

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BERKELEY COUNTY

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CRAIG KEELING,

APPELLANT

RECORD ON APPEAL

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THE STATE OF SOUTH CAROLINA)
)
VS.)
)
CRAIG KEELING,)
)
DEFENDANT.)
)

VOLUME 1 OF 3

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Berkeley County Courthouse
Moncks Corner, South Carolina
on Monday, November 1, 2010, Commencing at 1:00 p.m.

SUSAN "MIA" PERRON, CVR-CM
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1 one of them I think is insufficient. Notice we did
2 just receive the witness list. Certainly no last
3 names. Number two, I think it could be deemed -- first
4 of all, I'm not sure how it's relevant under 401.

5 THE COURT: All right. Ms. Littlejohn, anything
6 further?

7 MS. LITTLEJOHN: Yes.

8 Your Honor, on the video it does state that
9 Minor says Star -- he whispered something in Star's
10 ear. Your Honor, [a], relevancy; [b], 401; under 403,
11 prejudicial versus probative; under 801, hearsay.

12 I would ask, as a motion in limine, that that --
13 that she not be able to testify with regard to that,
14 which would be somewhat similar and tantamount to the
15 basis of the State's 803, as well.

16 THE COURT: So you are making a motion oral --
17 an oral motion in limine to exclude?

18 MS. LITTLEJOHN: Testimony of Star and of Ashley
19 under 401, relevancy; 403, prejudicial and probative.

20 THE COURT: Any testimony? Or specific
21 testimony?

22 MS. LITTLEJOHN: Your Honor, at this point any
23 testimony because we have no idea what either one of
24 them may say, other than Minor says on the
25 videotape, he whispered in Star's ear. That would, I

1 believe, fall under 801 through 803, Your Honor.

2 Also, again, at 403, cumulatively, potentially.
3 However, without knowing what they're going to be
4 testifying to, so I'm ask -- if the Court is not
5 inclined to grant that under those rules of evidence,
6 that there be an in-camera hearing with regard to what
7 they'll be saying and testifying to.

8 Arguably, this is similar in many natures -- in
9 many senses to the State's 803 with the hearsay issue.

10 THE COURT: All right. Ms. Williams?

11 MS. WILLIAMS: Your Honor, we're not trying to
12 elicit any statements from these witnesses.

13 These witnesses -- it's detailed in the forensic
14 report exactly what their relevance is. Right before
15 the defendant allegedly stuck his hands down the pants
16 of a seven year old, she was on the porch with her
17 cousins, Ashley and Star. He was whispering in one of
18 their ears, he tried to hug the other one. And we have
19 to prove motive. We don't have to prove just that he
20 touched the body parts of a child, we have to prove
21 that it was for a certain purpose. And it's highly
22 relevant that he was hanging out with these little
23 girls and trying to hug on them and whispering in their
24 ears about five minutes before he stuck his hands down
25 the pants of the seven year old.

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1 This is not new information. It's gone into
2 extensively in the videotape and it's detailed in the
3 written report done by Greenville Rape and Crisis
4 Center. And I -- as with all our witnesses, we told
5 the forensic interviewer that the defense attorneys
6 might be calling her, and, as an expert, she should
7 talk to them freely. So this is all information that
8 could have been explored by defense counsel.

9 MS. LITTLEJOHN: Your Honor, I would submit that
10 that is not in the video. The solicitor and I both may
11 have looked at the video incorrectly. But I would ask
12 the Court to review the video in camera. There is a
13 reference to he whispered something in Star's ear. We
14 don't know if he told her the day of the week.
15 Nevertheless, under 403, in that video there is nothing
16 said about the words Ashley.

17 There were approximately fifty to sixty people
18 at this so fifty to sixty people could be brought in as
19 cumulative witnesses to say, no, I wasn't on the porch
20 when this event allegedly occurred.

21 THE COURT: All right. Ms. Littlejohn, just so
22 I understand: you are making a motion to exclude any
23 reference that Star and Ashley may say about your
24 client whispering in their ear?

25 MS. LITTLEJOHN: Correct, Your Honor. And

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5

1 Minor Your Honor. Again, for the record, under
2 403, 401, 801 through 803.

3 THE COURT: And, Ms. Littlejohn --

4 Ms. Williams, is it --

5 MS. WILLIAMS: I'm going to make this Court's
6 Exhibit 1, Your Honor. It's a written report that
7 details what the child told the forensic interviewer
8 and gives a summary of the videotape. And clearly in
9 the written summary she talks about Ashley and Star and
10 whispering in the ear.

11 The State is not going to ask the child what the
12 defendant said. We think it's relevant that not only
13 did he put his hand down the pants of the one child --
14 because that can be construed as something else. We
15 had to prove that he had a certain intent in touching
16 the body parts. So we would say that the fact that he
17 was hugging on and whispering with the other two little
18 girls goes to that and it's a --

19 We would ask that this be marked as State's
20 Exhibit 1. And this is something that defense counsel
21 has had from the beginning, and it details what the
22 witnesses --

23 MS. LITTLEJOHN: Your Honor, I would object.

24 THE COURT: On what basis, Ms. Littlejohn?

25 MS. LITTLEJOHN: Your Honor, as Her Honor knows

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1 very well, this is --

2 I'm assuming you're talking about the Greenville
3 Rape Crisis Report; right, Anne?

4 MS. WILLIAMS: Yes.

5 MS. LITTLEJOHN: Okay. This is a -- I think
6 from the Greenville Rape Crisis Report [sic] Center.
7 And obviously that is, for example, background
8 information provided by the mother, Alyson Andrews, who
9 was -- disclosed the history of the allegation, the
10 interview summary. It actually says this interview was
11 conducted -- for full details refer to the taped
12 interview. So even the interviewer says, for full
13 details, refer to the taped interview.

14 This is a summary, Your Honor. Obviously, not
15 word-for-word. Furthermore, if they're not asking what
16 was said, how is it relevant under 401; again, under
17 403, more prejudicial than probative.

18 It also mentions numerous other things in here,
19 Your Honor.

20 THE COURT: All right. So, Ms. Littlejohn,
21 didn't you indicate that you would like for the Court
22 to review the video?

23 MS. LITTLEJOHN: I would, Your Honor, before we
24 allow any testimony by Star S. and Ashley
25 E. as well as potentially Minor I

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1 think that that may go to the Court's decision, with
2 regard to competency, with regard to Minor
3 And I think that that tells in the video clearly if she
4 uses the word cousin or utilizes the word -- my
5 recollection is she said, my cousin Star and my
6 cousins.

7 THE COURT: Well, Ms. Littlejohn, won't the
8 competency go to whether or not she can testify
9 adequately here in court and not what occurred on the
10 video?

11 MS. LITTLEJOHN: Your Honor, I still think we
12 have to meet the threshold of the competency within
13 court, regardless. But I think that also goes to the
14 determination of the Star and Ashley situation as
15 witnesses, which I'm asking that they be suppressed
16 based on --

17 THE COURT: All right. Just so I'm clear. Are
18 Star and Ashley on that same video?

19 MS. LITTLEJOHN: There is a mention of one.

20 THE COURT: But they're physically not
21 interviewed on that video? The video that you are
22 referring to is only an interview of --

23 MS. LITTLEJOHN: An interview of Minor

24 THE COURT: Ms. Andrews; is that correct, Ms.
25 Williams?

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1 MS. WILLIAMS: That is correct, Your Honor.

2 But she mentions the witnesses. And the written
3 report mentions, pretty well in detail. Even if Ms.
4 Littlejohn missed it on the videotape, the written
5 report has it right there. And that was part of
6 discovery.

7 And, again, we would ask to make this Court's
8 Exhibit 1 so the Court can review it.

9 MS. LITTLEJOHN: Your Honor, the written report
10 states: for full details, refer to the taped
11 interview.

12 THE COURT: Ms. Littlejohn, just so I'm clear,
13 what is it that I need to review on that Court's
14 Exhibit? Or, Ms. Williams, what is it that --

15 MS. WILLIAMS: On this exhibit -- I think what
16 Ms. Littlejohn is saying is that she didn't have notice
17 of what these witnesses were going to say and that --
18 and that if she did have notice, that they're not
19 relevant. Our argument is that she had notice way back
20 in the beginning when we provided discovery.

21 And this report details that the child says that
22 Ashley and Star was there and she [phonetic] was
23 whispering in I think she said Star's ear. That's in
24 terms of notice and discovery in Rule 5.

25 If the other argument is relevance, what we've

1 already said to the Court is that we have to prove what
2 his intent was. We think it's highly relevant. This
3 was not the only child that he was accosting that day.
4 It also goes to res gestae because it -- they were on
5 the porch with Minor they left to go to the
6 restroom, and like five minutes later is when this
7 incident occurs and the child's uncle sees it occur.
8 So for those two reasons we would say that they are
9 highly relative.

10 And then for the reason of notice, regardless of
11 what the video says or what she missed on the video,
12 the written report details it rather clearly.

13 THE COURT: All right. So, Ms. Littlejohn, your
14 objection to the Court reviewing the summary is that
15 you don't feel that it is a full and complete summary
16 of the video?

17 MS. LITTLEJOHN: Correct, Your Honor.

18 Also, I reference Rule 404 with regard to
19 character evidence not admissible to prove conduct.
20 404(a).

21 THE COURT: So you're objecting to the testimony
22 under 401 --

23 MS. LITTLEJOHN: 403 --

24 THE COURT: -- 403 and 404?

25 MS. LITTLEJOHN: And 801.

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1 THE COURT: And 801 is the cumulative --

2 MS. LITTLEJOHN: And 801 and 803 I believe it
3 is, Your Honor.

4 THE COURT: All right. Any other motions, Ms.
5 Littlejohn?

6 MS. LITTLEJOHN: Your Honor, and if I may. Yes,
7 Your Honor.

8 On this witness list they have Christine
9 Carlburg, Don Elsey. Christine Carlburg is from the
10 Greenville Rape Crisis Center. Don Elsey is from
11 Charleston, as Your Honor well knows. These two, I
12 purport, are being brought forth as alleged experts.
13 Your Honor, I don't know if you want to take up that
14 issue now, with regard to these two witnesses, or
15 later.

16 THE COURT: All right. You are objecting to the
17 testimony of Ms. Carlburg and Dr. Elsey?

18 MS. LITTLEJOHN: Correct, Your Honor.

19 THE COURT: And are you making an oral motion,
20 Ms. Littlejohn?

21 MS. LITTLEJOHN: I am, Your Honor.

22 THE COURT: All right. Well, let me -- just so
23 that we don't get too far behind, and too confused, so
24 that I can keep up with your oral motions: I am
25 denying your motion to not refer to the victim as a

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1 victim and not to refer to the defendant as the
2 defendant.

3 As I have previously noted, it is the Court's
4 position that those are merely terms. I will include
5 -- and I believe that there is already language in my
6 standard instruction as to it is merely a term -- and
7 you're not to make any inference as to what that means,
8 it's merely just a term to refer to individuals
9 involved in this court case. So that motion is denied.
10 I will --

11 MS. LITTLEJOHN: Your Honor, may I sit while
12 you're --

13 THE COURT: You may.

14 And I will make sure that the instruction is
15 clear as to both the defendant and victim terminology
16 in the Court's instructions to the jury.

17 I am -- my review of Rule 615, as well as the
18 case law, indicates that the lead detective may be
19 seated at the witness table with the State. Denying
20 your motion as to exclude the lead detective.

21 I am granting the motion as to sequestration.
22 As to the mother: the mother may be allowed after she
23 has testified and that there is no indication that she
24 would be recalled as a witness. She may remain seated
25 in the courtroom after she has testified. She must not

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1 be in the courtroom during opening statements or while
2 -- until she is -- until she has testified, since she
3 is a fact witness.

4 I have talked with Mr. Hamilton, Officer
5 Hamilton, and he has indicated that there would be
6 enough security and so there will be a court [sic] on
7 either side of the entryway and so there will be equal
8 on -- one behind the State and one behind the
9 defendant.

10 All right. I believe that that takes us --
11 except the motion in limine, which my understanding of
12 what you are objecting to, Ms. Littlejohn, is I will
13 review the videotape in conjunction with Court's 1.

14 I will review that, over your objection at this
15 time, at the appropriate time. I do not believe --

16 How long is the video, Ms. Williams?

17 MS. WILLIAMS: About thirty minutes.

18 THE COURT: All right. With the jury coming in,
19 I do not have time to review that at this time.

20 Have I addressed all of your motions, Ms.
21 Littlejohn?

22 MS. LITTLEJOHN: Your Honor, would you prefer
23 that I wait to address the issue of alleged experts at
24 the appropriate time or -- ;

25 THE COURT: Well, what do you feel is the

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1 forward on the competency issue with all three of them
2 and then make that determination.

3 THE COURT: Will all three children be present,
4 Ms. Williams, at -- in the morning if I -- they are
5 available and we could have a competency hearing on all
6 three children; correct?

7 MS. WILLIAMS: Yes, Your Honor. Yes. All the
8 children that we will put up -- there is one child that
9 the parents are still considering if they're going to
10 let her testify. Just in all candor to the Court, our
11 sense is that she will testify. But we know for a fact
12 that Minor the victim, will testify and that Star
13 will testify.

14 THE COURT: All right. Well, have Minor and
15 Star here at 9:00 a.m. in the morning and we will do
16 the competency hearing as to the two.

17 And then, Ms. Littlejohn, from what I'm
18 understanding the basis of your motion in limine, I
19 will reserve my ruling as to whether or not she
20 testifies as we progress with the trial.

21 MS. LITTLEJOHN: Okay. Thank you.

22 THE COURT: Thank you.

23 MS. LITTLEJOHN: Your Honor, we will be
24 reserving the motions for your ruling on the
25 handwriting, which is a 409, 410, as well as the

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PROCEEDINGS

THE COURT: Please be seated.

I appreciate everyone's patience. There were some matters unrelated to this case that I had to take up.

All right. State?

MS. WILLIAMS: Yes, Your Honor.

[Whereupon, Ms. Williams and Ms. Littlejohn confer]

MS. LITTLEJOHN: And the sequestration motion is in effect, Your Honor.

MS. WILLIAMS: That's what I just said.

MS. LITTLEJOHN: Oh. Okay.

THE COURT: All right. For the purposes of the competency hearing: the child's parent may remain in the courtroom for the purposes of the competency hearing.

MS. WILLIAMS: Thank you, Your Honor.

MS. LITTLEJOHN: That will be one parent?

MS. WILLIAMS: I don't think any of these people -- I mean, can the parents not stay for the competency hearing --

THE COURT: I am going to allow, for the purposes of the competency hearing, the parents of the child who is testifying to remain in the courtroom.

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1 This is not a fact-based discussion. It is a
2 determination of whether or not the child has the
3 ability to testify as a witness.

4 MS. WILLIAMS: And, Your Honor, just for
5 clarification: do you want other witnesses in the case
6 to leave during the competency hearing? We will not be
7 going over anything substantive of the case. But do
8 you want like other witnesses that have nothing to do
9 with the competency hearing --

10 THE COURT: Out of an abundance of caution, any
11 fact witnesses need to remain outside during the
12 competency hearing. But if there are two parents
13 present for the child, both parents may remain in the
14 courtroom.

15 MS. WILLIAMS: Okay. Thank you, Your Honor.

16 [Whereupon, Miss S. comes forward]

17 MS. WILLIAMS: Star, if you'll just go sit right
18 up in that chair.

19 [Whereupon, Miss S. takes the witness
20 stand]

21 THE CLERK OF COURT: Raise your right hand.

22 [Whereupon, Miss S. is duly sworn by the
23 clerk of court as follows: the testimony you give the
24 Court shall be the truth, the whole truth, and nothing
25 but the truth, so help you God]

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1 THE WITNESS: I do.

2 MS. WILLIAMS: Speak up --

3 THE WITNESS: I do.

4 THE CLERK OF COURT: Have a seat.

5 MS. WILLIAMS: There you go. Just talk right
6 into this microphone. Okay?

7 - - - - -

8 STAR S.

9 Having Been First Duly Sworn,,
10 was Examined and Testified as Follows:

11 DIRECT EXAMINATION

12 BY MS. WILLIAMS:

13 Q. Star, can you tell the judge what your name is?

14 A. Star S.

15 Q. Okay. And what grade are you in?

16 THE COURT: Hold on one second.

17 Miss S. I need you to spell your last name
18 for me.

19 THE WITNESS: S-W-A-N-S-O-N.

20 THE COURT: Thank you.

21 Q. [Ms. Williams] And what grade are you in, Star?

22 A. Fourth.

23 Q. What -- when is your birthday?

24 A. September 5th.

25 Q. And how old are you?

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1 A. Ten.

2 Q. Well, who's your teacher?

3 A. I have three teachers: Ms. Singles, Ms. Cassie,
4 and Mr. Parks [phonetic].

5 Q. Okay. What school do you go to?

6 A. Westview Elementary.

7 Q. And do you know, Star, the difference between
8 the truth and a lie?

9 A. Yes.

10 Q. If I said I was wearing a purple suit right now,
11 would that be the truth or a lie?

12 A. A lie.

13 MS. WILLIAMS: And let the record reflect that
14 I'm wearing a brown suit.

15 THE COURT: Yes, ma'am.

16 Q. [Ms. Williams] If I said my name was Star
17 S. would that be the truth or a lie?

18 A. A lie.

19 Q. If I said your name was Judge Harrington, would
20 that be the truth or a lie?

21 A. A lie.

22 Q. And what happens in your house if you tell a
23 lie?

24 A. We get in trouble.

25 Q. Okay. And do you think it's important to tell

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1 the truth in court?

2 A. Yes.

3 Q. What do you think might happen to someone who
4 did not tell the truth in court?

5 A. They would get in really big trouble.

6 Q. Okay. And do you think that you can tell the
7 truth in this courtroom about any of the matters that we
8 ask you about?

9 A. Yes.

10 MS. WILLIAMS: Court's indulgence for just a
11 second.

12 THE COURT: Yes, ma'am.

13 [Whereupon, Ms. Williams reviews documents]

14 Q. [Ms. Williams] And do you think it's wrong or
15 right to tell a lie?

16 A. Wrong.

17 MS. WILLIAMS: No further questions, Your Honor.

18 THE COURT: Ms. Littlejohn.

19 MS. LITTLEJOHN: Court's indulgence.

20 THE COURT: Yes, ma'am.

21 [Whereupon, Ms. Littlejohn and Ms. Williams
22 confer]

23 MS. LITTLEJOHN: Do you mind if I call you Star?

24 THE WITNESS: No, ma'am.

25 MS. LITTLEJOHN: Okay. Star, I'm Debbie

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1 Littlejohn. As you can see, there's not a jury here or
2 anything, so we can just kind of talk. Okay?

3 THE WITNESS: Okay.

4 THE COURT: Miss S. it's very important --
5 this is my court reporter and she -- that's a mask that
6 she's writing down everything that you say and I say.
7 She doesn't have the ability to write down head shakes
8 or nods, so it's very important that you answer your
9 questions out loud. Do you understand, Miss S.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Thank you.

12 CROSS-EXAMINATION

13 BY MS. LITTLEJOHN:

14 Q. Can you tell me what it really means to tell the
15 truth?

16 A. To tell what really happened.

17 Q. Okay. And can you tell me what it really means
18 if you tell a lie or what -- not what can happen, but what
19 it means to tell a lie?

20 A. It means to like not to tell the truth, like
21 telling not what happened.

22 Q. Okay. Have you ever heard anyone tell something
23 that wasn't true?

24 A. Yes.

25 Q. You have?

MIA PERRON, CVR-CM

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1 A. [No response]

2 MS. WILLIAMS: Asked and answered.

3 THE COURT: Miss S. it's important that
4 you answer very loud. You may use your outside voice
5 while you are in court; all right?

6 THE WITNESS: [Indicates affirmatively]

7 THE COURT: Is that a yes?

8 THE WITNESS: Yes.

9 THE COURT: Ms. Littlejohn, you may ask the
10 question again.

11 Q. [Ms. Littlejohn] I was just asking have you
12 ever heard anyone tell something that wasn't true.

13 A. Yes, ma'am.

14 Q. You have?

15 A. [No response]

16 Q. And what did you do when you heard someone tell
17 something that wasn't true?

18 A. I told the person that they told that that
19 wasn't true.

20 Q. And if your parents tell you something, is that
21 usually true or a lie?

22 A. True.

23 Q. True?

24 So if your parents said you were nine, would
25 that be the truth or a lie?

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1 A. It depends how old I was.

2 Q. No. Right now, today.

3 A. It would be a lie.

4 MS. LITTLEJOHN: Okay. No further questions.

5 THE COURT: Ms. Williams?

6 MS. WILLIAMS: Nothing further, Your Honor.

7 THE COURT: Miss S. you may step down.

8 Thank you.

9 [Whereupon, the witness is excused and exits the
10 witness stand]

11 MS. WILLIAMS: Can she remain in the courtroom
12 with her mother?

13 THE COURT: No, ma'am, because don't we have
14 another witness that's getting ready to testify?

15 MS. WILLIAMS: Ashley.

16 THE COURT: All right. Miss Williams, why don't
17 we hear argument as to this particular witness --

18 MS. WILLIAMS: Okay.

19 THE COURT: -- because they may --

20 MS. WILLIAMS: She has to wait. Ashley, could
21 you go back out for just a second? Sorry about that.

22 [Whereupon, Miss Andrews exits the courtroom]

23 MS. WILLIAMS: Your Honor, clearly the child
24 knows the difference between the truth and a lie. She
25 understands the gravity of telling the truth in court.

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1 Ms. Littlejohn tried to trick her with the question
2 about the parents. She didn't go for it. We would say
3 that she is qualified and competent to testify in
4 court, based on her understanding of what that means to
5 tell the truth in court.

6 THE COURT: Ms. Littlejohn?

7 MS. LITTLEJOHN: Your Honor, first, I would
8 object to the term tricking. I think that's very
9 inappropriate, because I just merely wanted her to give
10 me examples of what was the truth versus what was a lie
11 and if her parents told her one thing, would it be the
12 truth under all circumstances.

13 And I have no objection to her being qualified
14 as competent.

15 THE COURT: All right. Based upon my review of
16 the inquiry into Miss S. ability to tell the
17 truth as to her competency, there is no objection. I
18 find that she is mature enough. She understood
19 questions. She had the ability to narrate answers, as
20 well as to correct and clarify questions that were
21 factually inaccurate to her, the ability to relate a
22 true version of the facts presented.

23 She indicated she knows the difference between
24 right and wrong. She understood that it is right or
25 good to tell the truth and wrong or bad to tell a lie.

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1 She indicates she was willing to tell the truth and she
2 fears punishment.

3 Call your next witness.

4 MS. WILLIAMS: Minor

5 [Whereupon, Miss Andrews comes forward]

6 MS. WILLIAMS: Minor you can just come right
7 up here. Go right up to that chair.

8 THE CLERK OF COURT: Raise your right hand. Put
9 your left hand on the Bible.

10 [Whereupon, Miss Andrews is duly sworn by the
11 clerk of court as follows: the testimony you give the
12 Court shall be the truth, the whole truth, and nothing
13 but the whole truth, so help you God]

14 THE WITNESS: Yes.

15 THE COURT: All right. Have a seat

16 [Whereupon, Miss Andrews takes the witness
17 stand]

18 THE CLERK OF COURT: And state your name.

19 THE WITNESS: Minor A-N-D-R-E-W-S.
20
21
22
23
24
25

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Minor

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q. How old are you, Minor

A. Eight years old.

Q. And what grade are you in?

A. Third.

THE COURT: Hold on one second, Ms. Williams.

Minor could you spell your last name? I
didn't hear it.

THE WITNESS: A-N-D-R-E-W-S.

THE COURT: Thank you.

Q. [Ms. Williams] And how old are you?

A. Eight years old.

Q. What grade are you in?

A. Third.

Q. Do you know what school you go to?

A. Greenbriar Elementary.

Q. Do you like your teacher?

A. Yes.

Q. Who is that? Who's your teacher?

A. I have two.

Q. Oh. Can you tell me both?

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1 A. My real teacher, Ms. Shelly; my student teacher,
2 Ms. Runey.

3 Q. Okay. And where do you live?

4 A. Maulden.

5 Q. All right. And do you have any pets?

6 A. Two dogs and two gerbils.

7 Q. Now, Minor do you know the difference
8 between the truth and a lie?

9 A. Yes.

10 Q. Okay. If I said this chair was bright blue,
11 would that be the truth or a lie?

12 A. Lie.

13 MS. WILLIAMS: Let's let the record reflect that
14 the chair is orange.

15 Q. [Ms. Williams] If I said my name was Minor
16 Andrews, would that be the truth or a lie?

17 A. Lie.

18 Q. If I said your name was Minor would that be
19 the truth or a lie?

20 A. Truth.

21 Q. Is it right or wrong to tell the truth?

22 A. Right.

23 Q. Now, Minor is it important to tell the truth
24 in court?

25 A. Yes.

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1 Q. What happens in your house if you tell a lie?

2 A. I would get in trouble.

3 Q. Okay. What do you think might happen to
4 somebody in court if they tell a lie?

5 A. I'm not sure.

6 Q. Do you think it would be good or bad for someone
7 to tell a lie in court?

8 A. Bad.

9 Q. Do you think they might get in trouble?

10 A. Yes.

11 Q. But you don't know what kind of trouble?

12 A. I don't know.

13 Q. Okay. And do you think that you can tell the
14 truth in this courtroom?

15 A. Yes.

16 Q. Do you think you can answer all my questions
17 truthfully?

18 A. Yes.

19 Q. And can you answer the questions that Ms.
20 Littlejohn tells you and tell the truth?

21 A. [Indicates affirmatively]

22 THE COURT: Ms. Andrews, you're going to have to
23 answer all of your questions out loud and speak loudly
24 into the microphone. Do you understand?

25 THE WITNESS: Yes, ma'am.

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1 THE COURT: Ms. Littlejohn, your witness.

2 MS. LITTLEJOHN: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. LITTLEJOHN:

5 Q. Minor do you mind if I call you Minor

6 A. Yes.

7 Q. Because that's your name; right?

8 A. Uh-huh.

9 Q. Okay. You go by Minor don't you?

10 A. Sometimes.

11 Q. Sometimes. Okay. Well, I'm Debbie Littlejohn,
12 okay, and we're just going to kind of talk here today.

13 A. Uh-huh.

14 Q. And what we're going to talk about a little bit
15 is sort of what you and Ms. Williams talked about, the
16 truth versus a lie. And you said that if someone lies,
17 they get in trouble; right?

18 A. [Indicates affirmatively]

19 Q. Okay. What kind of trouble would you get in if
20 you told something that wasn't true?

21 A. You would probably get in trouble.

22 Q. Okay. But what kind of trouble?

23 A. I'm not sure.

24 Q. Have you ever told anything that wasn't true?

25 A. Sometimes.

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- 1 Q. And have you gotten in trouble?
2 A. [Indicates affirmatively]
3 Q. Okay. Have you ever heard people tell something
4 that wasn't true?
5 A. Yes, ma'am.
6 Q. And what happened to them?
7 A. They got in trouble or they had to go to
8 timeout.
9 Q. Timeout like in school?
10 A. Or at home --
11 Q. At home or --
12 A. -- usually.
13 Q. -- at school? Okay. Either one; right?
14 A. [Indicates affirmatively]
15 Q. Okay. And you live in Maulden; right?
16 A. Yes, ma'am.
17 Q. That's kind of right outside Greenville, isn't
18 it?
19 A. [Indicates affirmatively]
20 Q. Yeah. Now, let's just say -- well, it's coming
21 up on the holidays. You know it? Getting ready to get
22 out of school; aren't you?
23 A. Yes.
24 Q. Okay. So for holidays you have Thanksgiving
25 coming up, don't you?

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1 A. Yes.

2 Q. And you have Christmas coming up?

3 A. [Indicates affirmatively]

4 Q. Okay. Now, what happens at Christmas? Can you
5 tell me the truth about what happens at Christmas?

6 MS. WILLIAMS: Objection, Your Honor. Can we
7 approach, please?

8 THE COURT: No, Ms. Williams. I know where
9 Ms. Littlejohn is going and I know that she knows what
10 questions to ask, the appropriate questions to ask.

11 Q. [Ms. Littlejohn] Can you tell me what happens
12 at Thanksgiving?

13 A. I don't get what you're saying.

14 Q. Well, do you have a big turkey to carve?

15 A. Yes.

16 Q. Somebody to eat turkey; right?

17 A. Yeah, turkey.

18 Q. Right. And you get out of school?

19 A. [Indicates affirmatively]

20 Q. So that would be the truth if I told you that;
21 right?

22 A. Yeah.

23 Q. But if I told you that you have to go to school
24 during Thanksgiving, that would be a lie, wouldn't it?

25 A. Yes.

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1 Q. Okay. And at Christmas, if I told you you had
2 to go to school on Christmas day, would that be the truth
3 or a lie?

4 A. A lie.

5 Q. Okay. Because you don't have to; right?

6 A. Yes. Because it's a holiday.

7 Q. Okay. And if your mom or dad said at Christmas
8 you have to go to school, would that be true or false?

9 A. False.

10 Q. Okay. And if someone at Christmastime told you
11 that you won't get any presents, would that be the truth
12 or the lie?

13 A. The lie.

14 Q. Okay. So you -- because you normally get
15 presents at Christmas, don't you?

16 A. Yes.

17 Q. And if I told you that you would get a present
18 from that eagle on the board -- see that eagle behind you?

19 MS. LITTLEJOHN: And let the record reflect I'm
20 just pointing to a statute.

21 Q. [Ms. Littlejohn] If I told you that eagle was
22 going to deliver you presents, would that be true or
23 false?

24 A. False.

25 Q. If I told you your mom and dad were going to

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1 give you presents, would that be true or false?

2 A. True.

3 Q. True.

4 Okay. If I told you Santa Claus was going to
5 give you presents, would that be true or false?

6 A. True.

7 MS. LITTLEJOHN: Okay. I have no further
8 questions.

9 MS. WILLIAMS: Nothing further, Your Honor.

10 THE COURT: Miss Andrews, you may step down.
11 Thank you.

12 THE WITNESS: You're welcome.

13 [Whereupon, the witness is excused and exits the
14 witness stand]

15 THE COURT: All right. Ms. Williams, I'll be
16 happy to hear from you regarding argument.

17 MS. WILLIAMS: Yes, Your Honor.

18 Clearly the child understood, Minor
19 understood, the difference between the truth and a lie.
20 She understood that she had to tell the truth in court.
21 She knew what that meant. She knew that you would get
22 in trouble if you didn't tell the truth in court. Ms.
23 Littlejohn asked her a number of questions about being
24 true and false, and she answered all of them correctly.
25 Clearly she understands what it means to testify and a

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1 responsibility for telling the truth in court. We
2 would say that she's competent.

3 THE COURT: Ms. Littlejohn.

4 MS. LITTLEJOHN: Your Honor, I would normally
5 agree with that, until we got to the Santa Claus
6 question and she said Santa Claus is going to deliver
7 her presents. And I was trying to give examples of
8 each one of them. Your Honor, that's kind of a
9 stumbling block for me. I did not go further on it.
10 Wanted to know if an eagle would give her something, if
11 her parents would give her something, Santa Claus. I
12 didn't go into grandma and all the rest of the family.
13 But I'm not really sure how we get around Santa Claus.

14 THE COURT: All right. Based upon the testimony
15 that was presented, the Court finds that Miss Andrews
16 is mature enough to understand the questions and
17 narrate her answers. She perceives facts accurately.
18 She can recall facts correctly. She was able to tell
19 teachers, as well as student teachers, related a true
20 version of the facts perceived.

21 She indicated she knows the difference between
22 right and wrong; indicated that it is important to tell
23 the truth in court, it is bad to lie in court. She
24 understands the difference between right and good and
25 bad and wrong. She indicated she would be willing to

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1 tell the truth and she has a fear of a punishment if
2 she lies.

3 As to the belief or disbelief in Santa Claus,
4 that is not this Court's purview here today.

5 MS. LITTLEJOHN: Thank you, Your Honor.

6 THE COURT: Thank you. Call your next witness.

7 MS. WILLIAMS: Yes, Your Honor. The State calls
8 Ashley E.

9 Walk right up here, and around here, and up to
10 that chair. Okay?

11 [Whereupon, Miss E. comes forward]

12 THE CLERK OF COURT: Raise your right hand.

13 [Whereupon, Miss E. is duly sworn by the
14 clerk of court as follows: the testimony you give the
15 Court shall be the truth, the whole truth, and nothing
16 but the truth, so help you God]

17 THE WITNESS: I do.

18 THE CLERK OF COURT: Please be seated, and state
19 your name.

20 [Whereupon, the witness takes the witness stand]

21 THE WITNESS: Ashley.

22 MS. WILLIAMS: Can you spell your last name?

23 THE WITNESS: E-R-I-C-K-S-O-N.

24 THE COURT: Ms. Williams.

25 MS. WILLIAMS: Thank you, Your Honor.

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1 ASHLEY E.

2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. WILLIAMS:

6 Q. Ashley, how old are you?

7 A. Eight.

8 Q. And what grade are you in?

9 A. Third grade.

10 Q. Do you know what school you go to?

11 A. Devin Forest Elementary [phonetic].

12 Q. And who's your teacher?

13 A. Ms. Matthews.

14 Q. Do you remember who your teacher was last year?

15 A. Ms. Bell.

16 Q. And who lives in your house with you?

17 A. My brother, my dad, and my mom.

18 Q. Do y'all have any pets?

19 A. Yes.

20 Q. What's their names?

21 A. Ushi and Anna.

22 Q. Now, Ashley, do you know the difference between
23 the truth and a lie?

24 A. Yes, ma'am.

25 Q. If I said this chair was bright blue, would that

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1 be the truth or a lie?

2 A. A lie.

3 MS. WILLIAMS: Let the record reflect that the
4 chair is orange.

5 Q. [Ms. Williams] If I said that my name was
6 Ashley E. would that be the truth or a lie?

7 A. A lie.

8 Q. What happens in your house when you tell a lie?

9 A. I get popped.

10 Q. What does being popped mean?

11 A. I get popped in the mouth because I said
12 something that was really rude.

13 Q. What about if you tell a lie? You get popped?

14 A. Yeah.

15 Q. Do you like getting popped?

16 A. No, ma'am.

17 Q. So would it be a good thing or a bad thing to
18 tell the truth?

19 A. A bad -- a good thing.

20 Q. Okay. Would it be a good thing or a bad thing
21 to tell a lie?

22 A. A bad thing.

23 Q. And in court do you have to tell the truth?

24 A. Yes, ma'am.

25 Q. And what do you think happens to people who lie

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1 in court?

2 A. They get in trouble.

3 Q. Okay. And do you think it's right or wrong to
4 tell the truth in court?

5 A. It's right.

6 Q. Do you think that you can tell the truth in this
7 courtroom about anything that we ask you about?

8 A. Yes, ma'am.

9 MS. WILLIAMS: Please answer any questions that
10 Ms. Littlejohn has for you. Okay?

11 THE COURT: Ms. Littlejohn.

12 MS. LITTLEJOHN: Ashley, do you mind if I call
13 you Ashley? Because that's your name; right?

14 THE WITNESS: Uh-huh.

15 MS. LITTLEJOHN: Okay. My name is Debbie
16 Littlejohn. I'm just going to kind of ask you a few
17 questions. We're just going to talk a little bit.
18 Okay?

19 THE WITNESS: [Indicates affirmatively]

20 CROSS-EXAMINATION

21 BY MS. LITTLEJOHN:

22 Q. You told Ms. Williams that if you tell a lie,
23 you get popped in the mouth; right?

24 A. Yes, ma'am.

25 Q. Okay. Have you ever told a fib ever?

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1 A. Yes, ma'am.

2 Q. And you got in trouble, didn't you?

3 A. Yes, ma'am.

4 Q. Okay. That might be at home or at school;
5 right?

6 A. Yes, ma'am.

7 Q. Okay. Now, how do you know you have to tell the
8 truth in court?

9 A. [No response]

10 Q. You don't really know, do you?

11 A. [Indicates negatively]

12 MS. LITTLEJOHN: Okay. Well, I don't have
13 anymore questions for you. Okay?

14 THE WITNESS: Yes, ma'am.

15 MS. LITTLEJOHN: Okay.

16 THE COURT: Ms. Williams.

17 REDIRECT EXAMINATION

18 BY MS. WILLIAMS:

19 Q. Ashley, you don't know why you have to tell the
20 truth in court, but do you know if it's right or wrong to
21 tell the truth in court?

22 A. Yes.

23 Q. Yes?

24 A. [No response]

25 Q. And do you have to tell the truth in court?

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1 A. Yes.

2 Q. Do you always have to tell the truth?

3 A. Yes.

4 Q. And what happens if you don't tell the truth?

5 A. You -- you get in trouble.

6 Q. Uh-huh. You don't know you get in trouble, but
7 do you know that you get in trouble if you don't tell the
8 truth?

9 A. Yes, ma'am.

10 Q. So is it right to tell the truth in court?

11 A. Yes, ma'am.

12 Q. Is it right or wrong to tell a lie in court?

13 A. It's wrong.

14 Q. Do you know why it's wrong to tell a lie in
15 court?

16 A. [No response]

17 Q. It's okay if you don't. You just have to
18 answer.

19 A. No.

20 Q. So you don't know why, but you know it is?

21 A. Uh-huh.

22 Q. Are you going to tell the truth in court?

23 A. Yes, ma'am.

24 Q. And what do you think will happen to you if you
25 don't tell the truth in court?

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1 A. [No response]

2 Q. Do you think you'll get in trouble?

3 A. Yes.

4 Q. Do you want to get in trouble?

5 A. No, ma'am.

6 THE COURT: Ms. Littlejohn.

7 MS. LITTLEJOHN: I have no further questions.

8 THE COURT: Miss E. you may step down.

9 [Whereupon, the witness is excused and exits the
10 witness stand]

11 MS. WILLIAMS: You just have to walk right out
12 where you were. Okay?

13 THE COURT: Ms. Williams?

14 MS. WILLIAMS: Yes, Your Honor.

15 The witness knew the difference between the
16 truth and a lie. She knew she had to tell the truth in
17 court. She knew it was wrong not to tell the truth in
18 court. She knew that there would be consequences if
19 she didn't tell the truth in court. And she testified
20 that she would tell the truth in court.

21 Ms. Littlejohn asked her why she had to tell the
22 truth in court and she couldn't answer that question.
23 But she had previously answered that she knew it was
24 right to tell the truth and wrong to tell a lie. I
25 don't know that she needs to know why she had to tell

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1 the truth in court; just that she knows it's right to
2 do so and that she's prepared to do so.

3 THE COURT: Ms. Littlejohn.

4 MS. LITTLEJOHN: Your Honor, Ashley answered
5 that she hasn't always told the truth. But when I
6 asked her why do you have to tell the truth, I think
7 that goes to the basis of -- if you don't understand
8 why you have to do it, even as a child, even an answer
9 such as that's what my Sunday School teacher says to
10 always do. You need to know why. If you say, my
11 parents always tell me to tell the truth.

12 There's some reason you know that you have to
13 tell the truth, Your Honor. And she couldn't answer
14 why do you have to tell the truth. I think that that's
15 material to being able to understand telling the truth.

16 THE COURT: Is that an element, Ms. Littlejohn,
17 that the Court must consider in determining competency?
18 Is it my role here to determine whether or not she is
19 sufficiently aware of her duty to tell the truth and
20 the probability of punishment if she lies?

21 MS. LITTLEJOHN: Your Honor, I believe that it
22 goes to the ability to distinguish the truth from a
23 lie. If you don't know why, then how can you really
24 distinguish?

25 THE COURT: Ms. Williams, any response?

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1 MS. WILLIAMS: Just that the only thing that the
2 Court has to determine is that she has a duty to tell
3 the truth and that she understands that she has a duty.
4 And that's what she answered, that she understood that
5 she had to tell the truth. She doesn't have to
6 understand why she has a duty; just that the duty
7 exists and that she has to tell the truth.

8 THE COURT: Any further response, Ms.
9 Littlejohn?

10 MS. LITTLEJOHN: Your Honor, I would say how do
11 you understand if you don't know why. And, again, that
12 could be for whatever reason, your Sunday School
13 teacher, your mom and dad, whoever, told you; my
14 teacher told me I'm supposed to always tell the truth.

15 THE COURT: The responses to the questions by
16 the State and the defense indicate that Miss E.
17 is substantially rational and responsive to the
18 questions she was asked. She is sufficiently aware of
19 the moral duty to tell the truth, as well as the
20 probability of punishment if she lies.

21 She indicates and was able to understand the
22 questions, as well as relate answers as to her teachers
23 last year. She is able to perceive facts accurately
24 through her senses. She recalled them correctly. She
25 knows the difference between right and wrong, good and

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1 bad. She understands that it is right or good to tell
2 the truth, it's wrong or bad to lie. She indicates
3 that it's a good thing to tell the truth, that you
4 always have to tell the truth, that if you lie in court
5 you will get in trouble. She indicated she would be
6 willing to tell the truth, and she has a fear of
7 punishment. In her situation she indicated that when
8 she is punished she gets popped in the mouth and she
9 does not like that.

10 Based upon that, I find that her testimony is
11 competent. She is competent to testify to the
12 satisfaction of this judge.

13 Any further witnesses?

14 MS. WILLIAMS: No, Your Honor.

15 MS. LITTLEJOHN: None, Your Honor.

16 THE COURT: All right. And what are the -- what
17 are the remaining motions that we need to hear before
18 we bring in the jury?

19 MS. WILLIAMS: Your Honor, we would just have --
20 during opening we were planning to mention certain
21 pieces of evidence. And I think Ms. Littlejohn
22 indicated to the State that she didn't have any
23 additional motions, but I don't know if you want to
24 hear from the State on the admissibility of the letter,
25 if you've heard enough --

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1 a discussion if this is -- if there was not the ability
2 to have a discussion with Mr. Keeling, since you were
3 his attorney?

4 MS. LITTLEJOHN: Your Honor, I think that it
5 still does not negate the fact that it is a request for
6 a plea arrangement, a request for any sort of plea or
7 negotiations. Your Honor, I think that rule applies,
8 whether represented or not represented.

9 THE COURT: All right. And any -- are there any
10 other matters before we bring in the jury?

11 MS. LITTLEJOHN: Will the Court be addressing
12 the issue of the expert at this time?

13 And I would also make a motion with regard to
14 the testimony of the -- Star and Ashley, Star S.
15 I believe is her name, and Ashley E.

16 THE COURT: And the basis of -- the exclusion of
17 their entire testimony, Ms. Littlejohn; is that
18 correct?

19 MS. LITTLEJOHN: Correct, Your Honor.

20 THE COURT: All right. And what is the basis?

21 MS. LITTLEJOHN: Your Honor, this is one that we
22 had referenced yesterday. And for no other reason, I
23 would ask the Court, if nothing else, to do an in-
24 camera hearing first because of relevancy. Your Honor,
25 there was -- Her Honor took home the tape yesterday, as

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1 well as some other material, to listen to it. Relevant
2 under 401. It could be deemed bolstering. As well as
3 403, prejudicial, getting two little girls up there to
4 say he whispered in my ear but they're not allowed to
5 say what he whispered. Juror might be going, uhm,
6 wonder what he whispered. So the prejudicial effect
7 there is material.

8 THE COURT: Have I made a ruling he's not
9 allowed to testify as to what was whispered in their
10 ear?

11 MS. LITTLEJOHN: I believe the State had said
12 that he would not be -- they would not be testifying as
13 to what was whispered.

14 MS. WILLIAMS: I think that was in response to
15 her wanting to keep it out. But if -- that's fine. If
16 the -- if she wants the child to tell what was
17 whispered, that is fine, Your Honor.

18 MS. LITTLEJOHN: Your Honor, we do not, because
19 there's absolutely nothing that references it. Also --

20 THE COURT: Well, Ms. Littlejohn, what are you
21 basing the exclusion of witnesses testifying as to what
22 was going on?

23 MS. LITTLEJOHN: Your Honor, primarily 401,
24 relevancy. How is it relevant that two children who
25 were not there, who were not present when this alleged

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1 event occurred, didn't see anything, had gone inside?
2 With fifty, forty, sixty people around, how is it
3 relevant to the alleged charge that my client is
4 charged with? How is that relevant to did Mr. Keeling
5 perform a lewd act on Minor They were not
6 there. Just because they're going to say, he hugged
7 me, he whispered something in my ear, I believe that
8 that leads the jury to believe something to be very
9 prejudicial. They were not present. The issue today
10 is, and the issue for this trial is, pretty simple:
11 was there a lewd act performed by Mr. Keeling on
12 Minor those two people.

13 Your Honor, I believe that the testimony of
14 those two children, one, because of their age and all,
15 would be prejudicial; two, under 401 -- I mean, excuse
16 me, 403; two, I believe under 403 the -- I think that
17 the probative value is certainly -- I believe that the
18 -- excuse me -- the prejudicial value is outweighed by
19 any probative value. And 404, Your Honor, and that
20 would be that any propensity evidence is not
21 admissible, any character evidence, any propensity
22 evidence, is not admissible.

23 So 401, 403, 404.

24 THE COURT: And what is the basis, Ms.
25 Littlejohn, of your exclusion of the expert's

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1 testimony?

2 MS. LITTLEJOHN: Your Honor -- Court's
3 indulgence, Your Honor.

4 THE COURT: Yes, ma'am.

5 [Whereupon, Ms. Littlejohn reviews documents]

6 MS. LITTLEJOHN: Your Honor, with regard to
7 expert, the best evidence is the child. The child will
8 testify. The next best evidence would be the videotape
9 of the child for the jury to see. There is nothing
10 that indicates -- she's been deemed competent. There's
11 nothing that indicates that she can't tell her story as
12 her story is. It is --

13 Again, in looking at the Douglas case, which we
14 discussed yesterday, and Dempsey, et cetera, what are
15 we doing, asking them to come in and be a lie detector
16 for the child?

17 Your Honor, it's cumulative, bolstering,
18 vouching for the credibility of this child. You saw
19 her, I saw her, on the stand. She's credible. She can
20 tell it. Her Honor watched the video last night. This
21 child doesn't have a problem saying -- and, as a matter
22 of fact, I would submit that the solicitor's office
23 would agree to that, because they were of the opinion
24 let's call her competent. So obviously they
25 immediately are ready to call her competent and know

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1 that she can. The best evidence is her. The second
2 best evidence is that video.

3 If you go putting the lady from Greenville up as
4 quoted expert, then try to put Don Elsey up as another
5 expert, who hasn't even interviewed her, you're talking
6 about a child; then you have a video that tells the way
7 it is, and the jury can see it; then let's put an
8 expert up to tell us about what the child said, who's
9 already testified, and the video that you could see
10 plainly, but we're going to let somebody else come in
11 and tell you about it and then we're going to let
12 somebody come tell you that that first expert was an
13 expert.

14 We don't need expert upon expert upon expert.
15 It's clearly cumulative, clearly bolstering.
16 Obviously, we'll have to have -- if the Court is even
17 thinking that we will -- they will come in, we'll have
18 to have the hearing under Watson, and all the other
19 factors, to determine their expertise within these
20 areas.

21 Your Honor, there's no reason the child can't
22 tell it, as I believe the State said she was very
23 articulate, very truthful. These were their words.
24 She knows the difference between the truth and a lie.
25 They were the ones putting her up today to show this

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1 child knows the difference between the truth and lie,
2 this child can tell the truth, tell a lie, knows -- in
3 other words, I think tell the difference between knows
4 what to do, knows what not to do, knows to tell the
5 truth in court. So that's their witness, that they've
6 already placed up for competency, that's able to tell
7 that truth.

8 THE COURT: All right. We're going to go ahead
9 and get ready for openings. We'll take a ten-minute
10 recess, and I'll issue my ruling on the remaining
11 matters.

12 Counsel, let me see you briefly in chambers.

13 [Whereupon, a recess is taken from 10:25 a.m. to
14 10:37 a.m.]

15 THE COURT: All right. As to the issue of the
16 testimony of the two other witnesses, Ms. E. and
17 Ms. S. based upon my understanding of the facts
18 that will be presented by these two witnesses, the fact
19 that the children are eight are ten is not a factor.
20 The Court has found that the two witnesses are
21 competent to testify. If their testimony is relevant,
22 they are allowed to testify.

23 I'm denying your request at this time, Ms.
24 Littlejohn, to exclude the testimony of the two
25 witnesses.

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1 As to the issue of the expert testimony: based
2 upon my understanding of where we are procedurally in
3 this case, it is a premature issue. The fact that they
4 are experts, and two experts to testify, the Court at
5 this point cannot determine whether or not the
6 testimony should be excluded. If the testimony is
7 relevant and as an expert they will aid the jury in
8 understanding what the testimony will be, and have
9 specialized knowledge, the Court will qualify them as
10 an expert.

11 It is likely that we will need to have some sort
12 of hearing, in-camera hearing, before I qualify them as
13 an expert, depending on the testimony that precedes the
14 experts. But the mere fact that there are two experts
15 on the witness list is not, in itself, a basis to
16 exclude the testimony.

17 The remaining issue as to the letter that was
18 sent to the solicitor's office by Mr. Keeling: based
19 upon my review of the letter, the Court is determining
20 -- has determined that it is a offer, a plea discussion
21 and, as such, under my analysis of Rule 410, the letter
22 will be excluded. That, for the record, is State's
23 Exhibit 9.

24 Anything further before we bring in the jury?
25 From the State?

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1 MS. WILLIAMS: Yes, Your Honor.

2 I'm going to need the Court's indulgence just to
3 take a minute to decide about that ruling. I don't
4 know if it's an appealable issue, but it's so critical
5 to the case I just need to get some guidance as to
6 whether or not we would appeal that ruling.

7 THE COURT: All right. You may have ten
8 minutes.

9 MS. WILLIAMS: Thank you.

10 MS. LITTLEJOHN: And, Your Honor --

11 THE COURT: Yes.

12 MS. LITTLEJOHN: -- I believe yesterday we
13 had -- I actually don't recall. We may or may not have
14 made a motion in regard to the photographs, and I don't
15 know if they're going to be --

16 THE COURT: Well, the two solicitors have left,
17 Ms. Littlejohn, so we'll be at ease.

18 All right. Thank you. We'll be at ease.

19 [Whereupon, a recess is taken from 10:40 a.m. to
20 10:51 a.m.]

21 THE COURT: Be seated.

22 All right. Ms. Williams, you have indicated
23 that the State is not going to appeal?

24 MS. WILLIAMS: That's correct, Your Honor.

25 THE COURT: And that was State's 9, which was

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1 the letter from the defendant to Mr. Jennings. I have
2 ruled that I find that that is to be considered, under
3 Rule 410, a plea discussion.

4 I will allow you to articulate anything else you
5 need on the record, Ms. Williams.

6 MS. WILLIAMS: Yes, Your Honor.

7 Actually, just for clarification, 9 is the
8 envelope, 10 is the letter.

9 We would ask the Court to consider something
10 that's within the Court's venue to do, and that is to
11 redact the portion of the letter that refers to any
12 kind of plea negotiations. It's just one sentence in
13 the letter. The rest of the letter makes sense without
14 it. And I think if that's the Court's concern,
15 considering how essential it is to the State's case if
16 we could redact that portion of the letter, then maybe
17 that would resolve the Court's concern with regard to
18 plea negotiations.

19 And, Your Honor, I think even if we wanted to
20 respond to Mr. Keeling's offer, if that's what it was,
21 we wouldn't be able to under the rules of ethics
22 because he was represented.

23 But we respect the Court's decision and just ask
24 that the Court consider redacting that portion of the
25 letter so that we can still use it for other purposes.

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1 THE COURT: At this time I am declining to
2 redact your letter, based upon my review of the letter
3 in its entirety. As we have discussed during our
4 extensive discussion regarding the letter, and Rule 410
5 and 408, again, the Court is finding that that letter
6 is, based upon my review of the letter in its entirety,
7 a plea discussion.

8 Note your exception for the record, Ms.
9 Williams.

10 MS. WILLIAMS: Thank you, Your Honor.

11 THE COURT: All right. Anything before we bring
12 in the jury?

13 MS. WILLIAMS: No, Your Honor.

14 MS. LITTLEJOHN: Your Honor, I believe
15 sequestration matters.

16 MS. WILLIAMS: Oh. Your Honor, can they stay in
17 for just the opening?

18 MS. LITTLEJOHN: Your Honor, I would submit no.
19 Sequestration -- there may be evidence that -- you've
20 already ruled on sequestration. There's no purpose for
21 them staying in during the opening.

22 THE COURT: All right. I'm going to allow them
23 to stay in for the opening.

24 As I indicate to the jury, as well as to -- both
25 counsel knows, what is contained in opening is not to

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1 be considered evidence.

2 Note your exception for the record. Thank you.

3 Let's bring in the jury.

4 [Whereupon, the jury enters the courtroom at
5 10:54 a.m.]

6 THE COURT: Please be seated.

7 Good morning, ladies and gentlemen. Once again,
8 I am Judge Kristi Harrington. And for those of you who
9 are curious, this is my law clerk. His name is Yancey
10 McLeod.

11 Also, I wanted to let you know, because one of
12 the questions inevitably I get asked, is what I am
13 doing up here on my laptop. I assure you I am not
14 playing Bejeweled. I do not even know what that is,
15 but that was a question that some jurors asked me last
16 trial.

17 Ladies and gentlemen, all of our -- we don't
18 have books, law books, as much as we used to and so
19 all of my law is contained right here on WestLaw. And
20 so I am researching the law and communicating with my
21 law clerk to make sure that you are having a
22 comfortable experience as much as we can. So please do
23 not think that I am not paying attention or I am doing
24 anything -- playing games or anything of that nature.

25 Ladies and gentlemen, you have also been given

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1 notebooks. That means that you are allowed to take
2 notes during the progress of this trial. Ladies and
3 gentlemen, one juror's notes are no more correct or
4 accurate than another juror's notes. And remember,
5 some of us were much better note-takers in school than
6 others of us. So just remember, those are for you to
7 keep. We will collect the notebooks at the end of the
8 day and return them back to you. They will be locked
9 safely and securely. Ladies and gentlemen, I also
10 caution you: while you are taking notes, sometimes --
11 I know I have a tendency to look down -- you may miss
12 what is happening in front of you. So with those
13 cautionary instructions, please remember you will be
14 allowed to take notes.

15 Ladies and gentlemen, we are now going to
16 administer the oath to you. Please stand.

17 THE CLERK OF COURT: Please raise your right
18 hand to be sworn.

19 [Whereupon, the jury is duly sworn by the clerk
20 of court as follows: you shall well and truly try and
21 true deliverance make between the State of South
22 Carolina and the defendant at the bar, whom you shall
23 have in charge, and a true verdict render according to
24 the evidence, so help you God]

25 THE CLERK OF COURT: Please be seated.

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1 THE COURT: Ladies and gentlemen, the case that
2 we are about to try is the case of the State versus
3 Craig D. Keeling.

4 Before we begin this trial, I want to tell you
5 that this trial probably will be different from what
6 you might expect. Most people don't have the
7 opportunity to attend actual court sessions as you are
8 doing now. Most of you watch television or read books,
9 and those trials are always full of intense action,
10 high drama, and riveting circumstances. While all of
11 these things may be true at times during this trial,
12 please remember this trial is not for your
13 entertainment. It is a fundamental part of our
14 democracy, a search for the truth, in an effort to make
15 sure that justice is done before you before this Court.

16 Searching for the truth and making sure that
17 justice is done is often slow, deliberate, and
18 repetitive, the opposite of what you may have seen on
19 television, in movies, or read in books. This
20 courtroom is a place of honor. It is dedicated to the
21 protection and the preservation of citizens' rights
22 through what many have called the greatest justice
23 system ever created.

24 The attorneys that appear before you are
25 advocates for the parties they represent, but first and

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1 foremost they are officers of this Court. They are
2 sworn to uphold the integrity and the fairness of our
3 judicial system and to help you in the search for the
4 truth. You should expect them to be professional,
5 competent, and ethical in the representation of their
6 clients. But remember, you also have taken an oath to
7 try this case and to reach a fair and just verdict, and
8 you are also expected to be professional, reasonable,
9 and ethical.

10 Thank you again for accepting this most
11 important responsibility of jury service and for your
12 contribution here today to our justice system.

13 What I now say is intended to serve as an
14 introduction to the trial of this case. These remarks
15 are not a charge on the law. I will instruct you on
16 the law applicable to this case at the end of the trial
17 before you retire to consider your verdict. This is
18 merely an explanation of the procedure that we will
19 follow so that you may better understand what is
20 happening here today.

21 The defendant is charged, by an indictment filed
22 in this court, with a crime of committing or attempting
23 a lewd act upon a child, the elements of which will be
24 explained to you later. The indictment is simply the
25 charge by which the case is brought into this court.

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1 It is not in any sense evidence of any of the
2 allegations it contains. The defendant has pled not
3 guilty to this indictment. The State, therefore, has
4 the burden of proving each of the elements of the
5 indictment beyond a reasonable doubt. It will be your
6 duty, ladies and gentlemen, to decide whether the State
7 has met that burden.

8 Your purpose as jurors is to find and determine
9 the facts. You are the sole judge of the facts in this
10 case and if at any time I make any comment regarding
11 the facts of this case, you must disregard it. You are
12 to determine the facts from the testimony you hear from
13 the witness stand and any other evidence that is
14 introduced in court. It is up to you to determine the
15 inferences that you feel may be properly drawn from the
16 evidence.

17 It is especially important that you perform the
18 duty of determining the facts diligently and
19 conscientiously, because ordinarily there is no way to
20 correct an erroneous determination of the facts by a
21 jury. On the other hand, and with equal emphasis, the
22 same law that makes you the judges of the facts makes
23 me the judge of the law. The law as given by this
24 Court is the only law that you may consider. You must
25 accept it and follow it, even though you may disagree

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1 with it. I cannot tell you what I think the facts are
2 and you cannot disagree with me about what the law is
3 or what the law should be. Your job is to take the law
4 as I give it to you, apply it to the facts as you find
5 them to be from the testimony of the witnesses and any
6 other evidence that is introduced. After doing that,
7 you will render your verdict, a true and just verdict,
8 under the solemn oath that you just took.

9 Until I advise you to begin your deliberations,
10 you must not discuss this case with anyone, including
11 your fellow jurors, your friends, your family members,
12 or anyone involved in this case. Again, as I cautioned
13 you yesterday, this includes face-to-face discussions,
14 as well as those by telephone, e-mail, texting or
15 blogging. After the case is submitted to you, you must
16 discuss it only in the jury room and only with your
17 fellow jurors.

18 The attorneys and the parties in this case have
19 been informed and instructed by this Court they are not
20 to talk to you at all. So, please, if you see them in
21 the parking lot or in the hallway and they don't speak
22 to you, please do not think they are being rude. They
23 are merely following the Court's instruction.

24 During the trial do not read, watch, listen to
25 any news accounts regarding this case and do not do any

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1 independent investigations. You must not consider
2 anything that you may have read or heard about this
3 case outside of the courtroom, whether before or during
4 the trial.

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

14 In just a moment the solicitor will make what is
15 called an opening statement in which the solicitor will
16 explain to you the issues in this case, or at least
17 what the solicitor thinks the issues may be. The
18 attorney for the defendant may also make an opening
19 statement, although he is not required to do so. What
20 the attorneys tell you during their opening statements
21 is not evidence in this case. It is only their
22 contention as to what the issues are. The evidence in
23 this case will be presented to you by the testimony of
24 sworn witnesses from the witness stand, as well as any
25 exhibits that may be introduced into evidence.

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1 Ladies and gentlemen, the evidence that is
2 introduced as exhibits will go back to you with you in
3 your jury deliberation room to assist you in your
4 deliberations.

5 From time to time during the trial you may hear
6 one of the attorneys say, Your Honor, I believe we have
7 a matter of law, may we approach, or I might find it
8 necessary to excuse you from the courtroom while we
9 discuss matters of law. Ladies and gentlemen, please
10 do not speculate as to what we are talking about.
11 Please know that we are not trying to hide anything.
12 As I have indicated to you, I may not make any comment
13 regarding the facts. But sometimes it is necessary for
14 me to make a comment on the facts when I issue a ruling
15 on the law, so I will excuse you so that in no way will
16 I influence you regarding any statements according to
17 my rulings.

18 Ladies and gentlemen, in determining what the
19 true facts are in this case, you must decide whether or
20 not the testimony you hear is believable. It will be
21 my responsibility, as a matter of law, to rule whether
22 certain testimony is admissible. But once the
23 testimony is admitted, whether or not you believe it is
24 solely for you to determine.

25 In deciding whether to believe a witness, you

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1 have the right to consider the interest of any witness,
2 the bias of any witness, the prejudice of any witness,
3 the opportunity for that witness to have seen and heard
4 the things about the witness -- about which the witness
5 may testify, as well as the way that witness acts on
6 the witness stand. You have the right to consider
7 anything that is in the record that will help you
8 evaluate the testimony of the witnesses. Again, ladies
9 and gentlemen, that means it's your duty to pay close
10 attention to the witnesses and to the Court. And,
11 please, do not let your thoughts wander so that at the
12 end of all of the testimony, after the arguments of
13 counsel and the charge on the law by the Court, you
14 will be in a position to determine what the true facts
15 are and apply the law to those facts, rendering a true
16 and just verdict.

17 Ladies and gentlemen, please give your attention
18 to the opening statements.

19 Ms. Williams?

20 MS. WILLIAMS: Thank you, Your Honor. May it
21 please the Court, counsel.

22

23

24

25

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OPENING STATEMENT

MS. WILLIAMS: Good morning.

The Andrews family has a lot to be thankful for. A strong family. Mr. Andrews has enjoyed a very successful career with the military, and a beautiful daughter who is now eight years old. But they had something much more important to be grateful for and thankful for last Thanksgiving because last Thanksgiving, thank goodness, Minor who was then seven years old, her uncle was in the right place at the right time and he interrupted an act of child molestation before it was completed.

That day was a day of kind of like a family reunion for the Andrews. It was not your traditional sit-down Thanksgiving. They had lots and lots of family there. Everybody brought something. And everybody was around the yard. The kids were playing.

And Daryl Andrews, Minor Uncle, had just finished carving the turkey. He went to the sink to wash his hands and looked out on the porch and saw this man, Craig Keeling, seated right over here, who was pretty much a stranger to this family -- he had come with someone else to the party -- with his hands down the back of his niece's pants, inside her pants, and rubbing her bottom. And when he saw the expression on

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1 her face and saw what the defendant was doing, he got
2 emotional. He banged on the window and said, what are
3 you doing.

4 And what did Mr. Keeling do? He took off. He
5 tried to get away, tried to leave that area. And Mr.
6 Andrews immediately got his brother, who's the father
7 of this child. They ran after him and they prevented
8 him from leaving before the police could arrive.

9 Now, you are going to hear evidence of how this
10 transpired. It is very rare to have an eyewitness to
11 this kind of thing. Usually, there's just a child and
12 the person that does it to them. You're going to hear
13 from that child, she's eight years old now, and you're
14 going to hear her tell what happened. She doesn't
15 really understand why someone would do that. She's too
16 young to understand about sex and things like that.
17 But she's going to tell you what happened that day, and
18 you're going to get to judge her credibility.

19 You're also going to hear from Daryl, and you're
20 going to get to hear what he saw, and he'll explain
21 that to you.

22 Now, the State has the burden of proof. We have
23 to prove this case beyond a reasonable doubt, and we
24 are prepared to do that. What we have to prove is, and
25 this is very important, that the defendant committed or

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1 attempted a lewd act against a child who is under the
2 age of sixteen. This is important because this statute
3 specifically says or attempted.

4 Now, there are certain elements to this statute.
5 The defendant has to be over the age of fourteen.
6 You're going to hear testimony that he was indeed over
7 the age of fourteen. Next, that he willfully and
8 lewdly committed a lewd or lascivious act. But notice
9 the underlined words: committed or attempted. And I
10 submit to you that he had his hands down her pants and
11 was rubbing her bottom. Next, on or with the body, or
12 its parts, of a child under the age of sixteen. You're
13 going to hear evidence that Minor was under the age
14 of sixteen and that he was touching her bottom, which
15 is her body. Lastly, with the intent to arouse, appeal
16 to, or gratify the lust, passions, or sexual desires of
17 the defendant or the child. And I guess you just have
18 to figure out why else would someone do that.

19 So we're going to ask you to look at the
20 evidence, to evaluate the testimony, and to take a
21 commonsense approach to this case. We all watch CSI on
22 television and NC -- I guess it's called NCIS, which
23 the -- the girl with the black hair who can like -- if
24 I can go like this, she can tell everything about me in
25 her big computer. That's not what kind of case we

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1 have. Unfortunately, in the real world, just because
2 someone touches your underwear doesn't mean we can get
3 a whole DNA profile from you. So you're not going to
4 hear a whole lot of evidence about DNA, about skin
5 cells, about all kind of laboratories. You're going to
6 have to use your common sense and you're going to have
7 to say to yourself if a child tells you that this
8 happened, and a man sees it with his own eyes, is that
9 enough. We think it is, and we are going to ask you at
10 the conclusion of the testimony, if you believe what
11 you hear, that you find him guilty of this charge.
12 Thank you.

13 THE COURT: Ms. Littlejohn.

14 MS. LITTLEJOHN: Thank you.

15 - - - - -

16 OPENING STATEMENT

17 MS. LITTLEJOHN: I have no doubt that none of
18 y'all woke up yesterday morning, called Mary Brown, the
19 clerk of court, and said, hey, I want to volunteer for
20 jury duty; that is my goal for the week. But you know
21 what? It is important every single one of you is here
22 because every single one of y'all is the judge of the
23 facts. Judge Harrington is the judge of the law; each
24 one of y'all is the judge of the facts. What you see,
25 what you hear, what you don't hear, and what you don't

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1 see, all are equally important.

2 My name is Debbie Littlejohn, and I was
3 introduced to you briefly yesterday. I have the
4 privilege of representing Craig Keeling. Craig came
5 and attended Summerville High School. He's one of five
6 children, his brother and sisters, many nieces and
7 nephews. He has a daughter and a grandchild, like a
8 lot of us. I think that's -- not nondescript.

9 Well, the State is going to try to prove to you
10 certain things and in the end you're going to have to
11 say to yourself, did that really -- did they prove it.
12 I want to submit to you that the answer you're going to
13 come up with is no.

14 You now have new best friends. Since you can't
15 talk to anybody and each other, y'all are going to
16 learn a lot about each other: you know, who likes
17 football, who likes to go to the mountains. But
18 meanwhile, when the State is going over their case,
19 you're going to see a little something of their own --
20 what we call direct testimony of their own handpicked
21 witnesses.

22 I think most of y'all would say this is my hand,
23 if I hold it up. But is that really my hand? That's
24 one side of my hand. That's what the State asks, this
25 side. If I turn it over this way, now you see my

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1 entire hand. You need to look at both sides of every
2 picture, the front and the back. As the solicitor said
3 to you, do you believe a child -- you know what?
4 That's going to be the front of the hand and the back
5 of the hand. The back of the hand may be what's said,
6 how it's said, and what's not said. And that's going
7 to be a determination for each one of you,
8 individually, to make.

9 I appreciate y'all being here -- I'm sure the
10 solicitor does, the judge does -- because y'all are
11 what makes our judicial system work. Here in this
12 country we have twelve of you. Some countries they
13 have professional jurors. But we don't have that here.
14 And that's what makes this system work for us. I
15 appreciate y'all being here today and I know you didn't
16 call Ms. Brown and ask to volunteer. But it is what
17 makes it work, and I appreciate it. Thank you.

18 Ms. Williams -- Your Honor, I believe it's 615,
19 sequestration.

20 THE COURT: All right. Thank you.

21 Are you prepared to call your first witness?

22 MS. WILLIAMS: We would just ask that any
23 witness that's in the courtroom please leave.

24 THE COURT: Ladies and gentlemen, what has been
25 -- what is called the rule of sequestration has been

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1 invoked, and basically that's to exclude witnesses or
2 potential witnesses from being in the courtroom until
3 they have testified. And so that our rules of evidence
4 under rule 615, that's what that means and that's what
5 Ms. Littlejohn was indicating, and so that's why there
6 are some individuals exiting the courtroom at this
7 time.

8 MS. CORNWELL: The State calls Melissa Jacumin.

9 [Whereupon, Ms. Jacumin comes forward]

10 THE CLERK OF COURT: Please raise your right
11 hand. Place your left hand on the Bible.

12 [Whereupon, Ms. Jacumin is duly sworn by the
13 clerk of court as follows: do you solemnly swear or
14 affirm that the testimony you'll give the Court in the
15 trial of this case will be the truth, the whole truth,
16 and nothing but the truth, so help you God]

17 THE WITNESS: I do.

18 THE CLERK OF COURT: Please be seated. State
19 your full name. Spell your last name for the record.

20 [Whereupon, Ms. Jacumin takes the witness stand]

21 THE WITNESS: Melissa Jacumin. J-A-C-U-M-I-N.

22 THE COURT: Ms. Cornwell.

23 MS. CORNWELL: Thank you, Your Honor. Thank
24 you, Ms. Jacumin.

25 - - -

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MELISSA JACUMIN,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. CORNWELL:

Q. Ms. Jacumin, where are you employed?

A. Berkeley County 911.

Q. How long have you been employed there?

A. A little over eight years.

Q. And can you describe what your duties are?

A. I'm shift supervisor so I supervise five dispatchers, as well as perform dispatch duties, answer 911 calls -- excuse me -- administrative calls, and dispatch police, fire and EMS.

Q. And are all 911 calls recorded?

A. Yes.

Q. What is the typical protocol when you receive a 911 call?

A. What do you mean? I mean, how we answered it or --

Q. How do you answer a call and what is the procedure that you go through when you answer a call?

A. We answer Berkeley County 911, and the first question we ask is location. We find out what's going on, name of the caller, phone number.

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1 Q. And then do you make an assessment of the
2 situation and determine who's going to be sent where?

3 A. We send -- we decide if we're sending police,
4 fire, EMS, or all three.

5 Q. Were you working on November 26th of 2009?

6 A. Yes.

7 Q. Do you recall receiving a telephone call by
8 Phillip Andrews?

9 A. I don't, but I have the record.

10 Q. Do you -- may I?

11 A. Sure.

12 Q. And this is a record that you keep in your
13 ordinary course of business?

14 A. Yes. It's a CAD dispatch report.

15 [Whereupon, the witness proffers documents to
16 Ms. Cornwell]

17 MS. CORNWELL: I'm going to show this to the
18 defense attorney.

19 THE WITNESS: Sure.

20 [Whereupon, Ms. Littlejohn reviews documents]

21 MS. LITTLEJOHN: No objection, Your Honor.

22 Q. [Ms. Cornwell] Ms. Jacumin, if you were to look
23 at this, would you be able to refresh your recollection on
24 whether or not Mr. Andrews made a phone call that night?

25 A. Yes.

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1 Q. And looking at that report, did Mr. Andrews make
2 a phone call to you on November 26th of 2009?

3 A. Yes.

4 Q. What was that call in reference to?

5 A. In reference to his daughter being touched
6 inappropriately by a family member.

7 Q. Was that telephone call recorded?

8 A. Yes.

9 Q. When you received that phone call, do you recall
10 what Mr. Andrews' demeanor was?

11 A. After listening to it recently, he sounded
12 upset.

13 Q. At this time I'm going to show you what's been
14 marked as Exhibit 1 by the State.

15 [Whereupon, Ms. Cornwell proffers exhibit to
16 Ms. Littlejohn]

17 MS. LITTLEJOHN: No objection, Your Honor.

18 Q. [Ms. Cornwell] Do you recognize this?

19 A. Yeah. It's the 911 call.

20 Q. Okay. How do you recognize it?

21 A. My signature's on it.

22 Q. And have you had a chance to listen to this
23 before?

24 A. Yes.

25 Q. And is this -- and what is this?

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1 A. This is the conversation between myself and
2 Mr. Andrews the night --

3 Q. And is that --

4 A. -- he called.

5 Q. I'm sorry.

6 A. The night that he called.

7 Q. Is this an accurate recording --

8 A. Yes.

9 Q. -- of the conversation?

10 MS. CORNWELL: Your Honor, at --

11 Q. [Ms. Cornwell] Has it been changed or altered
12 in any way?

13 A. No.

14 MS. CORNWELL: Your Honor, at this time the
15 State would like to admit Exhibit 1 for --

16 THE COURT: And that's without objection?

17 MS. LITTLEJOHN: Without objection, Your Honor.

18 THE COURT: State's 1 without objection.

19 [Whereupon, State's Exhibit Number 1 is admitted
20 into evidence by the Court]

21 MS. CORNWELL: May we publish to the jury, Your
22 Honor?

23 THE COURT: You may.

24 [Whereupon, State's Exhibit Number 1, 911 call,
25 is played for the jury from 11:24 a.m. to 11:25 a.m.]

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1 Q. [Ms. Cornwell] And that was the phone call you
2 received?

3 A. Yes, ma'am.

4 Q. What did you do after you received that call?

5 A. I sent -- we type in a CAD system, then I sent
6 it over to a dispatcher to be dispatched.

7 Q. And who did you dispatch to the scene?

8 A. I didn't actually dispatch the call, but it was
9 dispatched to Officer Antoine Pittman and Mizel. And
10 Errington [phonetic] I believe also went. It was
11 initially dispatched to Antoine, though.

12 MS. CORNWELL: Ms. Jacumin, that's all the
13 questions that I have for you.

14 THE WITNESS: Okay.

15 MS. CORNWELL: If you'll please answer any
16 questions the defense has for you.

17 THE WITNESS: All right.

18 THE COURT: Ms. Littlejohn.

19 MS. LITTLEJOHN: Hey, Ms. Jacumin.

20 THE WITNESS: Hey.

21 CROSS-EXAMINATION

22 BY MS. LITTLEJOHN:

23 Q. You said that you will dispatch and see if
24 people need the police; correct?

25 A. Uh-huh.

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1 Q. And EMS and fire?

2 A. Right.

3 Q. Okay. And on that tape, you asked -- didn't you
4 ask if -- I believe the exact wording is do you need me to
5 send an ambulance or anything. And you said no?

6 A. Yeah. I believe I said does your daughter need
7 EMS, and he said no.

8 Q. And he actually said possible; correct?

9 A. Right.

10 Q. And that call arrived around 1641, didn't it?

11 A. It came in at 1631.

12 Q. 1631. Okay.

13 And for those of us who may not be that familiar
14 with 1631, that would be?

15 A. 4:31 p.m.

16 Q. 4:31. Okay. Thank you.

17 And, now, you dispatched them at 1635. That
18 would be 4:35 in the afternoon?

19 A. Correct.

20 Q. And they arrived at 1638, which would be 4:38.
21 So within a matter of minutes?

22 A. Right.

23 Q. Okay. And can you tell, based on that CAD
24 report, who was the last officer to arrive on the scene?

25 A. The last officer was Detective Riser.

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1 Q. Okay. And he left somewhere within fifty
2 minutes? They check in and they check out; right?

3 A. Right.

4 Q. Okay. So Detective Riser was there about fifty
5 minutes? Would that be accurate, according to the CAD
6 report?

7 A. Yes, ma'am.

8 Q. And I believe the first officer -- or one of the
9 officers checked out around -- when did the first officer
10 check out? Or do you know?

11 A. At -- on scene is at 4:38 p.m. Then the second
12 one at 4:41.

13 Q. Okay. And Officer Pittman checked out at what
14 time? Meaning all clear.

15 A. He cleared?

16 Q. Yeah.

17 A. Do you mean in route to the jail? Or cleared,
18 period?

19 Q. Cleared.

20 A. At 1853, which is 6:53.

21 Q. And he cleared the scene at what time?

22 A. At 6:04.

23 Q. 6:04.

24 And the first officer that cleared cleared the
25 scene at what time?

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1 A. The first officer cleared at 6:23.

2 Q. And frequently when you look at CAD reports,
3 it's not unusual for them to call in license plate
4 numbers, is it --

5 A. No.

6 Q. -- on scene?

7 And y'all run the license plate number, tell
8 them whose it is?

9 A. Right.

10 Q. And they may ask for more than one license plate
11 number; right?

12 A. Correct.

13 Q. Do you have any record of them asking for a
14 license plate number on this CAD report?

15 A. Not on this CAD report. The only thing I see is
16 a driver's license number.

17 Q. But no tag number?

18 A. Huh-uh.

19 MS. LITTLEJOHN: Court's indulgence.

20 THE COURT: Yes, ma'am.

21 [Whereupon, Ms. Littlejohn and Ms. White confer]

22 MS. LITTLEJOHN: No further questions, Your
23 Honor.

24 THE COURT: Ms. Cornwell?

25 MS. CORNWELL: Nothing further from the State,

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1 Your Honor.

2 THE COURT: Ms. Jacumin, you may step down. You
3 are excused from the courtroom. Thank you.

4 [Whereupon, the witness is excused and exits the
5 witness stand]

6 THE COURT: Call your next witness.

7 MS. WILLIAMS: The State calls Daryl Andrews.

8 [Whereupon, Mr. Andrews comes forward]

9 MS. WILLIAMS: Mr. Andrews, if you could just
10 walk up there to the witness box.

11 THE CLERK OF COURT: Please raise your right
12 hand. Place your left hand on the Bible.

13 [Whereupon, Mr. Andrews is duly sworn by the
14 clerk of court as follows: do you solemnly swear or
15 affirm the testimony you will give the Court in the
16 trial of this case will be the truth, the whole truth,
17 and nothing but the truth, so help you God]

18 THE WITNESS: I do.

19 THE CLERK OF COURT: Please be seated. State
20 your full name. Spell your last name for the record.

21 [Whereupon, Mr. Andrews takes the witness stand]

22 THE WITNESS: Daryl Andrews. A-N-D-R-E-W-S.

23 MS. WILLIAMS: Thank you, Your Honor.

24 - - -

25 - - -

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DARYL ANDREWS,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q. Mr. Andrews, who is your brother?

A. Phillip Andrews.

Q. And his wife?

A. Alyson.

Q. And who is their daughter?

A. Minor

Q. And are you pretty close with Minor

A. Pretty good. Pretty good.

Q. Where do you live?

A. I live in Chester, Virginia.

Q. And who do you live with?

A. Phillip.

Q. Explain to us why Phillip lives in Virginia.

A. He's currently stationed in Fort Lee and -- for his job, for the military.

Q. Okay. So it worked out that you two could live together?

A. Yes.

Q. Okay. Are you happy about that?

A. Yeah. Yeah, definitely.

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1 Q. And where does his family live, his wife and
2 daughter?

3 A. Out of Greenville. Maulden, South Carolina.

4 Q. Does he just go back and forth?

5 A. Yes, he does.

6 Q. Okay. And what do you do for a living?

7 A. I run a steel distribution company.

8 Q. Is that in Virginia?

9 A. Yes, ma'am.

10 Q. How long have you worked there?

11 A. In Virginia for -- since 2006.

12 Q. Did you work for that same company in other
13 areas?

14 A. In Greenville, where I lived with my brother
15 before.

16 Q. Now, Mr. Andrews, do you have family in Berkeley
17 County?

18 A. Yes, I do.

19 Q. Okay. Who is that?

20 A. It's Goose Creek. It's in Berkeley County?

21 Q. Yeah, Goose Creek is Berkeley --

22 A. My mother.

23 Q. Okay. And do you visit it frequently?

24 A. Yes, I do. Holidays.

25 Q. And do you go there for Thanksgiving sometimes?

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1 A. Lots. Yeah.

2 Q. Where were you last Thanksgiving, November 26th
3 of 2009?

4 A. 13 Lighthouse Road. My mother's.

5 Q. And that's the house you were talking about in
6 Goose Creek?

7 A. Yes, ma'am.

8 Q. And was Minor there?

9 A. Yes, she was.

10 Q. Were there other children there?

11 A. Yeah. The whole family.

12 Q. How many people generally come to that
13 gathering?

14 A. Well, I'd say close to fifty were there at this
15 one last Thanksgiving.

16 Q. And what kind of event is it? Is it a -- does
17 one person make the meal and you have a sit-down? Or just
18 kind of explain how that day goes.

19 A. Well, all family members try to help my mother
20 because she frantically wants to, you know, help -- you
21 know, please everyone. So there's just lots of work to do
22 with cooking several turkeys and getting everything
23 situated and it's just --

24 Q. And do different people bring stuff and --

25 A. Yes, ma'am.

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1 Q. And is there just one meal, or is it scattered
2 around or --

3 A. It's one meal and it's -- it takes up, you know,
4 pretty much the whole kitchen and living area.

5 Q. Okay. And on that day last year, had you ever
6 met the defendant, Mr. Keeling, before?

7 A. No, ma'am.

8 Q. Okay. How did he come to be at this gathering?

9 A. Well, I didn't really know at first, until after
10 everything had happened.

11 Q. What did you learn?

12 A. That he came in through my grandfather, and my
13 grandfather had made a friend and the friend was -- he was
14 my friend -- or the girl that's friends with my
15 grandfather. That's how. That's all I know.

16 Q. So your grandfather had a friend who was a
17 woman?

18 A. Right.

19 Q. And how was Mr. Keeling related to her?

20 A. The son.

21 Q. Okay. And did she bring Mr. Keeling and anyone
22 else, or just Mr. Keeling?

23 A. I believe, after everything had happened, he
24 also had his brother there.

25 Q. Okay. Did you have an opportunity to observe

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1 him before this event occurred?

2 A. No. I had to get to work.

3 Q. Okay.

4 A. Yeah.

5 Q. So when you go to work, what are you doing for
6 Thanksgiving?

7 A. Just anything my mom asks me to do.

8 Q. Okay. And at some point your brother called
9 911; is that true?

10 A. Yes, ma'am.

11 Q. Tell us about the events leading up to that.

12 A. Well, we were -- when I was carving the last
13 turkey, I was in the kitchen, as well as three or four
14 other people behind me and some other -- it's hard to
15 describe the actual place, but when I -- as I was
16 finishing up the turkey, I went to go wash my hands. And
17 there's a big window there. And that's when I saw what I
18 seen, you know, with --

19 Q. Okay. So you went -- you went to wash your
20 hands. Explain to us where the sink is in relation to the
21 window.

22 A. Okay. The sink, you have a big -- you know, you
23 have two windows. The sink is right there. And then
24 right on -- right before that window, maybe three feet,
25 you could see the actual handrail of the front porch. And

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1 that's where I seen Minor and Craig.

2 MS. WILLIAMS: Okay. Your Honor, I'm going to
3 show counsel what's been previously marked as State's
4 3, 5 and 8.

5 [Whereupon, Ms. Williams proffers documents to
6 Ms. Littlejohn]

7 [Whereupon, Ms. Littlejohn reviews documents]

8 MS. LITTLEJOHN: Your Honor, no objections to 5
9 and 8. An objection to 3. We may need to take this --

10 MS. WILLIAMS: We won't even show 3. Oh. No,
11 we do need to show 3.

12 MS. LITTLEJOHN: We may need to have a moment.

13 THE COURT: All right. Counsel approach.

14 [Whereupon, an off-the-record bench conference
15 is held]

16 MS. WILLIAMS: Your Honor, may I approach the
17 witness?

18 THE COURT: You may.

19 Q. [Ms. Williams] Mr. Andrews, I'm going to show
20 you three photos. And I just want you to look at them
21 first, then I'm going to ask you some questions about
22 them.

23 A. Okay.

24 [Whereupon, the witness reviews documents]

25 A. Okay.

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1 Q. [Ms. Williams] Now, what are those photos of?

2 A. Those photos are of me right when I seen what

3 I --

4 Q. Whose house is it?

5 A. That's my mother's house.

6 Q. And was that the house you were at November 26th
7 last year?

8 A. Yes, ma'am.

9 Q. And do they fairly and accurately depict the way
10 it looked last year?

11 A. Yes, it did.

12 MS. WILLIAMS: Your Honor, at this time we would
13 offer State's 3, 5 and 8.

14 MS. LITTLEJOHN: Your Honor, we would object to,
15 again, 3, I believe is the number.

16 THE COURT: All right. Just some clarification
17 on 3, Ms. Williams.

18 MS. WILLIAMS: Okay.

19 Q. [Ms. Williams] If you could just review 3.
20 What does that show, as far as the part of the house?

21 A. The front porch.

22 Q. Okay. And does it show the window that you were
23 looking out of?

24 A. Yes, it does.

25 Q. And are you familiar with that front porch from

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1 all different angles?

2 A. Yes, I am.

3 Q. And is that an accurate depiction of the way the
4 porch would have looked that day?

5 A. Yes, it would have.

6 THE COURT: No objection to 5 and 8.

7 MS. LITTLEJOHN: Correct, Your Honor. May we
8 take up a matter of law with the Court?

9 THE COURT: You may.

10 [Whereupon, an off-the-record bench conference
11 is held]

12 THE COURT: All right. State's 5 and 8 into
13 evidence without objection. State's 3 into evidence
14 over defendant's objection.

15 [Whereupon, State's Exhibit Number 3 is admitted
16 into evidence by the Court]

17 [Whereupon, State's Exhibit Number 5 is admitted
18 into evidence by the Court]

19 [Whereupon, State's Exhibit Number 8 is admitted
20 into evidence by the Court]

21 THE COURT: You may proceed.

22 MS. WILLIAMS: I think, Your Honor, I just have
23 one more photo to show Ms. Littlejohn. This is State's
24 Exhibit 2.

25 [Whereupon, Ms. Williams proffers documents to

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1 Ms. Littlejohn]

2 [Whereupon, Ms. Littlejohn reviews documents]

3 MS. LITTLEJOHN: Your Honor, I would have the
4 same objection with 2 as with 3.

5 THE COURT: All right.

6 MS. WILLIAMS: May I approach the witness?

7 THE COURT: You may.

8 MS. LITTLEJOHN: Your Honor, may we have a
9 ruling on two, or shall we reserve that?

10 MS. WILLIAMS: I was going to lay a foundation.

11 THE COURT: Well, she's got to lay --

12 MS. LITTLEJOHN: Thank you, Your Honor.

13 THE COURT: -- the appropriate foundation first,
14 and then I'll make my ruling.

15 Q. [Ms. Williams] Just one more picture, Mr.
16 Andrews. Is that also the porch?

17 A. Yes, ma'am.

18 Q. Is it from a different angle?

19 A. It's from the front lawn, looking in.

20 Q. Okay. Is it a more --

21 A. Full view.

22 Q. Right.

23 And is that an accurate depiction of the way
24 that porch looked on that day?

25 A. It did. Yes, it did.

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1 Q. Thank you.

2 MS. WILLIAMS: Your Honor, at this time we would
3 offer State's 2.

4 THE COURT: Ms. Littlejohn?

5 MS. LITTLEJOHN: Your Honor, the same objection
6 as with State's 3.

7 THE COURT: State's 2 into evidence over
8 defendant's objection.

9 [Whereupon, State's Exhibit Number 2 is admitted
10 into evidence by the Court]

11 THE COURT: You may continue.

12 MS. WILLIAMS: May we publish, Your Honor?

13 THE COURT: You may.

14 MS. WILLIAMS: If you could show State's 5.

15 Mr. Andrews, I'm going to show you a laser
16 pointer that we have here, and I'll ask you questions.
17 If you could kind of show -- if it helps to answer some
18 of the questions, you know, where things are.

19 THE WITNESS: Okay.

20 Q. [Ms. Williams] Is that -- what is that a
21 picture of?

22 A. Of the sink in my mother's kitchen.

23 Q. Okay. Is that the window that you were looking
24 out?

25 A. Yes, ma'am.

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1 Q. And where is --

2 A. At that angle. I'm sorry.

3 Q. At that angle. Okay.

4 And where is the porch in relation to that?

5 A. It's just maybe three and a half to four feet
6 from where I'm standing.

7 Q. Okay. And in that picture are the shades down
8 or up?

9 A. In that picture they're down.

10 Q. On that day were they down or up?

11 A. They were up.

12 MS. WILLIAMS: Can you show State's 8.

13 Q. [Ms. Williams] Okay. Is this a better
14 depiction of the way -- the view that day --

15 A. Yes, it is.

16 Q. -- with the shades up?

17 MS. WILLIAMS: State's 3.

18 Q. [Ms. Williams] Okay. Show us where the window
19 is that you were looking out of.

20 A. Right there.

21 Q. And where was Minor standing when you --

22 A. She was right there.

23 Q. Okay. And where was Mr. Keeling standing, or
24 sitting, or whatever?

25 A. He was just about like right here behind --

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1 Q. Okay.

2 A. -- behind her, away from here, just to where I
3 could see him at an angle, just as I was in the picture
4 before.

5 MS. WILLIAMS: Okay. And if you could show
6 State's 2.

7 Q. [Ms. Williams] Can you show us, just from this
8 angle, where the two people were standing and where you
9 were looking out?

10 A. Okay. I was looking out here. Minor was
11 about right here, and Craig was just behind her.

12 Q. Okay. Did you have a clear view of them?

13 A. Yes, I did.

14 Q. So you're at the window. Tell us what you saw,
15 exactly.

16 A. Okay. I saw his hand in her pants like this,
17 making a motion like this.

18 Q. Okay. And did you see the expression on her
19 face?

20 A. Yeah. She was stunned, and she was looking up,
21 and she didn't know what was going on.

22 MS. LITTLEJOHN: Objection, Your Honor.

23 THE COURT: Basis?

24 MS. LITTLEJOHN: Speculative. She can testify
25 to it.

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1 THE COURT: He may testify as to what he saw.

2 You may answer, sir.

3 Q. [Ms. Williams] If you could just re-answer that
4 question, as far as your observations about Minor
5 reaction.

6 A. She was kind of like twisted this way, and his
7 hands were like in that motion that I was just saying, and
8 she was just looking up like that [indicates]. And that's
9 when I was washing my hands and noticed it, and that's
10 when I hit the window.

11 Q. Okay. And when you hit the window, how did the
12 scene make you feel?

13 A. Numb.

14 Q. As you observed it, did it ever occur to you
15 that something appropriate was going on?

16 A. Nothing was --

17 MS. LITTLEJOHN: Your Honor, leading.

18 THE COURT: Rephrase your question.

19 MS. WILLIAMS: Okay.

20 Q. [Ms. Williams] What was your evaluation of what
21 was going on, as you saw it?

22 A. I don't understand the question.

23 Q. Okay. Why did it upset you?

24 A. Because it shouldn't have been taking place.

25 Q. And after you banged on the window, what

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1 happened next?

2 A. When I banged on the window, I immediately
3 turned around. And I had to go through some people
4 through the kitchen, because we had so many people there,
5 and then through the kitchen and then through the living
6 room and out the front door.

7 Q. And was Mr. Keeling still on the porch?

8 A. No. He almost made it to the end of the road.
9 I mean, to the end of the lawn.

10 Q. Do you know if he took off before, like when you
11 hit the -- do you know when he left?

12 A. As soon as I hit the window, he ran off.

13 Q. Okay. Do you see the defendant in the courtroom
14 today?

15 A. Yes, I do.

16 Q. Can you please point him out?

17 A. Right there.

18 Q. What is he wearing?

19 A. Black blazer, tie. He's in between the two
20 ladies right there.

21 MS. WILLIAMS: Okay. Your Honor, please let the
22 record reflect that he has identified the defendant,
23 Mr. Keeling.

24 THE COURT: It will reflect.

25 Q. [Ms. Williams] So what happened next? You said

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1 he almost made it to the road. How was he prevented from
2 going to the road?

3 A. I just got in front of him, started asking him a
4 few -- you know, asking him why.

5 Q. Okay. And did your brother know what was going
6 on?

7 A. I think as soon as a couple of people saw me,
8 you know, run through the kitchen and the living room --

9 MS. LITTLEJOHN: Your Honor, speculation. I
10 think.

11 THE COURT: You may answer.

12 Q. [Ms. Williams] You can go ahead and answer,
13 Mr. Andrews. Keep going.

14 A. Okay. As I ran through the kitchen, followers
15 were -- you know, there -- everyone followed me out, you
16 know.

17 Q. And was Mr. Keeling injured in any way?

18 A. No. Huh-uh.

19 Q. How was he prevented from leaving?

20 A. Through me, my brother and family.

21 Q. What did you do to prevent him from leaving?

22 A. Kept him in the -- in the lawn.

23 Q. Did you have to physically restrain him?

24 A. No, I didn't.

25 MS. WILLIAMS: Court's indulgence.

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1 THE COURT: Yes, ma'am.

2 [Whereupon, Ms. Williams and Ms. Cornwell
3 confer]

4 MS. WILLIAMS: I have nothing further. Please
5 answer any questions Ms. Littlejohn has.

6 THE COURT: Ms. Littlejohn?

7 MS. LITTLEJOHN: Daryl Andrews; correct?

8 THE WITNESS: Correct.

9 MS. LITTLEJOHN: Okay. I'm Debbie Littlejohn.
10 I'm going to ask you a couple of questions.

11 CROSS-EXAMINATION

12 BY MS. LITTLEJOHN:

13 Q. And you and I have never talked before, have we?

14 A. No.

15 Q. At least not to either one of us. You're from
16 the area. We may have run into each other. We haven't
17 talked about this case, have we?

18 A. No.

19 Q. You have talked with other people about this
20 case, though, hadn't you?

21 A. Have I what?

22 Q. You've talked with other people about this case?

23 A. About this case, no.

24 Q. You've never met with the solicitor's office?

25 A. Oh. Well, yeah. We've talked to -- about the

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1 case, yes. Yes. I'm sorry.

2 Q. So --

3 A. Didn't understand you.

4 MS. LITTLEJOHN: And if you don't understand my
5 question, that's what I appreciate you doing is saying
6 I --

7 THE WITNESS: Okay. I will.

8 MS. LITTLEJOHN: Okay. Exactly.

9 Q. [Ms. Littlejohn] So who all have you talked
10 with?

11 A. Anne Williams, Ashley -- I'm sorry. I forgot
12 your last name.

13 Q. Cornwell.

14 Okay. And that would be the solicitors?

15 A. Yes, ma'am.

16 Q. Okay. Anyone else from the solicitor's office?

17 A. No, ma'am.

18 Q. Okay. About how many times do you think you've
19 spoken with them?

20 A. One other time. One other time.

21 Q. So a couple of times?

22 A. Yeah.

23 Q. Spoke with one another a couple of times? Okay.

24 A. Yeah.

25 Q. Have you -- did you speak ever with any law

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1 enforcement, any other governmental person? Law
2 enforcement?

3 A. No, ma'am.

4 Q. You've never spoke with a law enforcement
5 person?

6 A. I've never -- about this case, no.

7 Q. You don't recall speaking with an Officer
8 Pittman?

9 A. About the case, yes. Yes. On the day that it
10 happened, yes, I did. Yes, I did. It was Pittman, and
11 the other police officer there was --

12 Q. That's all right --

13 A. It's hard to -- it's hard to remember the names
14 during --

15 Q. That's all right. So you've talked to about
16 three or four government folks, right, about the case, a
17 couple of times?

18 A. [Indicates affirmatively]

19 Q. Okay. Now, those photographs that you were
20 shown, when were those taken?

21 A. At my mother's.

22 Q. No. When.

23 A. When?

24 Q. Correct.

25 A. [No response]

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1 Q. I don't need the exact date. I just didn't know
2 if you had an idea if it was within the last couple of
3 weeks, or last month, or the last six months. Can you
4 kind of give us an idea of --

5 A. Do you still want --

6 Q. -- when they were taken?

7 A. -- me to answer that?

8 Q. Correct. If you can just give us an idea, to
9 the best of your knowledge.

10 A. A few weeks ago.

11 Q. A few weeks ago.

12 And did you take those photographs?

13 A. No, ma'am.

14 Q. Do you know who did take the photographs?

15 A. Yes, I do.

16 Q. And who took those photographs?

17 A. Chuck.

18 Q. So that would be with -- the fellow with the
19 solicitor's office?

20 A. Yes.

21 Q. And how do you know Chuck took the photographs?

22 A. We discussed it.

23 Q. You and Chuck discussed it?

24 A. Well, not discussed it. I was pretty much going
25 to view the -- they wanted another view, the last time I

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1 was here, of exactly where I was in my mother's house and
2 where I seen -- what I seen.

3 Q. So you went to your mother's house?

4 A. Yes, ma'am.

5 Q. So that day it was you and Chuck from the
6 solicitor's office? This gentlemen sitting right here;
7 right? And who else was there?

8 A. My brother, his wife, Minor and my uncle.

9 Q. Okay. And Chuck was the only one from the
10 solicitor's office or any governmental agency; correct?

11 A. He was the only one there, yes.

12 Q. Okay. These photographs are absolutely accurate
13 as of that day you testified to earlier; correct?

14 A. Yes, ma'am.

15 Q. Okay. No deviation whatsoever?

16 A. None.

17 Q. That day didn't you tell Officer Pittman that
18 you saw a man with a hand in your niece's pants?

19 A. Yes, I did.

20 Q. And then you hit the window; correct?

21 A. Correct.

22 Q. Did you say something like, hey. you, or what's
23 going on?

24 A. I don't remember.

25 Q. So you may have said something as you were

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1 hitting or right after you hit the window?

2 A. I think I turned around and said, move, to some
3 people in my way.

4 Q. So something was said?

5 A. Yeah. I slapped the window.

6 Q. Right.

7 A. That was all I did.

8 Q. You know about -- you said that living in this
9 house is your mother; correct?

10 A. Correct.

11 Q. Doesn't Uncle Timmy, or a fellow named Timmy,
12 also live there?

13 A. Yes, he does.

14 Q. And how is Uncle Timmy related?

15 A. It's my mother's uncle. I mean, my mother's
16 brother. Sorry.

17 Q. Your mother's brother?

18 A. Uh-huh.

19 Q. And what's Timmy's last name?

20 A. West.

21 Q. Timmy West.

22 Does anyone else live there, other than your
23 mother and Uncle Timmy?

24 A. Her husband lives there.

25 Q. Her husband. Okay.

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1 Can you tell me if that -- what you saw was his
2 right or his left hand?

3 A. It was his right hand.

4 Q. And did you in any way touch Mr. Keeling?

5 A. I got in his way. I put my body in front of
6 him. That's it.

7 Q. You never touched him?

8 A. No.

9 Q. So if anyone says you did, they would be telling
10 something that wasn't true?

11 A. Basically.

12 Q. But they would be; right?

13 A. They would be what?

14 Q. They would be telling something that's not true?

15 A. If I put my hand on them -- on him that day?

16 Q. That you in any way touch -- had contact with
17 him --

18 A. Right.

19 Q. -- touched him --

20 A. Right.

21 Q. -- physical contact.

22 MS. LITTLEJOHN: Court's indulgence.

23 THE COURT: Yes, ma'am.

24 [Whereupon, Ms. Littlejohn and Ms. White confer]

25 Q. [Ms. Littlejohn] Mr. Andrews, this is somewhat

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1 known as a Thanksgiving party, isn't it?

2 A. Oh, yeah.

3 Q. Because there's so many people there?

4 A. [No response]

5 Q. Would you say about somewhere between forty to
6 sixty?

7 A. Yeah. I think that's what we counted at the
8 family -- right when we said a prayer.

9 Q. Okay.

10 A. Yeah.

11 Q. So a good many people. Quite a few turkeys?

12 A. Uh-huh.

13 Q. Okay. Some people are drinking alcoholic
14 beverages and some aren't?

15 A. Correct.

16 Q. Would that be accurate?

17 A. Yes. That's very accurate.

18 Q. Okay. When you saw Mr. Keeling, was he sitting
19 or standing?

20 A. He was standing.

21 Q. He was standing?

22 A. [Indicates affirmatively]

23 Q. Did he have anything in his hand?

24 A. I -- you know, I think he had a cigarette.

25 Well, he had a cigarette by the time I made it outside,

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1 but I didn't --

2 Q. But he didn't when you saw him?

3 A. -- I didn't notice a cigarette at the time where
4 I saw it when his hands were in Minor pants.

5 Q. But you told the officer hand; correct?

6 A. Yes, ma'am.

7 MS. LITTLEJOHN: I have no further questions at
8 this time, Your Honor.

9 MS. WILLIAMS: Nothing further, Your Honor.

10 THE COURT: Mr. Andrews, you may step down.

11 THE WITNESS: Thank you.

12 THE COURT: Thank you.

13 [Whereupon, the witness is excused and exits the
14 witness stand]

15 THE COURT: Call your next witness.

16 MS. WILLIAMS: The State calls Phillip Andrews.

17 [Whereupon, Mr. Andrews comes forward]

18 MS. WILLIAMS: Mr. Andrews, if you could just
19 step around here and get up to the witness chair.

20 THE CLERK OF COURT: Please raise your right
21 hand. Place your left hand on the Bible.

22 [Whereupon, Mr. Andrews is duly sworn by the
23 clerk of court as follows: do you solemnly swear or
24 affirm the testimony you will give the Court in the
25 trial of this case will be the truth, the whole truth,

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1 and nothing but the truth, so help you God]

2 THE WITNESS: I do.

3 THE CLERK OF COURT: Please be seated. State
4 your full name and spell your last name for the record.

5 [Whereupon, Mr. Andrews takes the witness stand]

6 THE WITNESS: Phillip Alexander Andrews. Last
7 name is A-N-D-R-E-W-S.

8 THE COURT: Ms. Williams.

9 MS. WILLIAMS: Thank you, Your Honor.

10 - - - - -

11 PHILLIP A. ANDREWS,

12 Having Been First Duly Sworn,

13 was Examined and Testified as Follows:

14 DIRECT EXAMINATION

15 BY MS. WILLIAMS:

16 Q. Mr. Andrews, who is your wife?

17 A. Alyson Andrews.

18 Q. And your daughter?

19 A. Minor

20 Q. And I think that we can probably guess that
21 you're in the military, but tell the jury what you do for
22 a living.

23 A. I'm in the army. Right now I run an operation
24 cell for a division, a training division.

25 Q. And what's your rank?

MIA PERRON, CVR-CM

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1 A. Major.

2 Q. What does that -- what does that mean, exactly,
3 as far as the description of your job?

4 A. Try to manage lots of moving pieces.

5 Q. Okay. And where are you stationed presently?

6 A. Fort Lee, Virginia.

7 Q. And where is your wife and child?

8 A. Maulden, South Carolina.

9 Q. Okay. And how often do you get to see them?

10 A. Twice a month. Sometimes only once.

11 Q. Do you know how long you're going to be
12 stationed there?

13 A. Hopefully I'll come back to South Carolina
14 December of 2011.

15 Q. And who do you live with in Virginia?

16 A. My brother Daryl.

17 Q. Now, do you have family here in Berkeley County?

18 A. Yes, ma'am.

19 Q. Okay. And who is that?

20 A. Let's see. My mom, my stepdad, I'd say about
21 fifteen cousins, aunts, uncles, granddad.

22 Q. And where does your mom live?

23 A. 13 Lighthouse Drive, Goose Creek.

24 Q. That's in Berkeley County?

25 A. Yes, ma'am.

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- 1 Q. And do you get to visit your mom very often?
- 2 A. Yes, ma'am. Major holidays.
- 3 Q. All right.
- 4 A. And sometimes out of the blue.
- 5 Q. And where did you spend last Thanksgiving, 2009?
- 6 A. At my mother's home.
- 7 Q. Does she have a big Thanksgiving?
- 8 A. Every year.
- 9 Q. About how many people come?
- 10 A. Probably the minimum would be about twenty-five,
- 11 and I think last year was the most I've ever counted.
- 12 Q. Okay. And was Mr. Keeling at that affair?
- 13 A. Yes, ma'am.
- 14 Q. Was he a usual guest?
- 15 A. I had never met him before that day.
- 16 Q. Okay. Do you know at this point how he came to
- 17 be there?
- 18 A. Yes, ma'am.
- 19 Q. Could you tell us?
- 20 A. Approximately two and a half years ago my
- 21 grandmother passed away and my grandfather started seeing
- 22 his mother.
- 23 Q. Okay. And so his mother and he were there. Did
- 24 they bring anyone else with them?
- 25 A. His brother.

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1 Q. Did you have an opportunity to observe Mr.
2 Keeling during the day?

3 A. Yes, ma'am.

4 Q. Tell us what you saw.

5 A. Well, I was introduced to him. I had the garage
6 door open. I was frying a turkey, and I was predominately
7 by myself most of the time. He came up to me and spoke to
8 me, and I talked to his brother, as well. And I watched
9 him for a while, because I had never met him before. I
10 watched him and his brother leave my mother's neighborhood
11 a couple of times, maybe three, and return. Then when I
12 was done with that responsibility, we were in the back
13 yard. I counted fifty-six people in the prayer circle,
14 and my aunt and uncle went across the street so that was a
15 total of fifty-eight.

16 And my degree is in sociology so I like -- I
17 like to observe human behavior. I watched Mr. Keeling and
18 my daughter, my direct cousin, and second cousin be
19 segregated from the rest of us to the front yard.

20 Q. Okay. So is it fair to say Mr. Keeling was
21 hanging around with your daughter and her two little
22 friends?

23 A. Yes, ma'am.

24 Q. Were you concerned about that?

25 A. Yes, ma'am.

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1 Q. But you didn't do anything about it then?

2 A. No, ma'am.

3 Q. How do you feel about that now?

4 A. I have a dire regret.

5 Q. As far as him leaving the neighborhood and
6 coming back, did you notice his difference in his demeanor
7 when he would return?

8 A. He and his brother looked high.

9 Q. At some point, a commotion occurred at the
10 gathering; is that fair to say?

11 A. Yes, ma'am.

12 Q. Before that occurred, when was the last -- where
13 was the last place that you saw your daughter Minor

14 A. Okay. The front porch is very narrow but it's
15 long. It accommodates a bench for like two adults, and
16 then a chair, and maybe like an end table. That's the
17 length you could sit down. The three girls were sitting
18 in the double bench, Mr. Keeling was in the far seat away
19 from the front door, mainly smoking cigarettes. All three
20 little girls were eating out front. And as I brought them
21 like napkins and extra stuff that they wanted, desserts or
22 whatnot, I noticed he was still out there constantly and
23 every other adult was in the back yard. So that put me
24 uneasy.

25 And so I walked through the house the last time

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1 when I saw Star and Ashley get up and start playing in the
2 tree. My daughter wanted to be part of the action so she
3 stood up from her bench and she went up to the --

4 MS. LITTLEJOHN: Your Honor, I believe he's
5 testified he was not there for that, he was --

6 THE WITNESS: No. I saw this.

7 THE COURT: Mr. Andrews -- I'm sorry. Major
8 Andrews, let me rule on the objection.

9 THE WITNESS: Okay.

10 THE COURT: So when the attorneys stand up or
11 make -- then you need to stop talking, and then I'll
12 make a ruling, and then I'll let you know whether or
13 not you can continue.

14 Counsel approach.

15 [Whereupon, an off-the-record bench conference
16 is held]

17 THE COURT: Overruled. Major Andrews, you may
18 answer.

19 Q. [Ms. Williams] If you could --

20 A. Could you repeat --

21 Q. Yeah, I will.

22 You were testifying about what you saw and you
23 said that the two children left and Minor wanted -- I
24 guess was walking over to where they were.

25 A. Okay. The last time I left the front porch,

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1 Star and Ashley had gone into those -- the two trees in
2 the front yard and started playing. Minor stood up
3 from the bench, and she had her plate of food on the
4 railing, and Mr. Keeling was seated still in that seat to
5 her left.

6 Q. Okay. And that's where you -- that's where --
7 the last time you saw Minor

8 A. Yes, ma'am. I walked to the back deck.

9 MS. WILLIAMS: I'm going to show counsel what's
10 been previously marked and introduced as State's 2.

11 [Whereupon, Ms. Williams proffers documents to
12 Ms. Littlejohn]

13 [Whereupon, Ms. Littlejohn reviews documents]

14 MS. WILLIAMS: May I approach the witness?

15 THE COURT: You may.

16 Q. [Ms. Williams] Mr. Andrews, I'm just going to
17 show you a photograph and see. Would this help you
18 explain where everybody was on the porch?

19 A. Yes, ma'am.

20 MS. WILLIAMS: Okay. If you could put up
21 State's 2.

22 This is a pointer. You can use it to point out
23 where --

24 Q. [Ms. Williams] Just show the jury where you're
25 talking about and where she put her food and --

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1 A. Okay. This shadow right here is the front door.
2 These are the two windows. From the other side is the
3 double sink in the kitchen. In this corner right here --
4 sorry -- in this corner right here there was one single
5 chair. That's where Mr. Keeling began -- where he was
6 seated when they were all three eating. This right here
7 is a double bench. All three were initially seated there.
8 And then to the left of where this photograph would be is
9 where the two trees are, where the two other girls got up
10 and went to play. Then Minor was standing
11 approximately right here when she was -- had her food over
12 the -- on that railing.

13 Q. Thank you.

14 All right. So you went back into the back.
15 Then what happened?

16 A. I was standing on the deck, both front and back
17 door are open, and either an aunt or some other person
18 said, Phillip, your brother is fighting Jen's son, and I
19 bolted through the house.

20 Q. And when you got -- bolted through, does that
21 mean you went to the front?

22 A. Yes, ma'am. I went -- I bolted through because
23 I had been watching him and I -- I felt uneasy.

24 Q. And so what did you do next?

25 A. As I came across off that porch, I said, Daryl,

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1 what did he do, and Daryl stated what he did. So I
2 grabbed him and put him on the ground.

3 Q. Okay. Did you hit him?

4 A. No, ma'am.

5 Q. Why is that?

6 A. My daughter had been through enough trauma, I
7 think.

8 Q. When you got to where Mr. Keeling was, where
9 exactly was he?

10 A. If you come off that porch about from here to
11 where the detective is is where he was.

12 Q. So you're talking about Detective Riser?

13 A. Just about I would say ten yards or so.

14 Q. And was your brother fighting him?

15 A. He was so choked up. They were squared off.
16 And, I mean, it looked like it could have been a fight.

17 Q. Okay. But you didn't see him touching Mr.
18 Keeling?

19 A. No, ma'am.

20 Q. And when you say he was so choked up, you're
21 talking about which of them? Mr. Keeling or your brother?

22 A. My brother.

23 Q. And how did y'all prevent Mr. Keeling from
24 leaving?

25 A. Physically.

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1 Q. How did that occur? I mean, did you touch him,
2 did you --

3 A. I let him off the ground and I went and I got
4 the phone and I called 911.

5 Q. And were other people there preventing him
6 from --

7 A. Yes, ma'am. I think my aunt or someone else, a
8 female, that's all I remember, was saying you get the
9 [makes noise] out of here now, leave. And I said, he's
10 not going anywhere.

11 Q. And how long approximately do you think before
12 the police came?

13 A. I have no idea.

14 MS. WILLIAMS: Court's indulgence.

15 THE COURT: Yes, ma'am.

16 [Whereupon, Ms. Williams and Ms. Cornwell
17 confer]

18 MS. WILLIAMS: Mr. Andrews, I don't have anymore
19 questions right now. Please answer any questions
20 Ms. Littlejohn might have.

21 THE COURT: Ms. Littlejohn.

22 MS. LITTLEJOHN: Mr. Andrews, I'm Debbie
23 Littlejohn.

24 - - -

25 - - -

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CROSS-EXAMINATION

1
2 BY MS. LITTLEJOHN:

3 Q. And I'm sure that the folks with the government
4 have told you that I'm going to be asking you questions;
5 right?

6 A. Yes, ma'am.

7 Q. And you've actually talked to the government
8 folks, hadn't you?

9 A. Have I talked to who?

10 Q. The folks from the government. The solicitor's
11 office and all like that?

12 A. Yes, ma'am.

13 Q. About how many times do you think you've talked
14 to them?

15 A. Six, seven.

16 Q. Wow. Okay.

17 Have you also talked with their investigator, as
18 well?

19 A. Yes.

20 Q. Okay. So you've talked to a good many people
21 from the government's office. Six or seven times. And
22 that's in preparation for this trial; right?

23 A. Right.

24 Q. Okay. Did y'all talk about how to dress and
25 everything for court? Not wear blue jeans and all? To

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1 dress up for court?

2 A. Yes.

3 Q. Okay. Because I just noticed you look awfully
4 nice today.

5 You actually made the telephone call to 911,
6 didn't you?

7 A. That's right.

8 Q. And -- let me just go back a minute.

9 Have you been in this courtroom before today?

10 A. Yes.

11 Q. You have? Okay. When was that?

12 A. Yesterday.

13 Q. You were here yesterday.

14 Okay. And you've gone over some of your
15 testimony; right?

16 A. Yes.

17 Q. Okay. With the solicitor's office; right?

18 A. Uh-huh.

19 Q. Okay. But, anyway, you called 911 that day?

20 A. Yes.

21 Q. And what you said to them was a possible
22 suspect? Isn't that what you said, possible?

23 A. Yes.

24 Q. Okay. And you just told Ms. Williams that you
25 felt uneasy that day.

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1 A. That's correct.

2 Q. And you actually said that one of the things you
3 do is that you have a major in sociology and that's part
4 of your basis for observing all this; right?

5 A. Correct.

6 Q. Ironically, I have a master's in sociology and
7 since that's -- we're talking about that with your
8 observation, and you brought that out, let's talk about
9 that. Can you tell me what classes you took that educated
10 you and what statistical analysis and studies and thesis
11 you did that educated you with regard to that observation,
12 techniques, in the discipline of sociology?

13 A. I took all that was recommended for the major.

14 Q. Right. But, specifically, what techniques and
15 what classes specifically helped you in getting a --

16 It was an undergraduate degree?

17 A. That's correct.

18 Q. -- in getting that that would help you formulate
19 those within the realm of --

20 A. So what classes I took eleven and a half years
21 ago --

22 Q. That --

23 A. -- educated me on --

24 Q. Right. That --

25 A. -- observing human behavior?

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1 Q. Correct. Do you know?

2 A. No.

3 Q. Okay. So you didn't write a thesis on it or
4 anything; right?

5 A. No.

6 Q. Okay. So that was quite some time ago.

7 Okay. Now, you said you felt uncomfortable that
8 day with Mr. Keeling?

9 A. That's correct.

10 Q. At the house with your mother, does Uncle Timmy
11 live there as well?

12 A. Yes.

13 Q. Is your mom retired?

14 A. No, she's not.

15 Q. She's not. She works.

16 And your stepdad lives there?

17 A. Yes.

18 Q. And does he work?

19 A. Yes.

20 Q. And Uncle Timmy, does he work?

21 A. No.

22 Q. Is he retired?

23 A. He's retired.

24 Q. Where is he retired from?

25 A. The navy.

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1 Q. Okay. And that would be at twenty years, I
2 guess?

3 A. Yes.

4 Q. On that picture that was shown, were you part of
5 that picture being taken?

6 A. No.

7 Q. You weren't there the day that those pictures
8 were taken?

9 A. Yes, I was there.

10 Q. Okay. So you were a part of it. I mean, you
11 helped know where to lay it out and all; right?

12 A. Yes.

13 Q. Where to photograph it?

14 A. Yes.

15 Q. Where to set things up?

16 A. I don't know anything about setting things up.

17 Q. You were there with Mr. Chuck with the
18 government; right?

19 A. Yes.

20 Q. From the solicitor's office.

21 That's not really what that porch looked like
22 that day, is it?

23 A. As far as what? I mean, there's a whole year
24 difference. Different season.

25 Q. Other than the season, is that identical to what

1 the porch looked like that day?

2 A. The only thing I saw different was the chair in
3 the far right corner was gone.

4 Q. So those boxes were there that day?

5 A. I don't recall.

6 Q. You don't recall that. Okay.

7 Do you recall if Mr. Keeling had a car?

8 A. A car? No.

9 Q. Do you recall if he actually came with his
10 mother?

11 A. I didn't see him drive up.

12 Q. And EMS -- excuse me. Dispatch asked you if you
13 needed -- didn't they offer you EMS or anything?

14 A. I don't recall.

15 Q. If I were to say that EMS offered you -- I mean,
16 excuse me -- dispatch offered you EMS or anything and you
17 said no, do you believe that that may be accurate?

18 A. Yes.

19 Q. I believe you said that you thought Mr. Keeling
20 was attentive?

21 A. Yes. Very attentive.

22 Q. And you noticed that before this allegation?

23 A. Yes, I did.

24 Q. Or did you feel that -- did you remember the
25 attentiveness after the allegation?

1 A. Before the allegation.

2 Q. And you went inside?

3 A. Yes.

4 Q. So you felt uneasy, but you walked all the way
5 to the back yard?

6 A. Yes.

7 Q. Is that correct?

8 A. [Indicates affirmatively]

9 MS. LITTLEJOHN: Court's indulgence.

10 THE COURT: Yes, ma'am.

11 [Whereupon, Ms. Littlejohn and Ms. White confer]

12 Q. [Ms. Littlejohn] Mr. Phillip Andrews -- and I'm
13 saying Phillip Andrews because as you know from talking
14 with the government and your brother, Mr. Daryl Andrews is
15 going to be testifying. So, just for the record, I'm just
16 giving the first names. Okay?

17 A. Okay.

18 Q. Mr. Phillip Andrews, you actually didn't see
19 anything, did you?

20 A. No.

21 Q. So you don't know what, if anything, happened
22 for sure, do you?

23 A. For sure, no.

24 Q. You have no personal knowledge of anything on
25 this with regard to this alleged incident, do you?

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1 A. I didn't see Mr. Keeling touch my daughter, if
2 that's your question.

3 Q. So you don't know if he did it, you don't know
4 if he didn't; correct? Personal knowledge that you saw?

5 A. As far as I'm concerned, I know he did it.

6 Q. My question was do you know personally.

7 A. Yes.

8 Q. You do. How do you know that? What did you
9 see? Did you see this event?

10 A. If my brother said he saw it, it happened.

11 Q. So your brother always tells the truth about
12 everything all his life?

13 A. No.

14 MS. LITTLEJOHN: No more questions.

15 THE COURT: Ms. Williams.

16 REDIRECT EXAMINATION

17 BY MS. WILLIAMS:

18 Q. Your brother doesn't tell the truth about
19 everything in his life, but would he lie about something
20 like this?

21 A. No.

22 Q. Ms. Littlejohn asked you how many times you've
23 talked to the government.

24 A. Okay.

25 Q. As far as the solicitor's office, I mean, you

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1 said six or seven times. Were some of those times on the
2 phone?

3 A. Yes, ma'am.

4 Q. Were some of those times to tell you about
5 changes in court dates?

6 A. Yes, ma'am.

7 Q. How many times have you actually been down here?

8 A. Once this summer, the Friday after -- the Friday
9 after Columbus day, October 15th, and then yesterday.

10 Q. And that was to talk about court. Is that fair
11 to say?

12 A. Yes, ma'am.

13 Q. Ms. Littlejohn asked you about your observations
14 with regard to the defendant, how he was paying attention
15 to your daughter, and she asked you if you just remembered
16 that later. Do you remember that question?

17 A. I do.

18 Q. Do you remember what you told the police the day
19 this happened?

20 A. As far as when they got there on the scene, or
21 the 911 call, or --

22 Q. If you don't, you can review materials to
23 refresh your recollection if you don't remember everything
24 you told the police. Do you remember everything you told
25 the police?

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1 A. I don't -- I don't know.

2 Q. Would it refresh your recollection to review
3 your statement?

4 A. Yes, ma'am.

5 MS. WILLIAMS: Okay. Your Honor, I'm going to
6 show Ms. Littlejohn --

7 MS. LITTLEJOHN: That's without objection, Your
8 Honor. I have a copy.

9 MS. WILLIAMS: May I approach the witness?

10 THE COURT: You may.

11 Q. [Ms. Williams] Mr. Andrews, about seven lines
12 down, if you could just silently read what you said about
13 your observations about the defendant, and I'll ask you
14 some questions about it.

15 A. Family member had friends over for the --

16 Q. No, no. Just to yourself.

17 [Whereupon, the witness reviews documents]

18 Q. [Ms. Williams] And, in fact, did you tell
19 police officers that day that you were concerned about how
20 much attention he was paying to your daughter?

21 A. Yes, ma'am.

22 Q. Do you wish you had done something about it that
23 day?

24 A. Yes, ma'am.

25 Q. How do you feel that you had a hunch and you

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1 didn't act on it?

2 A. It's the biggest regret of my life.

3 MS. WILLIAMS: Nothing further.

4 THE COURT: Ms. Littlejohn.

5 RECROSS-EXAMINATION

6 BY MS. LITTLEJOHN:

7 Q. Mr. Phillip Andrews, we've established that you
8 did not individually see any allegations; correct?

9 A. No, I didn't.

10 Q. And that particular day you felt uneasy about
11 Mr. Keeling before this alleged event; correct?

12 A. Yes, correct.

13 Q. You felt uncomfortable?

14 A. Correct.

15 Q. You thought he had been showing more
16 attentiveness than normal. Would that be correct?

17 A. The normal as far as a --

18 Q. That --

19 A. -- stranger to --

20 Q. Right. Normal --

21 A. -- three little girls --

22 Q. -- attentiveness. Right.

23 A. -- or normal as in personal interaction?

24 Q. You thought he was more attentive to Minor
25 than most people might be?

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1 A. All three.

2 Q. Okay. You felt yourself uneasy about it?

3 A. Yes.

4 Q. And you left outside to the back yard; correct?

5 A. Yes.

6 Q. Leaving your daughter there?

7 A. Yes.

8 MS. LITTLEJOHN: No further questions.

9 THE COURT: Major Andrews, you may step down.

10 [Whereupon, the witness is excused and exits the
11 witness stand]

12 THE COURT: Who is your next witness?

13 MS. WILLIAMS: Our next witness is Star S.

14 THE COURT: Ladies and gentlemen, we are going
15 to -- this is an appropriate time for us to break for
16 our lunch break.

17 Please remember all of my admonitions. Do not
18 discuss this case amongst yourselves or with anyone.
19 Do not do any independent research. Do not discuss
20 this case either face to face with anyone or via any
21 electronic communication.

22 Please be back in your jury room at 2:00 p.m.

23 Please rise for the jury.

24 [Whereupon, the jury exits the courtroom at

25 12:19 p.m.]

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1 THE COURT: All right. Please be seated.

2 Anything before we break for lunch?

3 MS. WILLIAMS: Nothing from the State, Your
4 Honor.

5 MS. LITTLEJOHN: Your Honor, I did not know when
6 you might want to address the issue of the testimony or
7 either the relevancy of the testimony of Star and
8 Ashley. I had said that I was going to be objecting
9 with regard to relevancy, bolstering, and cumulative,
10 personal knowledge is --

11 THE COURT: Right. I think that, again, that's
12 premature as to anything specific. Overall, the
13 testimony that I've heard is that there would be
14 relevant testimony presented. So you may make your
15 objection at the appropriate time and if there -- it
16 appears that the testimony is not relevant, then we can
17 approach and I will excuse the jury if that's
18 necessary.

19 MS. LITTLEJOHN: Right. Thank you, Your Honor.

20 THE COURT: Thank you. Please be back at 2:00.
21 Thank you. Court is in recess.

22 [Whereupon, a recess is taken from 12:26 p.m. to
23 1:54 p.m.]

24 THE COURT: Please be seated.

25 Ms. Williams, call your next witness.

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1 MS. WILLIAMS: Thank you, Your Honor. The State
2 calls Star S.

3 [Whereupon, Miss S. comes forward]

4 MS. WILLIAMS: If you would just walk around
5 here, over that little bump, and go up where that
6 orange chair is.

7 THE CLERK OF COURT: Please raise your right
8 hand. Place your left hand on the Bible.

9 [Whereupon, Miss S. is duly sworn by the
10 clerk of court as follows: do you solemnly swear or
11 affirm the testimony you give the Court in the trial of
12 this case will be the truth, the whole truth, and
13 nothing but the truth, so help you God]

14 THE WITNESS: I do.

15 THE CLERK OF COURT: Please be seated. State
16 your full name and spell your last name for the record.

17 [Whereupon, Miss S. takes the witness
18 stand]

19 THE WITNESS: My name is Star S. I spell
20 my last name S-W-A-N-S-O-N.

21 MS. WILLIAMS: Thank you.
22
23
24
25

- - -

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STAR S.

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q. Star, who are your mom and dad?

A. [No response]

Q. Just what are their names.

A. Sarah S. and Michael [phonetic] S.

Q. And how old are you?

A. Ten.

Q. When's your birthday?

A. September 5th.

Q. And what grade are you in?

A. Fourth.

Q. Where do you live?

A. 200 Maypop Drive.

Q. Is that -- what town is that in? Do you know?

A. Goose Creek, I guess. I don't know.

Q. Okay. And how do you know Minor

A. She's my cousin.

Q. Okay. And do you get to see her very much?

A. Probably four or five times a year.

Q. Okay. Do you get to see her at Thanksgiving?

A. Yes.

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1 Q. Do you remember seeing her last Thanksgiving?

2 A. Yes, ma'am.

3 Q. Okay. And where do y'all go to Thanksgiving?

4 A. We go -- ma'am, what did you say?

5 Q. Where do you go for Thanksgiving?

6 A. My Aunt Elaine's house. Minor grandma.

7 Q. Minor grandma.

8 And when you were there last Thanksgiving, who
9 were you hanging around with?

10 A. My cousin Ashley and my cousin Minor

11 Q. Okay. So the three of you.

12 A. [Indicates affirmatively]

13 Q. And at some point, were y'all on the front porch
14 together?

15 A. Yes, ma'am.

16 Q. Was there anybody else on the front porch with
17 y'all?

18 A. Yes.

19 Q. Who was it?

20 A. Craig.

21 Q. Okay. And how do you know Craig?

22 A. My granddaddy was dating his mom, Jen.

23 Q. Okay. Do you know him very well?

24 A. No.

25 Q. And why was he on the porch? Do you know?

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1 A. No, ma'am.

2 Q. At any point when you were on the porch, did he
3 ask you to do anything?

4 A. Yes. He asked me for a hug.

5 Q. Okay. Did you give him a hug?

6 A. No, ma'am.

7 Q. Why is that?

8 A. Because I felt uncomfortable giving him a hug.

9 Q. Now, at some point -- well, were y'all eating
10 that day?

11 A. Yes, ma'am.

12 Q. Were you eating your food on the porch?

13 A. Yes, ma'am.

14 Q. At some point did you and Ashley leave the
15 porch?

16 A. Yes.

17 Q. And who was left on the porch when you left?

18 A. Minor and Craig.

19 MS. WILLIAMS: Court's indulgence.

20 THE COURT: Yes, ma'am.

21 [Whereupon, Ms. Williams and Ms. Cornwell
22 confer]

23 MS. WILLIAMS: Star, I'm finished asking you
24 questions. Please answer any questions Ms. Littlejohn
25 has.

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1 THE COURT: Ms. Littlejohn?

2 MS. LITTLEJOHN: Star, we met earlier today. Do
3 you remember that?

4 THE WITNESS: Yes, ma'am.

5 MS. LITTLEJOHN: Okay. So we're just going to
6 kind of chat like we did earlier, okay --

7 THE WITNESS: Yes, ma'am.

8 MS. LITTLEJOHN: -- when we were in the
9 courtroom.

10 CROSS-EXAMINATION

11 BY MS. LITTLEJOHN:

12 Q. On the day that this happened, hadn't you --
13 Mr. Keeling was sitting on the porch and you and your
14 cousins came out there; right?

15 A. Yes, ma'am.

16 Q. Okay. So he was already sitting there I guess
17 drinking, eating, what-have-you? Would that be right?

18 A. Yes, ma'am.

19 Q. He was smoking a cigarette, I believe, wasn't
20 he?

21 A. Yes, ma'am.

22 Q. Okay. There were a lot of people there that
23 year, weren't there?

24 A. Yes, ma'am.

25 Q. For Thanksgiving.

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1 And some of them were smoking, weren't they?

2 A. Yes, ma'am.

3 Q. And some of them were even drinking alcoholic --
4 drinking things like beer and all, weren't they?

5 A. [Indicates affirmatively]

6 Q. Okay. And so many people there, you can't
7 remember really who was drinking beer or not, can you?

8 A. No.

9 Q. Okay. So, basically, the way that kind of lined
10 up was you and I guess Minor and Ashley came out on the
11 porch and he was there; right?

12 A. Yes, ma'am.

13 Q. Okay. Now, before today, did you have a chance
14 to speak with Ms. Williams or Ms. Cornwell?

15 A. No, ma'am.

16 Q. Okay. Did you have a chance to come into the
17 courtroom? Did they show you the courtroom and how it
18 looked?

19 A. Yes, ma'am. They showed me on Friday.

20 Q. So you spoke to them on Friday; right?

21 A. [Indicates affirmatively]

22 Q. And have you spoken with any like police
23 officers or anything?

24 A. No, ma'am.

25 Q. So on this day no police officer talked to you,

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1 did they?

2 A. No, ma'am.

3 Q. How did -- you said your grandmother, I believe,
4 or your -- your grandfather dates Mr. Keeling's mother?

5 A. Yes, ma'am.

6 Q. Okay. Who told you that his name was Craig?

7 A. Ms. Anne did.

8 Q. Ms. Anne Williams?

9 A. Yes, ma'am.

10 Q. Told you that his name was Craig Keeling.

11 You didn't know that before Ms. Anne Williams
12 told you, did you?

13 A. No, ma'am.

14 Q. Okay. Because you didn't really know him --

15 A. Huh-uh

16 Q. -- other than he dated -- had somebody told you
17 that they dated?

18 A. I already knew that they were dating.

19 Q. How did you know that?

20 A. Because my mom told me, and plus we went to
21 their house one time and had dinner with them.

22 Q. Okay. So you had seen the mama and your
23 granddaddy dating?

24 A. Yes.

25 MS. LITTLEJOHN: Court's indulgence, Your Honor.

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1 THE COURT: Yes, ma'am.

2 [Whereupon, Ms. Littlejohn and Ms. White confer].

3 MS. LITTLEJOHN: No further questions, Your
4 Honor.

5 MS. WILLIAMS: Court's indulgence for just a
6 second, Your Honor.

7 THE COURT: Yes, ma'am.

8 [Whereupon, Ms. Williams and Ms. Cornwell
9 confer]

10 MS. WILLIAMS: Nothing further, Your Honor.

11 THE COURT: Miss S. you may step down and
12 be excused from the courtroom. Thank you.

13 THE WITNESS: Thank you.

14 [Whereupon, the witness is excused and exits the
15 witness stand]

16 THE COURT: Call your next witness.

17 MS. WILLIAMS: The State calls Ashley E.

18 [Whereupon, Miss E. comes forward]

19 MS. WILLIAMS: Step right up here.

20 THE CLERK OF COURT: Raise your right hand.
21 Place your left hand on the Bible.

22 [Whereupon, Miss E. is duly sworn by the
23 clerk of court as follows: do you solemnly swear or
24 affirm that the testimony you give the Court in the
25 trial of this case will be the truth, the whole truth,

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1 and nothing but the truth, so help you God]

2 THE WITNESS: Yes, ma'am.

3 THE CLERK OF COURT: Please be seated. State
4 your full name and spell your last name for the record.

5 [Whereupon, Miss E. takes the witness
6 stand]

7 THE WITNESS: Ashley Breanna [phonetic]
8 E. E-R-I-C-K-S-O-N.

9 THE COURT: Ms. Williams.

10 MS. WILLIAMS: Thank you, Your Honor.

11 - - - - -

12 ASHLEY E.

13 Having Been First Duly Sworn,
14 was Examined and Testified as Follows:

15 DIRECT EXAMINATION

16 BY MS. WILLIAMS:

17 Q. Ashley, how old are you?

18 A. Eight years old.

19 Q. And what grade are you in?

20 A. Third grade.

21 Q. Do you know where you go to school?

22 A. Devin Forest Elementary.

23 Q. And who is Minor to you?

24 A. My cousin.

25 Q. How about Star S.

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1 A. My cousin.

2 Q. And do you get to see them very much?

3 A. Yes, ma'am.

4 Q. Do you get to see them on holidays?

5 A. Kind of.

6 Q. Do you ever get to see them on Thanksgiving?

7 A. Yes, ma'am.

8 Q. Did you see Ashley and -- I'm sorry -- Star and
9 Minor last Thanksgiving?

10 A. Yes, ma'am.

11 Q. Where did you see them?

12 A. I saw them in the back yard playing.

13 Q. Whose back yard?

14 A. Aunt Elaine's.

15 Q. Aunt Elaine's.

16 Is Aunt Elaine, Minor grandma?

17 A. Yes, ma'am.

18 Q. And were all three of you ever on the front
19 porch?

20 A. Yes, ma'am.

21 Q. Now, Ashley, you can't say what somebody said.
22 You can only testify to what you saw or what someone did,
23 what you --

24 A. Uh-huh.

25 Q. -- saw them doing.

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1 Did you see anyone else on the porch with you
2 and Ashley and Minor

3 A. Yes.

4 Q. Who was it, if you --

5 A. Craig.

6 Q. Who is Craig? Do you know?

7 A. No.

8 Q. Is he a man?

9 A. Yes.

10 Q. And had you ever seen him before that day?

11 A. No.

12 Q. How did you know his name was Craig?

13 A. Minor told me.

14 Q. And don't tell us what he said, but did Craig
15 say or do anything to you?

16 A. No.

17 Q. Did he whisper in your ear?

18 A. Yes.

19 MS. LITTLEJOHN: Your Honor, I would object.

20 THE COURT: Basis?

21 MS. LITTLEJOHN: If we -- I believe it's going
22 to require a matter of law.

23 THE COURT: All right.

24 [Whereupon, an off-the-record bench conference
25 is held]

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1 THE COURT: Ladies and gentlemen, there is a
2 matter of law that I must take up outside of your
3 presence.

4 Do not begin your deliberations. Do not discuss
5 this case amongst yourselves.

6 Please rise for the jury. Miss E. stay
7 seated.

8 [Whereupon, the jury exits the courtroom at
9 2:08 p.m.]

10 THE COURT: Thank you. Be seated.

11 Miss E. do you need a drink of water or
12 to go to the restroom or anything?

13 THE WITNESS: No, ma'am.

14 THE COURT: You're okay?

15 THE WITNESS: [Indicates affirmatively]

16 THE COURT: All right.

17 [Whereupon, the question and answer are played
18 back]

19 - - - - -

20 MOTION FOR A MISTRIAL

21 THE COURT: All right. Ms. Littlejohn, I'll be
22 happy to hear from you.

23 MS. LITTLEJOHN: Your Honor, I have a -- quite a
24 few objections to -- granted, I recognize -- the State,
25 as well as the defense, everyone is somewhat allowed a

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1 little leniency with the ability to lead with regard to
2 children. That being said, leading is one thing. What
3 was said was a flat-out answer.

4 My recollection -- I notice the State -- the
5 judge just was listening to it. And I don't remember
6 it word for word, but it was somewhat similar to
7 Ms. Williams basically said did he do anything. She
8 said no. Then Ms. Williams asked, well, did he whisper
9 in your ear.

10 Your Honor, first of all, I'm back to 401,
11 relevance. 403. Clearly, clearly, prejudicial. And
12 we get -- she has already done an asked and answered.
13 It's their witness. They've spoken to her. Asked,
14 answered, and she said no. That's the answer. Leading
15 is one thing, but when you get a no, that's a no.

16 Your Honor, that answer of no is exculpatory
17 towards us, I believe, because it goes to the lack of
18 relevance for having Ashley on the stand. It's also,
19 in my opinion, bolstering. We would submit that it is
20 also 404, an attempt to show propensity and acting in
21 conformity, which is also improper. It's sort of like
22 going through the back door to get into the stable, if
23 you will.

24 I would ask that it is so damaging, the fact
25 that she had said no, their witness said no -- it's not

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1 on cross-examination -- and it's almost tantamount to
2 saying, you said no so now let me get you to change
3 your answer: and here's what he did; right. Your
4 Honor, that is clearly, clearly, prejudicial. I
5 believe that the -- that it is on so many different
6 grounds. I believe I've stated those -- to the point
7 where I would ask the Court to consider a mistrial in
8 this case.

9 THE COURT: All right. The Court is denying
10 your request for a mistrial.

11 As you are aware, that is an extreme remedy and
12 should be used with the greatest of caution. Based
13 upon what I have observed, and as far as the
14 questioning goes, the question from Ms. Williams to
15 Miss E. was did he touch you, was that phrase,
16 and then the follow-up question was did he whisper in
17 your ear. The Court finds that did he whisper in your
18 ear is not prejudicial. It is probative as to what was
19 going on on the porch at that time. Ms. Williams
20 cautioned not to say what he said, but it was a whether
21 or not it occurred.

22 I am allowing, under 611, latitude for this
23 witness. I just have found her competent. But I am
24 going to allow some latitude, as far as leading
25 questions, under 611(a).

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1 Note your exception for the record.

2 Ms. Williams, even though I have indicated I am
3 allowing latitude on leading questions, please attempt
4 to refrain from using leading questions. Thank you.

5 - - - - -

6 MOTION FOR A MISTRIAL

7 MS. LITTLEJOHN: Your Honor, furthermore -- and
8 I believe that the Court, I think, had a -- took the
9 opportunity to review the written report from
10 Greenville. I know the Court reviewed the videotape.
11 You had indicated you were going to be reviewing that
12 last night. Your Honor, in that report it says that
13 Minor said that he tried to whisper in Star's ear.

14 Clearly, none of this is in conformity with the
15 discovery that the solicitor's office provided. So by
16 the time you cumulate all of these combined, these
17 objections, including that one, not abiding -- not
18 conforming with the discovery, the -- another matter
19 there, Your Honor, which I guess stacking them all.

20 THE COURT: Ms. Littlejohn, just so I
21 understand: your next objection is that this
22 information was not provided in discovery and thus
23 should be stricken?

24 MS. LITTLEJOHN: It's incorrect information,
25 Your Honor. The information within the Rule 5 says

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1 whispered in Star's ear. It would be offering
2 incorrect information, based on the discovery that we
3 were provided.

4 THE COURT: Ms. Williams?

5 MS. WILLIAMS: Your Honor, if Minor
6 remembered that he whispered in Star's ear and not
7 Ashley's, then she can impeach Minor in remembering
8 it wrong.

9 You know, I don't know if Minor remembered
10 it wrong or if it was written wrong, but she can
11 certainly -- we had the same information that she did.
12 So that is information Minor is going to testify.
13 She can ask her the question and then she can argue to
14 the jury that they can't even keep their stories
15 straight or whatever -- you know, whatever bias or
16 reliability of the witness that she wants to argue.
17 But that's impeachment for Minor If Minor
18 remembers things differently than witnesses testify,
19 then she can impeach her with it.

20 THE COURT: Ms. Littlejohn, your response.

21 MS. WILLIAMS: We met Ashley this morning for
22 the first time, Your Honor, so it's not --

23 THE COURT: All right. Hold on one second,
24 Ms. Williams.

25 MS. LITTLEJOHN: Your Honor, that kind of goes

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1 to the whole point of this, the leading, the leading to
2 here is the answer you need.

3 THE COURT: I'm not following you on that,
4 Ms. Littlejohn.

5 MS. LITTLEJOHN: Your Honor, in other words, the
6 discovery says one thing, Minor says one thing.
7 Ashley is saying something only after the State has
8 told her this is -- isn't this what happened, didn't he
9 whisper in your ear. To suggest such an answer I
10 believe is improper.

11 THE COURT: Ms. Williams?

12 MS. WILLIAMS: I guess by that theory I should
13 have suggested it to Star because then it would be
14 consistent with the discovery.

15 I mean, there are two separate issues. I asked
16 a leading question, a leading follow-up question, to an
17 eight-year-old witness, which I think was proper. The
18 discovery said that all three of them were on the
19 porch, that he whispered in one of their ears.

20 Minor reported that he whispered in Star's ear.
21 Ms. Littlejohn could have asked Star that, since we
22 didn't elicit that.

23 We met Ashley this morning. We certainly aren't
24 trying to hide information from her. But the fact that
25 Minor said that he whispered in one ear and the

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1 girls said he whispered in a different ear I don't
2 think is a discovery violation. If they testified
3 differently than what the discovery says, she can
4 impeach them. It's a pretty small difference, I would
5 say.

6 MS. LITTLEJOHN: Your Honor, just as a -- Ashley
7 here didn't say it. The State said it.

8 THE COURT: All right. So what relief are you
9 seeking, Ms. Littlejohn?

10 MS. LITTLEJOHN: Your Honor, I would ask for a
11 mistrial based on this prejudicial effect because of
12 the bolstering. This is getting right back to the
13 whole issue when we started and they put these --
14 Ashley and Star on the list, I first raised the issue
15 of relevancy. They're getting into the bolstering and
16 attempting to show propensity and acting within a
17 conformity that -- through 404. It's almost alluding
18 to something where there is nothing necessarily to
19 allude to.

20 Obviously, I -- therefore, I would ask for a
21 mistrial. If the Court is not willing to do that, I
22 would ask that the Court strike the question and
23 that -- or that the question be struck and that we then
24 proceed forward, and not with that question since it
25 was a point-blank, oh, because she said no, now let me

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1 tell you what the answer is.

2 THE COURT: All right. I'm going to deny your
3 request for a mistrial.

4 As I have indicated before, the question was
5 leading. But I find that based upon the witness on the
6 stand and the prior question, I'm allowing leeway in
7 answering and asking leading questions.

8 I do not find that the difference between Star
9 whispering and Ashley whispering is enough to cause a
10 discovery violation that would require a mistrial in
11 this matter.

12 We will take a short recess to allow you to
13 collect your thoughts and to get -- to prepare your
14 cross-examination, now knowing that Ashley is the one
15 that was the one that the State is saying that there
16 was whispering.

17 Anything further, Ms. Littlejohn?

18 MS. LITTLEJOHN: Your Honor, I would just ask
19 that the Court address the issue with regard to 404,
20 acting in conformity, and propensity, an attempt to
21 show a propensity. And if the Court can just set forth
22 -- that was one of our basis of the objection, too. We
23 believe that both of these witnesses are on the stand
24 to be able to show an acting in conformity and an
25 attempt to show propensity, character propensity, which

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1 I don't believe we can --

2 THE COURT: Your response, Ms. Williams?

3 MS. WILLIAMS: Your Honor, these are not prior
4 bad acts. They were on the porch with the victim.
5 They left minutes before he stuck his hands down the
6 pants of Minor They are fact witnesses.
7 And I think it goes to res gestae, it goes to setting
8 the scene of what was going on, and it also goes to --
9 somewhat to us proving why he did what he did. Because
10 if there's another reason why he put his hands down
11 that child's pants, then I don't know why he was
12 hanging around with eight and nine year olds.

13 And there's like one -- we're almost one
14 question away from her finishing. We're not going to
15 go on a putting this child on the stand forever and
16 ever to talk about any other bad acts by the defendant.
17 But she was there, she was with Minor she was with
18 Star, and they left and then a few minutes later is
19 when this happened.

20 MS. LITTLEJOHN: Your Honor, I believe that
21 Ms. Williams pretty much has said what I was saying:
22 other bad acts, a propensity for showing conformity to
23 and acting in conformity with.

24 THE COURT: I'm going to allow this line of
25 questioning, about the whispering, under 404(b). The

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1 whispering may be admissible to show motive, identity,
2 existence of a common scheme or plan, the absence of
3 mistake or accident, or intent.

4 I am allowing it and it is admissible. We are
5 taking a break so that you may prepare your cross-
6 examination.

7 Miss E. you probably don't understand
8 anything that has been going on. However, what now --
9 I'm going to have you step down and you may talk to
10 Ms. Williams and Ms. Littlejohn about your testimony.
11 Do you understand that?

12 THE WITNESS: Kind of.

13 THE COURT: Can you -- do you want to ask me a
14 question so that I can explain it to you?

15 THE WITNESS: No.

16 THE COURT: No? You're okay?

17 THE WITNESS: [Indicates affirmatively]

18 THE COURT: All right. You may step down. And
19 we're going to take just a short break so that you can
20 talk to Ms. Littlejohn. Do you remember her asking you
21 some questions earlier today? She's going to ask you a
22 few more questions. Okay? Is that okay?

23 THE WITNESS: [Indicates affirmatively]

24 THE COURT: Is that a yes?

25 THE WITNESS: Uh-huh.

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1 THE COURT: All right. You may step down.

2 [Whereupon, the witness is excused and exits the
3 witness stand]

4 THE COURT: Ms. Littlejohn, will ten minutes be
5 enough for you?

6 MS. LITTLEJOHN: Sure, Your Honor.

7 THE COURT: All right. And, Ms. Littlejohn, if
8 you'll make sure.

9 Everyone else take your mid-afternoon break.
10 And we'll go until 5:00. Thank you. Ten minutes.

11 [Whereupon, a recess is taken from 2:27 p.m. to
12 2:33 p.m.]

13 THE COURT: Please be seated.

14 MS. WILLIAMS: Ashley --

15 Do you want her up on the stand before the jury
16 comes in, Your Honor?

17 THE COURT: Yes.

18 MS. WILLIAMS: Okay

19 [Whereupon, Miss E. retakes the witness
20 stand]

21 THE COURT: All right. Miss E. do you
22 need anything before we bring in the jury? Are you
23 comfortable?

24 THE WITNESS: Yes.

25 THE COURT: All right. Ms. Littlejohn, do you

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1 need any additional time?

2 MS. LITTLEJOHN: No, Your Honor.

3 THE COURT: Ms. Williams?

4 MS. WILLIAMS: No, Your Honor.

5 THE COURT: All right. Let's bring in the jury.

6 [Whereupon, the jury enters the courtroom at
7 2:34 p.m.]

8 THE COURT: Please be seated.

9 Ms. Williams, your witness.

10 MS. WILLIAMS: Thank you, Your Honor.

11 CONTINUED DIRECT EXAMINATION

12 BY MS. WILLIAMS:

13 Q. Ashley, you're allowed to answer. Did he
14 whisper in your ear?

15 A. Yes, ma'am.

16 Q. Now, when you -- did you, at some point, leave
17 the porch with Star?

18 A. Yes.

19 Q. Okay. And when you left the porch, who was
20 still there?

21 A. Minor and Craig.

22 MS. WILLIAMS: Nothing further. Please answer
23 any questions that Ms. Littlejohn has. Okay?

24 THE COURT: Ms. Littlejohn.

25 MS. LITTLEJOHN: Hey, Ashley. We're just going

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1 to -- I'm just going to ask you a couple of questions.
2 Okay? And, listen, if you don't understand something
3 I'm asking you, just tell me you don't understand.

4 Okay? Is that a fair deal?

5 THE WITNESS: Uh-huh.

6 MS. LITTLEJOHN: Good.

7 CROSS-EXAMINATION

8 BY MS. LITTLEJOHN:

9 Q. That day you said that you and Minor and Star
10 were all playing together; right?

11 A. Uh-huh.

12 Q. Playing in the back yard?

13 A. [Indicates affirmatively]

14 Q. And then at some point in time the three of
15 y'all came to the front porch; right?

16 A. Uh-huh.

17 Q. And when you --

18 THE COURT: Miss E. remember you need to
19 answer out loud, yes or no, so that my court reporter
20 can write down what you're saying. Okay?

21 THE WITNESS: Okay. Okay.

22 THE COURT: Is that a yes?

23 THE WITNESS: Yes, ma'am.

24 THE COURT: All right. I'm sorry, Ms.

25 Littlejohn.

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1 MS. LITTLEJOHN: Thank you, Judge.

2 Q. [Ms. Littlejohn] So when the three of y'all
3 came out to the front porch, Craig was already sitting on
4 the front porch, wasn't he?

5 A. Yes.

6 Q. Thank you for saying yes or no. I appreciate
7 it.

8 And then you and Star went off to the front yard
9 to play?

10 A. No. We went inside.

11 Q. You and Star went inside?

12 A. [Indicates affirmatively]

13 Q. And Mr. Keeling, he was smoking a cigarette?

14 A. Yes.

15 Q. And people were drinking beer that day, too,
16 weren't they?

17 A. Yes, ma'am.

18 Q. There were a lot of people at this party,
19 weren't there?

20 A. Yes, ma'am.

21 Q. A lot of people smoking?

22 A. Yes, ma'am.

23 Q. A lot of people drinking?

24 A. Yes, ma'am.

25 MS. LITTLEJOHN: Court's indulgence.

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1 THE COURT: Yes, ma'am.

2 MS. LITTLEJOHN: Let me just check on one thing,
3 Ashley. Okay?

4 [Whereupon, Ms. Littlejohn and Ms. White confer]

5 Q. [Ms. Littlejohn] Now, you're up here in court.
6 And, unfortunately, you don't get to miss a school day
7 because school is out. But have you had a chance to talk
8 to anybody about what today is about?

9 A. No, ma'am.

10 Q. So nobody told you why you might be coming to
11 court or anything?

12 A. I don't think so, no.

13 Q. Did anybody bring you into the courtroom and
14 show you around?

15 A. Yes, ma'am.

16 Q. And who would that be?

17 A. Miss Anne.

18 Q. Miss Anne did?

19 A. [Indicates affirmatively]

20 Q. Okay. And nobody's told you what you're doing
21 here today or why we're talking about Thanksgiving?

22 A. No.

23 Q. No.

24 Okay. So is this the first time you knew you
25 were coming to court was this morning?

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1 A. Yes.

2 Q. Okay. And then this morning, before we even
3 started, you spoke with Miss Anne?

4 A. Yes, ma'am.

5 MS. LITTLEJOHN: Okay. Okay I don't have
6 anymore questions for you, Ashley. Okay?

7 THE COURT: Ms. Williams?

8 MS. WILLIAMS: Just one.

9 REDIRECT EXAMINATION

10 BY MS. WILLIAMS:

11 Q. Ashley, in fact, you and I just met this
12 morning, didn't we?

13 A. Yes, ma'am.

14 Q. I've never met you before, have I?

15 A. No, ma'am.

16 MS. WILLIAMS: Nothing further, Your Honor.

17 THE COURT: Ms. Littlejohn, recross?

18 MS. LITTLEJOHN: No further questions, Your
19 Honor.

20 THE COURT: Miss E. you may step down and
21 you are excused from the courtroom. Thank you very
22 much.

23 [Whereupon, the witness is excused and exits the
24 witness stand]

25 THE COURT: Call your next witness.

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1 MS. WILLIAMS: Minor

2 [Whereupon, Miss Andrews comes forward]

3 MS. WILLIAMS: If you could just go --

4 THE CLERK OF COURT: Please raise your right
5 hand. Place your left hand on the Bible.

6 [Whereupon, Miss Andrews is duly sworn by the
7 clerk of court as follows: do you solemnly swear or
8 affirm the testimony you give the Court in the trial of
9 this case will be the truth, the whole truth, and
10 nothing but the truth, so help you God]

11 THE WITNESS: I do.

12 THE CLERK OF COURT: Please be seated. State
13 your full name and spell your last name for the record.

14 [Whereupon, Miss Andrews takes the witness
15 stand]

16 THE WITNESS: Minor A-N-D-R-E-W-S.

17 MS. WILLIAMS: Thank you, Your Honor.

18 - - - - -

19 Minor

20 Having Been First Duly Sworn,
21 was Examined and Testified as Follows:

22 DIRECT EXAMINATION

23 BY MS. WILLIAMS:

24 Q. Minor who are your mom and dad?

25 A. Alyson Andrews and Phillip Andrews.

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1 Q. Okay. And how old are you?

2 A. Eight years old.

3 Q. When's your birthday?

4 A. July 13th.

5 Q. How old are you going to be on your next
6 birthday?

7 A. Nine years old.

8 Q. So --

9 THE COURT: Miss Andrews, I'm going to need you
10 to speak very loudly into that microphone. Okay? It's
11 okay. You might feel like you're yelling, but you're
12 going to need to speak very loudly. Thank you.

13 THE WITNESS: You're welcome.

14 Q. [Ms. Williams] How old are you right now?

15 A. Eight years old.

16 Q. And where do you live?

17 A. Maulden.

18 Q. Do you ever come down to this area for holidays
19 or visits?

20 A. Yes, ma'am.

21 Q. Who do you usually visit when you come down
22 here?

23 A. My Grammy Elaine.

24 Q. Okay. Do you usually spend Thanksgiving with
25 Grammy Elaine?

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1 A. Yes, ma'am.

2 Q. And when you go there for Thanksgiving, do you
3 get to play with other kids?

4 A. I get to play with my cousins, yes, ma'am.

5 Q. Who are your cousins?

6 A. Star, Ashley, Sky, and Brighten.

7 Q. Okay. Do you remember last Thanksgiving?

8 A. Yes, ma'am.

9 Q. And were you at your Grammy Elaine's?

10 A. Yes, ma'am.

11 Q. Who did you go there with?

12 A. My mom.

13 Q. Okay. Was your dad there?

14 A. He got there after, like at eleven o'clock.

15 Q. Did he come with your Uncle Daryl?

16 A. Yes, sir. I mean, yes, ma'am.

17 Q. And at any time during that day, did you go on
18 the front porch?

19 A. Yes, ma'am.

20 Q. Who were you on the front porch with?

21 A. Craig.

22 Q. Who else?

23 A. That's it, usually. Well, I went with my Uncle
24 Timmy first.

25 Q. Okay. On Thanksgiving when you were on the

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1 front porch, who was with you?

2 A. Craig.

3 Q. Okay. Were you with any of your cousins at any
4 time?

5 A. Yes, I was.

6 Q. Okay. Which cousins?

7 A. Ashley and Star.

8 Q. All right. And was Craig there when Ashley and
9 Star were there?

10 A. Yes, ma'am.

11 MS. WILLIAMS: Do you need a glass of water or
12 anything like that?

13 THE WITNESS: No thank you.

14 MS. WILLIAMS: Okay. You need to speak up a
15 little bit. I'm going to put this microphone down just
16 a little bit. Okay. There you go.

17 Q. [Ms. Williams] Now, did you see Craig talking
18 to either Ashley or Star?

19 A. Both of them.

20 Q. Okay. Do you know: was he talking out loud?

21 A. Some of the time.

22 Q. Okay. Don't tell us what he said, but --

23 A. Yeah.

24 Q. -- was he whispering to either of them?

25 A. Ashley.

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1 MS. WILLIAMS: Okay. And if you don't remember
2 something, it's okay to say you don't remember. Or if
3 you need me to explain a question, that's okay.

4 Q. [Ms. Williams] At some point, did they leave
5 the porch?

6 A. Yes, ma'am.

7 Q. And then who was left on the porch?

8 A. Craig.

9 Q. What happened after they left the porch? And
10 don't tell us what anyone said, but just tell us what
11 happened.

12 A. I don't get what you're saying.

13 Q. When just you and Craig were left on the porch,
14 did he touch you anywhere?

15 A. Yes.

16 Q. Okay. You just need to tell us what happened.
17 Without saying what he said, just tell us what he did.

18 A. He touched my undies.

19 Q. Okay. And what were you doing on the porch at
20 that time?

21 A. I was eating.

22 Q. Okay. Were you having turkey?

23 A. No. I was having beans and rice.

24 Q. Okay. Beans and rice.

25 And do you remember where you were standing?

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1 Where was your plate?

2 A. On the rail.

3 Q. Okay. And when he touched your undies, was that
4 over your jeans or under your jeans or your pants?

5 A. It was over my jeans and under my jeans.

6 Q. Okay. So was it inside your pants or on the
7 outside of your pants?

8 A. First outside, then inside.

9 Q. Okay. And when he put his hand inside, what
10 part of your body was he touching?

11 A. My --

12 Q. What part --

13 A. -- bottom.

14 Q. -- of the body does your undies cover?

15 A. My bottom.

16 Q. Okay. And was his hand on the top of your
17 undies or underneath your undies?

18 A. On top.

19 Q. And what did he do with his hand when it was
20 inside your pants like that?

21 A. He rubbed it.

22 Q. How did that make you feel?

23 A. Scared, embarrassed.

24 Q. What happened next?

25 A. Then my Uncle Daryl banged on the window.

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1 Q. And did he -- did Craig stop what he was doing?

2 A. Yes, ma'am.

3 Q. Did he stay on the porch?

4 A. No. He ran down the stairs and went to his car.

5 Q. Okay. He ran toward the street?

6 A. Yes.

7 Q. Do you know -- do you even know if he had a car?

8 A. Yes.

9 Q. You do know?

10 A. [Indicates affirmatively]

11 MS. WILLIAMS: Court's indulgence.

12 [Whereupon, Ms. Williams and Ms. Cornwell

13 confer]

14 Q. [Ms. Williams] Did you know Craig at all before
15 that day?

16 A. No, ma'am.

17 Q. Had you ever seen him before?

18 A. Yes, ma'am.

19 Q. Where did you see him before?

20 A. Inside.

21 Q. Okay. But that was that day; right?

22 A. Yes, ma'am.

23 MS. WILLIAMS: Okay. Minor please answer
24 any questions that Ms. Littlejohn has. Okay?

25 THE WITNESS: Yes, ma'am.

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1 MS. LITTLEJOHN: Hey, Minor We met earlier
2 today. Do you remember that?

3 THE WITNESS: Yes, ma'am.

4 MS. LITTLEJOHN: Right. You were sitting there.
5 So I'm just -- I'm going to ask you a couple of
6 questions.

7 CROSS-EXAMINATION

8 BY MS. LITTLEJOHN:

9 Q. Do you remember after Thanksgiving going back up
10 to Greenville?

11 A. Yes, ma'am.

12 Q. Going home; right?

13 A. [No response]

14 Q. And you actually had the opportunity to meet
15 with a lady and talk to her about this, didn't you?

16 A. Yes, ma'am.

17 Q. And didn't that lady tell you -- I believe she
18 looked at you and said something like -- showed you a bulb
19 on the ceiling? A black ball?

20 A. Yes, ma'am.

21 Q. Right?

22 And she said, that's making a video recording
23 so -- and she told you that way anybody who was needing to
24 know could look at the video and they could hear you.
25 Isn't that what she told you?

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1 A. Yes, ma'am.

2 Q. Right. Exactly.

3 So and that was like in January, wasn't it?

4 A. Yes, ma'am.

5 Q. Okay. So about a month and a half, two months
6 after Thanksgiving, after school had already started back,
7 wasn't it?

8 A. Yes, ma'am.

9 Q. Right.

10 Okay. And you're in the third grade now, aren't
11 you?

12 A. Yes, ma'am.

13 Q. What school do you go to?

14 A. Greenbriar Elementary.

15 Q. Greenbriar. And that's in Maulden; right?

16 A. Yes, ma'am.

17 Q. Right. And you make pretty good grades, don't
18 you? Like all A's?

19 A. Yes, ma'am.

20 Q. Good for you. Keep up the good work there.

21 And you like your classes?

22 A. Yes, ma'am.

23 Q. How are you doing in math? You pretty good at
24 math?

25 A. Yes.

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1 Q. And so everything's been going fine for you,
2 hadn't it?

3 A. Yes, ma'am.

4 Q. Good. I'm glad.

5 Minor what kind of things do you like to do
6 for fun?

7 A. I like to play with my friends, my cousins.
8 Read.

9 Q. You like to watch TV?

10 A. Sometimes.

11 Q. What's your favorite show?

12 A. Hatchie Dog Tails [phonetic].

13 Q. Okay. Do you ever play with your dogs or
14 anything?

15 A. Yes, ma'am.

16 Q. And you have a good time with them, don't you?

17 A. Yes.

18 Q. Okay. On the day that this supposedly happened,
19 you were at your Grandma Elaine's? She's your Grandma?

20 A. [Indicates affirmatively]

21 Q. Okay. And with your Grandma lives your
22 grandmother lives -- and her husband; right?

23 A. Yes, ma'am.

24 Q. And Uncle Timmy?

25 A. [Indicates affirmatively]

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1 Q. And you told that to that lady who interviewed
2 you; right? Who all lived in the house; right?

3 A. Uh-huh.

4 Q. Okay. Good. Because that's what you're
5 supposed to do.

6 And did the police talk to you that day?

7 A. No, ma'am.

8 Q. They didn't?

9 A. [No response]

10 Q. Okay. And you've actually -- I believe you told
11 that lady that did the videotape that y'all were on the
12 porch, didn't you?

13 A. [No response]

14 Q. Was Mr. Keeling sitting down or standing up?

15 A. Sitting down.

16 Q. He was sitting down.

17 And you told her he was smoking; right?

18 A. [Indicates affirmatively]

19 Q. And he was drinking a beer; right?

20 A. [Indicates affirmatively]

21 Q. And you said your cousins Ashley and Star were
22 there, didn't you?

23 A. Yes, ma'am.

24 Q. And I think you said to the interviewer that
25 they went inside to go to the bathroom?

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1. A. Yes, ma'am.

2. Q. And then he said -- didn't you tell that
3 interviewer that he said --

4 MS. WILLIAMS: Objection.

5 THE COURT: Basis?

6 MS. WILLIAMS: Hearsay. Hearsay.

7 THE COURT: Is there an exception?

8 MS. LITTLEJOHN: Your Honor, I'm going to ask
9 her about what she said.

10 MS. WILLIAMS: Objection. May we approach?

11 THE COURT: All right. Counsel approach.

12 [Whereupon, an off-the-record bench conference
13 is held]

14 THE COURT: Sustained as to hearsay.

15 Ms. Littlejohn?

16 Q. [Ms. Littlejohn] Minor let's go back to
17 that interview that you did. Did you notice Mr. Keeling
18 smoking?

19 A. Yes, ma'am.

20 Q. And he was sitting in a chair, you said?

21 A. Yes, ma'am.

22 Q. Did you at any time -- out of your words did you
23 tell that interviewer that what you saw was Mr. Keeling
24 tried to whisper --

25 MS. WILLIAMS: Objection, Your Honor.

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1 MS. LITTLEJOHN: What she saw, Your Honor.

2 THE COURT: All right. Counsel approach.

3 [Whereupon, an off-the-record bench conference
4 is held]

5 THE COURT: Ms. Littlejohn, you may continue.

6 MS. LITTLEJOHN: Court's indulgence, Your Honor.

7 [Whereupon, Ms. Littlejohn and Ms. White confer]

8 Q. [Ms. Littlejohn] Let's go back to where we
9 were. Okay?

10 Do you remember telling that interviewer on
11 the videotape that what you saw with your own eyes was
12 Mr. Keeling trying to whisper in Star's ear?

13 A. Well, it was in Ashley's ear.

14 Q. So if you told that to the interviewer, if you
15 said that that's what you saw back in January, do you
16 remember -- that would be wrong?

17 A. I didn't hear you.

18 Q. Okay. Back in January --

19 THE COURT: Hold on one second, Ms. Littlejohn.
20 Miss Andrews, you're going to have to make sure
21 you speak into the microphone very loudly. Thank you.

22 MS. LITTLEJOHN: Do you want to pull that down
23 towards you a little bit. There you go. That'll help
24 you out.

25 Q. [Ms. Littlejohn] Back in January when you had

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1 the videotaped interview, if you told -- if you said you
2 saw him whisper in Star's ear, would that be the truth?

3 A. Like, I don't get what you're saying.

4 THE COURT: Ms. Littlejohn, rephrase your
5 question.

6 Q. [Ms. Littlejohn] You remember when you were
7 sitting there with that video camera?

8 A. [Indicates affirmatively]

9 Q. Okay. If you told that interviewer that what
10 you saw of your own eyes was that Mr. Keeling tried to
11 whisper in Star's ear, would that mean that you were
12 telling the interviewer something that would have been
13 true, or false?

14 A. True, because I saw him whisper in Star's ear
15 and Ashley's.

16 Q. Okay. And that day, you were eating your food,
17 weren't you?

18 A. Yes, ma'am.

19 Q. And if you told the interviewer you were
20 drinking a cherry Dr. Pepper, would that be true?

21 A. Yes, ma'am.

22 Q. Do you tend to like cherry Dr. Peppers?

23 A. Yes, ma'am.

24 Q. They're pretty good. I agree with you on that.
25 And were you sitting or standing?

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1 A. Standing.

2 Q. Standing.

3 Now, you can't say, and I can't say, what
4 Mr. Keeling said. Okay?

5 A. Yes, ma'am.

6 Q. That's just a rule. You know how sometimes we
7 have rules, like you have to get to school on time?

8 A. Yes.

9 Q. That's just a rule. Okay?

10 When you were talking to that interviewer, did
11 you have the opportunity to show her how you brushed off
12 your pants?

13 A. [No response]

14 Q. Did you have the opportunity to do like this
15 [indicates] in the video?

16 A. Yes, ma'am.

17 Q. Okay. And earlier that day, you had been
18 playing outside; right?

19 A. Yes, ma'am.

20 Q. And didn't you tell that video interviewer that
21 -- and I believe you testified today that Mr. Keeling's
22 hand was on your undies?

23 A. Yes, ma'am.

24 Q. And the interviewer actually asked you did he --
25 did his hand touch on your undies. And you said yes,

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1 didn't you?

2 A. Yes, ma'am.

3 Q. Did you have a chance to discuss -- you
4 discussed drugs with the interviewer, didn't you?

5 A. Yes, ma'am.

6 Q. And you said he was smoking too much?

7 A. Yes, ma'am.

8 Q. Are cigarettes and alcohol kind of drugs?

9 A. Yes, ma'am.

10 Q. They are?

11 A. [No response]

12 Q. Do you remember what hand he was holding his
13 cigarette in? Just think about it.

14 A. The left.

15 Q. The left hand.

16 And he was drinking a beer?

17 A. Yes, ma'am.

18 MS. LITTLEJOHN: Court's indulgence, Your Honor.

19 THE COURT: Yes, ma'am.

20 [Whereupon, Ms. Littlejohn and Ms. White confer]

21 Q. [Ms. Littlejohn] Okay. Minor what hand of
22 his did he use to wipe you off?

23 A. Right.

24 Q. Now, let me just show you this so we all

25 understand what we're talking about. This would be a

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1 cigarette; correct?

2 A. Yes, ma'am.

3 Q. And you said he had a beer. We'll pretend that
4 this cup of water here is a beer. Okay? So just pretend.
5 So did he have the cigarette and the beer together in one
6 hand?

7 A. No, ma'am.

8 Q. He had the beer here in this hand and the
9 cigarette in the other hand?

10 A. Yes, ma'am.

11 Q. Okay. Do you remember telling the interviewer
12 that something was wiped off your pants?

13 A. Yes, ma'am.

14 Q. And didn't you tell the interviewer that he was
15 sitting in a rubber chair?

16 A. Yes, ma'am.

17 Q. That's the kind with sort of the arms on it;
18 right?

19 A. Yes, ma'am.

20 Q. Okay. And you heard your Uncle Daryl hit the
21 window; right?

22 A. Yes, ma'am.

23 Q. Kind of scared you, sort of startled you --

24 A. Yes.

25 Q. -- when he hit the window? Because it was kind

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1 of quiet out front, and bam all of a sudden; right?

2 A. Yes.

3 Q. And he yelled like, or something? Said
4 something that kind of took you back; right?

5 A. Yes.

6 Q. Right.

7 And then you remember telling -- told the
8 interviewer that Mr. Keeling walked to his car?

9 A. Yes, ma'am.

10 Q. Right?

11 Can you tell me -- you had said something a
12 couple of times during your interview about smoking?

13 A. Yes, ma'am.

14 Q. Why is that bad?

15 A. [No response]

16 Q. Is that bad?

17 A. Yes, ma'am.

18 Q. It's bad?

19 A. [No response]

20 Q. So people shouldn't smoke, should they?

21 A. No, ma'am.

22 Q. Kind of like bad people smoke; right?

23 A. Yes, ma'am.

24 Q. Do you remember the interviewer asking you if
25 anyone had ever touched you on your bottom?

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1 A. Yes, ma'am.

2 Q. And didn't you tell her only your uncles when
3 you were really small?

4 A. Yes, ma'am.

5 Q. Okay. When they would carry you?

6 A. Yes, ma'am.

7 Q. Right. Has anyone ever showed you any sort of
8 pictures with people with no clothes on?

9 A. No, ma'am.

10 MS. WILLIAMS: Objection. Relevance. I know
11 that she's already --

12 THE COURT: What's the relevance, Ms.
13 Littlejohn?

14 MS. LITTLEJOHN: Your Honor, if we can approach?

15 THE COURT: You may.

16 [Whereupon, an off-the-record bench conference
17 is held]

18 THE COURT: Overruled.

19 Ms. Littlejohn, you may continue.

20 Q. [Ms. Littlejohn] Minor would you mind -- I
21 just kind of want to refresh my memory a little bit and
22 maybe for these folks here. If you could show them what
23 you showed that lady on the videotape on how that was that
24 you did your hand. Did you -- can you kind of show us
25 that?

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1 A. Like what do you mean?

2 MS. LITTLEJOHN: Your Honor, may I approach?

3 THE COURT: You may.

4 MS. WILLIAMS: Objection, Your Honor. She's
5 already testified to this. I don't understand why this
6 would be helpful to the jury or -- it's just intrusive
7 for the child.

8 THE COURT: All right. Counsel approach.

9 [Whereupon, an off-the-record bench conference
10 is held]

11 THE COURT: All right. Ms. Littlejohn, you may
12 continue.

13 Q. [Ms. Littlejohn] Minor let's go back to the
14 day that you talked to the lady with the video that you
15 made. Okay? And she told you just tell the truth, didn't
16 she?

17 A. Yes, ma'am.

18 Q. And you and I talked about this earlier. You
19 know what tell the truth means; right?

20 A. Yes, ma'am.

21 Q. Okay. So that was back a while. Almost a year
22 ago; right?

23 A. Yes, ma'am.

24 Q. Okay. And you remembered all this a whole lot
25 better a year ago, didn't you --

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1 A. Yes, ma'am.

2 Q. -- than you do now, don't you?

3 Like, you probably remember what you ate for
4 lunch today, don't you?

5 A. Yes, ma'am.

6 Q. But you probably don't remember what you ate for
7 lunch three weeks ago, do you?

8 A. No, ma'am.

9 Q. I don't, either. So it's easier to remember
10 things the closer they were, don't you think?

11 A. Yes, ma'am.

12 Q. Okay. So what you told the lady on the video,
13 that's the freshest memory you had of it, isn't it?

14 A. Yes, ma'am.

15 Q. So that would be the most truthful thing?

16 A. Yes, ma'am.

17 Q. So when you said that you felt scared because he
18 had a cigarette, it was because he was bad at smoking a
19 cigarette; right?

20 A. Yes, ma'am.

21 Q. And when you demonstrated to that lady -- you
22 went like this, rubbing like that --

23 A. Yes, ma'am.

24 Q. -- that was what happened. Because that was
25 close to that time frame. Isn't that what happened?

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1 A. Yes, ma'am.

2 Q. And you had been playing earlier that day;
3 right?

4 A. Yes, ma'am.

5 Q. And you've talked to a lot of people about this
6 case, hadn't you?

7 A. Yes, ma'am.

8 Q. You talked to your mama?

9 A. Yes, ma'am.

10 Q. You talked to your daddy?

11 A. Yes, ma'am.

12 Q. Talked to your Aunt Jo?

13 A. Yes, ma'am.

14 Q. Talked to your Grandma Elaine?

15 A. Yes, ma'am.

16 Q. Okay. Talked to some of your friends?

17 A. I don't talk to them about that.

18 Q. Okay. You talked to your cousins?

19 A. Yes, ma'am.

20 Q. Okay. You talked to Ms. Williams about it;
21 right?

22 A. Yes, ma'am.

23 Q. And you talked to Ms. Ashley Cornwell over here?

24 A. Yes, ma'am.

25 Q. Okay. Talked to a couple of people from the

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1 solicitor's office; right?

2 A. Yes, ma'am.

3 Q. Then you had that videotaped interview; right?

4 A. Yes, ma'am.

5 Q. Didn't ever talk to a police officer; right?

6 A. No, ma'am.

7 MS. LITTLEJOHN: Court's indulgence.

8 THE COURT: Yes, ma'am.

9 [Whereupon, Ms. Littlejohn and Ms. White confer]

10 MS. LITTLEJOHN: Minor I just have a couple
11 more questions I want to ask you. Okay?

12 THE WITNESS: Yes, ma'am.

13 Q. [Ms. Littlejohn] On that day, on Thanksgiving
14 day, didn't you tell the interviewer that your Uncle Daryl
15 knocked him down?

16 A. Yes, ma'am.

17 Q. And that was the truth; right?

18 A. Yes, ma'am.

19 Q. And I believe you described to the interviewer
20 what kind of shirt Mr. Keeling had on, didn't you?

21 A. Yes, ma'am.

22 Q. And you didn't remember what you were wearing,
23 did you?

24 A. No, ma'am.

25 Q. Okay. And your memory was a whole lot better

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1 about this -- about Thanksgiving last year than say --

2 A. Yes, ma'am.

3 Q. -- nine months ago than it is now; right?

4 A. Yes, ma'am.

5 Q. Okay. Because this coming -- this coming
6 January you'll remember what you got for Christmas; right?

7 A. Yes, ma'am.

8 Q. All right. Because we remember things closer in
9 time; right?

10 A. Yes, ma'am.

11 MS. LITTLEJOHN: Okay. Well, I don't have
12 anymore questions right now. Ms. Williams may have a
13 couple of questions for you. Okay?

14 THE COURT: Ms. Williams?

15 MS. WILLIAMS: Just one or two.

16 REDIRECT EXAMINATION

17 BY MS. WILLIAMS:

18 Q. Minor Ms. Littlejohn keeps going like this
19 [indicates]. Where was Mr. Keeling's hand? Was it inside
20 your pants or outside your pants?

21 A. First, outside my pants.

22 Q. And then where?

23 A. Inside.

24 Q. And when it was inside your pants, was he
25 touching your undies?

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1 A. Yes, ma'am.

2 Q. And that's what you've always said, isn't it?

3 A. Yes, ma'am.

4 Q. And what was his hand doing when it was inside
5 your pants?

6 A. Rubbing.

7 Q. And was that what made you scared?

8 A. Yes, ma'am, like --

9 MS. WILLIAMS: No further questions.

10 THE COURT: Ms. Littlejohn?

11 MS. LITTLEJOHN: Court's indulgence.

12 THE COURT: Yes, ma'am.

13 [Whereupon, Ms. Littlejohn and Ms. White confer]

14 MS. LITTLEJOHN: Minor I just have a quick
15 question.

16 RECROSS EXAMINATION

17 BY MS. LITTLEJOHN:

18 Q. When you showed that to the interviewer, what
19 you said he did, that's when you went like this
20 [indicates]; right?

21 A. Yes, ma'am.

22 Q. Okay. And that's what you were showing her;
23 right?

24 A. Yes, ma'am.

25 MS. LITTLEJOHN: Okay. No further questions.

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1 THE COURT: Miss Andrews, you may step down.

2 [Whereupon, the witness is excused and exits the
3 witness stand]

4 THE COURT: Call your next witness.

5 MS. WILLIAMS: Court's indulgence.

6 THE COURT: Yes, ma'am.

7 MS. CORNWELL: The State calls Officer Pittman.

8 [Whereupon, Mr. Pittman comes forward]

9 THE CLERK OF COURT: Raise your right hand.
10 Place your left hand on the Bible.

11 [Whereupon, Mr. Pittman is duly sworn by the
12 clerk of court as follows: do you solemnly swear or
13 affirm the testimony you give the Court in the trial of
14 this case will be the truth, the whole truth, and
15 nothing but the truth, so help you God]

16 THE WITNESS: I do.

17 THE CLERK OF COURT: Please be seated. State
18 your full name. Spell your last name for the record.

19 [Whereupon, Mr. Pittman takes the witness stand]

20 THE WITNESS: Johnny Pittman. P-I-T-T-M-A-N.

21 THE COURT: Ms. Cornwell.

22 MS. CORNWELL: Thank you, Your Honor.

23

24

25

- - -

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JOHN PITTMAN,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q. Officer Pittman, where are you employed?

A. Berkeley County Sheriff's Office.

Q. And what is your rank at the Berkeley County
Sheriff's Office?

A. PFC.

Q. How long have you been employed there?

A. Two and a half years.

Q. Can you describe what your present duties are?

A. Basically, to answer calls.

Q. And what does that entail when you answer a
call?

A. If somebody calls 911 or needs a deputy to come
to the house --

Q. You go out there?

A. -- they call us.

Q. And were you working on November 26th of 2009?

A. Yes, I was.

Q. Do you recall being called out to Lighthouse
Drive in Goose Creek that day?

A. Yes, I do.

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- 1 Q. And what was that call in reference to?
- 2 A. Lewd act on -- upon a minor.
- 3 Q. What county is Lighthouse Drive located in?
- 4 A. Berkeley.
- 5 Q. Can you describe for me what you observed as you
- 6 approached the house?
- 7 A. Basically, a bunch of family members in the
- 8 front yard.
- 9 Q. And did you see the defendant at the house at
- 10 the time?
- 11 A. Yes, I did.
- 12 Q. And where was he standing?
- 13 A. In the front yard, also.
- 14 Q. When you approached the house, did you have an
- 15 opportunity to observe the defendant?
- 16 A. Just briefly.
- 17 Q. Were there any bruises, abrasions, cuts --
- 18 A. No.
- 19 Q. -- on him when you approached him?
- 20 A. None.
- 21 Q. Didn't look like he had been assaulted and --
- 22 A. No.
- 23 Q. Once you arrived at the house, what did you do?
- 24 A. Talked to the -- Mr. Andrews, Daryl Andrews and
- 25 Phillip Andrews, and they explained to me what happened.

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1 And at that time I placed Mr. Keeling into what we call
2 detained. It's where he's not under arrest but basically
3 we put him in the back of a patrol car for the detectives
4 to question.

5 Q. And I see you looking down at something. Is
6 that your report from that day?

7 A. Yes, it is.

8 Q. And may I?

9 A. Yes.

10 Q. I'm just going to show the defense attorney so
11 she knows what you're looking at.

12 A. That's the report that I made.

13 Q. Okay.

14 [Whereupon, Ms. Cornwell proffers documents to
15 Ms. Littlejohn]

16 [Whereupon, Ms. Littlejohn reviews documents].

17 MS. CORNWELL: Thank you, Officer Pittman.

18 THE WITNESS: You're welcome.

19 Q. [Ms. Cornwell] So you said that you placed the
20 defendant in the back of your patrol car?

21 A. Yes.

22 Q. After you placed the defendant in the back of
23 your patrol car, what did you do?

24 A. Detective Riser was notified by Corporal
25 Errington [phonetic], which was also on the scene. And

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1 then I drove my patrol unit to the next house down so the
2 family members in the front yard wouldn't be around the
3 car and -- basically, so they wouldn't be able to look eye
4 to eye at each other.

5 Q. Did you do that for the defendant's safety?

6 A. Both defendant and the -- so the family wouldn't
7 have to be sitting there looking at him.

8 Q. And after you took the defendant to the next
9 house, did you go back to 13 Lighthouse Drive?

10 A. I was right there next door but -- I pretty much
11 just stayed back there with my patrol car.

12 Q. Did you have a chance to speak to any of the
13 witnesses?

14 A. I took a statement from both of the Andrews,
15 Daryl and Phillip.

16 Q. Okay.

17 A. But other than that, I just told them to write a
18 statement. And that was about all I talked to them about.

19 Q. Okay. And after you took the statements, you
20 contacted Detective Riser? Is that what you said?

21 A. Yes.

22 Q. And then -- and I apologize. I'm following
23 along here. You took the defendant to the house next door
24 and just stayed over there?

25 A. Basically.

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1 Q. Once Detective Riser arrived on scene, what did
2 you do?

3 A. Pretty much just stood right there, next to my
4 car, still.

5 Q. Did you escort the defendant anywhere else that
6 day?

7 A. Transported him to the jail right there in
8 Moncks Corner.

9 MS. CORNWELL: Court's indulgence.

10 THE COURT: Yes, ma'am.

11 MS. CORNWELL: Officer Pittman, that's all I
12 have for you. Please answer any questions the defense
13 may have for you.

14 THE WITNESS: Okay.

15 THE COURT: Ms. Littlejohn.

16 THE CLERK OF COURT: The jury can't hear him.

17 THE COURT: Thank you.

18 THE WITNESS: Can y'all hear me now?

19 MS. LITTLEJOHN: Hey, Officer Pittman.

20 THE WITNESS: Hello.

21 MS. LITTLEJOHN: I'm just going to ask you a
22 couple of questions, sort of a follow up.

23

24

25

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CROSS-EXAMINATION

BY MS. LITTLEJOHN:

Q. When you went there, you noticed there were a bunch of cars there; right?

A. Yes.

Q. A bunch of people there?

A. Yes.

Q. Having a big old Thanksgiving party?

A. Uh-huh.

Q. People had been drinking? Could you tell that?

A. I would say they probably were. I didn't really see nobody drinking.

Q. Okay. Did you see any beer cans around?

A. Not that I recall.

Q. So there may have been, may not have been?

A. May, may not have. I don't know.

Q. Okay. And you wrote your incident report dated 11/26/09; correct?

A. Yes.

Q. On your incident report under the name Craig Keeling, where it says using alcohol you said yes, didn't you?

A. [No response]

MS. LITTLEJOHN: Your Honor, if I may approach the witness just to show him?

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1 THE COURT: You may.

2 A. I see it.

3 Q. [Ms. Littlejohn] Okay. And that was --

4 A. If I remember right, he told me he was drinking.

5 Q. Okay.

6 A. But as far as everybody in the front yard
7 drinking, I didn't see that. If they were drinking, they
8 were probably inside drinking.

9 Q. Okay. But there were a bunch of people there;
10 right?

11 A. There's a good bit of people.

12 Q. Okay. And you didn't take any pictures that
13 day, did you?

14 A. No.

15 Q. And you didn't -- you wanted to kind of -- was
16 one of the reasons you moved your patrol car down to the
17 next house was to kind of, for lack of a better word, calm
18 the situation down?

19 A. Basically, to neutralize it just so --

20 Q. Right.

21 Kind of getting all hysterical and everything;
22 right?

23 A. Yes.

24 Q. Okay. And you didn't speak with Minor
25 Andrews, did you?

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1 A. No. I never talked to her.

2 Q. Okay. And you didn't check Mr. Keeling for any
3 bruising, specifically, did you?

4 A. I patted him down to make sure he didn't have no
5 weapons and --

6 Q. Right. Right.

7 But I mean sit there and check him for bruising
8 or anything?

9 A. No. I didn't see none on his face --

10 Q. Right.

11 A. -- or his arms.

12 Q. Right.

13 Just on any exposed areas you didn't see any?

14 A. No.

15 Q. Okay. Right. That's --

16 MS. LITTLEJOHN: Court's indulgence, Your Honor.

17 THE COURT: Yes, ma'am.

18 [Whereupon, Ms. Littlejohn and Ms. White confer]

19 MS. LITTLEJOHN: Officer Pittman, I don't have
20 anymore questions.

21 THE COURT: Ms. Cornwell?

22 MS. CORNWELL: Nothing from the State, Your
23 Honor.

24 THE COURT: Officer Pittman, you may step down.
25 Thank you.

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1 [Whereupon, the witness is excused and exits the
2 witness stand]

3 THE COURT: Call your next witness.

4 MS. WILLIAMS: Alyson Andrews.

5 [Whereupon, Ms. Andrews comes forward]

6 THE CLERK OF COURT: Raise your right hand.

7 Place your left hand on the Bible.

8 [Whereupon, Ms. Andrews is duly sworn by the
9 clerk of court as follows: do you solemnly swear or
10 affirm the testimony you give the Court in the trial of
11 this case will be the truth, the whole truth, and
12 nothing but the truth, so help you God]

13 THE WITNESS: Yes.

14 THE CLERK OF COURT: Please be seated. State
15 your full name. Spell your last name for the record.

16 [Whereupon, Ms. Andrews takes the witness stand]

17 THE WITNESS: Allison Andrews.

18 THE COURT: Would you spell your last name,
19 please.

20 THE WITNESS: [No response]

21 MS. LITTLEJOHN: Your Honor, if we may approach?

22 THE COURT: You may.

23 [Whereupon, an off-the-record bench conference
24 is held]

25 THE COURT: Ms. Williams.

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1 MS. WILLIAMS: Thank you, Your Honor.

2 Are you okay?

3 THE WITNESS: Yeah.

4 MS. WILLIAMS: We've gone through a lot of these
5 questions before, so I'm going to try to shorten them.

6 - - - - -

7 ALYSON ANDREWS,

8 Having Been First Duly Sworn,

9 was Examined and Testified as Follows:

10 DIRECT EXAMINATION

11 BY MS. WILLIAMS:

12 Q. Ms. Andrews, your husband is Phillip?

13 A. Yes.

14 Q. And his brother is Daryl?

15 A. Yes.

16 Q. And your daughter is Minor

17 A. Yes.

18 Q. And where do y'all live?

19 A. We live in Maulden, South Carolina.

20 Q. Okay. And for Thanksgiving, you all come down
21 here to Berkeley County to Phillip's mother's house?

22 A. Yes.

23 Q. And last Thanksgiving were you there?

24 A. Yes.

25 Q. And about how many people go to that gathering?

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1 A. Typically, forty or more. Typically.

2 Q. There is alcohol served? Some alcohol served?

3 A. Yes.

4 Q. But is it a big, drunken brawl? I mean, are
5 people just getting drunk?

6 A. No, ma'am.

7 Q. It's a family gathering?

8 A. Yes, ma'am.

9 Q. People drink excessively in front of the
10 children?

11 A. No, ma'am.

12 Q. At some point during Thanksgiving last year, was
13 there an incident that was out of the ordinary?

14 A. Yes, ma'am.

15 Q. And where were you when you learned something
16 was amiss?

17 A. In the kitchen.

18 Q. Okay. Just tell us what was going on. Without
19 telling what people said, but just what was going on.

20 A. Daryl was carving a turkey, and I was in the
21 kitchen and I heard him yell and run out the front door.

22 Q. What was his demeanor like?

23 A. He seemed very angry and --

24 Q. Was he upset?

25 A. Yes.

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1 Q. And so he ran out of the kitchen. What happened
2 next?

3 A. He ran out the front door, and I saw him
4 confront Mr. Keeling in the front yard. And I kind of
5 stayed behind. And I heard him mention that he saw what
6 he did.

7 MS. LITTLEJOHN: Your Honor, hearsay.

8 THE WITNESS: I'm sorry.

9 THE COURT: Sustained as to hearsay.

10 Q. [Ms. Williams] Aside from this incident, what's
11 Daryl usually like? Is he usually just -- does he have a
12 temper? Does he usually just fly off the cuff like that?

13 A. No. He's funny, sweet, always just a good
14 person to be around --

15 Q. Is he pretty even-keeled?

16 A. Yes.

17 Q. So would this be an unusual reaction for him?

18 A. Yes. It startled me when he raised his voice.

19 Q. Because he doesn't usually do that?

20 A. Right.

21 Q. When did you get to be with Minor right after
22 that incident?

23 A. Shortly after. We went into the room that we
24 usually sleep in.

25 Q. And you can't tell us who she said did something

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1 to her, but you can say --

2 A. Okay.

3 Q. Did she disclose that someone inappropriately
4 touched her?

5 A. She did.

6 Q. And did she tell you where it happened?

7 A. She did.

8 Q. Where did she tell you it happened?

9 MS. LITTLEJOHN: Your Honor, hearsay. Minor
10 has already testified regarding this.

11 THE COURT: All right. Counsel approach.

12 [Whereupon, an off-the-record bench conference
13 is held]

14 THE COURT: Overruled. You may answer.

15 THE WITNESS: Okay.

16 Q. [Ms. Williams] Did she tell you where, like in
17 terms of location, it happened?

18 A. She did.

19 Q. Where did she say it happened?

20 A. On the front porch.

21 MS. WILLIAMS: I'm going to move this microphone
22 just a little bit.

23 THE WITNESS: I'm sorry.

24 MS. WILLIAMS: That's a trait that runs in your
25 family. That's a good thing.

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1 Q. [Ms. Williams] Did she say when it happened?

2 A. She did.

3 Q. And when did she say it had occurred?

4 A. In respect to time of day?

5 Q. Yeah. Like how close to when -- you know, when
6 you were with her, how --

7 A. Oh. A few minutes before.

8 Q. Okay. And as a family, what have you done like
9 to try to deal with this with Minor

10 A. Counseling.

11 Q. How long has she been in counseling?

12 A. About four months.

13 Q. And do you-all talk about it around the house?

14 A. If she brings it up.

15 Q. Do you ever initiate conversations about it?

16 A. No.

17 Q. And how is -- how is she doing with it?

18 A. She's still scared.

19 MS. WILLIAMS: I have no further questions --

20 THE WITNESS: Okay.

21 MS. WILLIAMS: -- Ms. Andrews. Please answer
22 any questions that Ms. Littlejohn may have.

23 THE COURT: Ms. Littlejohn.

24 - - -

25 - - -

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CROSS-EXAMINATION

BY MS. LITTLEJOHN:

Q. Ms. Andrews, how long have you and Mr. Phillip Andrews been married?

A. Eight years.

Q. Eight years.

And would you say you have a pretty good open, honest relationship?

A. We do.

Q. You do. Great.

So if something really bothered you, you would tell him?

A. Yes.

Q. And if something really bothered him, you feel he'd tell you?

A. Yes.

Q. And if something really bothered you about Minor are you likely to tell him because of y'all's open, honest relationship?

MS. WILLIAMS: Objection. Relevance.

THE COURT: I'm going to give her a little leeway.

Q. [Ms. Littlejohn] Are you likely to confide in your husband if something bothered you with regard to her?

A. [No response]

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1 Q. And you believe he's likely to confide in you --
2 y'all have that kind of good relationship -- if something
3 bothered him about Minor right?

4 A. Right.

5 Q. Did he say anything to you before this about he
6 felt uneasy about Mr. Keeling around Minor

7 A. No.

8 Q. And do you remember taking Minor to talk to a
9 lady in Greenville?

10 A. I do.

11 Q. Okay. And when you took her there, they asked
12 you questions, too, didn't they, to get the history, a
13 background, who the mamma is, who the -- all those kind of
14 questions; right?

15 A. No. I don't know what you mean.

16 Q. They asked you some background questions?

17 A. Like? I mean --

18 Q. I mean, in other words, they just didn't take
19 her in a room and start talking to her and didn't speak to
20 you at all, did they?

21 A. No. No, ma'am.

22 Q. Okay. So they wanted to know things like, you
23 know, like your telephone number? They asked you those
24 kind of things?

25 A. No, she did not ask me my telephone number.

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1 Q. They didn't ask you that? Did they ask you --

2 A. I don't -- I don't know who you're speaking of.

3 Q. The people -- when you took her to meet with the
4 interviewer people.

5 A. Well, I spoke with two people on that day.

6 Q. Okay. When you spoke with either one of those
7 people, did they ask you about the background information?

8 A. Specifically what do you mean, background
9 information?

10 Q. For example, did they ask you your age --

11 A. My age --

12 Q. -- for you to give it to them?

13 A. My age?

14 Q. Correct.

15 A. I would think they did. They might have. I'm
16 not -- my age, I'm not sure if they did or not.

17 Q. Okay. And they asked y'all if y'all had been
18 married for almost seven years at the time?

19 A. I don't remember. I don't remember. They asked
20 -- I don't remember if they asked me how long I had been
21 married, no.

22 Q. Did they -- did you by any chance, when you were
23 talking with those two ladies, tell them that Mr. Andrews
24 was stationed in Hopewell, Virginia?

25 A. Yes. I'm sure I did.

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1 Q. Okay. Did you tell them that Minor goes to
2 Greenbriar Elementary?

3 A. I'm sure I did, yes.

4 Q. And that she makes A's academically?

5 A. I suppose. I don't know that we talked about
6 grades.

7 Q. And that she wasn't in any sort of special ed
8 classes? Did you tell them that?

9 A. That would be true I would not have told her --
10 them that she was in any special ed classes.

11 Q. And you told them she hadn't been suspended or
12 expelled?

13 A. Correct.

14 Q. Right?

15 Okay. And then you told them she didn't have
16 any medical problems; right?

17 A. Correct.

18 Q. And you described her mood as being normal and
19 no changes; correct?

20 A. Her mood?

21 Q. Her mood.

22 A. As of what?

23 Q. With regard to her mood. Did you describe her
24 as being normal?

25 A. I wouldn't say her mood was normal.

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1 Q. So if that was written down on any report, then
2 that would not be true?

3 A. I don't -- I don't understand what you mean.

4 Q. Well, like you told these two folks up there in
5 Greenville that she didn't have any medical problems;
6 right?

7 A. Correct.

8 Q. You told them she was -- at that time I think
9 maybe she was taking amoxicillan for an ear infection but
10 no real medical problems. Okay? And then I believe they
11 would have -- they asked you about any moods, and you told
12 her that her mood was normal?

13 A. Okay.

14 Q. Ms. Williams also said -- asked you about
15 counseling.

16 A. Correct.

17 Q. And let me ask you: after you talked to -- took
18 her and talked to these interviewers, did the interviewers
19 give you any recommendations or talk to you?

20 A. Recommendations?

21 Q. Like go to counseling and here's why we think
22 you need to go?

23 A. No.

24 Q. Okay. So your husband, though, during this
25 entire time, didn't say a word to you about him feeling

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1 uneasy, right, that day? He didn't say a word to you
2 about it, did he, prior to this alleged incident
3 occurring?

4 A. No.

5 Q. And you've talked to Minor about this; right?

6 A. Yes.

7 Q. And you've met with the folks in the solicitor's
8 office; right?

9 A. Yes.

10 Q. And you didn't see anything that day, did you?
11 You were in the kitchen; right?

12 A. Yes, I was in the kitchen.

13 MS. LITTLEJOHN: Court's indulgence.

14 THE COURT: Yes, ma'am.

15 [Whereupon, Ms. Littlejohn and Ms. White confer]

16 MS. LITTLEJOHN: I don't have any further
17 questions.

18 MS. WILLIAMS: Nothing further from this
19 witness, Your Honor.

20 THE COURT: Ms. Andrews, you may step down.
21 Thank you.

22 [Whereupon, the witness is excused and exits the
23 witness stand]

24 THE COURT: Call your next witness.

25 MS. CORNWELL: The State calls Detective Riser.

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1 [Whereupon, Mr. Riser comes forward]

2 THE CLERK OF COURT: Please raise your right
3 hand. Place your left hand on the Bible.

4 [Whereupon, Mr. Riser is duly sworn by the clerk
5 of court as follows: do you solemnly swear or affirm
6 the testimony you give the Court in the trial of this
7 case will be the truth, the whole truth, and nothing
8 but the truth, so help you God]

9 THE WITNESS: I do.

10 THE CLERK OF COURT: Please be seated. State
11 your full name. Spell your last name for the record.

12 [Whereupon, Mr. Riser takes the witness stand]

13 THE WITNESS: James Riser. R-I-S-E-R.

14 MS. CORNWELL: Thank you, Detective Riser.

15 - - - - -

16 JAMES RISER,

17 Having Been First Duly Sworn,
18 was Examined and Testified as Follows:

19 DIRECT EXAMINATION

20 BY MS. WILLIAMS:

21 Q. Detective Riser, where are you employed?

22 A. Berkeley County Sheriff's Office.

23 Q. And what is your rank at the Berkeley County
24 Sheriff's Office?

25 A. Corporal.

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- 1 Q. How long have you been employed there?
- 2 A. Approximately four and a half years.
- 3 Q. What are your duties as corporal?
- 4 A. I work in the criminal investigation division as
- 5 a detective.
- 6 Q. Were you working on November 26th of 2009?
- 7 A. Yes, I was. I was on-call duty detective.
- 8 Q. Do you recall being called out to Lighthouse
- 9 Drive in Goose Creek that day?
- 10 A. Yes, ma'am.
- 11 Q. What was that call in reference to?
- 12 A. Lewd act upon a child --
- 13 Q. What county --
- 14 A. -- minor.
- 15 Q. -- is Lighthouse Drive in?
- 16 A. Berkeley County.
- 17 Q. And describe for me what you observed as you
- 18 approached the house.
- 19 A. There were several people out in the yard.
- 20 Patrol was there, also.
- 21 Q. Where was the defendant when you arrived?
- 22 A. The defendant was in the back of Officer
- 23 Pittman's patrol vehicle.
- 24 Q. Who did you speak to once you arrived at the
- 25 home?

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1 A. I spoke to Officer Pittman, briefly. He gave me
2 a brief rundown of what had happened. Also handed me the
3 statements from the uncle and the father. I read over
4 them. And then I also spoke to the uncle and the father.

5 Q. Did you take down any written statements from
6 the uncle or the father?

7 A. No, ma'am.

8 Q. Did you talk to any of the little girls?

9 A. No, ma'am, I did not.

10 Q. Did you talk to Minor

11 A. No, ma'am.

12 Q. Why didn't you speak to Minor that day?

13 A. Since they're such a young age, I felt that a
14 more qualified person would be better to talk to them, a
15 forensic interview.

16 Q. And when you arrived at the house, were you able
17 to determine the defendant's age?

18 A. I could see that he was over the age of
19 fourteen.

20 Q. Based on your investigation, were you able to
21 obtain an arrest warrant for the defendant?

22 A. Yes, I was.

23 Q. When was the defendant arrested?

24 A. That day.

25 MS. CORNWELL: Court's indulgence.

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1 THE COURT: Yes, ma'am.

2 [Whereupon, Ms. Cornwell and Ms. Williams
3 confer]

4 Q. [Ms. Cornwell] Detective Riser, you said you
5 had Minor -- you didn't speak to Minor because you
6 would have her speak to a forensic interviewer?

7 A. Yes, ma'am.

8 Q. Is that protocol for your office?

9 A. On such a young age like that, we like to have
10 them go to a forensic interview, yes.

11 Q. And you said when you arrived you were able to
12 determine that the defendant was over the age of fourteen.
13 Once you served the arrest warrant on him and booked him,
14 were you able to get his exact age at that time?

15 A. Yes, ma'am.

16 Q. And do you recall what that age was?

17 A. No, ma'am. I'd have to look at the booking
18 report.

19 Q. If I showed you your booking report, that would
20 refresh your recollection?

21 A. Yes, ma'am.

22 [Whereupon, Ms. Cornwell proffers documents to
23 Ms. Littlejohn]

24 [Whereupon, Ms. Littlejohn reviews documents]

25 MS. CORNWELL: Your Honor, may I approach?

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1 THE COURT: You may.

2 Q. [Ms. Cornwell] It's on this report. Can you
3 tell me what the defendant's birth date is?

4 A. Yes, ma'am. 08/20/1963.

5 Q. He was born in 1963. Does that make him over
6 the age of fourteen?

7 A. Yes, ma'am.

8 MS. CORNWELL: Thank you. Detective Riser,
9 that's all the questions that I have for you. If you'd
10 please answer any questions defense may have.

11 THE WITNESS: Yes, ma'am.

12 CROSS-EXAMINATION

13 BY MS. LITTLEJOHN:

14 Q. Detective Riser, you've been to the criminal
15 justice academy, hadn't you?

16 A. Yes, ma'am.

17 Q. And one of the things they teach you to do is to
18 do that little thing that you turn to the jury and look
19 when you answer the questions? Y'all have that court-
20 testifying class up there, don't you, about how you're
21 supposed to appear in court; right?

22 A. Yes, ma'am.

23 Q. Yeah. You're doing good with that.

24 Let me ask you something. If the CAD -- well,
25 you've been in here the entire time. You've heard all the

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1 testimony; right?

2 A. Yes, ma'am.

3 Q. Okay. And you heard me ask -- the name escapes
4 me, but the 911 operator about the CAD report. Do you
5 remember that?

6 A. Yes, ma'am.

7 Q. And you were there approximately fifty minutes.
8 Would that be accurate?

9 A. If that's what the CAD report says. I can't
10 testify to that. I'd have to look at it and see.

11 Q. Would you like me to refresh your memory, or do
12 you think that's somewhere around the ballpark?

13 A. If you want to refresh my memory, that would be
14 fine, but --

15 MS. LITTLEJOHN: Court's indulgence, Your Honor.

16 THE COURT: Yes, ma'am.

17 MS. LITTLEJOHN: Your Honor, if I may approach
18 Officer Riser?

19 THE COURT: You may.

20 Q. [Ms. Littlejohn] Officer Riser, you and I just
21 reviewed the CAD report; right?

22 A. Yes, ma'am.

23 Q. And based on the CAD report, you were there
24 about fifty minutes?

25 A. Give or take a few minutes, yes, ma'am.

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1 Q. Right. Okay. I just wanted to make sure that
2 we saw that together the right way, because that's in that
3 military time and I don't always get that down.

4 You didn't take any photographs that day, did
5 you?

6 A. No, ma'am.

7 Q. And you didn't talk to any -- you talked to
8 Phillip and Daryl Andrews that day; right?

9 A. Yes, ma'am.

10 Q. And you said that your office likes to send
11 children to get interviews?

12 A. Yes, ma'am.

13 Q. Is that always the case?

14 A. Most of the time, yes, ma'am, when it comes to
15 sexual assault.

16 Q. So any time there's any allegation of a sexual
17 assault, they are always not interviewed by any member of
18 the Berkeley County Sheriff's Department; is that correct?

19 A. It depends.

20 Q. Is there anyone with the Berkeley County
21 Sheriff's Department qualified to interview a child in
22 any sort of sexual allegation case and that should
23 interview them?

24 A. I can't speak for anybody else. I wasn't.

25 Q. So you're not -- you're not qualified to

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1 interview a child in those cases?

2 A. I don't feel that I was qualified, at that given
3 time, to do a --

4 Q. So you --

5 A. -- forensic interview, no, ma'am.

6 Q. So you would never interview a child on those
7 kind of cases?

8 A. I would send mine to a forensic interview --

9 Q. But would you --

10 A. -- to be properly interviewed.

11 Q. -- ever interview a child on those kind of
12 cases?

13 MS. WILLIAMS: Asked and answered, Your Honor.

14 THE COURT: Sustained as to asked and answered.

15 Q. [Ms. Littlejohn] What's your level of
16 education, Officer Riser?

17 A. Twelfth grade, with some college.

18 Q. And where did you go to college?

19 A. I went to Trident Tech.

20 Q. And how many courses did you complete there?

21 A. About a year.

22 Q. About a year.

23 And let me -- you said that you took out the
24 warrant on this case I believe?

25 A. Yes, ma'am.

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1 MS. LITTLEJOHN: Okay. Your Honor, if I may
2 approach the witness, show him a copy of the warrant?

3 THE COURT: You may.

4 [Whereupon, Ms. Littlejohn proffers documents to
5 Ms. Cornwell]

6 [Whereupon, Ms. Cornwell reviews documents]

7 Q. [Ms. Littlejohn] Officer Riser, you signed the
8 warrant, didn't you?

9 A. Yes, ma'am.

10 Q. But who's listed as the affiant on that warrant?

11 A. That would be a typo. Brian --

12 Q. Who's listed --

13 A. -- Mosier.

14 Q. Officer Mosier?

15 A. On the top of it, yes, ma'am. That would have
16 been a typo. On the bottom of it, I signed it.

17 Q. So you typed the name Mosier in instead of your
18 name?

19 A. It was a typo.

20 Q. Did you type that incorrectly? Is that what it
21 was?

22 A. Yes, ma'am. We have a lot of warrants and we
23 use a rough draft.

24 Q. So you just typed in somebody else's name,
25 instead of yours, is what happened; right? Just that

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1 simple?

2 A. Like I said, ma'am, we have a lot of warrants in
3 the system, and it may have had his name on it and I
4 didn't catch it when I read it, and it printed out his
5 name.

6 Q. So basically -- or, basically, you're telling me
7 that when you take out a warrant you just kind of change
8 the date and the place?

9 A. Can I see that for a second?

10 [Whereupon, the witness reviews documents]

11 A. Let's see. Would this be under the new warrant
12 that they just changed and we get the affidavit to them
13 and the court system actually puts -- the judge actually
14 puts the name in it. It could have been under that time.

15 Q. [Ms. Littlejohn] So either a judge messed --

16 A. It was a -- it was a miss -- typo, yes, ma'am.

17 Q. But the fact is you weren't the affiant on it;
18 right?

19 A. I was the affiant, yes, ma'am.

20 Q. Even if --

21 A. That is my signature at the bottom.

22 Q. That's your signature. But up here it says
23 Mosier. So somewhere there was a mistake made; right?

24 A. That is my signature, yes, ma'am.

25 Q. Okay. Well, as long as we know somewhere there

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1 was one made. Okay.

2 You talked to Officer Pittman when you got
3 there?

4 A. Briefly, yes, ma'am.

5 Q. Right. To assess the situation.

6 A. Yes, ma'am.

7 Q. And also, in order to kind of assess the
8 situation you --

9 THE COURT: Ms. Littlejohn, please don't talk
10 over each other. Thank you.

11 Q. [Ms. Littlejohn] Did you also get a chance to
12 speak to Officer Mizel [phonetic] and Errington
13 [phonetic], when you got there, just briefly?

14 A. Briefly.

15 Q. Okay. Did you go into the house?

16 A. No, ma'am.

17 Q. You've met with the solicitor's office about
18 this case, haven't you?

19 A. Yes, ma'am.

20 MS. LITTLEJOHN: Court's indulgence.

21 THE COURT: Yes, ma'am.

22 [Whereupon, Ms. Littlejohn and Ms. White confer]

23 Q. [Ms. Littlejohn] So, Officer Riser, in the
24 fifty minutes or so that you were there, you got the two
25 statements that Officer Pittman had gotten, and spoke to

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1 Daryl and Phillip; correct?

2 A. Yes, ma'am.

3 MS. LITTLEJOHN: Okay. No further questions.

4 THE COURT: Ms. Cornwell?

5 MS. CORNWELL: Nothing further, Your Honor.

6 THE COURT: Detective, you may step down.

7 THE WITNESS: Thank you.

8 [Whereupon, the witness is excused and exits the
9 witness stand]

10 THE COURT: All right. For scheduling: you
11 have one remaining witness; is that correct?

12 MS. WILLIAMS: Yes, Your Honor.

13 THE COURT: All right. Counsel approach.

14 [Whereupon, an off-the-record bench conference
15 is held]

16 THE COURT: Ladies and gentlemen, as I indicated
17 we were going to go ahead and break to ensure that
18 everybody had time to get home and get to the polls, so
19 this is an appropriate time for us to break for the
20 evening hour.

21 Ladies and gentlemen, please do not discuss this
22 case amongst yourselves. Please remember all of my
23 admonitions.

24 Please have a restful evening, and I will see
25 you back. We will begin at 10:00 a.m.

THE STATE OF SOUTH CAROLINA)
)
VS.)
)
CRAIG KEELING,)
)
DEFENDANT.)
)

VOLUME 3 OF 3

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Berkeley County Courthouse
Moncks Corner, South Carolina
on Wednesday, November 3, 2010, Commencing at 9:40 a.m.

SUSAN "MIA" PERRON, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

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1 conducted the interview.

2 THE COURT: All right. So with that does the
3 State rest?

4 MS. WILLIAMS: Yes, Your Honor.

5 - - - - -

6 MOTION FOR A DIRECTED VERDICT

7 THE COURT: All right. Now, Ms. Littlejohn,
8 I'll be happy to hear from you regarding any motions.

9 MS. LITTLEJOHN: Caught me off a little guard
10 [phonetic] there, Your Honor. Sorry.

11 Your Honor, at this point in time our motion for
12 a directed verdict is based on the State has not proven
13 that the intent -- intent is an important word in
14 attempting a lewd act. When you listen to the
15 testimony of Minor -- and I asked her about the
16 wiping. And for the record, I wiped as though I was
17 wiping something off of my pants in the back. And I
18 asked her on several occasions if that was right. She
19 said yes. She said that he touched the underwear when
20 he was wiping it.

21 Your Honor, I simply do not think that they have
22 met the elements, particularly the intent element, with
23 regard to lewd act.

24 Furthermore, Your Honor, I do not see -- I do
25 not believe that they have given -- have set forth

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1 lewdly nor totalness of a lascivious act. The mother
2 said that her mood didn't change, still making great
3 grades. You saw her. Nothing that they have
4 introduced said that it appealed to his lust or
5 passions or that of the child.

6 Your Honor, based on the elements set forth on
7 lewd act, and based on the testimony of Minor
8 herself, I would submit that the State has not met the
9 burden of proof and we would ask for a directed verdict
10 on behalf of the defendant for the charge of attempting
11 or committing a lewd act.

12 THE COURT: Ms. Williams, under Rule 19, if you
13 would please articulate for me the elements of
14 attempting or committing a lewd act and the evidence
15 that corresponds to those elements. Thank you.

16 MS. WILLIAMS: Yes, Your Honor.

17 The State has to prove that a person over the
18 age of fourteen years touched the body or parts of a
19 child under the age of sixteen with the intent of
20 arousing, appealing to, or gratifying the lust or
21 passions or sexual desires of the person or the child.

22 There's been testimony that the defendant
23 touched the child under her pants, on her undies, on
24 her bottom and rubbed.

25 The State and the jury can consider direct

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1 evidence and circumstantial evidence, and we would
2 submit that the jury could conclude circumstantially
3 that there really isn't too many purposes to want to
4 rub a child's bottom. He was a stranger to the child.
5 She was seven years old, and that they could conclude,
6 as the Court could, that the purpose was for his own
7 desires and that it was a lewd or lascivious act.

8 For a directed verdict the Court is not
9 concerned with the weight of the evidence but rather if
10 there is any evidence. And in the light most favorable
11 to the State, we believe there's enough testimony in
12 the record that the jury could conclude that the
13 purpose of this act was for his own desires.

14 THE COURT: Ms. Littlejohn, any response?

15 MS. LITTLEJOHN: Your Honor, I would just
16 respectfully state that we see no evidence saying --
17 that can show the purpose of this act or show any
18 intent. We would concede the age thing. And I think
19 that's -- we would even ask the Court to take judicial
20 notice of somebody being over and somebody being under
21 age --

22 THE COURT: I don't have to take judicial
23 notice. There was testimony from Detective Riser that
24 he --

25 MS. LITTLEJOHN: Right.

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1 THE COURT: -- was over fourteen.

2 MS. LITTLEJOHN: But I think that's not really
3 the issue here. It's that we would say that there was
4 no evidence that said what the purpose -- that the
5 purpose of the act was for lewd or lascivious reasons.

6 THE COURT: Making a ruling on a directed
7 verdict under Rule 19, the Court is concerned with the
8 existence or nonexistence of the evidence and not as to
9 the weight of the evidence.

10 I find that the State has met the elements of
11 lewd act or committing a lewd act upon a minor under
12 age sixteen. There has been testimony that the
13 defendant is over the age of fourteen, that there was a
14 lewd or lascivious act upon the body or the parts of a
15 child under the age of sixteen. The testimony was the
16 child was eight at the time -- she testified here seven
17 -- and there was ample testimony as to her date of
18 birth.

19 I find that the State has met the burden for a
20 motion for a directed verdict. Deny your motion for a
21 directed verdict at this time.

22 MS. LITTLEJOHN: Thank you, Your Honor.

23 THE COURT: Ms. Williams, you had indicated to
24 the Court that you had run a new criminal rap sheet on
25 the defendant. If you would please state what the new

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1 rap sheet indicates; if the defendant were to testify,
2 what the State would be attempting to introduce to
3 impeach his credibility.

4 MS. WILLIAMS: Yes, Your Honor.

5 The defendant has a burglary conviction in 2000;
6 breach of trust in 2000; he has another burglary charge
7 in 2008 which he was revoked on, so he's currently on
8 probation.

9 THE COURT: I'm sorry, Ms. Williams. What was
10 that charge?

11 MS. WILLIAMS: He has a burglary second in 2000.
12 He has a breach of trust and a burglary first in 2008.
13 And that's it, Your Honor.

14 [Whereupon, Ms. Littlejohn and Mr. Keeling
15 confer]

16 MS. WILLIAMS: Oh. He's on probation for a
17 burglary second.

18 But he has a burglary first and a burglary
19 second conviction, and then a breach of trust.

20 THE COURT: Thank you.

21 All right. Ms. Littlejohn, have you reviewed
22 the new rap sheet with your client?

23 MS. LITTLEJOHN: Your Honor, we are looking at
24 this and it -- this is -- so if you'll just give us a
25 quick little moment. I believe it's almost identical

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1 to what he and I have reviewed in the past.

2 THE COURT: All right. Thank you.

3 [Whereupon, Ms. Littlejohn and Mr. Keeling
4 confer]

5 MS. LITTLEJOHN: Your Honor, he and I have
6 spoken about his prior record and this is in conformity
7 with that. And he is on probation.

8 THE COURT: All right. Mr. Keeling, please
9 stand.

10 [Whereupon, Mr. Keeling complies]

11 THE COURT: Mr. Keeling, I remind you that
12 you're still under oath. I placed you under oath
13 yesterday.

14 Do you recall the Court reading to you and
15 explaining to you your right to testify or not to
16 testify?

17 MR. KEELING: Yes, ma'am.

18 THE COURT: And have you had time to meet with
19 your attorneys to discuss whether or not you should
20 testify?

21 MR. KEELING: Yes, I have.

22 THE COURT: Do you need any additional time to
23 meet with Ms. Littlejohn, Ms. White, Ms. Kennedy, or
24 anyone else?

25 MR. KEELING: No, ma'am.

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1 THE COURT: All right. Have you made a decision
2 whether or not you will testify?

3 MR. KEELING: Yes, I have.

4 THE COURT: And what is that decision, sir?

5 MR. KEELING: I remain silent.

6 THE COURT: All right. Thank you.

7 Ms. Littlejohn, do you have any additional
8 witnesses?

9 MS. LITTLEJOHN: None, Your Honor.

10 THE COURT: So the defense rests?

11 MS. LITTLEJOHN: We do, Your Honor.

12 THE COURT: All right. Are you requesting --
13 the Court does not believe that there are any lessor
14 included.

15 MS. LITTLEJOHN: I don't know of any, Your
16 Honor. Your Honor, I do.

17 I do not believe there are any. I was looking
18 at assault and battery, and I don't believe that that
19 is a lessor included.

20 THE COURT: That is not a lessor included --

21 MS. LITTLEJOHN: That was the closest I could
22 get to.

23 THE COURT: -- and based upon my review of the
24 testimony as presented, it is not accurate as to the
25 facts that were presented. So with that, there is no

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1 lessor included.

2 Are there any special instructions that the
3 defendant is requesting? I have included the
4 terminology that there is to be no significance as to
5 the indictment or to the terminology used as defendant
6 or victim.

7 MS. LITTLEJOHN: And it'll be the standard --

8 THE COURT: Standard charges. Anything else?

9 MS. WILLIAMS: Were you asking us if we had
10 anything?

11 THE COURT: It appears that Ms. Littlejohn --

12 MS. LITTLEJOHN: I can't think of any, Your
13 Honor.

14 THE COURT: All right. Ms. Williams, do you
15 have any additional charges?

16 MS. WILLIAMS: Yes, Your Honor. Two. We would
17 ask that voluntary intoxicated be included. There is
18 evidence in the record that he was drinking, that he
19 left the party several times and came back high.

20 And also, and more importantly, Your Honor -- or
21 as importantly, the standard instruction for committing
22 or attempting a lewd act is entitled just lewd act.
23 And because, especially with the facts of this case,
24 attempting is so important -- and that is the title of
25 the statute -- we would ask for a Ralph Kind Anderson

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1 instruction. It's almost identical. I have one typed
2 out for Your Honor. It just has the correct title of
3 the statute. And I have a copy of the statute and a
4 copy of that jury instruction. The only difference is
5 that the title is truer to the actual title of the
6 statute.

7 THE COURT: All right. Let me see yours.

8 [Whereupon, Ms. Williams proffers documents to
9 the Court]

10 MS. WILLIAMS: I've also printed off the
11 statute, too, Your Honor.

12 THE COURT: Thank you.

13 [Whereupon, the Court reviews document]

14 THE COURT: All right. And with that, anything
15 further?

16 MS. LITTLEJOHN: Your Honor, we would
17 respectfully disagree with regard to the -- any charge
18 on voluntary intoxication. There was something that
19 said -- some people said, yep, drinking a beer. But I
20 would submit to the Court lots of people drink a beer
21 and they're not intoxicated.

22 Neither one of the police officers said, your
23 client was drunk. We don't have that.

24 THE COURT: Was there testimony from Officer
25 Pittman that he had checked on the form that there was

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1 alcohol use?

2 MS. LITTLEJOHN: Alcohol use. But nowhere in
3 the record does it say intoxicated.

4 THE COURT: Based upon that testimony, I am
5 including the voluntary intoxication.

6 All right. We will take a fifteen minute
7 recess. I am going to allow the jury to go smoke and
8 take a break, as well.

9 I will allow you, when we come back -- the State
10 to rest and the defense to rest in front of the jury.

11 And so you will have last close; correct, Ms.
12 Littlejohn?

13 MS. LITTLEJOHN: Correct, Your Honor.

14 MS. WILLIAMS: Yes, Your Honor.

15 THE COURT: And you had indicated that there was
16 some need for audio or video assistance?

17 MS. LITTLEJOHN: I don't -- that will not be the
18 case now.

19 THE COURT: All right. I was just going to have
20 you make arrangements with Mr. Hart, if that's what you
21 needed.

22 MS. LITTLEJOHN: Right. We would have our
23 techies get together, if that was the case.

24 THE COURT: All right. But you do not need that
25 assistance?

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1 MS. LITTLEJOHN: That's not the case now.

2 THE COURT: All right. Fifteen minutes. Thank
3 you.

4 [Whereupon, a recess is taken from 10:59 p.m. to
5 11:18 p.m.]

6 THE COURT: Anything before we bring in the
7 jury? From the State?

8 MS. WILLIAMS: Nothing. Nothing from the State,
9 Your Honor.

10 THE COURT: From the defendant?

11 MS. LITTLEJOHN: Nothing from the defendant,
12 Your Honor, other than just renew my previous motions.

13 THE COURT: All right. And the Court is
14 standing by the previous analyses on the motion for
15 directed verdict. Deny your motion for a directed
16 verdict at this time.

17 Anything further?

18 MS. LITTLEJOHN: Yes, Your Honor.

19 I would ask that the Court note my objection for
20 the record on the voluntary intoxication, as there was
21 evidence of drinking but not intoxication.

22 THE COURT: All right. It is noted for the
23 record. And the voluntary intoxication charge is
24 included in the Court's charge.

25 MS. LITTLEJOHN: Thank you, Your Honor.

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1 THE COURT: All right. Thank you. Anything
2 further, Ms. Littlejohn?

3 MS. LITTLEJOHN: Nothing, Your Honor.

4 MS. WILLIAMS: Nothing from the State.

5 THE COURT: All right. Let's bring in the jury.

6 MS. LITTLEJOHN: Do you want us to officially
7 rest in front of the jury?

8 THE COURT: Yes.

9 MS. LITTLEJOHN: Okay.

10 [Whereupon, the jury enters the courtroom at
11 11:20 a.m.]

12 THE COURT: Thank you. Please be seated.

13 Ms. Williams.

14 MS. WILLIAMS: Yes, Your Honor. At this time
15 the State would rest.

16 THE COURT: Thank you. Ms. Littlejohn?

17 MS. LITTLEJOHN: The defense rests, Your Honor.

18 THE COURT: Ladies and gentlemen, you have now
19 heard all of the evidence and testimony that will be
20 presented in this case. You have also received into
21 evidence all of the exhibits that are a part of the
22 record of this case.

23 We have now reached the part of the trial where
24 you will hear closing arguments on behalf of counsel.
25 Ladies and gentlemen, just as I instructed you opening

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1 statements are not to be considered evidence, neither
2 are closing arguments. After you have heard closing
3 arguments on behalf of the State and the defendant, I
4 will instruct you on the law applicable to this case.

5 Please give close attention.

6 Ms. Williams?

7 MS. WILLIAMS: Thank you, Your Honor. May it
8 please the Court? Counsel?

9 - - - - -

10 CLOSING ARGUMENT

11 MS. WILLIAMS: Common sense. When we began this
12 journey, I asked you to please use your common sense.
13 You're going to look at all the evidence, you're going
14 to discuss it, you're going to think about it. And we
15 want you to do that. But as you do that, ask yourself
16 what reason that man possibly had for sticking his hand
17 down the pants of a seven-year-old and rubbing her
18 bottom.

19 If you notice, what she said was not on her
20 undies anywhere. I asked her what part of your undies
21 and she said, my bottom. Didn't know the little girl.
22 There has been no evidence to contradict what she said,
23 which is that he stuck his hand down her pants and was
24 rubbing her bottom. Who does that? What reason is
25 there for that?

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1 Usually, we would have a child get up there and
2 bravely tell you what happened. In this case there was
3 actually an eyewitness. Rare. If you believe Daryl
4 Andrews, then this happened. Think about his reaction.
5 Think about his sister-in-law's testimony. This was
6 not how he usually was. He wasn't the type of guy to
7 fly off the handle. He saw something that he knew it
8 was wrong.

9 It is enough, with this statute, that he
10 attempted a lewd act. Ladies and gentlemen, I would
11 submit to you that he was touching the body parts of a
12 child with the intent required, even if it was through
13 the panties. But even if you don't believe that,
14 surely you can see that this was an attempt. He was
15 interrupted. We don't know what was next. Thank
16 goodness.

17 Now, I want to thank you so much for your
18 attention. A lot of times trials are a lot more
19 tedious than they look on TV, and I think you learned
20 that this week. And I apologize for that. Lots of
21 sidebars, lots of delays. But I appreciate the
22 attention that you paid and how serious you're taking
23 this case.

24 There were a couple of things said during the
25 trial. Whether he was smoking a cigarette with this

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1 hand or holding a drink with this hand, does it really
2 matter? The child said he was smoking and drinking.
3 Obviously, he put his drink down before he put his
4 right hand down her pants. And if you remember, both
5 the child and the uncle remembered that it was the
6 right hand.

7 Now, there might be some slight discrepancies in
8 testimony. But think about the consistency, because
9 that's pretty amazing for a child that age. She
10 disclosed three times: once right away to her mother;
11 once during the forensic interview that Ms. Littlejohn
12 asked her so many questions about. But no matter what,
13 the child kept going back to the truth, because it is
14 the truth. She told the same story over and over
15 again. It's not that complicated of a story. He stuck
16 his hand down her pants, was rubbing her bottom, and it
17 scared her. No other reason for that to happen.

18 What about Star and Ashley? That child told
19 about Star and Ashley during the forensic interview.
20 Why is a grown man whispering in the ear of another
21 child that he doesn't even know? Why is he asking that
22 other child for a hug? I am sure that her parents are
23 happy that she left the porch, that both of those
24 children left the porch.

25 And, again, this is something that Minor had

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1 said from the beginning. And it's up to you to
2 evaluate the credibility of these witnesses. And,
3 again, please use your common sense.

4 Now, the State has to prove all of the elements
5 of committing or attempting a lewd act upon a child
6 under the age of sixteen. Obviously, Minor is under
7 the age of sixteen. She testified that she was eight,
8 that she was seven when this occurred. You also heard
9 info about the defendant's birth date, and he's
10 obviously over the age of sixteen.

11 The defendant willfully and lewdly committed or
12 attempted a lewd of lascivious act on or with the body
13 or its parts of a child under the age of sixteen years
14 with the intent to arouse, appeal to, or gratify the
15 lust, passions, or sexual desires of the defendant or
16 the child.

17 He's touching her body parts with his hands.
18 Yes, it was over her undies. Still touching her body
19 parts. But even if you don't believe that, even if you
20 think he had to be touching skin-on-skin, clearly he
21 was attempting a lewd act. This statute is so
22 important because we don't have to wait until something
23 worse happens. You can say it's enough, an attempt is
24 enough.

25 I'm going to go through -- I know that you've

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1 been here a long time. I'm going to go through, very
2 briefly, some of the evidence that we presented and
3 some of the witnesses that you've heard from.

4 If you remember, the very first witness was
5 Melissa Jacumin from Berkeley County, 911 tape
6 operator. And you heard the anguish in that father's
7 voice, and you heard that he was worried about the
8 defendant leaving. Think about that. Someone bangs on
9 the window and says, what are you doing. What does
10 that reacting tell you? He takes off. You can infer
11 that the reason he took off is because he's guilty. He
12 wants out of there. Think about a normal reaction to
13 an accusation like that. Is that a normal reaction to
14 an accusation like that? He said it was Craig. And he
15 also -- you heard him angrily telling some people not
16 to let him leave. Now, clearly this family did prevent
17 this man from leaving. A lot of families would have
18 done a whole lot more had they saw what Daryl Andrews
19 saw. The detective -- or the officer, rather, said
20 that he wasn't bruised, he wasn't bleeding.

21 Phillip Andrews said he took him down. He
22 obviously restrained him. But I would just ask you to
23 not judge, because what they knew that he did to their
24 daughter was very emotional for them. They're at a
25 Thanksgiving get-together. They're in the company of

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1 family when this happens. So clearly this was an
2 emotional event for this family.

3 Daryl Andrews -- again, you are the sole judges
4 of credibility. Daryl Andrews testified that he didn't
5 know the defendant. Saw the defendant rub his niece's
6 bottom. And, again, thank goodness. He knew it was
7 bad, because I asked him, how did you know that this
8 wasn't something innocent, you know, that it wasn't
9 just something he was doing to her pants that was
10 appropriate. And he said, it wasn't; it was bad. He
11 knew it was bad. He knew what he saw. He had a clear
12 view of the defendant. Right after he banged the
13 window, the defendant ran away. Ask yourself this
14 question: why would he lie? He doesn't even know this
15 guy. Why would he make up a story like that? What
16 motivation does Daryl Andrews have to not tell you the
17 truth?

18 Phillip Andrews, the father of the child:
19 again, he does not know the defendant. He observes the
20 defendant leaving the party and coming back several
21 times, and he notices that he seems high. He also
22 notices that the defendant is paying special attention
23 to the little girls. And Ms. Littlejohn asked him if
24 that was something he thought about later. It came out
25 on redirect that he wrote that in the very beginning,

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1 in his original statement, that he had noticed that he
2 was paying a lot of attention to these little girls. I
3 think you saw the anguish when he testified that he
4 will always regret not acting on that hunch. It's
5 always going to be something that he tortures himself
6 with. When he had that feeling about Mr. Keeling, he
7 should have just prevented his daughter from being
8 around her [sic]. And he's going to probably torture
9 himself with that for a long time.

10 Star S. she testified that the defendant
11 asked her for a hug. Again, from the beginning,
12 Minor talks about Star.

13 And let's just say this about the little girls.
14 It's no secret that when the State puts a case up, we
15 talk to our witnesses. We wouldn't be doing our jobs
16 if we didn't talk to witnesses. These witnesses
17 testified exactly to what they said from the very
18 beginning. That's the important thing. The fact that
19 the State is in contact with our witnesses and informs
20 them about different things about the trial, and tells
21 them what the trial is going to be about and prepares
22 them for trial, is no secret. So all those questions
23 about how we meet with our witnesses is -- if we're not
24 doing that, we're not doing our job.

25 Ashley E. that was the little girl who

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1 said that the defendant whispered in her ear. And
2 although you didn't get to hear what he whispered, she
3 did clearly say he whispered in her ear. And, again,
4 Minor talked about Ashley during the forensic
5 interview. This is not new information. She's always
6 said this from the beginning.

7 The victim, Minor the defendant put
8 his hands inside her pants, on her undies, on her
9 bottom. Ms. Littlejohn made a big fuss about did he do
10 this, did he do this. Whether Minor did this or the
11 defendant did this before, she was always very clear
12 that he put his hand inside of her pants. And she's
13 really never made any bones about that. She doesn't
14 really understand, I don't think, why he did that or
15 what that's all about. But that's what she's always
16 said, and that's what Daryl saw. Again, you judge her
17 credibility. You know, use your personal experience
18 and your common sense to judge the credibility of that
19 little girl. She is corroborated by Ashley and Star.
20 They all pretty much tell the same thing. And, again,
21 with this witness: why would she lie? She doesn't
22 know the defendant. You know, she has no motivation to
23 come in here and not tell you the truth.

24 John Pittman was the officer who responded first
25 to the scene: no bruises on the defendant. All this

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1 business about so much drinking at the Thanksgiving
2 party. He was asked specifically if he saw beer cans
3 around, if he noticed that the victims had been
4 drinking, and he said no. He did note on his report
5 that the defendant was intoxicated. He checked the
6 spot that said alcohol for the defendant but not
7 necessarily any notice -- noticing of the victim's
8 drinking. Finally --

9 MS. LITTLEJOHN: Your Honor, I would object.

10 THE COURT: Ladies and gentlemen of the jury,
11 please remember that the -- what is contained in the
12 closing arguments on behalf of the State and the
13 defendant are not to be considered evidence.

14 You may continue.

15 MS. WILLIAMS: Thank you, Your Honor.

16 And, finally, the last witness, Alyson Andrews.
17 This is the mother of the child. She was very
18 emotional. This isn't something that any family wants
19 to go through, and it's not the kind of thing that this
20 family ever dreamed that they would be going through.
21 Her daughter told her what happened immediately. And
22 she described her daughter as being very upset at the
23 scene. She also talked to you about her brother-in-
24 law, Daryl. And, again, I mentioned this before. She
25 said his reaction was so out of the ordinary that she

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1 was startled by it, because she was also in the kitchen
2 when he banged on the window and then ran outside. It
3 was out of character for him to behave that way. He
4 wasn't a hothead. She took her daughter to a forensic
5 interview. She's taken her daughter to counseling. I
6 think one of the reasons why this child is getting
7 straight A's, as Ms. Littlejohn elicited from her, and
8 she's doing so well, is because the family has
9 responded protectively and they've gotten her
10 counseling and they've let it be clear that they
11 believe her, which isn't always the case.

12 Now, I want you to know that no matter what you
13 hear from us up here, if I say anything different than
14 what the judge says, always defer to the judge. We
15 make mistakes and we get to arguing and sometimes we
16 misstate things. Hopefully not. But the judge is the
17 final authority on the law and I would ask you that if
18 I say anything differently than she does, if Ms.
19 Littlejohn says anything differently, that the judge is
20 the final authority.

21 You may hear quaint stories or different
22 definitions of reasonable doubt. Reasonable doubt is
23 going to be explained to you by the judge. That's the
24 only person that can say what reasonable doubt is.
25 She's going to give you an instruction about reasonable

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1 doubt. But let's be clear. Reasonable doubt is not
2 all doubt. There's nothing that we know beyond all
3 doubt.

4 I'm asking you to have the courage of your
5 conviction. If you know what he did was the truth, if
6 you know that they were telling the truth and you
7 believe it, and you can't think of any other reason why
8 this man would have his hands down her pants, have the
9 courage to stick to your convictions. Because if we
10 can't find someone guilty of an intent, if we have to
11 wait until the act is completed, that's not what the
12 statute says.

13 Don't forget that thank heavens that Daryl had a
14 clear view as to what was going on on that porch. The
15 defendant probably didn't think so. He probably missed
16 the boat on that window. But he could see very clearly
17 everything that happened. I mean, he was probably a
18 foot away. So think about that as you evaluate Daryl's
19 testimony. Is it enough? What he did, is it enough?
20 It didn't go any farther because it was interrupted.
21 But it was enough for an attempt.

22 THE COURT: Ms. Littlejohn.
23
24
25

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CLOSING ARGUMENT

MS. LITTLEJOHN: Well, now that y'all have all become friends, finally you'll be able to start talking about the case. By now you know who's a Gamecock and a Clemson fan. So what we're going to do is --

And I agree with Ms. Williams on one thing really important: if I say something and you don't agree with the way I said it, or you thought you heard it differently, take what you individually thought you heard. Likewise, if Ms. Williams said it and you thought you heard it a different way. She and I both unequivocally agree on that, because you, each one, individually, must make a determination. It's your individual perception, your individual meaning, as the judge of the facts.

What I want to do is go over a little bit about what Ms. Williams was talking about. She talked about -- she started telling us about the 911 dispatcher. I believe y'all remember her. And they played the tape. And in that tape the dad, he sounded out of breath. I submit to you that they talked about the tackling. And maybe that's why he sounded out of breath. Do you know what dad said? Remember that word? Possible. A possible. Wow. Did dad have a doubt? Possible. If you thought, thought for just a second, that that had

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1 happened to your child, are you going to use the word
2 possible? It's going to have to be a decision you'd
3 have to make. Are you going to have it so together to
4 use that word?

5 Said dad was upset about him leaving. But then
6 didn't we also hear testimony -- some people were
7 telling him, go, get out of here. So some say stay,
8 some say go. Now, I don't think it really matters
9 whether there were two, twenty-two, or fifty-two.
10 Somebody says stay, somebody says go, you don't know
11 what to do. Okay? What do you do? We know that there
12 were about fifty-something people there.

13 We also know -- and y'all have heard the tape,
14 played right here -- the 911 dispatcher said, do you
15 need me to get EMS or anything. And what did he say?
16 No; no, I don't need it. He didn't need the -- he
17 didn't need anything.

18 Let's talk about Daryl for a second. One of the
19 things -- one of the things he told us was there was a
20 lot -- there were a lot of people there. It was a big
21 Thanksgiving party. Lots of people there. He tells us
22 he's in the kitchen and there are three or four other
23 folks in the kitchen with him. Right there. Nobody's
24 made this great big picture of this huge mansion. So
25 right there, packed in the kitchen. Did you see him

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1 testify there were only three or four people? Did they
2 see anything, or did they not see anything?

3 You're going to have to use your ideas when you
4 look at those pictures and see could a view have been
5 obstructed... But those photographs -- what I want you
6 to really remember is Daryl told us those photographs
7 absolutely represented the way it was that day. Looked
8 for the chair. I didn't see the chair. But that's
9 what Daryl said it represented. But he took the
10 picture. Remember, he was out there along with the
11 solicitor's office and a couple of other people. Why?
12 The police officer didn't even take pictures that day.
13 Okay?

14 Now, you remember Daryl told you he had never
15 met Mr. Keeling before looking out there. But what did
16 Phillip say? They, he and Daryl, had talked to him
17 earlier that day. I think he said something about
18 frying a turkey in the garage, or something to that
19 effect, in the garage. He also said it was at an
20 angle. When I asked him which hand -- not plural,
21 singular -- hand, he said right.

22 One thing I'm going to say is Minor seems
23 pretty credible to me. She's a pretty smart little
24 eight-year-old girl, I thought. And when I asked her
25 did he wipe it as though wiping off dirt from the pants

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1 or something, and I used my left hand, she said yes.
2 I used my left hand. He said right hand. She's agreed
3 -- when I demonstrated it for her, she said yes.

4 He also -- my recollection is he said the man
5 was not smoking. Do you remember what Minor Star,
6 and Ashley said? He was smoking.

7 And then what do we know what happened? He
8 banged on the window and he yelled. That's going to
9 startle you. That would kind of help somebody wake up
10 a little bit, what-have-you, you know, you get -- if
11 somebody startles you with a loud voice. And that's
12 what he said he did. What's anybody going to do? I'm
13 going to jump. I submit most people are going to jump,
14 or look, or give some sort of reaction. You know what?
15 Minor even said she was stunned when he banged and
16 yelled.

17 Daryl got up there and said he told the truth.
18 When I asked Phillip, when I said, does he always tell
19 the truth always? No.

20 I believe Daryl said he was standing. Minor
21 said sitting. Daryl also said, but when I got outside
22 he did have a cigarette but from inside he didn't. Use
23 your common sense. If you smoke, if you've previously
24 smoked, or if you know a smoker, think about it.

25 Let's talk about Phillip for a second, the dad.

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1 First of all, he told you he had met with the
2 solicitor's office a few times. They didn't tell
3 him -- you remember I asked him, did y'all go over how
4 to dress, and he said yes.

5 And he said they had talked earlier that day. I
6 believe it was in the garage. But whatever your
7 perception was, you use that. But now he said --
8 here's the dad, said he felt uncomfortable. More than
9 attentive. I observed him, felt uneasy, uncomfortable,
10 didn't get that good feeling. Is that what a father
11 does who really doesn't get that good feeling then? Is
12 that what any parent does that doesn't get that good
13 feeling? Walk away? I submit to you, no. If you're
14 not getting a good feeling about someone around your
15 child, you don't just walk away. I submit to you that
16 that is not normal.

17 Let's look at something else. Whose house was
18 it? Phillip's mother's house. Now, if someone's at
19 your house and your sibling or your child comes up to
20 you and says -- Phillip could have said to his mother,
21 hey, mom, kick this guy out. Who's going to notice it?
22 There are fifty people there. So you're minus one.
23 Fifty people. He didn't go to his mama and say, mom,
24 kick him out, I feel uncomfortable. Didn't do that.
25 And then leaves her on the porch. Use your common

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1 sense. What parent does that? What parent wouldn't
2 ask that they be excused. Or at a very least, what
3 parent wouldn't say, bye, we're out of here, thank you
4 for the dinner, and leave with your family? Who
5 wouldn't do that?

6 Use your common sense. That's what this is
7 about today, ladies and gentlemen. What you hear and
8 apply, what we bring from the table from our individual
9 experiences. Not collective, but our individual
10 experiences.

11 He also said, I know it's true because my
12 brother said it was true. He says he didn't see
13 anything, but my brother said it was true but my
14 brother has not always told the truth.

15 Officer Pittman: I submit to you he did not say
16 my client was intoxicated. Using alcohol, yes.
17 Actually, we asked him was he using alcohol. Did you
18 hear Officer Pittman say he was drunk? I don't think
19 those words came out of Officer Pittman's mouth. He
20 was one of the first ones to arrive on the scene. What
21 did he tell you he did? He actually had to take Mr.
22 Keeling down to the next house for Mr. Keeling's
23 safety, as well.

24 Star: Star never even talked to the police.
25 The police never, ever bothered to talk to the children

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1 over there. Star and Ashley, the two witnesses that
2 you see up here that the State put up, the police
3 didn't talk to them? Why? Ask yourself why wouldn't
4 you talk with them. Why wouldn't you talk with them?
5 I submit because maybe they did not think it was
6 important. Maybe they didn't think that there was
7 something to offer. Why don't the police talk with --

8 Star said he asked for a hug. Uh. Uh, uh, uh.
9 And she said whispered in his [sic] ear. Both said he
10 was smoking. Ashley told you how she knew his name was
11 Craig. Minor told her. When I asked Star that, she
12 said someone from the solicitor's office had told them
13 the name. They didn't know the name.

14 Officer Risen: I mean, you saw him. Testified,
15 looking at y'all. And he admitted he was trained in
16 it. But what did he tell you? I just didn't interview
17 her; I leave that to somebody else.

18 We talked about that, that interview. Forty-
19 three days after this alleged event. Forty-three.
20 Over a month and a half, just shy of two months.
21 Forty-three days. You're going to wait forty-three
22 days to have someone interviewed?

23 He said he didn't feel capable of interviewing.
24 He didn't feel that he would be able to interview her.
25 Well, what else did he do? He also told us that he

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1 made a mistake on something as simple as a warrant.
2 Put a different officer's name on it; it was a fill-in-
3 the-blank. This is not a fill-in-the-blank case. It's
4 not a fill-in-the-blank case. You don't put Mosier --
5 because I asked him the name Mosier. Or is it Riser?
6 Well, I'm not real technologically oriented in the
7 typing arena, but I submit to you, think about those
8 two to see if they even can get near each other on a
9 keyboard. I submit to you they wouldn't.

10 How long was the lead detective there? About
11 fifty minutes. The lead detective in the entire case
12 is only there fifty minutes. And then he didn't do the
13 interview. He didn't do the interview. So how much
14 time has the lead detective really put into this case?

15 Let's talk about the mother, Alyson. When I
16 asked her if she and the father, if they had a good
17 relationship and tell each other everything,
18 absolutely. Somehow or other, though, he didn't tell
19 her, from what she said, about this uncomfortable
20 feeling he got. Didn't tell her that. And, you know,
21 she said something about counseling. I want you to
22 remember one thing I said in opening. This is one part
23 of your hand, the front part, and this is the back
24 part. Vice versa. Where were the counselors? Did you
25 see those counselors? People can go to counselors for

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1 many things. Why weren't the counselors here? What
2 was that about? She makes good grades. She's doing
3 well in school. She could tell us about her animals,
4 tell us what she likes to do, tell us her favorite TV
5 show. Minor is pretty articulate.

6 Well, let's talk about the interview with
7 Minor That's exactly what I asked her about it:
8 wasn't there -- wasn't there a videotaped interview?
9 She said yes. There was a videotaped interview. The
10 front of my hand; the back of my hand.

11 She tells you she was startled. When I asked
12 her about was it on your undies, she said, yes. She
13 could tell us he was sitting in a chair. She even knew
14 she was drinking a cherry Dr. Pepper. Almost a year
15 later. She didn't -- wasn't able to tell us exactly
16 what she was wearing. I submit to you what you're
17 wearing is pretty important in this. I don't know what
18 kind of undies she was wearing. I'm just going to ask
19 y'all to think about that. She's only eight years old.
20 Probably a lot of difference in what eight-year-olds
21 wear and some adults. But she did just keep wiping to
22 the side.

23 One of the most important things that we learned
24 from her was that she told us she had been playing
25 outside. All three of them had been playing outside.

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1 Told us he had a beer in one hand, cigarette in the
2 other. Said she felt bad because he smoked, smoked
3 cigarettes. And I asked her, I said, do people who
4 smoke cigarettes, are they bad? She said yes. This is
5 a cigarette, folks. Is that bad? I submit to you it
6 may not be the healthiest thing in the world, but I
7 don't submit that makes you a bad person.

8 The solicitor has said thank heavens Daryl
9 stopped this. Thank heavens. Isn't this really an
10 issue of inconsistencies, a matter of perception, a
11 matter of who defines what is bad? We know Minor
12 defines a bad person as somebody who smokes cigarettes.
13 Just because somebody finds somebody's bad --
14 perception. Like this stack of nickels that I have.
15 Perception. You bang that stack of nickels and you
16 have a dime. Perception.

17 A child was playing. And what happens when you
18 play, and you're eight years old, and particularly in
19 the fall? I submit to you you get dirty. What happens
20 if you see your niece, your nephew, sister, grandchild,
21 somebody's child comes over to the house and they've
22 been eating ice cream and they have something on their
23 face? Do you ever want to take your thumb and lick it
24 and wipe it off because you don't have a Kleenex in
25 your bag? Have you ever thought about that? Did you

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1 ever rub somebody's dirt off their pants? Or just let
2 them walk around? Is it -- to do that?

3 We know she was playing and we know he wiped and
4 he hit on top of the undies. Without knowing more, the
5 police didn't bother to take any clothing, take any
6 pictures or anything to be able to give you. We don't
7 see the videotape. Are we going to wipe something off
8 of our children, our children's friends, or do we let
9 them walk around, ice cream on their face? Do we be
10 around people anymore who smoke, because they're bad
11 people from what we've been told?

12 I don't think it's a lie. Difference between a
13 lie and how you perceive something. People may accuse
14 people of things every day, asking a question. But how
15 do you perceive it versus what it might be? It might
16 be two different stories. You may think something.
17 And then there's the reality.

18 Thank heavens for the jury because y'all,
19 individually, will be the ones to determine about that
20 perception. You will be the ones to determine about
21 that reasonable doubt of wiping off, about that
22 reasonable doubt of inconsistent stories, to see if we
23 have a complete puzzle. I submit to you that when you
24 look at it, you will come back with a verdict of not
25 guilty.

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CHARGE OF THE COURT

THE COURT: Ladies and gentlemen of the jury, I remind you that during this trial you and I have had certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case and I have the duty to rule on the admissibility of the evidence offered during this trial.

You are to consider only the competent evidence before you. If there was any testimony ordered stricken from the record during this trial, you must disregard that testimony. You are to consider only the testimony which has been presented from the witness stand, any exhibits which have been made a part of the record in this case, as well as any stipulations of counsel.

I have the additional duty to charge you the law applicable to this case. As the presiding judge, I am the sole judge of the law of this case. It is your duty as jurors to accept it and apply the law as I state it to you now. If you have any idea as to what the law is or what the law ought to be and it does not agree with what I am about to tell you, you must abandon your own idea, because you are sworn to accept the law and apply the law exactly as I state it to you now.

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1 In every case tried in this court before a jury,
2 the jury becomes the sole and exclusive judge of the
3 facts in the case. A trial judge cannot make any
4 comment on or make any statement to a trial jury about
5 the facts in this case. Since you, the jury, are the
6 sole judge of the facts in this case, you are not to
7 infer from anything that I have said during the
8 progress of this trial, in ruling upon admissibility of
9 the evidence, or anything that I say now during the
10 course of this instruction to you, that I have any
11 opinion about the facts in this case. The law does not
12 allow me to have an opinion about the facts in this
13 case. This is a matter solely for you, the jury, to
14 determine. As jurors, it is your duty to determine the
15 effect, value, and weight, and the truth of the
16 evidence presented during this trial.

17 The indictment charges the defendant with
18 committing or attempting a lewd act upon a child. I
19 remind you that the fact that the defendant was
20 arrested, charged, and indicted in this case is not
21 evidence in this case and cannot be considered by you
22 as evidence of guilt in this case. This document is
23 simply the formal written instrument which contains the
24 charge made against the defendant. It is the formal
25 document by which this case is brought into this court.

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1 Just as the indictment in this case is not
2 evidence, any terminology or labels used to refer to
3 the individuals involved in this case cannot be
4 considered as evidence. For example, the use of the
5 words defendant and victim are merely formal labels and
6 not -- and may not be considered by you as evidence in
7 this case.

8 The defendant has pled not guilty to the
9 indictment, and that plea puts the burden on the State
10 to prove the defendant guilty. A person charged with
11 committing a criminal offense in South Carolina is
12 never required to prove himself innocent.

13 I charge you it is an important rule of the law
14 that a defendant in a criminal trial, no matter what
15 the seriousness of the charge may be, will always be
16 presumed to be innocent of the crime for which the
17 indictment was issued unless guilt has been proved by
18 evidence satisfying you of that guilt beyond a
19 reasonable doubt. This presumption of innocence does
20 not end when you begin your deliberations, but it
21 accompanies the defendant throughout the trial until
22 you reach a verdict of guilt based upon evidence
23 satisfying you of that guilt beyond a reasonable doubt.
24 The presumption of innocence is like a robe of
25 righteousness placed about the shoulders of the

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1 defendant, which remains with the defendant until it
2 has been stripped from the defendant by evidence
3 satisfying you of the defendant's guilt beyond a
4 reasonable doubt. The presumption of innocence is not
5 mere legal theory, it is not just a legal phrase. It
6 is a substantial right to which every defendant is
7 entitled unless you, the jury, are satisfied from the
8 evidence of the defendant's guilt beyond a reasonable
9 doubt.

10 The State has the burden of proving the
11 defendant guilty beyond a reasonable doubt. Some of
12 you may have served as jurors in civil cases where you
13 were told that it was only necessary to prove that a
14 fact is more likely true than not true, such as greater
15 weight or preponderance of the evidence. In criminal
16 cases, the State's burden must be more powerful -- the
17 State's proof must be more powerful than that. It must
18 be beyond a reasonable doubt. Proof beyond a
19 reasonable doubt is proof that leaves you firmly
20 convinced of the defendant's guilt. There are very few
21 things in this world that we know with absolute
22 certainty and in criminal cases the law does not
23 require proof that overcomes every possible doubt. If
24 based upon your consideration of the evidence you are
25 firmly convinced that the defendant is guilty of the

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1 crime charged, you must find the defendant guilty. If,
2 on the other hand, you think there is a real
3 possibility that the defendant is not guilty, you must
4 give the defendant the benefit of the doubt and find
5 him not guilty.

6 There are two types of evidence which are
7 generally presented during a trial: direct evidence
8 and circumstantial evidence. Direct evidence is the
9 testimony of a person who claims to have actual
10 knowledge of a fact, such as an eyewitness. It is
11 evidence which immediately establishes the main fact to
12 be proved. Circumstantial evidence is proof of a chain
13 of facts and circumstances indicating the existence of
14 a fact. It is evidence which immediately establishes
15 collateral facts from which the main facts may be
16 inferred. Circumstantial evidence is based on
17 inference and not on personal knowledge or observation.
18 The law makes absolutely no distinction between the
19 weight or value to be given either direct or
20 circumstantial evidence, nor is a greater degree of
21 certainty required of circumstantial evidence than that
22 of direct evidence. You should weigh all the evidence
23 in this case and after weighing all of the evidence if
24 you are not convinced of the guilt of the defendant
25 beyond a reasonable doubt, you must find the defendant

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1 not guilty.

2 Necessarily, you must determine the credibility
3 of witnesses who have testified in this case.
4 Credibility simply means believability. It becomes
5 your duty as jurors to analyze and to evaluate the
6 evidence and determine which evidence convinces you of
7 its truth. In determining the believability of
8 witnesses who have testified in this case, you may
9 believe one witness over several witnesses or several
10 witnesses over one witness. You may believe a part of
11 the testimony of a witness and reject the remaining
12 part of the testimony of that same witness. You may
13 believe the testimony of a witness in its entirety or
14 reject the testimony of a witness in its entirety. You
15 may consider whether the witness has exhibited to you
16 any interest, bias, prejudice, or other motive in this
17 case and you may also consider the appearance and
18 manner of a witness while on the witness stand.

19 I instruct you and emphasize that the fact the
20 defendant did not testify is not a factor to be
21 considered by you in any way in your deliberation and
22 in your consideration on the question of the guilt or
23 the innocence of the defendant. It must not be
24 considered by you in any manner whatsoever. A
25 defendant has a constitutional right to remain silent,

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1 and the assertion of this right must not be considered
2 by you in your deliberations. I repeat, under your
3 oath you are to draw no conclusion whatsoever from the
4 fact that the defendant in this case did not testify.
5 The fact that the defendant did not testify should not
6 even be discussed in the jury room. The burden of
7 proof, as I have stated to you, is on the State. The
8 defendant is not required to prove his innocence. The
9 burden of proof remains on the State to prove guilt
10 beyond a reasonable doubt.

11 In order to establish criminal liability,
12 criminal intent is required. For example, the mental
13 state required to be proven by the State for a
14 particular crime might be purpose, intent, knowledge,
15 recklessness, or criminal negligence. Criminal intent
16 must be proved by the State beyond a reasonable doubt.
17 Criminal intent is always a matter that must be
18 determined, by the jury, from the circumstances
19 surrounding the situation. There is no way to prove
20 intent to a mathematical certainty. There is no way
21 medical science can dissect a person's brain and
22 determine what the person had in mind so the law says
23 that criminal intent may be inferred from the
24 circumstances shown to have existed. This is how you
25 make a determination of whether or not the element

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1 requiring intent was present. It is not necessary to
2 establish intent by direct or positive evidence but
3 intent may be established by inference in the same way
4 as any other fact, by taking into consideration the
5 acts of the parties and all the facts and circumstances
6 of this case. Criminal intent is a mental state, a
7 conscious wrongdoing. It is up to you to determine
8 what the defendant intended to do, based upon the
9 circumstances shown to have existed. Criminal intent
10 can arise from action or a failure to act. It may
11 arise from negligence, recklessness, or an indifference
12 to duty or to consequences that is considered by the
13 law to be the equivalent of criminal intent.

14 Insanity caused by the use of drugs or alcohol
15 may be a defense if the insanity is permanent and
16 destroys the defendant's ability to know right from
17 wrong. However, when voluntary intoxication has not
18 produced permanent insanity, it is not a defense to a
19 crime. A person who voluntarily becomes intoxicated is
20 just as responsible for the acts committed while
21 intoxicated as when the person is not intoxicated.

22 The defendant is charged with committing or
23 attempting a lewd act on a child under sixteen. First,
24 the State must prove beyond a reasonable doubt that the
25 defendant was over the age of fourteen. Next, the

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1 State must prove that the defendant wilfully and lewdly
2 committed or attempted a lewd or lascivious act on or
3 with the body, or its parts, of a child under the age
4 of sixteen years with the intent to arouse, appeal to,
5 or gratify the lust, passions, or sexual desires of the
6 defendant or the child. Wilfully means voluntarily and
7 intentionally, with the specific intent to do something
8 the law forbids. Lewd means obscene, lustful,
9 indecent, or lecherous. Lascivious means intending to
10 incite lust, lewd, indecent, obscene, or tending to
11 deprave the morals in respect to sexual relations.

12 Ladies and gentlemen, I will now go over the
13 verdict form in this case. There's absolutely no
14 significance to the way that I read the verdict form.
15 It's simply one must go on the paper first.

16 Ladies and gentlemen, in the Court of General
17 Sessions, docket 2010-GS-08-332, the State of South
18 Carolina, County of Berkeley, State of South Carolina
19 versus Craig D. Keeling, defendant. On the count of
20 committing or attempting a lewd act upon a child, we,
21 the jury, find the defendant not guilty; or, we, the
22 jury, find the defendant guilty.

23 Madam Foreperson, you will sign the verdict
24 form, indicating it's the unanimous decision of the
25 jury. You will date it today's date. And once you

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1 have completed the verdict form, you will knock on the
2 door to the jury room indicating to the bailiff that
3 you have reached a unanimous decision on the verdict
4 form.

5 Ladies and gentlemen, the evidence will be
6 collected and taken back to the jury room with you.
7 Until you are instructed -- this will be the last time
8 I say this to you -- do not begin your deliberations,
9 do not discuss this case amongst yourselves. We will
10 be gathering the verdict form and the evidence, and
11 once all of that is gathered we will -- the bailiff
12 will bring it to you and she will indicate to you you
13 may begin your deliberations.

14 To my two alternates: I will keep you separate,
15 for just a few moments, from the twelve that will be
16 deciding the case. But it is important. We will keep
17 you two together, so you may not discuss this case
18 amongst yourselves, either, or begin your
19 deliberations.

20 Ladies and gentlemen, please be escorted to your
21 jury room at this time.

22 Please rise for the jury.

23 [Whereupon, the jury exits the courtroom at
24 12:12 p.m.]

25 THE COURT: Thank you. Please be seated.

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1 Any objection to, addition to, the charge as
2 read? From the State?

3 MS. WILLIAMS: None from the State, Your Honor.

4 THE COURT: From the defendant?

5 MS. LITTLEJOHN: Your Honor, again, I would
6 renew my motion as to the objection to the charge of
7 voluntary intoxication, as I do not recall hearing any
8 testimony as to he was intoxicated, drinking. And
9 other people had drinks, not intoxicated. I'm renewing
10 my motion with regard to that particular charge.

11 THE COURT: All right. With that, was there any
12 other additions, corrections, or objections to the
13 charge as read?

14 MS. LITTLEJOHN: No, Your Honor.

15 THE COURT: All right. Your exception and
16 objection to the voluntary intoxication charge is
17 noted.

18 MS. LITTLEJOHN: Thank you, Your Honor.

19 THE COURT: And please come -- Ms. Williams and
20 Ms. Littlejohn, please come and review the verdict
21 form.

22 My records reflect that State's 1, 2, 3, 5 and 8
23 were admitted into evidence; there was no evidence
24 admitted by the defendant.

25 [Off the record momentarily]

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1 MS. WILLIAMS: Your Honor, I'm sorry. I didn't
2 have that. Did you say 1, 2, 3, 5 and 8?

3 THE COURT: Yes.

4 MS. WILLIAMS: Okay. That's what we have.

5 MS. LITTLEJOHN: That's what Keshia thinks she
6 had, too, so that sounds good.

7 THE COURT: All right. If there's no objection
8 to the verdict form and to those exhibits, Madam
9 Bailiff if you would take those exhibits and the
10 verdict form and instruct the jury to begin their
11 deliberations.

12 [Whereupon, evidence and verdict form go out to
13 the jury at 12:15 p.m.]

14 THE COURT: All right. We'll be at ease. Thank
15 you.

16 [Whereupon, a recess is taken from 12:16 p.m. to
17 12:51 p.m.]

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VERDICT

THE COURT: I understand we have a verdict.
Anything from the State?

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

MS. LITTLEJOHN: Nothing from the State [sic],
Your Honor.

I was just instructing my client and his family
members, because one of them being an attorney --
regardless of whatever the verdict is, no outbursts
either way.

THE COURT: That is correct.

Let's bring in the jury.

[Whereupon, the jury enters the courtroom at
12:52 p.m.]

THE COURT: Thank you. Be seated.

Madam Foreperson, I understand you have reached
a verdict. If you'll hand the verdict form to the
bailiff.

[Whereupon, the foreperson complies]

[Whereupon, the Court reviews documents]

THE COURT: Mr. Keeling, please rise.

[Whereupon, Mr. Keeling complies]

THE CLERK OF COURT: County of Berkeley, State
of South Carolina versus Craig D. Keeling, indictment

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1 number 2010-GS-08-0332. On the count of committing or
2 attempting a lewd act upon a child, we, the jury, find
3 the defendant guilty. Signed by foreperson.

4 If this be your verdict, please signify by
5 raising up your right hand at this time.

6 [Whereupon, jurors comply]

7 THE CLERK OF COURT: Thank you.

8 THE COURT: Anything further required of the
9 jury? Ms. Littlejohn?

10 MS. LITTLEJOHN: Individual polling of the jury
11 members, Your Honor.

12 THE COURT: All right.

13 - - - - -

14 POLLING OF THE JURY

15 THE CLERK OF COURT: Juror 39, Elaine Chisolm.
16 Is this your verdict?

17 MS. CHISOLM: Yes.

18 THE CLERK OF COURT: Is this still your verdict?

19 MS. CHISOLM: Yes.

20 THE CLERK OF COURT: Juror 89, Cynthia Jones.
21 Is this your verdict?

22 MS. JONES: Yes.

23 THE CLERK OF COURT: Is it still your verdict?

24 MS. JONES: Yes.

25 THE CLERK OF COURT: Juror 142, Haley

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1 Rodenhouse. Is this your verdict?

2 MS. RODENHOUSE: Yes.

3 THE CLERK OF COURT: Is it still your verdict?

4 MS. RODENHOUSE: Yes.

5 THE CLERK OF COURT: Juror 156, Timothy Smith.

6 Is this your verdict?

7 MR. SMITH: Yes.

8 THE CLERK OF COURT: Is it still your verdict?

9 MR. SMITH: Yes.

10 THE CLERK OF COURT: Juror 33, David Cannon. Is
11 this your verdict?

12 MR. CANNON: Yes, ma'am.

13 THE CLERK OF COURT: Is it still your verdict?

14 MR. CANNON: Yes, ma'am.

15 THE CLERK OF COURT: Juror 28, Michele Brownlee.

16 MS. BROWNLEE: Yes.

17 THE CLERK OF COURT: Is this your verdict?

18 MS. BROWNLEE: Yes.

19 THE CLERK OF COURT: Is it still your verdict?

20 MS. BROWNLEE: Yes.

21 THE CLERK OF COURT: Juror 46, Donovan Croker.

22 MR. CROKER: Yes.

23 THE CLERK OF COURT: Is this your verdict?

24 MR. CROKER: Yes.

25 THE CLERK OF COURT: Is it still your verdict?

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1 MR. CROKER: Yes.

2 THE CLERK OF COURT: Juror 17, Brad Bradley. Is
3 this your verdict?

4 MR. BRADLEY: Yes.

5 THE CLERK OF COURT: Is it still your verdict?

6 MR. BRADLEY: Yes.

7 THE CLERK OF COURT: Juror 108, Hazel --

8 MS. MALMEADE: Malmeade.

9 THE CLERK OF COURT: -- Malmeade. Is this your
10 verdict?

11 MS. MALMEADE: Yes.

12 THE CLERK OF COURT: Is it still your verdict?

13 MS. MALMEADE: Yes.

14 THE CLERK OF COURT: Juror 92, Tomika Jones. Is
15 this your verdict?

16 MS. JONES: Yes.

17 THE CLERK OF COURT: Is it still your verdict?

18 MS. JONES: Yes.

19 THE CLERK OF COURT: Juror 153, Charity
20 Slobecheski.

21 MS. SLOBECHESKI: Yes.

22 THE CLERK OF COURT: Is this your verdict?

23 MS. SLOBECHESKI: Yes.

24 THE CLERK OF COURT: Is it still your verdict?

25 MS. SLOBECHESKI: Yes.

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1 THE CLERK OF COURT: Juror 188, Ida Williams.

2 Is this your verdict?

3 MS. WILLIAMS: Yes.

4 THE CLERK OF COURT: Is it still your verdict?

5 MS. WILLIAMS: Yes.

6 THE CLERK OF COURT: Your Honor, I polled the
7 jury and the verdict stands.

8 THE COURT: Thank you.

9 Anything further, Ms. Littlejohn?

10 MS. LITTLEJOHN: No further matters for the
11 jury.

12 THE COURT: Thank you.

13 Anything required further from the jury?

14 MS. WILLIAMS: Nothing from the State, Your
15 Honor.

16 THE COURT: Ladies and gentlemen, that completes
17 your service to this case. It also completes your
18 service for the week. I am excusing you. If you would
19 please wait for just a few moments in the jury
20 deliberation room, I will come and personally thank you
21 for your service to Berkeley County. You are excused.

22 And to my two alternates, they were -- just for
23 the record, they were sequestered apart from the twelve
24 and followed the Court's admonition. But I did allow
25 them to come in. They were interested in learning of

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1 the verdict..

2 All fourteen may be excused to the jury
3 deliberation room.

4 [Whereupon, the jury exits the courtroom at
5 12:56 p.m.]

6 THE COURT: Thank you. Be seated.

7 Outside the presence of the jury, anything
8 further required? From the State?

9 MS. WILLIAMS: Nothing from the State, Your
10 Honor.

11 THE COURT: Are you prepared to go forward with
12 sentencing at this time?

13 MS. WILLIAMS: If we could just have a few
14 minutes. I just want to talk to the family and see who
15 wants to say anything. And Ms. Cornwell went to go get
16 the sentencing sheets.

17 THE COURT: All right. Thank you.

18 Ms. Littlejohn, outside of the presence of the
19 jury, anything further before --

20 MS. LITTLEJOHN: Yes.

21 Your Honor, I would renew my motion for a
22 directed verdict, based on those matters previously
23 submitted, as well as for a new trial, also based on
24 those matters, including the jury charges which were
25 given, the totality of all motions presented.

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1 THE COURT: Any response, Ms. Williams?

2 MS. WILLIAMS: Your Honor, we would just rely on
3 our previous responses.

4 THE COURT: All right. Thank you.

5 Anything further, Ms. Littlejohn?

6 MS. LITTLEJOHN: Nothing, Your Honor.

7 THE COURT: All right. Based upon the Court's
8 previous ruling as to the -- at the close of the
9 State's case, and then renewed before closing
10 arguments, I am denying your motion for a directed
11 verdict, as well as a motion for a new trial.

12 Anything further?

13 MS. LITTLEJOHN: Nothing, Your Honor. We are
14 ready to proceed whenever the sheet gets up here.

15 THE COURT: All right. Any objection to
16 releasing the jury? From --

17 MS. LITTLEJOHN: None, Your Honor.

18 THE COURT: -- the State?

19 MS. WILLIAMS: None from the State, Your Honor.

20 THE COURT: All right. Prepare sentencing. Let
21 me know when you're ready with the sentencing sheets.
22 And I'm going to release the jury. We'll be at ease.

23 MS. LITTLEJOHN: Thank you, Your Honor.

24 [Whereupon, a recess is taken from 12:58 p.m. to
25 1:09 p.m.]

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SENTENCING

THE COURT: All right. Ms. Williams, are you prepared to go forward on sentencing?

MS. WILLIAMS: Yes, Your Honor.

Your Honor, just very briefly from the State, and then the family members would like to address the Court.

We would ask Your Honor to impose a jail sentence on the high end of the spectrum and take into consideration that these were children he didn't even know. There could have been three victims. There was one victim. It has taken quite a toll on this family.

He does have a history. He has two burglary second convictions, one in March and one in June of 2008, and a breach of trust.

Ms. Littlejohn just handed me an evaluation. I very quickly called Dr. Burke [phonetic], but I haven't really had a chance to look at it too closely. But there is like two sentences in there about recidivism as far as sexual, you know, recidivism. It's not a full sexual evaluation like Dr. Burke does. He did do a battery of tests, but not the kind of sexual evaluation that someone that does these kinds of -- handles these kind of patients all the time would do. So we would just ask Your Honor to evaluate that in

State vs. Craig Keeling
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November 3, 2010

1 context.

2 THE COURT: All right. Ms. Williams, can you --
3 we went quickly over it -- tell me about his prior
4 convictions, what they were convictions for and the
5 date of the convictions.

6 MS. WILLIAMS: Okay. He has a burglary second
7 degree conviction in March of 2008. He has a --

8 THE COURT: And what was the sentence?

9 MS. WILLIAMS: The sentence was five years,
10 provided upon the service of 112 days suspended and two
11 years probation.

12 He had another burglary second conviction in
13 June of 2008, and he got five years and -- just five
14 years on that.

15 He also has a breach of trust --

16 THE COURT: Five years active?

17 MS. WILLIAMS: Yes, Your Honor. Oh. I'm sorry.
18 He got seven years on the burglary. At the same time
19 he had a breach of trust and got five years on that.

20 THE COURT: In June of 2008?

21 MS. WILLIAMS: Oh. I'm sorry, Your Honor. The
22 Court's indulgence for just a second.

23 THE COURT: Yes, ma'am.

24 [Whereupon, Ms. Williams reviews documents]

25 [Whereupon, Ms. Littlejohn and Mr. Keeling

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1 confer]

2 THE COURT: All right. Mr. Keeling, you have an
3 attorney and I know --

4 MR. KEELING: Yeah. I'm talking to her now.

5 THE COURT: All right. I need you not to be so
6 loud, Mr. Keeling. All right? I will give you ample
7 opportunity. We have all afternoon, and I will hear
8 from you and your attorney and anyone else regarding
9 sentencing. But I need to hear from the State. Thank
10 you.

11 MS. WILLIAMS: I'm sorry, Your Honor. It was in
12 2000, the first burglary conviction when he got -- it
13 looks like he got five years on the breach of trust and
14 seven years, according to his rap sheet, on the
15 burglary. And then in 2008 it looks like he got -- he
16 had a burglary second degree nonviolent, and he got
17 five years provided upon the service of 112 days and
18 two years -- suspended to two years probation. And
19 that was in March of 2008.

20 THE COURT: So he's currently on probation?

21 MS. WILLIAMS: Yes, Your Honor.

22 THE COURT: Are we going to handle that matter,
23 as well?

24 MS. LITTLEJOHN: Yes, Your Honor. That'll be
25 fine with us.

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1 THE COURT: Do we have Probation?

2 THE CLERK OF COURT: They're on their way.

3 [Off the record momentarily]

4 MS. LITTLEJOHN: Your Honor, he's being
5 supervised out of Charleston.

6 THE COURT: All right. Well, I was attempting
7 to consolidate all the matters.

8 Are you prepared -- were you prepared? Can you
9 serve him with a citation?

10 PROBATION AGENT: Yes, ma'am. Just let me get
11 the name. Got it right here.

12 THE COURT: All right. Ms. Williams, you may
13 continue.

14 MS. WILLIAMS: That is all we have, Your Honor.
15 There was the breach of trust, that I mentioned before,
16 from 2000. He has some older charges but they are back
17 in the '80s and have to do -- mostly they're all
18 misdemeanors.

19 THE COURT: All right. Ms. Littlejohn, are you
20 presenting the report from Dr. Burke to the Court to
21 review?

22 MS. WILLIAMS: It's Dr. Wade [phonetic], Your
23 Honor.

24 MS. LITTLEJOHN: Dr. Wade, Your Honor. I will
25 be, Your Honor.

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1 THE COURT: All right. Ms. Williams, I'll be
2 happy to hear from --

3 MS. LITTLEJOHN: Your Honor, would you like me
4 to go ahead and pass these up right now?

5 THE COURT: That's fine.

6 [Whereupon, Ms. Littlejohn proffers documents to
7 the Court]

8 THE COURT: Ms. Williams, I'll be happy to hear
9 from any family members that wish to address the Court.

10 [Whereupon, Mr. Phillip Andrews comes forward]

11 THE COURT: All right. Mr. Andrews, if you
12 would just state your full name for the record and
13 spell your last name one more time. I was here, I saw
14 you testify, but just so the record --

15 MR. ANDREWS: Yes, ma'am.

16 THE COURT: -- is clear. Thank you.

17 MR. ANDREWS: Yes, ma'am. Phillip Alexander
18 Andrews. A-N-D-R-E-W-S.

19 Since this event it changed all our lives,
20 namely Minor She now shows fear in going in
21 certain public places or being around certain people.
22 My wife has broke down emotionally several times since
23 the event. I couldn't keep track of it. My younger
24 brother, I've seen him break down emotionally from
25 having seen the event.

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1 Since I live so many miles away from home, I've
2 had many sleepless nights, and I could not console
3 myself with my family. Just paranoia of my regret in
4 not doing anything, being so far from them and I
5 couldn't stop this one event; how can I stop it from so
6 far away.

7 Coming back to Goose Creek now has taken on a
8 whole new meaning. I think the entire family has a new
9 sense of dread every time we come down to the
10 Charleston area, where the bulk of our extended family
11 lives.

12 I'm asking the Court to consider that there were
13 Mr. Keeling and fifty-five other people in a prayer
14 circle, and he was so audacious. With that many people
15 around, he still did this. And so what can you do when
16 he gets out of prison and there's no adults around?

17 So I'm asking you to give him the maximum
18 sentence, keep him away from children as long as
19 possible.

20 THE COURT: Thank you. Anyone else, Ms.
21 Williams?

22 MS. WILLIAMS: That's it, Your Honor.

23 THE COURT: All right. Ms. Littlejohn, I'll be
24 happy to hear from anyone.

25 MS. LITTLEJOHN: Your Honor, as they say, the

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1 jury's spoken.

2 On behalf of Mr. Keeling, we've handed up a
3 report done by Dr. Wade. As the Court knows -- I know
4 that the solicitor appears to prefer Dr. Burke, but I'm
5 sure the solicitor is well aware that Dr. Wade and Dr.
6 Burke work together frequently on cases. So I would
7 submit that report, Your Honor, with -- what is equally
8 as important is what it doesn't say, so far as the
9 summary and all.

10 I think also equally important, Your Honor --
11 you've heard it -- is the rap sheet. Not a clean rap
12 sheet. But let's look at what it's for.

13 Your Honor, I think that I've pretty much gone
14 over everything, said everything. Her Honor looked at
15 the videotape, and that's something the State was going
16 to put in and didn't.

17 But at this point in time, we would ask for Dean
18 Murphy to speak on behalf of the family of Mr. Keeling.

19 [Whereupon, Mr. Murphy comes forward]

20 THE COURT: Mr. Murphy, I need you to state your
21 full name and spell your last name for the record.

22 MR. MURPHY: Yes, ma'am. W. Dean Murphy, III.
23 M-U-R-P-H-Y.

24 Your Honor, I'm an attorney in Charleston. I've
25 practiced for thirty years. Craig happens to be my

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1 brother-in-law. I'm married to his sister, Robin.
2 That's Ms. Denise Keeling seated in the middle. That's
3 another sister, Crystal, that's seated to the far
4 right, your far left.

5 Your Honor, I've known Mr. Keeling now for the
6 better part of fifteen years. Mr. Keeling has made
7 many mistakes in his life, but I have some things that
8 I want to say to the Court on behalf of the family and
9 on behalf of Mr. Keeling. I realize that the jury has
10 returned a verdict, so I can't stand before you and
11 argue the case. I would like to, but I can't.
12 Apologizes to the family --

13 THE COURT: Mr. Murphy, if you would please
14 address the Court.

15 MR. MURPHY: Certainly.

16 THE COURT: Thank you.

17 MR. MURPHY: And I will.

18 One of the concerns is Mr. Keeling and the
19 likelihood that this is a part of his life. And the
20 answer, frankly, is it's not. And the Court may well
21 inquire how do I know. Mr. Keeling has lived with me
22 in my home for over a year within the last four years.
23 I have two beautiful daughters. Mr. Keeling has a
24 family that's full of young children. There are
25 probably twelve to fifteen nieces and nephews. He has

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1 his own daughter and he has his own grandson. This is
2 not a part of Mr. Keeling's life. Mr. Keeling's
3 mistakes that he's made in the past are, in my
4 estimation, contributable to his problems with alcohol.
5 He doesn't think clearly. But if you were to ask me is
6 Mr. Keeling likelihood -- the likelihood that he would
7 ever repeat this, my answer is no, not ever. I would
8 still trust him with my children. I would trust him
9 with my grandson. I have no problem standing before
10 this Court, both on behalf of the family and as an
11 officer of the Court, and tell you that.

12 I've been involved on the periphery of this
13 case. Can't represent him, obviously, because he's
14 family. But I've watched.

15 And I would ask the Court to take into
16 consideration that upon his conviction he will be
17 registered as a sex offender. He will be required to
18 wear electronic monitoring. He will be required to
19 have GPS monitoring. He's been incarcerated now for a
20 year.

21 My thought is that a sentence on the lower end
22 of the spectrum would be entirely appropriate, given
23 that he's going to be monitored and everyone will know
24 exactly where he is. So the family would ask that the
25 Court consider leniency in this case. And I thank you

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1 for the opportunity to speak.

2 THE COURT: Thank you, Mr. Murphy.

3 MS. LITTLEJOHN: Your Honor, I would just concur
4 and -- what Dean Murphy said, not only the brother-in-
5 law but as an officer of the Court, someone who's known
6 him far longer than anyone in this courtroom, other
7 than his immediate family.

8 I would note that I recognize the solicitor has
9 asked for something on the high end. However, as we
10 know, this is a constitutional right he's exercised.

11 What, though, Mr. Murphy noted was, he's going
12 to be wearing that GPS monitor for the rest of his
13 life. So the family was concerned about -- or appeared
14 to me to have the sense of concern of keeping track of
15 him. That keeps track of him. That's what our
16 legislature did to ease those minds. It is keeping
17 track of him.

18 Your Honor, I would ask for -- he has been
19 incarcerated for a year. He does have the support of a
20 family. I think you've heard from Mr. Murphy. I don't
21 think that there's anything else I can add. I would
22 ask that we certainly -- and I don't by any chance --
23 any means mean anything by this, but that we make sure
24 that we recognize the right to the trial versus a
25 punishment. And not that I have any reservation with

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1 regard to that. And that we recognize that that
2 monitor will be on there for the rest of his life, as
3 well as the registry, Your Honor.

4 I have asked my client if he would like to
5 saying anything, Your Honor, and he has said at this
6 time, no, he would not.

7 THE COURT: Ms. Littlejohn, you have advised
8 your client of his appellate rights?

9 MS. LITTLEJOHN: We have, Your Honor.

10 THE COURT: Have you advised that he must file
11 his appeal within ten days of today's date? Is that
12 correct?

13 MS. LITTLEJOHN: We have, Your Honor, and my
14 office will be handling that.

15 THE COURT: All right. Ms. Littlejohn, you also
16 advised your client of the requirement of the GPS, as
17 well as the requirement that he will have to register
18 as a sex offender?

19 MS. LITTLEJOHN: Twice a year, Your Honor. We
20 have advised him of that.

21 THE COURT: Ms. Littlejohn, did he understand
22 those rights?

23 MS. LITTLEJOHN: In my opinion he did, Your
24 Honor. He --

25 THE COURT: Excuse me. Those requirements.

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1 MS. LITTLEJOHN: In my opinion he did, Your
2 Honor. He would like to make an independent --

3 THE COURT: All right. Ms. Littlejohn, did you
4 also advise Mr. Keeling of the possibility this could
5 trigger the Sexually Violent Predator Act?

6 MS. LITTLEJOHN: I have, Your Honor, as well as
7 the consequences if one was found on the sexually
8 violent predator and that it's a civil matter on that.

9 THE COURT: All right. Mr. Keeling, do you
10 understand your appellate rights?

11 MR. KEELING: Yes, ma'am.

12 THE COURT: Do you understand that because you
13 have been convicted you will be required to register on
14 the sex offense registry for the rest of your life? Do
15 you understand that?

16 MR. KEELING: Yes, ma'am.

17 THE COURT: Currently, the requirement is that
18 you must register twice a year. But once you are
19 released from custody, you understand that you must
20 register. Do you understand that, sir?

21 MR. KEELING: Yes, ma'am.

22 THE COURT: You will also be required under our
23 current law to register and to be -- and to wear a GPS
24 monitoring system. Do you understand that that's a
25 requirement due to your conviction on this offense?

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1 MR. KEELING: Yes, ma'am.

2 THE COURT: Sir, do you also understand that
3 this conviction could trigger the Sexually Violent
4 Predator Act? Do you understand that, sir?

5 MR. KEELING: Yes.

6 THE COURT: And, Mr. Keeling, is there anything
7 you wish to say to the Court at this time?

8 MR. KEELING: I just ask for extreme mercy.

9 THE COURT: All right. Thank you, Mr. Keeling.

10 And, Mr. Fashion, are we prepared to go forward
11 on a probation matter at this time?

12 PROBATION AGENT: Yes, ma'am, we are.

13 THE COURT: All right.

14 MS. LITTLEJOHN: Your Honor, I believe that --
15 if I may consult with Mr. Fashion?

16 [Whereupon, Ms. Littlejohn and Probation confer]

17 THE COURT: All right, counsel.

18 Mr. Keeling, you understand that you are
19 currently on probation?

20 MR. KEELING: Yes, ma'am.

21 THE COURT: All right. You understand that --

22 I'm assuming, Mr. Fashion, that this conviction
23 will violate the terms and conditions of his probation;
24 is that correct?

25 PROBATION AGENT: That is correct, Your Honor.

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1 THE COURT: And, Mr. Fashion, there appears to
2 be some sort of problem with going forward on the
3 probation matter at this time. Is that correct?

4 PROBATION AGENT: In that --

5 THE COURT: Some sort of a hesitancy to go
6 forward at this time?

7 PROBATION AGENT: The victim requested to be
8 present for any violation on his present offense, Your
9 Honor.

10 THE COURT: All right. Well, then, Mr. Keeling,
11 we will handle your probation matter at a later time.
12 I'm going to go forward on the sentencing on this
13 matter, as well.

14 Thank you, Mr. Fashion, for informing the Court
15 and being prepared to go forward, but we will wait and
16 do that matter at a different time.

17 Anything further, Ms. Littlejohn?

18 MS. LITTLEJOHN: Nothing, Your Honor.

19 THE COURT: Ms. White, anything you wish to tell
20 the Court?

21 MS. WHITE: Nothing, Your Honor.

22 THE COURT: How many -- how much time has he
23 served, Ms. Littlejohn?

24 MS. LITTLEJOHN: Just shy of a year, Your Honor.
25 Today's the 30th. He was incarcerated on the 26th.

State vs. Craig Keeling
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1 Around 333 days, Your Honor.

2 THE COURT: Ms. Littlejohn, what is your
3 client's educational level?

4 MS. LITTLEJOHN: Tenth grade, Your Honor.

5 THE COURT: Does he have his GED?

6 MS. LITTLEJOHN: He does not.

7 THE COURT: Anything further from the State?

8 MS. WILLIAMS: Nothing from the State, Your
9 Honor.

10 THE COURT: It's the order of the Court,
11 Mr. Keeling, on indictment 2010-GS-08-332, that you be
12 committed to the State Department of Corrections for a
13 term of twelve years. Provided upon the service of
14 eight years, the balance is suspended. Probation for
15 four years. You are to be given credit for 330 days;
16 since your arrest on November 26th of 2009. I am
17 ordering ATU while you are incarcerated. You are to be
18 placed on the sexual offender registry, mandatory GPS,
19 pursuant to the statute. No contact with the victim or
20 the victim's family. And substance abuse counseling,
21 random drug and alcohol testing, and sex offender
22 counseling completion upon your release.

23 Good luck to you, Mr. Keeling.

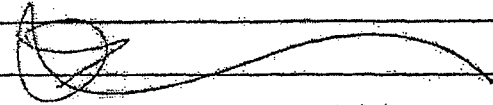
24 MS. LITTLEJOHN: Thank you, Your Honor.

25 [JURY TRIAL ADJOURNS AT 1:30 P.M.]

WITNESSES

Brian Mosier

Berkeley County Sheriff's Office



AGENCY CASE NUMBER

0911049976

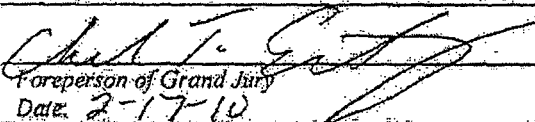
ARREST WARRANT NUMBER

DIRECT INDICTMENT

DATE OF ARREST

November 26, 2009

ACTION OF GRAND JURY

True Bill


Foreperson of Grand Jury
Date: 2-17-10

VERDICT

Foreperson of Petit Jury

Date:

INDICT

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

FEBRUARY Term 2010

THE STATE

vs.

Craig D Keeling
DOB: 1963-08-20
W/M

Indictment for

COMMITTING OR ATTEMPTING A
LEWD ACT UPON A CHILD

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

10 FEB 17 PM 2:43

FILED

JPH

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)

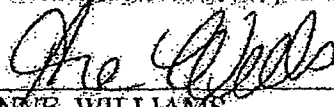
INDICTMENT

At a Court of General Sessions, convened on FEBRUARY 17, 2010, the Grand Jurors of Berkeley County present upon their oath:

COMMITTING OR ATTEMPTING A LEWD ACT UPON A CHILD

That in Berkeley County, South Carolina, On or about November 26, 2009, the Defendant, Craig Douglas Keeling, a person over fourteen years of age, willfully and lewdly did commit or attempt to commit a lewd or lascivious act upon the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: Minor with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, in violation of Section 16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ANNE WILLIAMS
 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)

IN THE COURT OF GENERAL SESSIONS

DOCKET NO.: 2010-GS-08-0332

THE STATE OF SOUTH)
 CAROLINA)

v.)

VERDICT FORM

CRAIG D. KEELING,)

Defendant.)

VERDICT

On the count of Committing or Attempting a Lewd Act upon a Child:

1. We the jury, find the Defendant NOT GUILTY. _____

OR

2. We the jury, find the Defendant GUILTY. ✓

I certify that this decision is the unanimous decision of the jury.

Cherie L. Chivalier

Foreperson

November 3, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Berkeley
STATE VS.
Craig D Keeling

INDICTMENT/CASE#: 2010GS080332
A/W#: 2010GS080332
Date of Offense: 11/26/2009
S.C. Code §: 16-15-0140
CDR Code #: 2468

AKA:
Race: W Sex: M Age: 47
DOB: 0 SS#: /
Address:
City, State, Zip:
DL#: SID#:

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Committing or Attempting a Lewd Act Upon a Child

☒ CONVICTED OF or ☐ PLEADS

In violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC) ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 76463 Defendant [Signature] Attorney for Defendant [Signature] SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed 8 years
and/or to pay a fine of \$ 0; provided that upon the service of 8 days/months/years and/or payment
of \$ 0; plus costs and assessments as applicable*, the balance is suspended with probation for 0

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. 380 days (since 11/26/09)
☐ 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 0
Total: \$ 0 plus 20% fee: \$ 0
Payment Terms: 1
☐ Set by SCDPPPS

Recipient: 0
*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 36-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u>500.00</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 36-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>18.90</u>
TOTAL	\$	\$ <u>648.90</u>

Clerk of Court/ Deputy Clerk Linda J Hill
Court Reporter: Mica Person
SCCA/217 (06/2010)

0 days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. 0
May serve W/E beginning 0
Substance Abuse Counseling ☒
Random Drug/Alcohol testing ☒
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 0 beginning 0

\$ 0 paid to Public Defender Fund
Other: No contact with victim
ATU - Sexual Offender Counseling
Sexual Offender Testing
☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition
☒ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

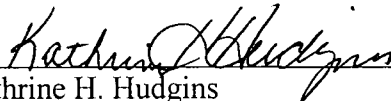
Presiding Judge [Signature]
Judge Code: 0
Sentence Date: 11/3/10

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 6th, 2012


Kathrine H. Hudgins
Appellate Defender

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

ATTORNEY FOR APPELLANT