

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM PICKENS COUNTY

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD BURTON BEEKMAN,

APPELLANT

Appellate Case No. 2011-196688

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,

PLAINTIFF,

-VS-

RICHARD B. BEEKMAN,

DEFENDANT.

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2009-GS-39-01404 and 01405

JULY 25-28, 2011

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

JENNY BARWICK, ESQUIRE
ATTORNEYS FOR THE STATE

JOHN DEJONG, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

1 MR. DEJONG: And now I have to back up and say if
2 -- I'm not conceding these two -- well let me back up.
3 2009-GS-39-1405 charges Richard Burton Beekman with
4 criminal sexual conduct with a minor in the first degree.
5 That is the allegations that arose from the eight-year-old.
6 The problem I have, Your Honor, with the forensic video is,
7 during the course of that video, the eight-year-old alludes
8 to inappropriate touching or bad acts that were done or
9 alleged to have been done towards his sister. As I
10 understand the discovery in this case, and I'm sure Ms.
11 Barwick will correct me if I'm wrong, but as I understand
12 the discovery in this case, the eight-year-old, the alleged
13 victim under the CSC first with minor, had no independent
14 knowledge of the allegations of the twelve-year-old girl
15 until after the fact. So there was no -- as I understand
16 it, no independent knowledge of what the allegations were as
17 to what Mr. Beekman did -- allegedly did to the twelve-year-
18 old. Those statements, Your Honor, at best, could only be
19 based on hearsay, what the eight-year-old heard after the
20 fact, number one. Number two, and again, I'm not sure if
21 we're trying both of them or not. But if we are trying
22 either way, separately or apart, that is a means of
23 bolstering the testimony, in my opinion, of the twelve-year-
24 old female child. And I would submit to the Court that is
25 impermissible bolstering.

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

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

16 MS. BARWICK: Your Honor, I just want to make sure
17 I'm straight on this. You're not objecting to MINOR

18 MINOR video. You're objecting to portions of his video?

19 MR. DEJONG: That is correct.

20 MS. BARWICK: Okay. To address Mr. DeJong's
21 concerns, Your Honor, MINOR CHILD 2 makes mention, I believe
22 it's twice in the video, when Ms. Galloway-Williams says, do
23 you know why you're here? MINOR said, because of what Rick
24 did to me and my sister. And the second mention of it is
25 when Ms. Shauna Galloway-Williams asked MINOR well, what

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

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

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

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

17 MR. DEJONG: I do, Your Honor.

18 THE COURT: What's that?

19 MR. DEJONG: The other objection I have, we did a
20 404(b). There are allegations that arise on the tape as to
21 what I would say would be 404(b). The allegations of the
22 criminal sexual conduct first degree with a minor are
23 allegations of anal -- of basically anal intercourse,
24 certainly anal penetration. There were allegations, I
25 believe, on the tape of two or three other times where the

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

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

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

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

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

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

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

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

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

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

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

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

12 THE COURT: The cite is ---

13 MR. DEJONG: Is that *Clasby*?

14 MS. BARWICK: Yes.

15 THE COURT: 385 148.

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

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

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

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

15 MS. BARWICK: The Supreme Court.

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

1 Again, I still submit, Your Honor, that escalating
2 pattern, what something happened and it's going to escalate
3 that finally may or may not culminate in anything else,
4 404(b) does not address that. 404(b) says common scheme or
5 plan, and if you go back and read *Lyle*, which we're not
6 going to go through all the litany of cases on 404(b) and
7 *Lyle*, because they are impossible to reconcile. But if you
8 go back to that, the common scheme or plan is more along the
9 lines, if I steal a car in Greenville and I use that car and
10 I go to Georgia and rob a bank, that's part of the common
11 scheme or plan.

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

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

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

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

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

14 MR. DEJONG: Well, I ---

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

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

1 THE COURT: But doesn't the case law in these
2 cases, particularly, talk about the escalating plan? And,
3 again, I guess you're saying that I need to rule against
4 precedent that maybe you think *Clasby* was not decided under
5 *Lyle*, under the standard that *Lyle* should have been under
6 404.

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

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

18 MR. DEJONG: Yes, Your Honor.

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

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

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

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

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

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

18 THE COURT: Okay.

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

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

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

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

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

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

18 THE COURT: Right. Okay.

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

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

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

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

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

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

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

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

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

1 victims, different times, and I submit different witnesses.
2 The facts of one case do not so overlap the facts of the
3 other case -- I think what the State's going on there is
4 that on July the 7th -- well, excuse me. The alleged
5 offense date with regard to a lewd act is July the 7th of
6 2008. Yes. The allegations arose on July the 14th of 2008
7 with regard to the lewd act indictment. The allegation on
8 the criminal sexual conduct case did not arise until July
9 the 21st. The State seems to be hanging their hat on trying
10 these cases together, that the allegations were -- I hate to
11 use the word disclosed, but that's the only word I can come
12 up with -- that the allegations were disclosed within a
13 short time frame. I don't think that goes either to chain
14 of circumstances or the same general nature.

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

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

1 Your Honor.

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

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

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

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

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

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

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

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

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

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

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

19 THE COURT: All right. Any other motions?

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

22 THE COURT: Yes, sir.

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

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

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

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

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

10 MS. BARWICK: Your Honor?

11 THE COURT: Yes.

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

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

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

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

11 MS. BARWICK: Okay. Thank you.

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

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

17 THE COURT: Well, ...

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

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

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

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

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

7 THE COURT: And the prior bad acts. I guess that
8 ---

9 MS. BARWICK: That goes with the videotape.

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

13 MS. BARWICK: Yes, sir.

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

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

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

21 MS. BARWICK: I'll hand it up.

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

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

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

4 MR. DEJONG: You want us back before two?

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

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

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

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

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

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

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

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

1 THE COURT: Yeah.

2 MR. DEJONG: Okay.

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

5 Yes, sir.

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

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

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

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

17 THE JUROR: No. I mean ...

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

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

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

23 COURT REPORTER: What's his name?

24 THE COURT: Your name, please, sir?

25 THE JUROR: Zachary McCollum.

1 THE COURT: Thank you, Mr. McCollum.

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

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

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

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

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

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

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

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

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

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

1 one on this.

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

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

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

22 THE COURT: Yes, ma'am.

23 MS. BARWICK: Right now, Your Honor?

24 THE COURT: Right now.

25 MS. BARWICK: Thank you.

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

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

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

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

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

11 THE COURT: All right.

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

14 THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 MR. DEJONG: Your Honor, not arguing with your
15 ruling, just a point of clarification. As I understood on
16 the video, which goes in part to -- well, it does go to
17 404(b), that your finding based on your view of the video,
18 that there is clear and convincing evidence. Is that
19 correct?

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

23 MR. DEJONG: Yes, sir.

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

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

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

7 THE COURT: Yes, sir.

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

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

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

1 the boy?

2 THE COURT: Correct.

3 MS. BARWICK: Okay.

4 THE COURT: Under 404(b).

5 MS. BARWICK: Yes, -sir. I just wanted to make
6 sure that you weren't asking that for MINOR as well.

7 As far as MINOR CHILD 2 the State could proffer some
8 testimony tomorrow morning if you would like. Just to --
9 the State doesn't want to do it now because the State kind
10 of doesn't want to put the boy through it twice. And maybe
11 we could do that -- I don't know how Your Honor would like
12 to go about doing that.

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

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

24 THE COURT: Well, ---

25 MS. BARWICK: Sorry.

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

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

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

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

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

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

23 MS. BARWICK: No, sir.

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

1 THE COURT: Right.

2 MR. DEJONG: Okay.

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

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

7 JULY 26, 2011

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

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

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

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

18 THE CLERK: She's seated over there.

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

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

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

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

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

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

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

25 (No response.)

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

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

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

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

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

1 moments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (No response.)

9 THE COURT: All right. Any others. Okay.
10 All right. What I want to do is to have each of you,
11 if you would just line up there, I want to put on the record
12 -- if you'd come forward and we'll put this on the record
13 for the Clerk here with the attorneys.

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

15 THE JUROR: I'm Zack McCollum.

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

18 MR. DEJONG: No, sir.

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

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

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

25 THE COURT: I think you acknowledge that

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1 yesterday.

2 THE JUROR: Yes, sir.

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

5 THE JUROR: Yes, sir, I could.

6 THE COURT: You could set that aside?

7 THE JUROR: Yes, sir, I could.

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

10 THE JUROR: You're welcome.

11 THE COURT: And what's your name?

12 THE JUROR: Mary Loftis.

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

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

15 THE COURT: Yes, sir.

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

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

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

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

24 THE JUROR: Yes, sir.

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

1 Could I see the attorneys here just for a minute.

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

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

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

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

11 MS. BARWICK: Please present the juror.

12 THE CLERK: And the Defense?

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

15 THE CLERK: Okay. Thank you, sir.

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

17 MS. BARWICK: Please present the juror.

18 THE CLERK: And the Defense?

19 MR. DEJONG: Please swear the juror.

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

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

24 MS. BARWICK: Please present the juror.

25 THE CLERK: And the Defense?

1 MR. DEJONG: Please swear the juror.

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

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

7 MS. BARWICK: No, sir, Your Honor.

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

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

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

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

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

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

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

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

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

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

13 MR. DEJONG: Thank you.

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

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

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

21 MS. BARWICK: No, sir, Your Honor.

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

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

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

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

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

25 Before the attorneys make their opening statement, I'm

MINOR - Direct Examination by Ms. Barwick

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

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

5 MS. BARWICK: The State would call MINOR CHILD 1
6 to the stand. Judge, may we clear the courtroom for her
7 testimony? Just the people in the audience.

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

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

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

15 THE WITNESS: I do.

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

18 MINOR CHILD 1

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MS. BARWICK:

22 Q. MINOR CHILD 1, if you'll just say your name for the record?

23 A. MINOR CHILD 1

24 Q. That's kind of loud. They can hear you just fine.

25 Just sit back and get comfortable, okay? Are you a little

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MIN Wheeler - Direct Examination by Ms. Barwick

1 nervous?

2 A. Yes.

3 Q. Okay. How old are you?

4 A. Fifteen.

5 Q. When were you born?

6 A. October 10th, 1995.

7 Q. Who do you live with?

8 A. My mom and dad.

9 Q. Okay. Explain that for the jury. Are your mom and dad
10 together or separate?

11 A. They're separated.

12 Q. Do you have a brother?

13 A. Yes, ma'am.

14 Q. What's his name?

15 A. MINOR

16 Q. Okay. Does he has the same last name as you?

17 A. Yes, ma'am.

18 Q. Do you know when his birthday is?

19 A. November 1st, 1999.

20 Q. 1999?

21 A. Yes, ma'am.

22 Q. Are you in cheerleading anymore?

23 A. No, ma'am.

24 Q. Did you used to be in cheerleading?

25 A. Yes, ma'am.

MINOR - Direct Examination by Ms. Barwick

- 1 Q. Back in 2008, were you a cheerleader?
- 2 A. Yes, ma'am.
- 3 Q. And were you really involved with cheerleading?
- 4 A. Yes, ma'am.
- 5 Q. What do you -- describe for the jury how your year was
- 6 as far as cheerleading goes?
- 7 A. Do you mean like how much I cheered?
- 8 Q. Uh-huh (affirmative). In the fall, were you involved
- 9 in cheerleading?
- 10 A. Yes, ma'am.
- 11 Q. What about the wintertime?
- 12 A. Yes, ma'am.
- 13 Q. What would you do in the wintertime?
- 14 A. I was always cheering.
- 15 Q. Okay. And the springtime, were you cheering?
- 16 A. Yes, ma'am.
- 17 Q. Well, what about the summertime?
- 18 A. Yes, ma'am. Well, I practiced. I had a little bit of
- 19 time off, but not much.
- 20 Q. Did you do any tumbling or anything like that?
- 21 A. Yes, ma'am.
- 22 Q. What is tumbling?
- 23 A. I went and I just did flips.
- 24 Q. And that's just something you kind of do with
- 25 cheerleading?

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MINOR - Direct Examination by Ms. Barwick

1 A. Yes, ma'am.

2 Q. Do you remember when your mom met the Defendant?

3 A. Yes, ma'am.

4 Q. Okay. Did your mom eventually marry him?

5 A. Yes, ma'am.

6 Q. And did y'all move in with the Defendant?

7 A. Yes, ma'am.

8 Q. When you first met him and when you were living with
9 him before any of this occurred, how did you feel about him?

10 A. I liked him a lot.

11 Q. Okay. What do you mean a lot?

12 A. I wanted him to be my dad.

13 Q. Well, let's back up a little bit and talk about your
14 dad a little, okay? How is the custody arrangement between
15 your mom and your dad?

16 A. I go with mom one week and my dad another.

17 Q. Okay. So one week at a time at your mom's and one week
18 at a time at your dad's?

19 A. Yes, ma'am.

20 Q. MINOR now you have two boxes. So just in case. When
21 -- describe your relationship with your dad for the jury.
22 Do y'all have an easygoing relationship or is it kind of
23 difficult?

24 A. We get along, but I would rather be with my mom most of
25 the time.

MINOR - Direct Examination by Ms. Barwick

1 Q. Right. Just kind of describe your relationship with
2 your dad for the jury.

3 A. Well, I know I can always count on him.

4 Q. Okay. Do you consider your dad strict or ---

5 A. He's strict but he loves me.

6 Q. Okay. Are your mom and dad in the courtroom right now?

7 A. No, ma'am.

8 Q. Okay. Did you want them in here?

9 A. No, ma'am.

10 Q. Well, tell the jury why you didn't want your parents in
11 the courtroom?

12 A. Because it tears them up.

13 MR. DEJONG: Your Honor, I object to that on the
14 basis of relevance.

15 THE COURT: I'll overrule your objection.

16 Q. That means you can continue. I'm sorry, MINOR Why
17 didn't you want your parents in the courtroom today?

18 A. Because I don't like seeing them cry.

19 Q. Okay. Well, why do you think this would make your
20 parents cry?

21 A. Because it hurts them.

22 Q. We're going to move on from that. When you met Rick,
23 you said you loved him?

24 A. Yes, ma'am.

25 Q. Did you consider him like your father figure?

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MINOR - Direct Examination by Ms. Barwick

- 1 A. Yes, ma'am.
- 2 Q. Did y'all do things together?
- 3 A. Yes, ma'am.
- 4 Q. Like what kind of things would you do?
- 5 A. We just all hung out and we'd go out to eat.
- 6 Q. All right. Do you remember back the July 4th weekend
- 7 back in 2008?
- 8 A. Yes, ma'am.
- 9 Q. Where did y'all go?
- 10 A. Charleston.
- 11 Q. Did you have a good time in Charleston?
- 12 A. Yes, ma'am.
- 13 Q. What did y'all do?
- 14 A. We went shopping. I remember that.
- 15 Q. Okay. Did y'all do any kind of beach stuff or anything
- 16 like that?
- 17 A. Yes, ma'am.
- 18 Q. Who went to Charleston?
- 19 A. Me, Rick, my mom and brother.
- 20 Q. Do you remember when you were in Charleston locking
- 21 Rick out of the hotel room?
- 22 A. Yes, ma'am.
- 23 Q. Why did you do that?
- 24 A. Just to play around.
- 25 Q. Did you -- okay. Did ever disobey Rick or anything

MINOR - Direct Examination by Ms. Barwick

1 like that?

2 A. I mean, I argued sometimes, but I'm not a bad kid.

3 Q. Right. And did you argue with your dad sometimes, too?

4 A. Yes, ma'am.

5 Q. When you locked Rick out of the hotel room in

6 Charleston, was he mad about it?

7 A. I don't remember.

8 Q. Okay. Do you remember much about that incident in

9 Charleston?

10 A. No, ma'am.

11 Q. When did you come home from that Charleston trip, do

12 you remember? Was it like a Saturday or a Sunday?

13 A. I think it was a Sunday.

14 Q. Do you remember what date this incident occurred that

15 we're going to talk about?

16 A. The 7th.

17 Q. Of what?

18 A. July.

19 Q. Do you remember the year?

20 A. 2008.

21 Q. Okay. Do you remember that being a Monday or anything

22 like that?

23 A. I think it was a Monday.

24 Q. Well, the night before, I guess that would be July 6th,

25 2008 then, did you sleep in your bed that night?

MINOR - Direct Examination by Ms. Barwick

- 1 A. No, ma'am.
- 2 Q. Where did you sleep?
- 3 A. The couch.
- 4 Q. Well, why did you sleep on the couch?
- 5 A. Because my room was messy.
- 6 Q. Okay. And where did MINOR sleep?
- 7 A. The little couch.
- 8 Q. Was that also in the living room?
- 9 A. Yes, ma'am.
- 10 Q. Okay. And why didn't he sleep in his bed?
- 11 A. Because it was messy.
- 12 Q. Okay. When you say messy, what was going on there?
- 13 A. We were redoing the dining room.
- 14 Q. I'm going to show you something real quick. Do you
- 15 know what this looks like?
- 16 A. Yes, ma'am.
- 17 Q. What does that look like?
- 18 A. My old house.
- 19 Q. The one that you lived in when this incident occurred?
- 20 A. Yes, ma'am.
- 21 Q. With Rick?
- 22 A. Yes, ma'am.
- 23 Q. Okay. It's not exactly to scale, is it?
- 24 A. No, ma'am.
- 25 Q. Okay. If you'll push this button right here. That's
- 26 the laser.

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

3 THE COURT: Any objection?

4 MR. DEJONG: No objection, Your Honor.

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

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

9 Q. Does that look like your living room, MINOR

10 A. Yes, ma'am.

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

12 A. Yes, ma'am.

13 Q. And where's the couch that MINOR was sleeping on?

14 A. Do you want me to just point?

15 Q. Yes, please. Right there?

16 A. Right there.

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

19 A. Right there.

20 Q. Okay. And when MINOR fell asleep, which direction was
21 his head?

22 A. When he woke up?

23 Q. Just when he went to sleep?

24 A. (Indicating.)

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

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MINOR - Direct Examination by Ms. Barwick

- 1 A. Yes, ma'am.
- 2 Q. How many blankets?
- 3 A. I believe two, but I'm not sure.
- 4 Q. Okay. And what were you wearing?
- 5 A. I had on my underwear and I had on bloomers,
- 6 cheerleader bloomers, and pajama like stretchy pants.
- 7 Q. So you had three layers on your bottom part?
- 8 A. Yes, ma'am.
- 9 Q. Well, why were you wearing bloomers?
- 10 A. Just I got in the habit of wearing them for
- 11 cheerleading.
- 12 Q. Did all your friends wear them too?
- 13 A. Yes, ma'am.
- 14 Q. Were any lights on when you fell asleep?
- 15 A. No, ma'am.
- 16 Q. Okay. Had the light been on before you fell asleep?
- 17 A. I turned it off.
- 18 Q. Okay. What was on TV, do you remember?
- 19 A. Disney Channel.
- 20 Q. Did you have a hard time sleeping that night?
- 21 A. Yes, ma'am.
- 22 Q. Well, what did you do?
- 23 A. I went and got my mom.
- 24 Q. Okay. Well, what happened with that?
- 25 A. She got me melatonin.

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MINOR - Direct Examination by Ms. Barwick

- 1 Q. What's that?
- 2 A. Medicine that the doctor gave me.
- 3 Q. Okay. What does that do for you?
- 4 A. Helps me sleep.
- 5 Q. All right. So you took one of those?
- 6 A. Yes, ma'am.
- 7 Q. Do you remember about what time it was or is it just
- 8 during the middle of the night?
- 9 A. During the middle of the night.
- 10 Q. So did you go to sleep after that?
- 11 A. Yes, ma'am.
- 12 Q. How were the blankets when you fell asleep?
- 13 A. They were on me and tucked in the side of the couch.
- 14 Q. Like the back side of the couch or the front side or
- 15 both?
- 16 A. Like -- I don't know. The side that the pillow, like
- 17 the back of the pillow is.
- 18 Q. Okay. Do you remember waking up?
- 19 A. Yes, ma'am.
- 20 Q. Do you remember what made you wake up?
- 21 A. Yes, ma'am.
- 22 Q. What made you wake up?
- 23 A. Rick.
- 24 Q. And what was he doing?
- 25 A. Touching me.

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MINOR - Direct Examination by Ms. Barwick

- 1 Q. Where was he touching you?
- 2 A. My private area.
- 3 Q. Were your clothes -- how were your clothes?
- 4 A. Down.
- 5 Q. Okay. Let's talk about your pants, how far down were
- 6 they? And you can stand up to show the jury.
- 7 A. Right here.
- 8 Q. Okay. And where were your underwear and your bloomers?
- 9 A. About to my knees.
- 10 Q. To your knees?
- 11 A. About right there.
- 12 Q. Okay. Where were the blankets?
- 13 A. In the floor.
- 14 Q. Did you sleep with any stuffed animals or dolls or
- 15 anything?
- 16 A. My doll.
- 17 Q. And where was that?
- 18 A. With me.
- 19 Q. Okay. What was he doing with his hand?
- 20 A. Touching me.
- 21 Q. And I know this is difficult. Did he put his hands
- 22 inside of you?
- 23 A. No, ma'am.
- 24 Q. He was just touching?
- 25 A. Yes, ma'am.

MINOR - Direct Examination by Ms. Barwick

- 1 Q. If you were laying on the couch with your head -- when
2 you woke up where was your head?
- 3 A. In the same place.
- 4 Q. Where would he -- was he sitting on the couch with you
5 or standing up when he did that?
- 6 A. Sitting down.
- 7 Q. Where was he sitting?
- 8 A. You want me to point? Like right there.
- 9 Q. Okay. Were his hands -- show -- if he was sitting
10 there and you were laying there, was his hand like this or
11 did he have to reach down and go in?
- 12 A. He just had to lay it down.
- 13 Q. And it was on your bare naked skin?
- 14 A. Yes, ma'am.
- 15 Q. And it was on your private area?
- 16 A. Yes, ma'am.
- 17 Q. Did you scream or anything like that?
- 18 A. No, ma'am.
- 19 Q. Why didn't you?
- 20 A. Because I was really scared.
- 21 Q. Do you remember when you woke up like that, what was on
22 TV?
- 23 A. The news.
- 24 Q. What did the Defendant do when you woke up?
- 25 A. He jumped up and hesitated and asked where the remote

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- 1 was.
- 2 Q. Where was the remote?
- 3 A. Right in front of him on the -- you want me to point?
- 4 Q. Yes. So it was on the trunk?
- 5 A. Yes, ma'am.
- 6 Q. Is that what y'all used for the coffee table?
- 7 A. Yes, ma'am.
- 8 Q. Was the remote clearly visible?
- 9 A. Yes, ma'am.
- 10 Q. What did you do with the remote?
- 11 A. I grabbed it and threw it.
- 12 Q. You threw it at him?
- 13 A. Yes, ma'am.
- 14 Q. Well, what did he do after that?
- 15 A. He walked out.
- 16 Q. Was the lamp on?
- 17 A. Yes, ma'am.
- 18 Q. And the TV was on the news?
- 19 A. Yes, ma'am.
- 20 Q. Were you able to go back to sleep?
- 21 A. Yes, ma'am.
- 22 Q. Did you wake up later on?
- 23 A. That morning?
- 24 Q. Uh-huh (affirmative).
- 25 A. (Affirmative nod.)

MINOR - Direct Examination by Ms. Barwick

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

MINOR - Direct Examination by Ms. Barwick

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

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

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

6 A. In the bathroom.

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

8 A. Like eight, I guess.

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

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

12 Q. Did your brother take a shower too?

13 A. Yes, ma'am.

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

15 A. In there.

16 Q. In where?

17 A. In the bathroom.

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

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

21 Q. Was your mom home at this time?

22 A. No, ma'am.

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

24 A. No, ma'am.

25 Q. What did you do then?

MINOR - Direct Examination by Ms. Barwick

- 1 A. After?
- 2 Q. Yes.
- 3 A. We went and went into Rick and my mom's bedroom and
- 4 just watched TV.
- 5 Q. Why did you go in there?
- 6 A. Because -- I don't know. So we didn't have to get up.
- 7 Q. Okay. Did you tell your mom that morning?
- 8 A. No, ma'am.
- 9 Q. How come?
- 10 A. Because she just -- she was like -- we were all in a
- 11 rush and I was scared.
- 12 Q. Did you tell your brother?
- 13 A. No, ma'am.
- 14 Q. Did you tell your daycare worker?
- 15 A. No, ma'am.
- 16 Q. Did your grandma call you when you got home from the
- 17 daycare?
- 18 A. Yes, ma'am.
- 19 Q. Did you tell your grandma?
- 20 A. No, ma'am.
- 21 Q. When Rick did that to you, were you shocked that he did
- 22 that?
- 23 A. Yes, ma'am.
- 24 Q. Did you expect something like that?
- 25 A. No, ma'am.

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- 1 Q. When you were in the bedroom, was MINOR with you?
- 2 A. At the end of the day?
- 3 Q. Yes. When you got home from the daycare?
- 4 A. Yes, ma'am.
- 5 Q. And y'all were just watching TV?
- 6 A. Yes, ma'am.
- 7 Q. Do you see Rick's bedroom on here?
- 8 A. Yes, ma'am.
- 9 Q. Can you point it out for the jury?
- 10 A. (Indicating.)
- 11 Q. Okay. So y'all were watching TV in there. Did y'all
- 12 shut the door or leave the door open?
- 13 A. We shut it.
- 14 Q. And why did you shut it?
- 15 A. Because I was scared and I just wanted to shut it.
- 16 Q. Did Rick say anything at this point?
- 17 A. He told us not to shut it after we did.
- 18 Q. Did y'all have any rules about not leaving doors shut
- 19 in your house or anything like that?
- 20 A. No. We just weren't supposed to lock them.
- 21 Q. Okay. Your mom got home -- how long do you think you'd
- 22 been at the house after daycare when your mom got home?
- 23 A. I'm not sure.
- 24 Q. Do you think that maybe it was like an hour or an hour
- 25 and a half or two hours?

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1 A. Like an hour and a half or two.

2 Q. Okay. When she got home, what did you do?

3 A. Ran immediately to her and took her to the bathroom.

4 Q. Okay. When your mom came in the door, where was Rick?

5 A. At the door opening it for her.

6 Q. So you have to go and get your mom right in front of
7 Rick?

8 A. Yes, ma'am.

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

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

12 Q. Where was Rick when your mom came in?

13 A. At the door.

14 Q. And where did you go and get your mom from?

15 A. The door.

16 Q. Okay.

17 A. As soon as she got in.

18 Q. All right. And what did you tell her?

19 A. To come, I had to tell her something.

20 Q. And where did y'all go?

21 A. To the bathroom.

22 Q. Which bathroom?

23 A. Mine. Do you want me to point?

24 Q. Yes, please.

25 A. (Indicating.)

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- 1 Q. Okay. And in the bathroom did you disclose to your
2 mother what Rick had done to you?
- 3 A. Yes, ma'am.
- 4 Q. And how did she act?
- 5 A. Really upset.
- 6 Q. Do you need water?
- 7 A. I'm okay.
- 8 Q. And when she was upset, what did y'all do?
- 9 A. We were going to my grandmother's.
- 10 Q. Is that her mother?
- 11 A. Yes, ma'am.
- 12 Q. Did you tell Rick that you were going to your
13 grandmother's?
- 14 A. Yes, ma'am. My mom did.
- 15 Q. And what did Rick say?
- 16 A. No.
- 17 Q. What did he say no about?
- 18 A. I couldn't leave because my room was a mess.
- 19 Q. Was he usually concerned with your room being a mess?
- 20 A. No, ma'am.
- 21 Q. What did you and your mom do?
- 22 A. Went in there and just made my bed over stuff and put
23 stuff in the closet.
- 24 Q. Did you go to your grandmother's that night?
- 25 A. Yes, ma'am.

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1 Q. And that was your mom's week to have you?

2 A. Yes, ma'am.

3 Q. Then did you end up telling your father what happened?

4 A. Yes, ma'am.

5 Q. About how long after you moved out of your house did
6 you tell your father what happened?

7 A. I'm not sure.

8 Q. Do you think it was a few days?

9 A. Yes.

10 Q. Maybe a week?

11 A. Yes, ma'am.

12 Q. Did your brother and your mother -- where did they stay
13 that night at your grandma's or at the house?

14 A. At the house.

15 Q. What about the next day?

16 A. We left. They were gone. We stayed at my grandma's.

17 Q. Okay. So after that point y'all never went back in the
18 house?

19 A. No, ma'am.

20 Q. About how long do you think you stayed with your
21 grandmother?

22 A. How long did we live there?

23 Q. Yes.

24 A. I'm not sure.

25 Q. Are y'all -- when you live with your mom, when it's

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- 1 your mom's time, where do y'all live?
- 2 A. Now?
- 3 Q. Yes.
- 4 A. At our house in ---
- 5 Q. So you have your own house now?
- 6 A. Yes, ma'am.
- 7 Q. Do you think you lived with your grandma for a few
- 8 months, a few days, weeks, years?
- 9 A. Months or a year. I'm not sure.
- 10 Q. Okay. Just a relative time frame. What happened when
- 11 you told your father?
- 12 A. He ---
- 13 Q. How did he act?
- 14 A. He was really hurt and just mad.
- 15 Q. Did you do anything -- did y'all ever report it to the
- 16 police?
- 17 A. Yes, ma'am.
- 18 Q. Was it before or after you told your dad?
- 19 A. It was after I told my dad.
- 20 Q. When you went to the Sheriff's Office, did you tell
- 21 them what happened to you?
- 22 A. I wrote it down.
- 23 Q. Okay. And was it a male officer or female officer you
- 24 spoke with first?
- 25 A. A male officer.

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1 Q. Younger or older?

2 A. I don't remember.

3 Q. Well, everybody's probably older than you. Did you
4 give a second statement as well?

5 A. Yes, ma'am.

6 MS. BARWICK: Your Honor, can we approach?

7 THE COURT: Yes, ma'am.

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

10 Q. Have you received counseling?

11 A. Yes, ma'am.

12 Q. About how many times do you go to counseling, say, a
13 week?

14 A. I go -- in a week? Once.

15 Q. Have you been going to counseling since this incident?

16 A. Yes, ma'am.

17 Q. Are you still in counseling?

18 A. Yes, ma'am.

19 Q. When you were at your grandmother's house, did MINOR
20 make a disclosure of sexual abuse?

21 A. Yes, ma'am.

22 Q. How did that come about?

23 A. Do you mean like how he came out with it?

24 Q. Yes. Well, I'll ask this question first. About how
25 long had y'all been out of the house when MINOR made his

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1 disclosure?

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

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

8 Q. Did MINOR make a disclosure of sexual abuse?

9 A. Yes, ma'am.

10 Q. When did he make that disclosure?

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

13 THE COURT: Disclosure to whom?

14 Q. Did he disclose to you any sexual abuse?

15 A. Yes, ma'am.

16 Q. Where did he make that disclosure?

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

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

19 A. Yes, ma'am.

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

21 A. My grandmother's.

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

24 A. I'm not sure.

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

1 days?

2 A. I'm not sure.

3 Q. Okay. How was he acting before he made the disclosure?

4 A. He was freaking out.

5 Q. What do you mean by freaking out?

6 A. He was pulling his hair, hiding in the closet and just
7 crying.

8 Q. Did your mom ask him what was the matter?

9 A. I don't remember.

10 Q. When he told you what happened, where was he?

11 A. In his bedroom.

12 Q. Okay. Immediately before he told you what happened,
13 where was he?

14 A. I think in the living room.

15 Q. Okay. He was in the living room. What made him go
16 into his room?

17 A. He went into the closet.

18 Q. The closet in his bedroom?

19 A. Yes, ma'am.

20 Q. And did you go and talk with MINOR

21 A. Yes, ma'am.

22 Q. And how was he acting?

23 A. Really scared.

24 Q. Okay. And what was he actually doing?

25 A. Pulling his hair.

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- 1 Q. Was he crying?
- 2 A. Yes, ma'am.
- 3 Q. Did you disclose to him what Rick had done to you?
- 4 A. Kind of. After he told me.
- 5 Q. Okay. When he disclosed to you -- let's back up. What
- 6 made you go in there to talk to him?
- 7 A. Because he's my brother and I just was scared for him.
- 8 Q. Why did you want to tell him what had happened to you?
- 9 A. I don't know.
- 10 Q. Was that the first time that you had told him what
- 11 happen to you?
- 12 A. Yes, ma'am.
- 13 Q. Okay. What was his reaction when you told him what
- 14 happened to you?
- 15 A. He was really, really angry.
- 16 Q. When he disclosed to you, did he disclose everything?
- 17 A. No, ma'am.
- 18 Q. How do you know that?
- 19 A. Because he won't tell everything.
- 20 Q. Okay. But how do you know he hasn't told everything?
- 21 A. Because he said so.
- 22 Q. Okay. Do you remember him before he disclosed drawing
- 23 any pictures?
- 24 A. Yes, ma'am.
- 25 Q. What did he draw a picture of?

MINOR - Direct Examination by Ms. Barwick

- 1 A. Rick dying.
- 2 Q. Okay. Had you disclosed to him what had happened to
- 3 you at that point?
- 4 A. I don't remember.
- 5 Q. He showed you the pictures -- did he show you the
- 6 pictures?
- 7 A. No, ma'am.
- 8 Q. How were you able to see those pictures?
- 9 A. Just -- I just seen them.
- 10 Q. Okay. Where were they when you discovered them?
- 11 A. The trash can.
- 12 Q. Were they just gently placed in there or were they
- 13 balled up?
- 14 A. Balled up.
- 15 Q. And was that -- did you see those pictures before or
- 16 after he disclosed?
- 17 A. I believe it was before.
- 18 Q. And when you told him in the bedroom, was that the
- 19 first time ---
- 20 A. Yes, ma'am.
- 21 Q. --- that you'd disclosed to MINOR what happened to you?
- 22 A. Yes, ma'am.
- 23 Q. Okay. After you told him what happened to you, did he
- 24 tell you everything -- well, did he tell you what Rick ---
- 25 MR. DEJONG: Your Honor, I'm going to object.

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

4 MS. BARWICK: Judge, ---

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

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

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

10 MS. BARWICK: No, Your Honor.

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

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

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

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

17 A. Yes, ma'am.

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

19 A. Really mad and hurt.

20 Q. You're older now. Do you think you're dealing with
21 this better than what MINOR dealing with?

22 A. Yes, ma'am.

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

25 THE COURT: Sustain the objection.

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MINOR - Cross Examination by Mr. DeJong

1 Q. How has MINOR changed since before all this happened
2 until now?

3 A. He's just -- I don't know. He's just different.

4 Q. Okay. Does he have an easy time talking about it?

5 A. No, ma'am.

6 Q. What does he do when he talks about it?

7 A. Gets really mad and just really angry.

8 Q. Does he like talking about it?

9 A. No, ma'am.

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

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

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

15 **CROSS-EXAMINATION**

16 **BY MR. DEJONG:**

17 Q. So you say this happened in July of 2008?

18 A. Yes, sir.

19 Q. And you were twelve at that time, right?

20 A. Yes, sir.

21 Q. All right. Now, and how old was MINOR

22 A. He was eight.

23 Q. Okay. Now, looking at this picture up here, did you
24 draw this picture?

25 A. No, sir.

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

MINOR - Cross Examination by Mr. DeJong

1 Q. Okay. On this night, your mother was home?

2 A. Yes, sir.

3 Q. I'm sorry?

4 A. Yes, sir. I'm sorry.

5 Q. Okay. And do you remember what day of the week --

6 well, the day -- well, I'm going to confuse you and me both

7 here in a minute. July the 7th of 2008, do you remember

8 what day of the week that was?

9 A. A Monday.

10 Q. Okay. So July the 6th would have been a Sunday?

11 A. Yes, sir.

12 Q. You came home from the beach on Sunday?

13 A. Yes, sir.

14 Q. Okay. When you got home from the beach, were all four
15 of you there in the house?

16 A. Yes, sir.

17 Q. That being you, MINOR your mom and Rick, right?

18 A. Yes, sir.

19 Q. Did your mom ever leave that night?

20 A. That night, no, sir.

21 Q. I'm sorry?

22 A. That night?

23 Q. Yes, ma'am.

24 A. No, sir.

25 Q. All right. And do you know or if you know, where did

- 1 she sleep that night?
- 2 A. In the room -- in their bedroom with Rick.
- 3 Q. Okay. Is that the room that's marked on this drawing
- 4 as Rick and Tina's bedroom?
- 5 A. Yes, sir.
- 6 Q. Now, I believe there's a little bathroom in that
- 7 bedroom, isn't there?
- 8 A. Yes, sir.
- 9 Q. Okay. Now, when you were living there in 2008, do you
- 10 know if Rick worked?
- 11 A. Yes, sir.
- 12 Q. Do you know what time he would get up to go to work?
- 13 A. He would get up about four, I'm pretty sure.
- 14 Q. I'm sorry?
- 15 A. I'm pretty sure it was like four.
- 16 Q. And your mama would get up with him?
- 17 A. No, sir.
- 18 Q. So you're saying he got up by himself?
- 19 A. Yes, sir. And then she would get up after.
- 20 Q. Okay. Would he still be home when your mom got up?
- 21 A. Yes, sir.
- 22 Q. Okay. And then they would have coffee together?
- 23 A. Yes, sir.
- 24 Q. Okay. Where would they have their coffee?
- 25 A. I usually wasn't awake.

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MINOR - Cross Examination by Mr. DeJong

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1 Q. Okay. So you don't know where they normally had their
2 coffee?

3 A. No, sir.

4 Q. Well, does Rick like to watch the news?

5 A. Yes, sir.

6 Q. Okay. Kind of a news buff, wasn't he?

7 A. Yes, sir.

8 Q. As far as you and MINOR sleeping in -- I guess that was
9 the living room?

10 A. Yes, sir.

11 Q. Is that a fairly common occurrence or did that happen
12 often or ---

13 A. No, sir.

14 Q. Have y'all ever slept in that room before?

15 A. Yes, sir.

16 Q. Okay. Now, I want to do a pause there and go back a
17 little bit, go back to this trip to Charleston. You and
18 Rick were going to go get some towels, weren't you?

19 A. Yes, sir.

20 Q. And actually, the disturbance, the episode happened
21 outside of the room?

22 A. I don't remember.

23 Q. You don't remember. Well, you remembered a moment ago,
24 if I recall correctly, that you said you had locked Rick out
25 of the room.

1 A. I just locked him out, just for a joke.

2 Q. All right. Well, let's take that for a moment. But
3 there was some more stuff that went on out in the parking
4 lot, wasn't there?

5 A. I don't remember.

6 Q. You don't remember hitting him out in the parking lot?

7 A. No, sir.

8 Q. You don't remember screaming out in the parking lot?

9 A. No, sir.

10 Q. And he wasn't doing anything to you in the parking lot,
11 was he?

12 A. No, sir.

13 Q. Okay. Now, when you say Rick touched you, do you know
14 what time of the day it was?

15 A. I don't remember exactly.

16 Q. Well, what time do you think it might have been?

17 A. It was early in the morning.

18 Q. Okay. Four o'clock, four-thirty?

19 A. Somewhere around four-thirty.

20 Q. Okay.

21 A. Four to four-thirty.

22 Q. And as I understood you, he got up normally about four
23 o'clock, the best you know, right?

24 A. Yes, sir.

25 Q. And then sometime after he got up, your mama got up,

MINOR - Cross Examination by Mr. DeJong

- 1 right?
- 2 A. Yes, sir.
- 3 Q. Okay. Before he left for work?
- 4 A. Yes, sir.
- 5 Q. Okay. What time did your mama give you this sleeping
- 6 pill?
- 7 A. I don't remember.
- 8 Q. Okay. Well, you said this happened around four-thirty.
- 9 Had it been a long time, a short time? Do you know?
- 10 A. It was before I went to sleep. I couldn't sleep.
- 11 Q. How often did you take sleeping pills?
- 12 A. Not too often.
- 13 Q. All right. Did you take any other kind of medicine?
- 14 A. Yes, sir.
- 15 Q. What else did you take?
- 16 A. ADHD medicine.
- 17 Q. I see. Had you taken that on July the 6th?
- 18 A. No, sir.
- 19 Q. Pardon me?
- 20 A. No, sir.
- 21 Q. Are you supposed to take that everyday?
- 22 A. I usually take it during the school time.
- 23 Q. All right. Now, July the 7th, you were not in school,
- 24 were you?
- 25 A. No, sir.

- 1 Q. You say you participated in cheerleading and tumbling?
- 2 A. Yes, sir.
- 3 Q. And in the summertime that was practice, right?
- 4 A. Yes, sir.
- 5 Q. And when you practiced cheerleading and tumbling, would
- 6 that be at the same place?
- 7 A. No, sir.
- 8 Q. All right. Well, let's do cheerleading first. How
- 9 many days a week did you practice cheerleading?
- 10 A. Like all week.
- 11 Q. Every day?
- 12 A. Yes, sir.
- 13 Q. Where did you go for that?
- 14 A. I think the high school.
- 15 Q. The high school in Liberty?
- 16 A. Yes, sir.
- 17 Q. Do you know how far away that was from your house?
- 18 A. Not very far.
- 19 Q. Okay. Who would normally take you to the cheerleading?
- 20 A. I don't remember.
- 21 Q. I see. Who would normally pick you up from the
- 22 cheerleading?
- 23 A. Either Rick or my mom.
- 24 Q. Okay. And when you were picked up from cheerleading
- 25 did MINOR come along to pick you up?

MINOR - Cross Examination by Mr. DeJong

- 1 A. I don't remember.
- 2 Q. You and MINOR have a very close relationship for a
- 3 brother and a sister, don't you?
- 4 A. Yes, sir.
- 5 Q. You love each other a lot?
- 6 A. Yes, sir.
- 7 Q. I'm sorry. You have to answer out loud.
- 8 A. Yes, sir.
- 9 Q. You protect each other, don't you?
- 10 A. Yes, sir.
- 11 Q. Cover each other's backs, don't you?
- 12 A. Yes, sir.
- 13 Q. Now, do you recall, MINOR what hours you took tumbling
- 14 practice?
- 15 A. I don't remember.
- 16 Q. I'm sorry?
- 17 A. Do you mean like when I took? I remember the day.
- 18 Q. We've got every day, okay.
- 19 A. Okay.
- 20 Q. Was it morning or afternoon?
- 21 A. I think it was afternoon.
- 22 Q. Early afternoon, mid afternoon, late afternoon?
- 23 A. I think around five.
- 24 Q. Okay. And what time would it be over?
- 25 A. I'm not sure.

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

MINOR - Cross Examination by Mr. DeJong

1 window in there. Do you remember which way your head was?

2 A. My head was closer to the window.

3 Q. To the window?

4 A. Yes, sir.

5 Q. Okay. And so that would have made your feet closer to
6 what is shown up here -- and I don't know if you can see it.
7 Your eyes are younger than mine. Can you see a chair and an
8 ottoman on that?

9 A. Yes, sir.

10 Q. Okay. So your feet would have been closer to the chair
11 and the ottoman, right?

12 A. Yes, sir.

13 Q. Now, is that where MINOR was sleeping?

14 A. Yes, sir.

15 Q. Okay. Did MINOR take a sleeping pill that night, do
16 you know?

17 A. No, sir.

18 Q. Now, you say you took melatonin. Did you get that out
19 of the bottle or did your mother just give you a pill?

20 A. My mom gave it to me.

21 Q. Okay. So you don't know whether it was melatonin or
22 some other sleeping pill, do you?

23 A. I know it was melatonin.

24 Q. Well, what does your mother do for a living?

25 A. She's a pharmacist.

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1 Q. Was she working during this period of time?

2 A. Was she a pharmacist then?

3 Q. Uh-huh (affirmative).

4 A. Yes, sir.

5 Q. All right. But on July the 6th, July the -- well, July
6 the 6th, the morning of July the 7th, she wasn't working?

7 She wasn't at work. Let me put it that way.

8 A. Yes, sir.

9 Q. Okay. And MINOR was in the house?

10 A. Yes, sir.

11 Q. All right. Now, you say the light was on when you woke
12 up?

13 A. Yes, sir.

14 Q. And you and MINOR watch the Disney Channel a lot or did
15 then, at any rate, didn't you?

16 A. Yes, sir.

17 Q. Okay. Other than the TV that was in the living room --
18 well, was there a TV in Rick and your mom's room?

19 A. Yes, sir.

20 Q. Were there TVs in any other rooms?

21 A. Mine and MINOR

22 Q. All the rooms in the house?

23 A. Yes, sir.

24 Q. Your room and MINOR room were pretty messed up,
25 right?

MINOR - Cross Examination by Mr. DeJong

1 A. Yes, sir, they were, like destroyed.

2 Q. Yes, ma'am. I'm sorry. I didn't mean to interrupt
3 you. Messed up to the point nobody could sleep in them,
4 right?

5 A. Yes, sir.

6 Q. Or watch television in them?

7 A. Yes, sir.

8 Q. Now, you said that, as I understood you, that this was
9 not the first time you had slept in the living room, right?

10 A. Yes, sir.

11 Q. How many times would you say you had slept in the
12 living room three months before July? In May, June, and
13 July?

14 A. I don't remember. But I didn't really ever sleep in
15 there, just sometimes.

16 Q. Well, I understand that. You didn't sleep there every
17 night?

18 A. No, sir.

19 Q. But this wasn't the first night you had slept there,
20 right?

21 A. No, sir.

22 Q. There were certainly other times when you slept there
23 that Rick came in the living room, right?

24 A. I guess. I was asleep.

25 Q. Okay. Well, do you ever remember the news coming on?

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1 A. I would be asleep.

2 Q. All right. Well, when you went to sleep on the sofa on
3 July the 6th or the 7th, whatever day that was, where was
4 the remote when you went to sleep?

5 A. On the trunk. I don't remember where it was. I know
6 where it was when I woke up.

7 Q. Yes, ma'am. It could have been behind you, correct?

8 A. I don't remember.

9 Q. Right. You just don't know. It could have been behind
10 you?

11 A. Could have been. I don't remember.

12 Q. Yes, ma'am. You could have been laying on it?

13 A. I don't remember.

14 Q. Because you don't remember, correct?

15 A. (No verbal response).

16 Q. All right. Do you remember when you first told
17 somebody about this, you said that Rick's hands were under
18 your clothes?

19 A. Could you ask that again? I don't understand.

20 Q. Yes, ma'am. When you first told somebody -- I don't
21 know if it was your mother or police officer, who -- you
22 said Rick's hands were under your clothes. Do you remember
23 that?

24 A. I don't remember that.

25 Q. And then later on you said your clothes were down,

MINOR - Cross Examination by Mr. DeJong

- 1 right?
- 2 A. Yes, sir.
- 3 Q. Well, you say this happened on July the 7th?
- 4 A. Yes, sir.
- 5 Q. And you say you told your mom on July the 7th, right?
- 6 A. Yes, sir.
- 7 Q. But you didn't go to the police on July the 7th, did
- 8 you?
- 9 A. No, sir.
- 10 Q. Actually, it was about a week later, wasn't it?
- 11 A. I don't remember exactly when, like ---
- 12 Q. That's fair enough. Dates are hard to remember.
- 13 A. Yes, sir.
- 14 Q. Okay. But it was several days after you told your mom
- 15 that you ever went to the police, right?
- 16 A. Yes, sir.
- 17 Q. Who actually took you to the police?
- 18 A. My dad.
- 19 Q. Now, you swapped off with weeks between your mom and
- 20 your dad, correct?
- 21 A. Yes, sir.
- 22 Q. Okay. Now, when you were at your dad's, did you stay
- 23 with your dad all day and every night for a week or did you
- 24 come home to your mom's some? How did that work?
- 25 A. Well, I stay with my mom most of the time just -- and

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

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

7 A. Yes, sir.

8 Q. All right. On these -- well, after July the 7th of
9 2008, y'all went to live with your grandmother?

10 A. Yes, sir.

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

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

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

15 A. Yes, sir.

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

18 A. Yes, sir.

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

20 A. About, like, what happened?

21 Q. Yes, ma'am.

22 A. Yes, sir.

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

25 A. Yes, sir.

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1 Q. And when you talked with your mom these several times
2 about it, was MINOR there?

3 A. I don't remember.

4 Q. Do you know if MINOR heard these conversations between
5 you and your mom?

6 A. No, sir.

7 Q. No, he didn't? Or no you don't remember?

8 A. I don't remember. He wasn't around.

9 Q. MINOR liked to sneak around, didn't he?

10 A. Yes, sir.

11 Q. Pardon me?

12 A. Yes, sir.

13 Q. Liked to hide, right?

14 A. Yes, sir.

15 Q. That was kind of his thing, right?

16 A. Yes, sir.

17 Q. And liked to play with action figures, right?

18 A. Yes, sir.

19 Q. That was more or less how he occupied himself, right,
20 with action figures and sneaking around, right?

21 A. Yes, sir.

22 Q. All right. Do you know what action figures he played
23 with?

24 A. I don't remember.

25 Q. Okay. Well, on July the 7th, you said you went and

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- 1 spent the day with the babysitter. Is that right?
- 2 A. Yes, sir.
- 3 Q. Who took you to the babysitter?
- 4 A. My mom.
- 5 Q. Okay. And who went to the babysitter?
- 6 A. Me and my brother.
- 7 Q. And did she drive you, walk you, how did you get there?
- 8 A. My mom drove us.
- 9 Q. And how far is it from your house to the babysitter?
- 10 A. About five to seven minutes.
- 11 Q. Five to seven -- I'm sorry?
- 12 A. About five to seven minutes.
- 13 Q. Minutes?
- 14 A. Minutes, yes, sir.
- 15 Q. And nothing was said to your mother during that point
- 16 in time, right?
- 17 A. No, sir.
- 18 Q. Now, Missy, had she been baby -- you weren't baby --
- 19 but we'll use the word babysitter. Had she been your
- 20 babysitter for a while?
- 21 A. Yes, sir.
- 22 Q. You and Missy get along well together?
- 23 A. Yes, sir.
- 24 Q. Did you ever say anything to Missy that day?
- 25 A. No, sir.

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- 1 Q. You were twelve at the time?
- 2 A. Yes, sir.
- 3 Q. And did you know where your mother worked?
- 4 A. Yes, sir.
- 5 Q. Did you know her telephone number?
- 6 A. Yes, sir.
- 7 Q. Did you ever call her throughout the day?
- 8 A. I don't remember. I'm sure I talked to her.
- 9 Q. All right. But in talking to her when you called her
- 10 throughout the day, you never said anything about what you
- 11 say Rick did?
- 12 A. No, sir.
- 13 Q. Now, as I understand it, you say you were laying on the
- 14 couch, that's on the long one here. Right here. Now my
- 15 finger doesn't want to work but somewhere right in there,
- 16 right?
- 17 A. Yes, sir.
- 18 Q. But you were on the big couch?
- 19 A. Yes, sir.
- 20 Q. And your head was closer to the window?
- 21 A. Yes, sir.
- 22 Q. And your feet were towards the kitchen?
- 23 A. Yes, sir.
- 24 Q. Now, was Rick sitting at your head or at your feet?
- 25 A. My feet.

MINOR - Cross Examination by Mr. DeJong

- 1 Q. At your feet. Was he sitting all the way back on the
2 sofa? Was he sitting, standing, what was he doing?
3 A. He was sitting down, leaning over.
4 Q. Sitting down, leaning over. Now, you say he touched
5 you?
6 A. Yes, sir.
7 Q. Was it the front of his hand or the back of his hand
8 that you say touched you?
9 A. His front.
10 Q. I see. All right. You say that once this happened you
11 just went back to sleep?
12 A. Yes, sir.
13 Q. You stayed in the living room?
14 A. Yes, sir.
15 Q. Did you wake MINOR up?
16 A. No, sir.
17 Q. Now, your mama's back in the bedroom, right?
18 A. Yes, sir.
19 Q. Did you go wake her up?
20 A. No, sir.
21 Q. How was Rick dressed?
22 A. For work.
23 Q. For work?
24 A. Yes, sir.
25 Q. Does he wear one of these get-ups, ---

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1 A. No, sir.

2 Q. --- speaking of my suit? Or does he wear just trousers
3 or slacks or how does he dress?

4 A. Just like a Carhart T-shirt and jeans.

5 Q. And when you say he did this, he was fully dressed,
6 wasn't he?

7 A. Yes, sir.

8 Q. Nothing unusual about his clothing, was there?

9 A. No, sir.

10 Q. You don't recall what time you took the sleeping pill.
11 Do you have any idea how long you had been asleep?

12 A. No, sir.

13 Q. Are you an active sleeper?

14 A. What does that mean?

15 Q. I thought you were going to ask me that. That means do
16 you toss and turn in your sleep a good bit?

17 A. Not usually.

18 Q. Okay. Well, does it make a difference when you take a
19 sleeping pill or when you don't take a sleeping pill?

20 A. It helps me sleep better.

21 Q. Okay. Taking sleeping pills, do you ever dream?

22 A. No, sir.

23 Q. You don't dream at all?

24 A. Oh, I thought you said drink.

25 Q. Oh, I'm sorry. There are plenty of uses for hearing

MINOR - Cross Examination by Mr. DeJong

- 1 aids here. I'm trying to figure out how loud my voice is.
- 2 I apologize. Do you dream?
- 3 A. Yes, sir.
- 4 Q. Okay. Vivid dreams?
- 5 A. What is that?
- 6 Q. Okay. I'm sorry.
- 7 A. That's okay.
- 8 Q. Bright dreams. You know, just really real.
- 9 A. Sometimes.
- 10 Q. Yes, ma'am. Okay.
- 11 A. I do it, like, whether I take medicine or just ---
- 12 Q. Sure. I understand. I understand. And you did that
- 13 at this point in your life as well, when you were twelve
- 14 years old?
- 15 A. Yes, sir.
- 16 Q. Do you think you dream more at twelve than at fifteen?
- 17 A. Not really.
- 18 Q. About the same?
- 19 A. Yes, sir.
- 20 Q. Still these bright, vivid dreams?
- 21 A. Yes, sir.
- 22 Q. Okay. Where -- okay. Here's the couch. Hey, this
- 23 works better than that. Here's a couch. Here's a trunk,
- 24 TV. Where was the lamp?
- 25 A. I'm thinking.

MINOR - Cross Examination by Mr. DeJong

1 Q. Okay. That's what we kind of call an end table or
2 something?

3 A. Yes, sir.

4 Q. Okay. All right. Now, you say the television was on?

5 A. When?

6 Q. When you say Rick came in the living room. Was the
7 television on?

8 A. Yes, sir.

9 Q. And it was on the Disney Channel?

10 A. It was on the news when I woke up.

11 Q. On the news when you woke up?

12 A. Yes, sir.

13 Q. Okay. I'm sorry. I may have misunderstood you. What
14 time, if you know, did Rick normally get home in the
15 evening? Or was it afternoon? Do you know?

16 A. It was in the afternoon, but I'm not sure.

17 Q. Well, when your mom worked and Rick worked, did they
18 work the same hours or different hours or do you know?

19 A. Different.

20 Q. Different. Okay. What time -- if you know, what time
21 would your mom normally wake up?

22 A. I'm not sure.

23 Q. Okay. Well, at any rate, Missy -- at any rate, Rick
24 picked you up from Missy's on July the 7th?

25 A. Yes, sir.

MINOR - Cross Examination by Mr. DeJong

- 1 Q. What kind of vehicle did he drive?
- 2 A. A truck.
- 3 Q. A truck. One seat, two seats? How many seats?
- 4 A. Three.
- 5 Q. Three seats?
- 6 A. Yes, sir.
- 7 Q. Well, when you went to Missy's on July the 7th, did
- 8 MINOR go also?
- 9 A. Yes, sir.
- 10 Q. And did Rick pick both of you up?
- 11 A. Yes, sir.
- 12 Q. Okay. And when we say this truck had three seats, was
- 13 that three seats in a row, like bucket seats, or did it have
- 14 seats up here and then another door or some area back there
- 15 that you could get into a seat?
- 16 A. Just three in a row.
- 17 Q. Three in a row?
- 18 A. Yes, sir.
- 19 Q. All right. Now, where did you sit?
- 20 A. The far passenger side.
- 21 Q. Okay. MINOR in the middle?
- 22 A. Yes, sir.
- 23 Q. When you get home -- well, let's back up a little bit.
- 24 You said Rick asked if you were mad at him?
- 25 A. Yes, sir.

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

3 A. No, sir.

4 Q. No idea?

5 A. He just asked me.

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

8 A. Yes, sir.

9 Q. Any conversation?

10 A. No, sir.

11 Q. Dead silence?

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

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

15 A. Yes, sir.

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

18 A. The house door.

19 Q. And did MINOR normally stay in the bathroom when you
20 took a shower?

21 A. No, sir.

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

24 A. Yes, sir.

25 Q. Did he ask you anything about that?

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1 A. About? What do you mean?

2 Q. Ask you why you wanted him in the bathroom while you
3 were taking a shower?

4 A. No, sir. I just made him stay in there.

5 Q. So he stayed in the shower there with you the entire
6 time you were showering, right?

7 A. Yes, sir.

8 Q. Then from there -- you say you were afraid, but when
9 you left there, if I understood you correctly, you and MINOR
10 went to Rick's bedroom. Is that right?

11 A. Yes, sir.

12 Q. Okay. Which is way back over here, right?

13 A. Yes, sir.

14 Q. Now, the door -- here's the front door right here,
15 correct?

16 A. Yes, sir.

17 Q. And I don't see another door on there. I'm sure there
18 is one. Is there a door that comes out of the kitchen into
19 the garage?

20 A. Do you want me to point?

21 Q. Yeah. Please.

22 A. Right here.

23 Q. Okay. I thought that's probably where it was. So you
24 say you're afraid of Rick, but when you get through taking a
25 shower, you go to the room the farthest away from any door

MINOR - Cross Examination by Mr. DeJong

1 in the house, right?

2 A. Yes, sir.

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

5 A. Yes, sir.

6 Q. Was that cell phone working?

7 A. Yes, sir.

8 Q. And did MINOR have a cell phone?

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

10 Q. I'm sorry?

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

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

14 A. Rick had one.

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

18 A. I don't remember.

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

20 A. Yes, sir.

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

23 A. Yes, sir.

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

MINOR - Cross Examination by Mr. DeJong

- 1 got home, did you talk to your mother on the telephone?
- 2 A. By the time she got home, before ... I don't remember.
- 3 Q. All right. Now, there was nothing when you and MINOR
- 4 came out of the shower -- and I just -- help me out here.
- 5 Where's the bathroom?
- 6 A. Mine?
- 7 Q. I beg your pardon?
- 8 A. What bathroom?
- 9 Q. The one where you took the shower.
- 10 A. Oh. (Indicating.)
- 11 Q. Okay. And then where's the other little bathroom?
- 12 A. I think it's ... (indicating.)
- 13 Q. Okay. So those two bathrooms kind of back up to each
- 14 other but there's a wall in between them, correct?
- 15 A. Yes, sir.
- 16 Q. All right. So you and MINOR went to the back part of
- 17 the house to Rick and your mom's bedroom?
- 18 A. Yes, sir.
- 19 Q. Did Rick ever come back there while you were back
- 20 there?
- 21 A. Yes, sir.
- 22 Q. What did he do?
- 23 A. Sir?
- 24 Q. What did he do?
- 25 A. Told us not to shut the door.

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MINOR - Cross Examination by Mr. DeJong

1 Q. Okay. Did he come in the room?

2 A. He just came right to the door.

3 Q. Okay. Did he ever try to get MINOR to come out of the
4 bedroom?

5 A. No, sir.

6 Q. Ever try to get you to come out of the bedroom?

7 A. No, sir.

8 Q. So all that transpired is he said, don't close the
9 door?

10 A. Yes, sir.

11 Q. But that was basically -- well, you couldn't lock the
12 doors?

13 A. He told us not to shut the door so the air could
14 circulate.

15 Q. I think -- wasn't there an air conditioning unit in one
16 of these windows?

17 A. In Rick's.

18 Q. Okay. Can you point out where that was?

19 A. (Indicating.)

20 Q. All right. If you know, was that the only air
21 conditioner that was in the house?

22 A. I don't think. I think there was one in the living.

23 Q. But he came back and said don't close the door because
24 the air needs to circulate?

25 A. Yes, sir.

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MINOR - Cross Examination by Mr. DeJong

1 Q. Was he angry, that you could tell?

2 A. Not that I could tell.

3 Q. Was he upset?

4 A. Not that I could tell.

5 Q. From the time you got home from Missy's or Misty,
6 whatever her name was, did Rick ever leave the house?

7 A. No, sir.

8 Q. MINOR didn't have as good a relationship with Rick as
9 you had, did he?

10 A. I don't remember.

11 Q. Fair enough. How long, if you know, MINOR how long
12 was it after you shared this with your mother that you say
13 MINOR talked to you?

14 A. I don't, I don't remember, not the exact days.

15 Q. Well, was it the next day?

16 A. No, sir.

17 Q. It was a good bit of time that lapsed in there?

18 A. A little bit of time, yes, sir.

19 Q. When you say on the evening of July the 7th of 2008
20 that you and your mother went to your grandmother's house.

21 Is that right?

22 A. Yes, sir.

23 Q. Where was MINOR

24 A. He came with us.

25 Q. He came with you?

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MINOR - Cross Examination by Mr. DeJong

1 A. To my grandmother's.

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

3 A. Rick did.

4 Q. --- other than Rick? Okay.

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

6 Honor?

7 THE COURT: Yes, sir.

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

10 A. Yes, sir.

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

13 A. Yes, sir.

14 Q. Getting ready for Court, right?

15 A. Yes, sir.

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

18 A. A few times.

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

21 A. Yes, sir.

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

24 A. No, sir.

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

MINOR - Redirect Examination by Ms. Barwick

1 A. Yes, sir.

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

3 A. Yes, sir.

4 Q. Quite a few times?

5 A. Quite a few times.

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

8 THE COURT: Any redirect?

9 MS. BARWICK: Yes, sir.

10 REDIRECT EXAMINATION

11 BY MS. BARWICK:

12 Q. MINOR, every time you'd come and speak with me, what
13 has -- the ten rules that I've told you are?14 A. Tell the truth. Tell the truth. Tell the truth. Tell
15 the truth. Tell the truth. Tell the truth. Just tell the
16 truth and if you're not sure at the end, tell them you're
17 not sure.18 Q. Okay. Where did -- you said that MINOR and your mom
19 came over to your grandma's on July the 7th. Where did they
20 sleep that night?

21 A. Rick's, in my bedroom.

22 Q. They went back to Rick's?

23 A. Yes, ma'am.

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

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MINOR - Redirect Examination by Ms. Barwick

1 A. What do you mean? I'm sorry.

2 Q. You said you didn't remember screaming at the Defendant
3 in the parking lot down in Charleston. Did you scream at
4 him?

5 A. I don't remember screaming at him.

6 Q. Okay. And you take ADHD medication during the school
7 year and not the summertime because of why?

8 A. Just so -- I don't really need to concentrate.

9 Q. So you use the ADHD medicine to concentrate?

10 A. Yes, ma'am.

11 Q. When Rick was touching you and it caused you to wake
12 up, and he saw that he woke up, what did he say?

13 A. He asked where the remote was.

14 Q. So he asked where the remote was?

15 A. Yes, ma'am.

16 Q. Okay. And it was where again?

17 A. On the trunk.

18 Q. Do you remember all of this clearly, what Rick did to
19 you, or is it fuzzy?

20 A. I remember it.

21 Q. Were you dreaming ---

22 A. No.

23 Q. --- that it happened to you?

24 A. No, ma'am.

25 Q. Did it happen to you?

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MINOR - Redirect Examination by Ms. Barwick

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1 A. Yes, ma'am.

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

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

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

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

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

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

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

19 THE COURT: Yes, sir.

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

MINOR - Redirect Examination by Ms. Barwick

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

6 THE COURT: Does the State have a position?

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

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

17 MR. DEJONG: Yes, sir.

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

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

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

22 MS. BARWICK: Yes, sir, Your Honor.

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

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

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MINOR - Direct Examination by Ms. Barwick

1 (WHEREUPON, the jury entered the open court at

2 approximately 11:34 a.m.)

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

5 MS. BARWICK: The State would call MINOR CHILD 2
6 to the stand.

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

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

12 THE WITNESS: Yes, ma'am.

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

15 THE WITNESS: MINOR CHILD 2

16 MINOR CHILD 2

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MS. BARWICK:

20 Q. MINOR this is a lot like TV, isn't it? Who's your
21 sister?

22 A. MINOR CHILD 1

23 Q. Okay. Who's your mom?

24 A. Tina Aiken.

25 Q. Who's your dad?

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MINOR - Direct Examination by Ms. Barwick

1 A. Ted Wheeler.

2 Q. Okay. Who do you live with?

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

5 Q. Okay. When's your birthday?

6 A. November 1st.

7 Q. Do you remember which year?

8 A. 1999.

9 Q. How old are you now?

10 A. Eleven.

11 Q. Are you in middle school right now?

12 A. Yes, ma'am.

13 Q. And what grade are you in?

14 A. Going to six.

15 Q. What are you studying? Well, what did you just study?

16 I guess you're on summer break. I forget about that now.

17 Back in fifth grade, what were you studying?

18 A. Science and social studies and reading.

19 Q. What's your favorite subject?

20 A. Science.

21 Q. Are you good in science?

22 A. Yes, ma'am.

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

25 A. No, ma'am.

MINOR - Direct Examination by Ms. Barwick

- 1 Q. Did you want them in the courtroom?
- 2 A. No, ma'am.
- 3 Q. And why not?
- 4 A. I feel more comfortable talking about it.
- 5 Q. Do you like talking about what we're going to talk
- 6 about today?
- 7 A. No, ma'am.
- 8 Q. Why don't you like talking about it?
- 9 A. It's embarrassing.
- 10 Q. Do you remember living with Rick?
- 11 A. Yes, ma'am.
- 12 Q. Was he your step-dad?
- 13 A. Yes, ma'am.
- 14 Q. When you first started living with him, how would you
- 15 describe your relationship with him? Did you like him?
- 16 A. Yes, ma'am.
- 17 Q. Did y'all get along pretty well?
- 18 A. Yes, ma'am.
- 19 Q. What are some of the things you would do together?
- 20 A. We would go to the Liberty Bell. He would just take me
- 21 places.
- 22 Q. Were y'all kind of like buddies?
- 23 A. Yes, ma'am.
- 24 Q. Did he ever punish you or anything like that?
- 25 A. No, ma'am.

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MINOR - Direct Examination by Ms. Barwick

1 Q. Did he ever do any spankings?

2 A. No, ma'am.

3 Q. Is he strict or more lenient than your dad?

4 A. Less stricter.

5 Q. Did you know what lenient meant?

6 A. (Negative nod).

7 Q. Okay. I guess -- do you think -- you said your dad is
8 more strict?

9 A. Yes, ma'am.

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

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

16 Q. Can you sit up real quick?

17 A. Yes, ma'am.

18 Q. Are you too squished like that?

19 A. No, ma'am.

20 Q. Do you remember moving out of the house with Rick?

21 A. Yes, ma'am.

22 Q. When you first moved out did you know why y'all moved
23 out?

24 A. No, ma'am.

25 Q. Did Rick ever touch you in any inappropriate ways?

MINOR - Direct Examination by Ms. Barwick

1 A. Yes, ma'am.

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

4 THE COURT: Your objection is noted and overruled.

5 MR. DEJONG: Thank you, Your Honor.

6 Q. That means you can answer it, MINOR Did the Defendant
7 ever -- or did Rick ever touch you in any way that was
8 inappropriate?

9 A. Yes, ma'am.

10 Q. Where did he touch you?

11 A. On my ...

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

14 A. Yes, ma'am.

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

17 A.. A worm.

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

19 A. Yes, ma'am.

20 Q. Did Rick ever touch you on your worm?

21 A. Yes, ma'am.

22 Q. Where were you when he did that?

23 A. In his room.

24 Q. Where were you in his room?

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

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1 Q. When he touched your worm, was it underneath your
2 clothing or over your clothing?

3 A. Underneath.

4 Q. Did you have your clothing on?

5 A. Yes, ma'am.

6 Q. So he touched your skin?

7 A. Yes, ma'am.

8 Q. On your worm?

9 A. Yes, ma'am.

10 Q. What did he touch it with?

11 A. His hand.

12 Q. What would he -- did he do anything with his hand?

13 A. He just grabbed it?

14 Q. And how did it feel?

15 A. It hurt.

16 Q. Did he say anything when he did that?

17 A. He -- one time he told me not to tell.

18 Q. Did he tell you why not to tell?

19 A. What do you mean?

20 Q. Okay. Did he ever say why you shouldn't tell?

21 A. Because he might get in trouble or something.

22 Q. Did he touch your worm once or twice?

23 A. Twice.

24 Q. The second time he touched your worm, where were you?

25 A. In his room.

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1 Q. And where in his room?

2 A. The news was on and this time it was on his bed still.

3 Q. Okay. And was his hand on your skin again like the
4 first time?

5 A. Yes, ma'am.

6 Q. Was your clothing on?

7 A. Yes, ma'am.

8 Q. Did he go under your clothing or over your clothing?

9 A. Under.

10 Q. Did he do anything with his hand this time?

11 A. He grabbed it.

12 Q. And did it hurt again?

13 A. Yes, ma'am.

14 Q. And, MINOR I know this embarrasses you a little bit.

15 Did he force you to ever touch his worm?

16 A. Yes, ma'am.

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

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

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

22 Q. MINOR did he ever force you to touch his hand -- or to
23 touch his worm?

24 A. Yes, ma'am.

25 Q. Was his clothing on?

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MINOR - Direct Examination by Ms. Barwick

1 A. Yes, ma'am.

2 Q. Okay. So did you go over his clothing or under his
3 clothing?

4 A. Under.

5 Q. Do you remember what kind of underwear he wore or do
6 you remember that at all?

7 A. Hanes.

8 Q. Okay. So were they like boxers or like briefs?

9 A. Briefs.

10 Q. Okay. Now, we're going to talk about the penetration
11 side of things a little bit. Did the touching happen before
12 the penetrating?

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

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

17 MS. BARWICK: Yes, sir.

18 THE COURT: Just ask the question ---

19 MS. BARWICK: Yes, sir.

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

21 Q. Did the Defendant ever penetrate you?

22 A. Yes, ma'am.

23 Q. Do you know what penetration means?

24 A. Yes, ma'am.

25 Q. What does it mean?

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MINOR - Direct Examination by Ms. Barwick

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- 1 A. When something like goes in another something.
- 2 Q. When the Defendant penetrated you was that before or
3 after the touching?
- 4 A. That was after.
- 5 Q. Now, we're going to talk a little bit about this
6 penetration. How did he penetrate you? I know you don't
7 like to talk about it, but we'll talk about it and then
8 we'll be done with it, okay? How did he penetrate you?
- 9 A. He stuck his worm in my butt.
- 10 Q. Okay. MINOR do you remember where you were when he
11 did that?
- 12 A. In his room.
- 13 Q. And where in his room?
- 14 A. On the floor.
- 15 Q. Do you remember what was on the TV?
- 16 A. News.
- 17 Q. Were you clothes off all the way?
- 18 A. They were a little bit.
- 19 Q. Were they -- your bottom half, what were you wearing?
20 Were they pants or shorts?
- 21 A. I don't remember.
- 22 Q. Well, the bottom half of your clothing, was it all the
23 way off or pulled down?
- 24 A. Just pulled down.
- 25 Q. Do you remember what position you were in?

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MINOR - Direct Examination by Ms. Barwick

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- 1 A. Like on my knees.
- 2 Q. And where was the Defendant when he did that?
- 3 A. On my back.
- 4 Q. Okay. What did you say, I'm sorry?
- 5 A. Like on my back part.
- 6 Q. Was he behind you or in front of you?
- 7 A. Behind me.
- 8 Q. Did you see his worm?
- 9 A. No, ma'am.
- 10 Q. How do you know he stuck in your butt?
- 11 A. Because that's what it felt like.
- 12 Q. How did that feel?
- 13 A. Bad.
- 14 Q. Did you feel any pain with that?
- 15 A. Yes, ma'am.
- 16 Q. What were you able to see?
- 17 A. Just around, like carpet.
- 18 Q. Did you ever tell anybody about that?
- 19 A. (Negative nod.)
- 20 Q. Did you tell right away what happened to you?
- 21 A. No, ma'am.
- 22 Q. Why didn't you tell right away?
- 23 A. Because he told me not to.
- 24 Q. Okay. Why do you think he told you not to?
- 25 A. Because he would get in trouble.

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MINOR - Direct Examination by Ms. Barwick

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- 1 Q. Did he ever make any threats or promises to you?
- 2 A. Yes, ma'am.
- 3 Q. What did he do?
- 4 A. Told me that he would hurt my family.
- 5 Q. Did you believe him?
- 6 A. Yes, ma'am.
- 7 Q. How do you feel about Rick now?
- 8 A. A nasty man.
- 9 Q. Do you remember your sister staying the night at your
- 10 grandma's house and you and your mom staying home?
- 11 A. Yes, ma'am.
- 12 Q. Where did you and your mom sleep that night?
- 13 A. I don't remember.
- 14 Q. Did y'all sleep together or apart?
- 15 A. Together.
- 16 Q. Was it in Rick's room?
- 17 A. No, ma'am.
- 18 Q. Okay. How many rooms are in the house?
- 19 A. Three.
- 20 Q. Do you remember if it was in your room or in MINOR
- 21 room?
- 22 A. No.
- 23 Q. What were your sleeping patterns like? Where did you
- 24 normally sleep?
- 25 A. Like in my bed or something?

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- 1 Q. Right. Where did you ---
- 2 A. Oh. I mostly slept in my closet.
- 3 Q. Okay. And did you ever sleep with your sister?
- 4 A. Yes, ma'am.
- 5 Q. Why would you sleep in your closet?
- 6 A. So in case he tried to find me.
- 7 Q. And who were you worried about finding you?
- 8 A. Rick.
- 9 Q. Well, why did you sleep in your closet? Did you think
- 10 he could find you in there?
- 11 A. (Negative nod.)
- 12 Q. Describe your closet a little bit for the jury. Is it
- 13 the kind that just opens and shuts or are they the doors
- 14 that open and shut?
- 15 A. The doors, like it bends and then flattens.
- 16 Q. Okay. Did Rick ever say anything to you about sleeping
- 17 in your closet?
- 18 A. Yes, ma'am.
- 19 Q. What did he say?
- 20 A. I don't remember.
- 21 Q. Okay. Do you remember telling your sister what Rick
- 22 did to you?
- 23 A. Yes, ma'am.
- 24 Q. Have you told her everything?
- 25 A. No, ma'am.

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MINOR - Direct Examination by Ms. Barwick

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1 Q. Why didn't you tell her everything?

2 A. I don't remember.

3 Q. When you told your sister -- well, do you remember your
4 sister telling you what Rick did to her?

5 A. Yeah.

6 Q. Did she tell you what Rick did to her before you told
7 her what he did to you? Do you understand that question?

8 A. No, ma'am.

9 Q. Did MINOR tell you what Rick did to her before or after
10 you told her what happened to you?

11 A. She told me first and then I told them.

12 Q. Well, do you remember drawing pictures of Rick?

13 A. Yes, ma'am.

14 Q. Will you tell the jury a little bit about those
15 pictures?

16 A. I drew one with him hanging. And that's the only one I
17 can remember.

18 Q. And why did you draw that picture?

19 A. Because after he did it to me.

20 Q. Do you think this has changed you at all?

21 A. Yes, ma'am.

22 Q. How do you think it's changed you?

23 A. I used to be like a nice kid. But now when people try
24 to pick on me, I'm meaner.

25 Q. What about the pictures on the walls? How do you feel

MINOR - Cross Examination by Mr. DeJong

1 about those?

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

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

5 A. Yes, ma'am.

6 Q. And how did you try doing that?

7 A. I fought back.

8 Q. Did it work?

9 A. Sometimes.

10 Q. How would you fight back?

11 A. Just kick and punch and stuff.

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

14 THE COURT: You may cross-examine.

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

17 **CROSS-EXAMINATION**

18 **BY MR. DEJONG:**

19 Q. So how old are you now, MINOR

20 A. I'm eleven.

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

23 A. I can't remember.

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

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MINOR - Cross Examination by Mr. DeJong

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- 1 A. Yes, ma'am -- I mean, yes, sir.
- 2 Q. And not that you talked about it a lot, but anytime you
- 3 talked about it you said it was your worm, right?
- 4 A. Yes, sir.
- 5 Q. Now wee wee?
- 6 A. Well, yeah, I call it that, too.
- 7 Q. Pardon me?
- 8 A. I call it that, too.
- 9 Q. I see. But mostly worm?
- 10 A. (Affirmative nod.)
- 11 Q. Okay. Now, you say Rick touched you worm before the
- 12 last thing you shared with this lady over here, right?
- 13 A. Yes, sir.
- 14 Q. And how many times?
- 15 A. You mean like he touched me?
- 16 Q. Uh-huh (affirmative).
- 17 A. Two.
- 18 Q. Okay. And how old were you, do you say, when that
- 19 happened?
- 20 A. I was eight.
- 21 Q. Okay. So you would have turned eight in November of
- 22 ---
- 23 A. The 1st.
- 24 Q. --- 2007, right?
- 25 A. Yes, sir.

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MINOR -Cross Examination by Mr. DeJong

1 Q. How long did you and your mom and sister live with

2 Rick?

3 A. I can't remember.

4 Q. Well, for you was it a long time, a little while or how

5 long?

6 A. It felt like a long time.

7 Q. All right. Do you ever remember telling anyone that

8 you didn't like Rick because he told lies on you?

9 A. Yes, sir.

10 Q. And do you remember who you told that to?

11 A. My mom.

12 Q. Anybody else?

13 A. My dad.

14 Q. Anybody else?

15 A. I can't remember.

16 Q. Okay. Now you told them that before you ever say Rick

17 touched you, didn't you?

18 A. I can't remember.

19 Q. Well, you felt like Rick told lies on you to get you in

20 trouble, right?

21 A. No.

22 Q. Do you ever remember telling anyone that Rick told lies

23 to get you and MINOR in trouble?

24 A. I can't remember.

25 Q. Okay. Now, how many people have you talked to about

- 1 this, MINOR
- 2 A. I can't remember.
- 3 Q. All right. Well, have you talked to the police
- 4 officer? Well, let's back up. Have you talked to your mom?
- 5 A. Yes.
- 6 Q. Have you talked to your dad?
- 7 A. A little.
- 8 Q. Well, the first person you say you talked to was MINOR
- 9 right?
- 10 A. You mean the first person I told?
- 11 Q. Right? Who was the first person you told?
- 12 A. My cousin.
- 13 Q. All right. But you told MINOR after -- well, let me
- 14 back up. You knew that MINOR had said Rick had touched her,
- 15 right?
- 16 A. (Negative nod.)
- 17 Q. Is that correct?
- 18 A. She told me that.
- 19 Q. Then you told your cousin?
- 20 A. Yes, sir.
- 21 Q. And then you told MINOR
- 22 A. Yes.
- 23 Q. So before you told anybody, you knew that MINOR had
- 24 said Rick had touched her?
- 25 A. Yes.

1 Q. Okay. Now you and your sister are pretty close, aren't
2 you?

3 A. Yes, sir.

4 Q. You like each other, don't you?

5 A. Yes, sir.

6 Q. All right. That's a good thing. And you kind of look
7 out for each other, don't you?

8 A. Yes, sir.

9 Q. Now, when you say that Rick touched your worm, where
10 did that happen?

11 A. In his room.

12 Q. In his room. Well, what was he doing in his room when
13 you say this happened?

14 A. He was watching the news.

15 Q. How many televisions are in that house or were in that
16 house? I'm sorry.

17 A. You mean where are the televisions?

18 Q. Uh-huh (affirmative).

19 A. Living room, my room, their room, and my sister's room.

20 Q. Okay. Now, when you say you were watching the news --
21 and I realize it's been a while back -- but when you were
22 watching the news, do you remember what was on the news?

23 A. No, sir.

24 Q. Okay. And every time you say this happened, was the
25 news on?

- 1 A. Yes, sir.
- 2 Q. Okay. Now, the last time when you say that Rick stuck
3 his worm in your butt, you were on the floor, right?
- 4 A. Yes, sir.
- 5 Q. And you say you were on your knees, your hands and
6 knees. Would that be right?
- 7 A. (Affirmative nod.)
- 8 Q. Okay. Would you answer out loud so this lady can get
9 it down, please, sir? Thank you.
- 10 A. Yes.
- 11 Q. Well, did you spend a lot of time with Rick?
- 12 A. Yes, sir.
- 13 Q. And did you like to play with action figures?
- 14 A. Yes, sir.
- 15 Q. Who's your favorite action figure?
- 16 A. I don't remember.
- 17 Q. Don't remember. Have more than one?
- 18 A. Yes, sir.
- 19 Q. Pardon me?
- 20 A. Yes, sir.
- 21 Q. And you liked to sneak around the house, didn't you?
- 22 A. Yes, sir.
- 23 Q. Liked to hide, didn't you?
- 24 A. Yes, sir.
- 25 Q. And going back to when you say -- I guess when you

MINOR - Cross Examination by Mr. DeJong

- 1 moved out of the house, what do you remember when your mom
2 and MINOR -- well, let me ask that a different way. Do you
3 remember somewhere around all of this when MINOR went to
4 stay with your grandma?
5 A. Can you repeat that?
6 Q. Pardon me?
7 A. Can you repeat that, please?
8 Q. Sure. If I can remember it. Do you remember around
9 this time when MINOR went to stay with your grandma?
10 A. Yes, sir.
11 Q. Did you go with your mom and MINOR to your grandma's
12 house that night?
13 A. Yes, sir, but I didn't stay.
14 Q. You didn't stay? You came back?
15 A. Yes, sir.
16 Q. Did your mom come back?
17 A. Yes, sir.
18 Q. Pardon me?
19 A. Yes, sir.
20 Q. And you slept in a bed, right?
21 A. Yes, sir.
22 Q. I'm sorry?
23 A. Yes, sir.
24 Q. Do you remember whose room it was?
25 A. No, sir.

- 1 Q. Was it in your room or MINOR room?
- 2 A. I can't remember.
- 3 Q. Okay. These things that you said -- you just told us
- 4 that Rick said about you not telling, before today have you
- 5 told anybody that?
- 6 A. Yes, sir.
- 7 Q. Who did you tell?
- 8 A. My counselor.
- 9 Q. I'm sorry?
- 10 A. My counselor.
- 11 Q. Anyone else?
- 12 A. I can't remember what ---
- 13 Q. I'm sorry?
- 14 A. I can't remember what they're called. I can't
- 15 remember.
- 16 Q. And before coming to Court to testify today, you've
- 17 talked to quite a few people, haven't you?
- 18 A. Yes, sir.
- 19 Q. You talked to your counselor about that?
- 20 A. Yes, sir.
- 21 Q. Talked to this lady about that?
- 22 A. Yes, sir.
- 23 Q. Talked to your mom about it?
- 24 A. A little.
- 25 Q. Your grandma?

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- 1 A. Not really.
- 2 Q. Your daddy?
- 3 A. Yes, sir.
- 4 Q. MINOR
- 5 A. A little.
- 6 Q. Okay. Now, after you say that Rick stuck his worm in
- 7 your butt, what did you do after all of that?
- 8 A. What do you mean?
- 9 Q. Where did you go, what did you do?
- 10 A. I can't remember that.
- 11 Q. Okay. Did you have a cell phone, by the way, at this
- 12 point in your life?
- 13 A. I don't think so.
- 14 Q. Was there a phone in the house?
- 15 A. I can't remember.
- 16 Q. Did you know where your mother worked?
- 17 A. She worked one place and then sometimes she moved
- 18 around.
- 19 Q. Did you know the phone numbers to those places?
- 20 A. No, sir.
- 21 Q. This lady asked you about some pictures in your room.
- 22 When did you draw those pictures, do you remember?
- 23 A. I can't remember.
- 24 Q. Do you remember if it was before you and MINOR talked
- 25 about all of this or after?

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MINOR - Redirect Examination by Ms. Barwick

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1 A. Are you talking about when I drew them?

2 Q. Uh-huh (affirmative)?

3 A. I drew them at my grandma's.

4 Q. I'm sorry?

5 A. I drew them at my grandmother's.

6 Q. After y'all had moved out of the house?

7 A. Yes, sir.

8 Q. When MINOR told you what she said Rick did to her, how
9 did that make you feel? Did it make you feel angry?

10 A. Yes, sir.

11 Q. Want to get even with Rick?

12 A. Yes, sir.

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

14 Q. Thank you, MINOR

15 THE COURT: You may redirect.

16 MS. BARWICK: Thank you, Your Honor.

17 **REDIRECT EXAMINATION**

18 **BY MS. BARWICK:**

19 Q. MINOR when you were talking to your parents about the
20 lies the Defendant told, do you remember telling them what
21 will happen when they found out that he's telling lies?

22 A. Yes, ma'am.

23 Q. What did you say?

24 A. I just told them that you'll figure it out one day.

25 Q. Every time you'd come and talk to me, did we discuss

MINOR - Redirect Examination by Ms. Barwick

1 any rules?

2 A. What do you mean?

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

5 A. The truth.

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

10 A. I can't remember.

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

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

14 Q. Speak up for me, MINOR What did you tell your cousin?

15 A. I told her what he did.

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

17 A. No, ma'am.

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

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

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

24 You may call your next witness, Solicitor.

25 MS. BARWICK: The State would call Tina Aiken to

1 the stand.

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

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

7 THE WITNESS: Yes.

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

10 THE WITNESS: Tina Aiken.

11 TINA AIKEN,

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. BARWICK:

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

17 A. Yes, ma'am.

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

19 A. Okay.

20 Q. And where did you meet him at?

21 A. The very first time was CVS.

22 Q. Did you work at CVS?

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

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

25 A. I'm a pharmacist.

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1 Q. And how long have you been a pharmacist?

2 A. Since 1994.

3 Q. Now, where did you go to med school?

4 A. The Medical University of South Carolina.

5 Q. How did you do there?

6 A. I graduated third out of my class, 3.81 grade point
7 average.

8 Q. Okay. So are you currently a pharmacist?

9 A. Yes.

10 Q. So back in 2008 would you have been a pharmacist?

11 A. Yes.

12 Q. When you met the Defendant at CVS were you working
13 there?

14 A. Yes.

15 Q. And just kind of tell the jury how your relationship
16 with him began.

17 A. He was my customer, but I didn't -- you know, we didn't
18 really start talking outside of work, kind of thing, until I
19 worked for Ingle's Pharmacy and he was no longer my
20 customer.

21 Q. Okay. Do you know about how old he is? Do you know
22 his date of birth?

23 A. October 14th, 1955.

24 Q. Okay. How did your relationship evolve from just the
25 customer relationship to y'all eventually getting married?

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

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

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

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

9 A. Yes.

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

12 A. Joint custody.

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

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

16 Q. So when did you marry the Defendant?

17 A. It was June 3rd, 2006.

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

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

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

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- 1 A. Oh, very different.
- 2 Q. And how would your husband parent? Or, I'm sorry, how
- 3 would the children's father parent?
- 4 A. Very, very strict.
- 5 Q. Okay.
- 6 A. And didn't spend much, I mean, quality time with them.
- 7 They did a lot of chores and that kind of thing.
- 8 Q. And what about the Defendant, how did he parent them?
- 9 A. He was just -- would sit and watch TV with them,
- 10 especially my son. He watched the news with him and he
- 11 liked to, you know, teach him about birds and they would
- 12 look at nature books and watch a lot of the nature shows on
- 13 TV.
- 14 Q. Did they go anywhere together?
- 15 A. They would have like men's night out. He would take
- 16 him to Liberty Bell and they had milkshakes. And, you know,
- 17 he just spent quality time with him.
- 18 Q. Did you kids rather spend time at your house or at
- 19 their father's house?
- 20 A. Our house. My house.
- 21 Q. When did you marry their father?
- 22 A. October 17th, 1987.
- 23 Q. And when did you divorce their father?
- 24 A. It was around when my son was two. And he was born in
- 25 '99.

1 Q. Did you remarry?

2 A. Yes.

3 Q. When do you think you remarried?

4 A. It was November, I think, 23rd or 22nd, 2003.

5 Q. Okay. And what was that gentleman's name?

6 A. Randy Lawder.

7 Q. Did you divorce him?

8 A. Yes.

9 Q. And then that's when you married the Defendant?

10 A. We started dating and then, yes, we got married after
11 that.

12 Q. Okay. I just kind of want to get everybody's ... Ms.
13 Aiken, who are those photos of?

14 A. This one is of my son, MINOR CHILD 2 and this one's my
15 daughter, MINOR CHILD 1

16 Q. Okay. Do you remember about when these pictures were
17 taken?

18 A. It was probably like the end -- maybe somewhere around
19 2007, you know, somewhere between the end of 2007, spring
20 2007 to 2008.

21 Q. Okay.

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

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

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1 relevance. There's no probative value.

2 THE COURT: What is the relevance?

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

7 MR. DEJONG: May we approach, Your Honor?

8 THE COURT: Yes, sir.

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

11 THE COURT: The objection is sustained.

12 Q. Can you explain how your daughter looked back in July
13 2008 versus how she looks now?

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

15 Q. Was she prepubescent?

16 A. Yes.

17 Q. What about MINOR how has he changed since the summer
18 of 2008?

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

22 Q. Do you remember MINOR telling you that the Defendant
23 sexually abused her?

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

1 and nothing else.

2 THE COURT: Okay.

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

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

6 Q. Do you remember your daughter, MINOR CHILD 1
7 disclosing any sexual abuse to you?

8 A. Yes.

9 Q. Do you remember the date she did that?

10 A. July the 7th of 2008.

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

12 A. Charleston, South Carolina.

13 Q. Oka. Do you remember any kind of incident happening
14 between the Defendant and MINOR

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

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

19 A. Uh-huh (affirmative).

20 Q. What were you doing in the hotel room?

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

23 Q. What do you remember about that incident?

24 A. I just remember that -- MINOR came storming through the
25 door and she locked the door.

1 Q. Okay. Did the Defendant say anything about that?

2 A. A little. Well, not very much. He just said that
3 there was -- I think that there may have been some yelling
4 or something and that there was a guy outside wanting to
5 beat him up because of what was being said. But as far as
6 what was being said, I don't remember.

7 Q. Okay. Did the Defendant -- how did he appear over all
8 this, was he angry?

9 A. He was upset. But, I mean, it didn't ruin the, you
10 know, time that we were together.

11 Q. Okay. Do you remember which day this hotel incident
12 happened on, whether it was like a Saturday or a Sunday?

13 A. I can't remember exactly. It was toward the end of our
14 trip.

15 Q. How long had y'all been down there?

16 A. I'm not exactly sure if it was -- I'm not sure if it
17 was three or four days, to be honest.

18 Q. Did y'all come home that Sunday?

19 A. Yes.

20 Q. And that car ride, was any mention made of this hotel
21 incident?

22 A. Not to my knowledge.

23 Q. Did Rick bring it up again?

24 A. I can't remember.

25 Q. How was the rest of your trip after this hotel

1 incident?

2 A. We had a good time.

3 Q. Let's talk a little bit about yours and the Defendant's
4 normal morning routine. About what time do you think he
5 normally woke up?

6 A. He got up at four-thirty.

7 Q. And what time would you get up?

8 A. Five-thirty.

9 Q. What time would he leave for work?

10 A. Six o'clock.

11 Q. You got up at five-thirty. What would y'all do in the
12 morning?

13 A. Watch the news and drink coffee.

14 Q. Okay. And that was from the five-thirty to six o'clock
15 span?

16 A. Uh-huh (affirmative). Yes.

17 Q. The morning of the 7th, did y'all follow your normal
18 routine?

19 A. Yes.

20 Q. Did you come into the living room?

21 A. Yes.

22 Q. And where were your kids located?

23 A. My daughter was laying on the couch, head was more
24 toward like the window area.

25 Q. I'm going to help you out. Hold on one second.

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

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

4 A. Okay. How do I do it?

5 Q. Just that one right there.

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

7 Q. Uh-huh (affirmative).

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

10 Q. Okay. And where was the Defendant?

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

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

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

17 Q. Okay. Was he bunched up towards MINOR or away from
18 MINOR

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

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

25 A. Yes.

- 1 Q. Where?
- 2 A. The rocking chair right there.
- 3 Q. Did you get any coffee?
- 4 A. Yes, I had coffee.
- 5 Q. Where did you end up sitting?
- 6 A. Rocking chair.
- 7 Q. What was on the TV?
- 8 A. The news.
- 9 Q. Do you remember anything about the way MINOR was
10 positioned?
- 11 A. Not really, other than her just being -- laying on the
12 couch. And I believe she had blankets on her.
- 13 Q. Okay. Were the blankets on her or were they on the
14 floor?
- 15 A. They were on her.
- 16 Q. That evening had you given MINOR any sleep aids?
- 17 A. She came to the room, you know, like early morning. I
18 don't know if it was around one or two o'clock, somewhere
19 around there. That's just guesstimating. And I gave her --
20 the doctor had prescribed her, you know, that she could take
21 melatonin three milligrams. I only gave her a half of one.
- 22 Q. And what exactly is melatonin?
- 23 A. It's a naturally occurring substance in the body. It's
24 made by a gland that's in the brain.
- 25 Q. Do you have to have a prescription to get that or could

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1 I just go get it?

2 A. Anybody can go buy it.

3 Q. How often would MINOR take that, do you think?

4 A. Just occasionally. I mean, I've never really given her
5 that much.

6 Q. Did she come in your room to wake you up to ask for, or
7 to tell you that she couldn't sleep?

8 A. Yes.

9 Q. When you were you in that -- in your bedroom -- I'm
10 sorry, which bed were you in?

11 A. My bed with Rick.

12 Q. Okay. Let's talk a little bit about MINOR
13 cheerleading back then. How often would she have some kind
14 of cheerleading or tumbling event?

15 A. She was constantly doing cheerleading. She went to
16 tumbling -- I can't remember -- I know that she'd go at
17 least once a week, sometimes two times a week. And then in
18 the summer she had a lot of cheerleading that she had to do.
19 They practiced a lot.

20 Q. Is there anything she would wear all the time?

21 A. Yes.

22 Q. Involved with cheerleading?

23 A. Yes.

24 Q. What would she wear?

25 A. She usually wore Softe shorts, always cheerleading

1 bloomers and then her regular underwear, panties.

2 Q. Okay. Would the -- I know this is a silly question,
3 would the panties be over the bloomers or under the
4 bloomers?

5 A. Under the bloomers.

6 Q. Would you take her to cheerleading?

7 A. Yes.

8 Q. Would Rick take her to cheerleading?

9 A. He has before.

10 Q. When you would take her some, did you ever stay or did
11 you just go home?

12 A. I've stayed. She's been doing cheerleading a long
13 time.

14 Q. Some of those times when you stayed, did MINOR go with
15 you?

16 A. He stayed at home a good bit.

17 Q. Okay. And who did he stay at home with?

18 A. Well, he would stay with Rick.

19 Q. What was your work schedule when you first met Rick?

20 A. I usually -- I mean, I've always worked basically
21 thirty hours a week, and it varied. I mean, sometimes I'd
22 work nine to nine, nine to two. This was with CVS.

23 Q. And did Rick ever make any mention about your work
24 hours?

25 A. Well, later on we -- I was able to cut back to twenty

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

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

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

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

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

12 Q. Gotcha. How would he discipline them?

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

17 Q. Did he ever do any spankings or anything?

18 A. Never.

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

20 A. Yes.

21 Q. Was MINOR able to disclose anything to you that
22 morning?

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

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

1 A. I did.

2 Q. Did Rick leave for work before you left to drive the
3 kids to daycare?

4 A. Yes.

5 Q. When you drove to daycare, how long -- what time do you
6 think you drove them to the daycare?

7 A. I had to be at work at eight-thirty, all the way in
8 Seneca so -- on the other side of Seneca, so probably,
9 probably anywhere from -- probably around twenty minutes
10 till eight, somewhere around there. Like forty, forty-five
11 minutes before I had to be at work.

12 Q. When you were living with Rick back in 2008, where were
13 y'all living, which County?

14 A. Which county? Pickens County.

15 Q. Okay. In which town?

16 A. Liberty.

17 Q. When you got home that evening, we'll talk about that a
18 little bit. Did you, back in the 2008 time period, did you
19 notice anything about MINOR sleep patterns?

20 A. He -- first, he liked to sleep -- he would sleep in his
21 own room as long as I left the TV on and the bathroom light
22 on. But then he really started wanting to sleep with MINOR
23 in her floor on a pallet. And he has expressed, you know,
24 he wanted to sleep in the closet and that kind of thing.

25 Q. Did Rick have any comments to make about MINOR sleeping

1 in the closet?

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

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

5 A. As soon as I walked through the door, MINOR you know,
6 grabbed me right then and said she needed to talk to me and
7 she wanted me to come to the bathroom. But I was like, why
8 can't you just tell me right now? But she wouldn't tell me
9 anything until I went to the bathroom with her.

10 Q. Well, we're not going to talk about what MINOR told you
11 in the bathroom.

12 A. Okay.

13 Q. But did she disclose any sexual abuse in the bathroom?

14 A. Yes.

15 Q. And in response to that, what did you do?

16 A. I immediately said we're going to pack your clothes.
17 We're going to grandmother's house.

18 Q. How were you feeling at this point?

19 A. Pretty much just in a whirlwind, shocked, I mean,
20 didn't really know what to think other than my child, you
21 know, was telling the truth.

22 Q. And you were going to take her to her grandmother's
23 house. That's your mother?

24 A. Yes. I called her Maw Maw.

25 Q. Okay. And did the Defendant have anything to say about

1 that?

2 A. He didn't want her to go. He said, no.

3 Q. And did he say why?

4 A. He said her room was messy and that she needed to have
5 that clean.

6 Q. Did you clean it?

7 A. We did kind of do like a spot clean, throwed like the
8 covers on the top of the bed, threw stuff in the closet to
9 make it look neater.

10 Q. Did you go over to your mother's house that evening?

11 A. Yes.

12 Q. Did you take -- who was with you?

13 A. Me, MINOR and my son MINOR

14 Q. And when you got to your grandmother's house, did you
15 sleep there?

16 A. No.

17 Q. Not your grandmother's, I'm sorry. Your mother's. Did
18 you sleep at your mother's house that night?

19 A. No.

20 Q. Where did you sleep?

21 A. At home with MINOR in MINOR room.

22 Q. Did Rick say anything -- I'm sorry. Did the Defendant
23 say anything about you not sleeping in his bed with him?

24 A. That night?

25 Q. Yes?

- 1 A. Not to my knowledge.
- 2 Q. How many TVs do you have -- were in the house at the
- 3 time?
- 4 A. Four.
- 5 Q. Did they all have cable?
- 6 A. Yes.
- 7 Q. Well, I've zoomed in on this, but did you draw this?
- 8 A. I did.
- 9 Q. And it's not to scale?
- 10 A. No.
- 11 Q. There's two bathrooms. Who used this bathroom?
- 12 A. Let's see. That is my bathroom with MINOR and MINOR
- 13 Q. And whose bathroom is this?
- 14 A. That's Rick's bathroom.
- 15 Q. So the Defendant had his own bathroom?
- 16 A. Yes.
- 17 Q. After you dropped MINOR off at your mother's house, did
- 18 anything happen the next day?
- 19 A. As soon as I got up and Rick left for work, I packed
- 20 all -- as much stuff as I could pack. I took MINOR to
- 21 daycare first and then I packed everything I could pack and
- 22 carry.
- 23 Q. Did you ever go back to live with the Defendant?
- 24 A. Not after the 8th, no, ma'am.
- 25 Q. Okay. Did you go back to get the rest of your stuff?

1 A. Yes, ma'am.

2 Q. Did the Defendant say anything about you moving out?

3 A. We had a discussion on the telephone.

4 Q. Well, tell the jury a little bit about that discussion?

5 A. Basically, he said that -- first it started out that he
6 was questioning why I left. And I said, you know why I
7 left. And he said, no, I don't. And then I told him what
8 he said -- you know, what happened. And he said that that
9 wasn't true and that my ex, which is Ted, their father, was
10 trying to take them away from him and that if I -- like for
11 me to come back home that we would work through this
12 together.

13 Q. Okay. When MINOR told you, did you take her to any law
14 enforcement?

15 A. I did not.

16 Q. Okay. Why didn't you?

17 A. Because I was in shock and I just felt like that if we
18 just didn't say anything it would just go away. I didn't
19 want her to be -- I've seen too many TV shows and stuff
20 where like victims have been persecuted basically, you know.

21 MR. DEJONG: Objection, Your Honor, to that line
22 of testimony. That's not responsive to the question.

23 THE COURT: I'll overrule your objection. I'll
24 allow her to explain her -- the thought process.

25 A. I just felt like that she -- people found out, you

1 know, in school, in town, that they'd make fun of her and

2 ---

3 Q. Do you regret that now a little bit?

4 A. Yes.

5 Q. Did she eventually go to law enforcement and tell them
6 what happened?

7 A. Yes. She did..

8 Q. Do you remember about how long that was after y'all had
9 moved out?

10 A. I'm going to say about a week.

11 Q. Who had her when she disclosed? Who had custody of
12 her, you or your husband? Your -- I keep saying your
13 husband. I apologize. I mean, Ted Wheeler, their father.

14 A. When she disclosed it to him, when she disclosed to
15 him, he is the one who pursued the matter with contacting
16 law enforcement.

17 Q. Okay. Did MINOR ever make a disclosure?

18 A. Not right away. It took -- oh, it was probably about,
19 around two weeks later, he told some things but not all
20 things and to this day he has not disclosed everything
21 because he said that he would die before he said anything --
22 all of it.

23 Q. Well, let's talk about this disclosure a little bit.
24 Did it happen over a weekend?

25 A. Yes. Yes.

- 1 Q. Do you want some water?
- 2 A. No, I'm fine.
- 3 Q. How did it begin? And I'm not asking you what he told
- 4 you. I'm just saying, how did it begin?
- 5 A. Pretty much went through, you know, that I had left
- 6 because we wasn't getting along.
- 7 Q. How was he acting before he disclosed?
- 8 A. Terrible. Terrible. Scratching his skin, banging his
- 9 head, crying. He couldn't really talk because he was so
- 10 upset.
- 11 Q. Did you ask him why he was upset?
- 12 A. Yes.
- 13 Q. Would he tell you?
- 14 A. No. He just said he had a secret.
- 15 Q. Did you see any drawings that he did?
- 16 A. Yes.
- 17 Q. Where did you see those drawings?
- 18 A. He crumpled one up and threw it in the trash and told
- 19 me not to look at it.
- 20 Q. And you looked at it?
- 21 A. Yes.
- 22 Q. And what was on it?
- 23 A. It was a saying, he said Rick was a butt hole.
- 24 Q. Is that what was in the picture?
- 25 A. That was just, that was -- he wrote it out, but then

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1 there was another picture where he had Rick hanging.

2 Q. Did you ask MINOR about those pictures?

3 A. I'm sorry. I didn't hear you.

4 Q. I'm sorry. Did you ask MINOR about those pictures?

5 A. I -- let's see. I asked him, I asked him again, you
6 know, you know, what was going on? Why would he do
7 something like that? And he said he had a secret and it was
8 too ---

9 Q. Okay. He didn't tell you?

10 A. Tell me?

11 Q. At this point when you asked him why he drew those
12 pictures, he told you that he drew those pictures because
13 why?

14 MR. DEJONG: Objection, Your Honor. It's hearsay,
15 blatantly.

16 THE COURT: I sustain the objection.

17 MS. BARWICK: Okay.

18 Q. We just won't talk about what MINOR told you.

19 A. Okay.

20 Q. After he drew those pictures and you asked him why he
21 did those, did you have a difficult time talking with him?

22 A. Yes.

23 Q. Did anyone come over to help him talk?

24 A. Yes.

25 Q. Who came over?

1 A. My niece, Savannah.

2 Q. Is that his cousin?

3 A. Yes.

4 Q. And she came over. Did they have a discussion?

5 A. Yes.

6 Q. And did you see what MINOR did after that discussion?

7 A. As far as the way he was acting ---

8 Q. Yes.

9 A. --- he was still doing, you know, hyperventilating, I
10 mean, hid in the closet, scratched his legs. He was just
11 uncontrollable.

12 Q. And you said he hid in the closet, which closet?

13 A. It would be the closet -- it's in the laundry room.
14 But we turned it into a small bedroom, too. I mean, it's
15 very small.

16 Q. Is that where MINOR was sleeping at your grandma's --
17 at your mother's?

18 A. That's where he was -- would -- that's the room we made
19 for him but he would not sleep in there.

20 Q. Okay. After MINOR ran to the closet, did you tell
21 MINOR to go do anything?

22 A. At the point, before all of this, he had no idea
23 anything else was going on and I told him that -- I mean, I
24 told her that maybe if she went and talked to him, that
25 maybe he would be able to open up a little more to her.

1 Q. And when you said to her to go talk to him, did you
2 tell her what she needed to talk to him about?

3 A. The only thing I said was maybe if she could talk to
4 him about what her experience was.

5 Q. Okay. And did she go in the room with him?

6 A. Yes.

7 Q. As a result of MINOR going into that room, did you do
8 anything after they had their conversation? Did you end up
9 calling law enforcement?

10 A. Oh, yes, I did. I'm sorry. Yes, I did.

11 Q. And did you call law enforcement that weekend or did
12 you wait?

13 A. No, I called immediately.

14 Q. Law enforcement told you to do what?

15 A. I spoke with a specific person and I also called rape
16 crisis and they told me to wait until Monday.

17 Q. On Monday did you have another conversation with law
18 enforcement?

19 A. I don't remember exactly what happened, but I'm pretty
20 sure that I did. I mean, I know that it was right away.

21 Q. What kind of undergarments as far -- or what kind of
22 undergarments would the Defendant wear, boxers or briefs?

23 A. Briefs.

24 Q. Do you remember what brand name?

25 A. Not really. I don't know if it was -- I'm not sure to

1 be honest. They were white. That's all I know.

2 Q. Did MINOR ever mention to you anything about the
3 Defendant lying?

4 A. He has made mention of that. He said that Rick lies.

5 MR. DEJONG: Objection to what he said, Your
6 Honor.

7 THE COURT: Sustained.

8 MS. BARWICK: Your Honor, may we approach?

9 THE COURT: Yes.

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

12 Q. Why did you have your son sleep with you the night of
13 July 7th?

14 A. Just, I mean, that was -- I mean, we are pretty close
15 and that's just something we would do sometimes and I didn't
16 want him sleeping alone.

17 Q. Can you tell the jury a little bit about what Rick told
18 you about MINOR seeing him coming out of the shower?

19 A. There was an incident where MINOR supposedly came into
20 the shower and saw -- into the bathroom and saw Rick come
21 out of the shower, of course, naked. And that Rick said now
22 that MINOR saw him naked that he would go and tell his dad
23 what he looked like, you know. Like, I don't know exact
24 words but ---

25 Q. You can say it.

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1 A. Like his penis or what his private parts look like.

2 Q. Do you remember how much before July 7th that that
3 conversation took place, just a rough estimate?

4 A. I don't remember.

5 Q. Are your kids in counseling now?

6 A. Yes.

7 Q. Have they been in counseling since this incident
8 happened?

9 A. Yes.

10 Q. How often will they go to counseling?

11 A. Anywhere from one to two weeks -- I mean, two times a
12 week.

13 Q. And how long would these sessions last, do you think?

14 A. Around fifty minutes to an hour.

15 Q. Did the Defendant ever say anything about waking up in
16 the middle of the night?

17 A. Yes.

18 Q. What did he say about that?

19 A. He said that he would wake up in the middle of the
20 night sometimes and he would go in and check on the children
21 to make sure, you know, they were okay.

22 Q. Have either of your children ever accused anybody else
23 of something like this?

24 A. No.

25 Q. You mentioned you were having some financial

1 difficulty. What were the Defendant's spending habits
2 towards the kids?

3 A. I mean, we would not have -- you know, I mean, we
4 didn't have tons of money or whatever, but, I mean, we
5 bought a nine hundred dollar dog because the kids wanted it.
6 We bought a bearded dragon. Just different, you know,
7 animals and that kind of thing.

8 Q. What about swimsuits?

9 A. In July ---

10 Q. Of 2008?

11 A. --- in 2008, it was suggested by Rick that MINOR needs
12 to have two swimsuits that summer. Where in the past, he'd
13 never said that before.

14 Q. Have your children changed at all since this?

15 A. Most definitely.

16 Q. How have they changed?

17 A. MINOR has nightmares. She cries. She feels -- at
18 times she's made mention that, you know, dirty. MINOR has
19 nightmares. He is very paranoid. He cannot stand to be
20 alone with his thoughts because he says his mind is racing
21 twenty-four seven. He cries. Says he wishes he could die.
22 That he wished he could be normal and that -- he's just not
23 a happy little boy like he was. He's just, he's just always
24 afraid somebody's watching him. He's afraid that Rick's
25 going to come to the house and hurt us. He's always afraid

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1 like we're going to run into him in the store. I mean, he
2 just goes nuts, crying and hyperventilating and having like
3 panic attacks.

4 Q. Has he ever expressed any fears to you?

5 A. After ---

6 Q. After he disclosed?

7 A. Just that he's afraid that Rick would harm us, that --
8 he's just afraid mainly that Rick would find where we were
9 and that he would harm us.

10 Q. Did y'all have a conversation about homosexuality?

11 A. Yes.

12 Q. And what brought that up?

13 A. It was after a counselor's meeting.

14 Q. Did Teddy express any fears about that?

15 A. Yes.

16 Q. And what is his fear?

17 A. That he was gay.

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

20 THE COURT: You may cross-examine the witness.

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

23 **CROSS-EXAMINATION**

24 **BY MR. DEJONG:**

25 Q. Now, how long have you been a pharmacist, Ms. Aiken?

1 A. As of now, seventeen years.

2 Q. Okay. And how long had you been a pharmacist in 2008?

3 A. Fourteen years.

4 Q. All right. And as a pharmacist you've had certain
5 training in medications. Is that correct?

6 A. That's correct.

7 Q. Side effects?

8 A. That's correct.

9 Q. And with regard to sleeping pills, as a pharmacist, are
10 you aware of side effects?

11 A. Sleeping medications, yes, sir.

12 Q. Many sleeping medications have side effects, do they
13 not?

14 A. That's true.

15 Q. One of those side effects can be dreams or vivid
16 dreams, correct?

17 A. That is true.

18 Q. All right, ma'am. And, indeed, many sleeping
19 medications are not recommended for children twelve and
20 under, are they?

21 A. This is not considered an out and out sleeping aid.
22 This medication is used -- it's a natural substance ordered
23 by a doctor.

24 Q. Yes, ma'am. But in your experience and your training,
25 there's even been questions about melatonin being used on

1 children twelve and under.

2 A. All I know is I have several, several patients who are
3 twelve and under who take melatonin on a daily basis.

4 Q. Yes, ma'am. That wasn't exactly my question.

5 A. Sorry.

6 Q. My question was, I believe, that there's certain
7 questions -- there's question about giving even melatonin to
8 children twelve and under.

9 A. I have not read that.

10 Q. Okay. Nonetheless, you gave MINOR a sleeping pill on
11 -- and this may become a little fuzzy, but was it July the
12 6th that you gave her the sleeping pill or July the 7th, do
13 you remember?

14 A. It would be early in the morning on July the 7th. And
15 it was a half a pill.

16 Q. Okay. So sometime after midnight?

17 A. Yes.

18 Q. Do you know what the half life on melatonin is?

19 A. Thirty to fifty -- I believe it's -- I mean, it's very
20 short.

21 Q. Okay. But nonetheless, stays in your system, right?

22 A. Not for very long.

23 Q. Okay. Now, talking about this Charleston trip. There
24 was an incident -- I understand you said you didn't recall a
25 lot about it, but there was an incident between Rick and

1 MINOR that happened out in the parking lot, right?

2 A. That's what I was told.

3 Q. Right. And it wasn't just a matter of MINOR locking
4 Rick out of the room?

5 A. I don't know exactly what happened because I was not
6 out there.

7 Q. Yes, ma'am. Nonetheless, there was some controversy,
8 disturbance or whatever, between MINOR and Rick?

9 A. Yes.

10 Q. And that came towards the end of your vacation,
11 correct?

12 A. Towards the end.

13 Q. Right. And I guess, what was this, the week of July
14 4th?

15 A. Yes.

16 Q. Okay. So your vacation actually ended, I guess, on
17 July the 6th, right?

18 A. That Sunday, July 6th.

19 Q. Okay. Now, when you say Rick watched the news, what
20 news would he watch?

21 A. News Channel 4.

22 Q. All right. So when we say News Channel 4, just so --
23 it was a local news channel that he was watching?

24 A. Yes.

25 Q. It wasn't like TBS or CNN or any of those?

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- 1 A. No.
- 2 Q. It was local news?
- 3 A. Correct.
- 4 Q. Morning and afternoon, correct?
- 5 A. Correct.
- 6 Q. All right. Now, where was Rick working in 2008?
- 7 A. I'm not sure if he was out on leave or not, but he was
- 8 employed with General Electric.
- 9 Q. All right. And was he employed with General Electric
- 10 when y'all first met?
- 11 A. Yes.
- 12 Q. And except for some leave, he continued to be employed
- 13 by General Electric, right?
- 14 A. That's correct.
- 15 Q. Did he work anyplace else, other than General Electric,
- 16 as a side job?
- 17 A. He was -- he worked for the rescue squad.
- 18 Q. Now, the rescue squad, was that Pickens County or ---
- 19 A. Pickens County in Liberty.
- 20 Q. I'm sorry?
- 21 A. Pickens County in Liberty.
- 22 Q. Okay. Very good. What was his position or his status,
- 23 if you know, with the rescue squad?
- 24 A. I'm not exactly sure. All I know, it was volunteer.
- 25 Q. Okay. Do you know how often he volunteered?

1 A. Just whenever he could get a call and go.

2 Q. All right. When Rick worked at GE, what were -- were
3 his hours always the same?

4 A. Yes.

5 Q. And what hours did he work?

6 A. Seven until -- I know it was seven in the morning and
7 I'm pretty sure it was three o'clock in the afternoon
8 because he would arrive home around four o'clock.

9 Q. So he would get up what time in the mornings?

10 A. He would get up at four-thirty in the morning.

11 Q. And then -- well, to your knowledge when he got up, did
12 he dress for work?

13 A. He would take a shower, shave and do whatever other
14 bathroom duties he needed to do.

15 Q. Yes, ma'am. I understand. You know how long that
16 took?

17 A. I just know that around five-thirtyish he was in -- you
18 know, he would drink coffee.

19 Q. And would you get up and join him to drink coffee?

20 A. Yes.

21 Q. And when you got up to join him to drink coffee was
22 that just as he finished his morning routine of dressing and
23 showering and shaving and the other things you do in the
24 bathroom?

25 A. Yes.

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1 Q. Now, on July the 7th of 2008, you got to the living
2 room, I gather, correct?

3 A. Yes, sir.

4 Q. And when you got there, was MINOR asleep?

5 A. MINOR asleep? Yes, sir.

6 Q. Was MINOR asleep?

7 A. Yes, sir.

8 Q. Okay. Did you notice any movement or anything on the
9 part of MINOR

10 A. No, sir.

11 Q. Talking in her sleep or anything like that?

12 A. No, sir.

13 Q. All right. But from what you could observe as her
14 mother, she was sound asleep?

15 A. Yes.

16 Q. And this would have been approximately five-thirty in
17 the morning?

18 A. When I arrived in the -- yes.

19 Q. Yes, ma'am. Yes, ma'am. Do you know what was on
20 television when you got into the living room?

21 A. The news.

22 Q. Was it Channel 4?

23 A. As far as I know, it was Channel 4. That's usually
24 what he watched.

25 Q. All right. Well, when you got into the living room,

1 did Rick have his coffee?

2 A. That part, I can't remember. I would like to say that
3 yes, but I'm not a hundred percent positive.

4 Q. Okay. Well, did Rick bring you your coffee or did you
5 have to go get your own coffee or how did that work?

6 A. That morning, I can't remember.

7 Q. All right, ma'am. And Rick was sitting on the sofa?

8 A. Yes, sir.

9 Q. Now, other than the rocking chair, I believe, the sofa
10 was the only other place to sit, right?

11 A. I can't catch all of it. I'm sorry.

12 Q. I'm sorry. Other than the rocking chair, the sofa
13 would have been the only other place to sit in the room,
14 correct?

15 A. Yes, that's correct.

16 Q. Especially on that particular morning because MINOR was
17 occupying that other chair, right?

18 A. That's correct.

19 Q. And I guess this trunk -- I think it says trunk --
20 right here. Is that more or less a coffee table?

21 A. It was my grandmother's hope chest type trunk ---

22 Q. Uh-huh (affirmative).

23 A. --- and we would use it as a coffee table.

24 Q. Okay. You don't remember if Rick had coffee on there
25 or not?

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1 A. I can't remember.

2 Q. Okay. And you sat in the rocking chair?

3 A. Yes.

4 Q. Okay. And all of that pretty much -- well, the TV was
5 pretty much the focal point in the whole room, right?

6 A. Yes.

7 Q. Okay. Now, so Rick left for work around six o'clock?

8 A. Yes, sir.

9 Q. And then you drove MINOR and MINOR to the daycare or
10 babysitter or whatever, correct?

11 A. Well, MINOR was already -- let's see. Okay. Yes. I
12 took -- that was the morning off so I took them to the
13 babysitter's.

14 Q. Okay. That was your morning off. Did I understand
15 that correctly?

16 A. Okay. Let's see. Okay. We're talking about the
17 morning all of this happened. So the morning that it
18 happened, I was taking them to the babysitter's because I
19 was running -- I was going to work.

20 Q. Okay.

21 A. And I -- I mean, I have to be there by eight-thirty.

22 Q. All right. So if I understood you correctly, you left
23 the house about seven forty, twenty till eight, right?

24 A. Somewhere around there. It may have been a little bit
25 earlier since I had to take them to daycare.

1 Q. But Rick was gone after six o'clock?

2 A. Yes.

3 Q. So it was you, MINOR and MINOR in there for about an
4 hour, forty minutes, forty-five minutes.

5 A. Okay.

6 Q. Is that right?

7 A. It was -- I mean, we were there alone for a good while.

8 Q. Okay. Now, in the -- well, and how far was it to
9 daycare or babysitter or whatever from where you lived?

10 A. Probably no more than five minutes.

11 Q. And I gather Rick had a vehicle and you had a vehicle,
12 right?

13 A. Yes, sir.

14 Q. What kind of vehicle did you drive?

15 A. A Dodge Durango.

16 Q. I'm sorry?

17 A. A Dodge Durango.

18 Q. Okay. Four doors, two seats.

19 A. Four.

20 Q. Okay. What was the seating arrangement normally when
21 you drove? Who sat where? Obviously, you drove, but ---

22 A. Not always. But it would be the two adults in -- you
23 mean when Rick was with us?

24 Q. No, when Rick wasn't with you.

25 A. It was myself, MINOR and then MINOR usually in the

1 back.

2 Q. All right. Ma'am.

3 A. Not in the far back but in the middle.

4 Q. Now, you say MINOR occasionally took sleeping pills.

5 How often is occasionally?

6 A. Oh, maybe once -- I mean, once a month, once every two
7 months. It was not an on-going thing. She did not do this
8 on a regular basis.

9 Q. Now, in the summertime when it came to cheering, there
10 were no -- cheerleading to me brings up pictures of football
11 game, baseball game, basketball game, that type of thing.

12 So she didn't have any of that in the summer, did she?

13 A. No, she has competitive cheerleading.

14 Q. Okay. Where did she do her practicing?

15 A. At Liberty High School. This is when she was older,
16 Liberty High School.

17 Q. Well, where did she do it in 2008?

18 A. Liberty High School.

19 Q. All right. What were her hours for cheerleading?

20 A. To be honest, I can't remember because they varied and
21 she had tumbling, also.

22 Q. Well, as I understood it, she took tumbling maybe two
23 days a week, correct?

24 A. Yes.

25 Q. Not ---

1 A. Somewhere around there, one to two times a week.

2 Q. All right. And how many times cheerleading?

3 A. Cheerleading, oh, during the summer they could do it
4 anywhere from three to five days a week.

5 Q. But you don't remember what hours?

6 A. No. Because see, the varsity would sometimes do theirs
7 in the morning and then we would do ours in the afternoon,
8 say, like -- I don't know if it was three o'clock or, you
9 know, until seven o'clock, five o'clock. I'm not sure
10 exactly. I don't want to say one hundred percent. She's
11 just a very busy girl.

12 Q. Okay. You talked a little bit with the Solicitor about
13 sleep patterns and I don't really recall if that was with
14 MINOR or MINOR or both. But you say you noticed the sleep
15 patterns changed. Was this MINOR sleep patterns that
16 changed?

17 A. No, it was my son's.

18 Q. And when did you notice that?

19 A. I can't tell you in a definite answer to that question.
20 I just know that he started wanting to stay more and more
21 with his sister in her room.

22 Q. Now, MINOR and MINOR have a very close relationship?

23 A. That's true.

24 Q. In fact, they take care of each other, if you will?

25 A. Yes.

1 Q. All right. Maybe we'd say on the street they look out
2 for each other's backs, right?

3 A. They're just like normal brother and sister, so ...

4 Q. And, of course, MINOR liked to play with action
5 figures, right?

6 A. That's true.

7 Q. What was his favorite action figure?

8 A. I mean, he'd play with different things, GI Joe, Army
9 men, that type thing. Anything to do with GI Joe. A lot of
10 little race car and motorcycle men.

11 Q. And as a part of that, he liked to sneak around the
12 house, didn't he?

13 A. Sneak around the house?

14 Q. Sneak around the house?

15 A. I don't recall that.

16 Q. Okay. And as part of that, he liked to hide around the
17 house?

18 A. I don't recall that, either. I don't want to say a
19 hundred percent.

20 Q. When you say MINOR disclosed, made this disclosure to
21 you, made these allegations to you, did you ever step back
22 and talk to Rick?

23 A. No, I did not.

24 Q. And the only conversation you had with Rick is when, I
25 believe, he later called you, right?

1 A. It was on the telephone.

2 Q. Yes, ma'am. Well, as I understand it, you said MINOR
3 made these allegations, came to you with these allegations
4 on July the 7th. And that he -- now, the week of July 7th,
5 was that your week to have the children or was that dad's
6 week to have the children?

7 A. I can't remember because we would trade off a good bit,
8 I mean, you know, help each other.

9 Q. Well, did you ever share with dad these allegations
10 that MINOR had made?

11 A. Did I share them with who?

12 Q. With your ex-husband?

13 A. I don't recall that I did, not right away. We didn't
14 talk about them.

15 Q. Now, at this point in time, MINOR was twelve and MINOR
16 was eight, correct?

17 A. Yes, sir.

18 Q. Thank you, ma'am.

19 THE COURT: Any redirect?

20 MS. BARWICK: No, sir, Your Honor.

21 THE COURT: All right. Thank you, ma'am. You may
22 step down from the witness stand.

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

25 THE COURT: Ladies and gentlemen, this would be a

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1 good time for us to take a lunch break. You've been very
2 conscientious and observant, listened well and I know you're
3 ready for a break, as we all are. I'll remind you again,
4 don't discuss the case with anyone. Don't let anyone
5 discuss the case with you while you're out for lunch. Be
6 careful to protect that purity of the process that I've
7 talked about. You may be eating lunch at a local restaurant
8 here and someone sits close to you and you start overhearing
9 someone talk, you take the initiative to just move away.
10 You've made a high commitment to these parties and you need
11 to maintain that commitment throughout this process.

12 We'll be ready to start back at two-fifteen. If you'll
13 be back in your jury room then. Have a good lunch, ladies
14 and gentlemen. Everyone else, please remain seated.

15 (WHEREUPON, the jury exited the open court at
16 approximately 1:05 p.m.)

17 THE COURT: All right. We'll be at ease until
18 two-fifteen.

19 MR. DEJONG: Thank you, Your Honor.

20 (WHEREUPON, the Court stood at recess for a lunch
21 break.)

22 THE COURT: Are you ready to proceed?

23 MS. BARWICK: The State is, Your Honor.

24 MR. DEJONG: I have a couple of matters to take up
25 with the Court before the jury comes in.

1 THE COURT: All right, sir.

2 MR. DEJONG: The first matter is, Your Honor, I
3 want the Court and Ms. Barwick to be aware I was downstairs
4 partaking of my lunch during the break. A young lady walked
5 up to me and started talking with me. The conversation was
6 that it was a beautiful day. She was reading memorials and
7 looking at the Andrew Pickens statute. And she did not have
8 a badge on and she was not dressed the same as she was this
9 morning. Had sunglasses on. But the thought occurred to me
10 then, oh, my gosh, I think I'm talking to a juror. I asked
11 her. I immediately removed myself. Nothing about the case
12 was discussed. If Ms. Barwick wishes to have her voir
13 dired, I have no problem with that, Your Honor, but I did
14 want the Court to be aware of it.

15 THE COURT: Any response from the State?

16 MS. BARWICK: Your Honor, Mr. DeJong's a very
17 honest man and if he says it, that's how it happened.

18 THE COURT: All right. Thank you. The next
19 thing?

20 MR. DEJONG: The other thing, Your Honor, there
21 are two pictures that were not allowed into evidence that
22 the Solicitor has lying on the end of counsel table. I
23 would ask that those be removed. That's all I have, Your
24 Honor, thank you.

25 THE COURT: All right. If the jury's ready, you

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1 can have them come in..

2 THE BAILIFF: They're not ready yet, Judge.

3 THE COURT: Okay.

4 (WHEREUPON, the jury entered the open court at
5 approximately 2:22 p.m.)

6 THE COURT: All right. Solicitor, you may call
7 your next witness.

8 MS. BARWICK: The State calls Ted Wheeler to the
9 stand.

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

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

15 THE WITNESS: Yes, I do.

16 THE CLERK: Have a seat, please, and state your
17 name for the record.

18 THE WITNESS: Ted Wheeler.

19 TED WHEELER,

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MS. BARWICK:

23 Q. Mr. Wheeler, do you know MINOR and MINOR

24 A. I'm their father.

25 Q. And you share custody with their mother?

1 A. Yes, I do.

2 Q. Do you recall back in July 2008 MINOR coming to spend
3 your week with you? It would have been after the July 4th
4 holiday.

5 A. Yes, I do.

6 Q. When she came and stayed with you, how was she acting?

7 A. Upset.

8 Q. When would it have been? Would it have been the week
9 after July 4th weekend?

10 A. I don't remember the exact date, but I just remember
11 when I got her back, she was real upset.

12 Q. Okay. And how was she acting that made you think she
13 was upset?

14 A. She was just nervous and upset and ---

15 Q. Did you ask her why she was upset?

16 A. Yes.

17 Q. And did she make a disclosure of sexual abuse to you?

18 A. Yes, she did.

19 Q. When she told you, what was her mannerism in telling
20 you? Was she hesitant or forthcoming?

21 A. Hesitant.

22 Q. Okay. After she told you, what did you do?

23 A. I didn't really know what to do and I had a lot of
24 thoughts, but I called Gene Patterson. He's in law
25 enforcement that's a personal friend of mine.

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1 Q. Do you know which agency he works for?

2 A. He's with Easley.

3 Q. Okay. And after speaking with Gene, did he tell you
4 anything?

5 A. He told me that I had to go to the police.

6 Q. Okay. And did you go to the police?

7 A. (Affirmative nod.)

8 Q. When did you go to the police?

9 A. I remember it was late at night. We went late.

10 Q. Okay. Which day of the week do you think that would
11 have been?

12 A. Honestly, I don't remember.

13 Q. Okay. And you went and told. And you said it was late
14 at night. Do you have an estimate of time when that was?

15 A. Eight or nine o'clock at night.

16 Q. Okay. Who was with you?

17 A. Just MINOR.

18 Q. Where did you go?

19 A. We went to the LEC.

20 Q. Okay. And do you know what LEC stands for at all?

21 A. Law Enforcement Center.

22 Q. Okay. Did you speak with an officer there?

23 A. Yes, I did.

24 Q. Do you see him in the courtroom?

25 A. Yes, I do.

1 Q. Okay. And can you point him out for the jury?

2 A. The man in uniform.

3 Q. When you spoke with him, did MINOR make a disclosure of
4 sexual abuse ---

5 A. Yes, she did.

6 Q. --- to the officer?

7 A. (Affirmative nod.)

8 Q. Did you find out -- All right. Did you find out about
9 MINOR Did you find out about him making a disclosure of
10 sexual abuse as well?

11 A. Later on.

12 Q. Okay. After you found out about that, did you have any
13 conversations with MINOR about that topic?

14 A. Yes, I did.

15 Q. Did he express any fears to you?

16 A. Yeah. He had a lot of fears.

17 Q. What were some of the fears he had?

18 A. He was afraid of Rick and he was afraid that he was
19 gay.

20 Q. After he expressed that fear to you, what if anything
21 did you do?

22 A. I asked him if he liked girls and he said, yes. And
23 then I asked him if he liked boys and he said, no. So I
24 told him he wasn't gay.

25 Q. And I'm sorry to ask you this question. Do you

1 remember MINOR and MINOR ever disobeying Rick?

2 A. Yes.

3 Q. Did you do anything in response to that?

4 A. I spanked them and I told them they had to listen to
5 him.

6 Q. Was that before these disclosures were made?

7 A. Yes.

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

10 THE COURT: You may cross-examine the witness.

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

13 **CROSS-EXAMINATION**

14 **BY MR. DEJONG:**

15 Q. So would you agree, Mr. Wheeler, that what you say was
16 a disclosure to you by MINOR was at least a week after the
17 alleged incident?

18 A. I don't remember the time line, sir.

19 Q. All right. Well, when she disclosed, as you call it
20 and as the Solicitor calls it, did she give you a date?

21 A. She didn't really talk about a date. She just said
22 that they had left.

23 Q. Okay. Well, you and her mother communicate, do you
24 not?

25 A. Yes, we do.

1 Q. And are you saying that when MINOR came to you, when it
2 was your weekend, that was the first knowledge that you had
3 of these allegations?

4 A. Yes.

5 Q. Okay. Did Mr. Beekman ever call you about these
6 allegations?

7 A. I believe he did at one time, but it was after it was
8 all -- we'd already been to Court. I knew he was lying.

9 Q. You just don't remember is what you're telling me,
10 right?

11 A. I don't remember the time line.

12 Q. Well, that being said, I'll ask anyway. How long was
13 it after MINOR made these allegations that you became aware
14 of MINOR allegations?

15 A. Honest to God, I don't really remember the time line.
16 I mean, this has been three years ago.

17 Q. And apparently you asked him if -- MINOR if he liked
18 girls?

19 A. Yes, I asked MINOR if he liked girls.

20 Q. You brought that up, correct?

21 A. Yes, I did. When he told me he was gay.

22 Q. All right. And had there been any prior discussion
23 about that between you and him?

24 A. Never.

25 Q. And then you asked him if he liked boys, right?

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1 A. Yes, I did.

2 Q. And he said he wasn't gay, right?

3 A. He said he didn't like boys. I told him he wasn't gay.

4 Q. Thank you, sir.

5 THE COURT: Any redirect?

6 MS. BARWICK: No, sir, Your Honor.

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

8 THE WITNESS: Thank you.

9 MR. DEJONG: No objection to this witness being
10 excused, Your Honor.

11 THE COURT: The State may call its next witness.

12 MS. BARWICK: The State would call Deputy Cory
13 Baker to the stand.

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

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

19 THE WITNESS: I do.

20 THE CLERK: State your name for the record,
21 please.

22 THE WITNESS: Cory Baker.

23 CORY BAKER,

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MS. BARWICK:

2 Q. Deputy Baker, where do you work?

3 A. I work for the Pickens County Sheriff's Office.

4 Q. And how long have you worked for them?

5 A. Five years.

6 Q. How long have you been in law enforcement?

7 A. Five years.

8 Q. So all five years have been at the Sheriff's Office?

9 A. Yes, ma'am.

10 Q. Do you remember MINOR CHILD 1 coming into the LEC with
11 her father to speak with you?

12 A. I do.

13 Q. What day did she come in with her father?

14 A. She came in on July 14th of 2008.

15 Q. About what time?

16 A. About nine-thirty at night.

17 Q. Did you speak with MINOR CHILD 1?

18 A. I did.

19 Q. Did she disclose any sexual abuse to you?

20 A. Yes, she did.

21 Q. And what did you do in response to that?

22 A. I documented what she had told me had happened. I got,
23 with the permission of her father due to her being a minor,
24 I got her to write me a voluntary statement and forwarded
25 that to the Juvenile Detective Division, since that would be

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1 their area of speciality. That way, they could get the ball
2 rolling on what needed to happen the next morning, get the
3 case assigned to them.

4 Q. And is that the extent of your involvement with this
5 case?

6 A. It is.

7 MS. BARWICK: No further questions.

8 THE COURT: Any cross-examination.

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

11 **CROSS-EXAMINATION**

12 **BY MR. DEJONG:**

13 Q. Anybody come in other than Mr. Wheeler and MINOR
14 Wheeler?

15 A. Not to me.

16 Q. All right. Once you took your report, did you have any
17 further involvement with the case?

18 A. I did not.

19 Q. All right. And you say you documented your report. Is
20 that correct?

21 A. Yes.

22 Q. And that report would be accurate?

23 A. I can't hear you.

24 Q. That report would be accurate?

25 A. Yes.

1 Q. And as part of the reporting -- and I'm not asking for
2 all of it, just one specific part -- did the alleged victim,
3 MINOR CHILD 1 say that the hands were inside her panties?

4 A. Yes.

5 Q. And you've been to the police academy, right?

6 A. Yes.

7 Q. Part of that is to teach you to write accurate reports?

8 A. Yes.

9 Q. And that report is accurate?

10 A. As to what I was told, yes.

11 Q. How long did you spend with MINOR and her dad?

12 A. I can't remember exactly how long they were there.

13 That was three years ago.

14 Q. Do you remember what day of the week it was?

15 A. I do not.

16 Q. Okay. Are you road patrol?

17 A. Yes.

18 Q. Were you road patrol back in '08?

19 A. I was.

20 Q. How did it happen that you met at the LEC?

21 A. I work the Pickens area. I actually -- if we don't
22 have anybody at the office, if you work the Pickens area and
23 we have a walk-in to the center, to the Law Enforcement
24 Center, that would be one of our responsibilities, to help
25 take -- to handle the walk-in.

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1 Q. All right. As a result of these allegations, did you
2 ever talk to Mr. Beekman?

3 A. No.

4 Q. So your basic involvement was taking what we would
5 refer to as the initial report. Is that correct?

6 A. Yes.

7 Q. Did you have any other involvement whatsoever with this
8 case?

9 A. No.

10 Q. Thank you, sir.

11 THE COURT: Anything in redirect?

12 MS. BARWICK: No, sir, Your Honor. May he please
13 be excused?

14 MR. DEJONG: No objection, Your Honor.

15 THE COURT: Without objection, the witness may be
16 excused. Thank you, sir. You may step down, Officer Baker.
17 You may call your next witness, Solicitor.

18 MS. BARWICK: The State would call Detective
19 Cynthia Palis to the stand.

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

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

25 THE WITNESS: I do.

1 THE CLERK: State your name for the record,
2 please.

3 THE WITNESS: Cynthia Palis, P-a-l-i-s.

4 CYNTHIA PALIS,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MS. BARWICK:

8 Q. Detective Palis, what do you normally go by?

9 A. Teddi.

10 Q. Okay. Just like MINOR

11 A. Yes, that's correct.

12 Q. Did you become involved in this case?

13 A. Yes, I did.

14 Q. When did you first learn about this case?

15 A. I was assigned this case on the 15th of July, 2008.

16 Q. When you were assigned to it, what did you do?

17 A. Well, what I did is after receiving this assignment, I
18 met with MINOR and her mom at the Sheriff's Office at LEC
19 and obtained and spoke with her about the incident that had
20 happened. And after she did disclose the sexual situation
21 that occurred, then I took a written statement from her.

22 Q. Normally, where do you work during the school year?

23 A. During the year and during school, I'm assigned as a
24 school resource officer. And during the summer months,
25 while at the Sheriff's Office, we are given different

1 various assignments. And some of us work investigations and
2 just other different divisions. So I happened to be
3 investigations in 2008 and was assigned this case.

4 Q. Okay. And how long have you been working for the
5 Sheriff's Office?

6 A. I've been working there for approximately twenty years.

7 Q. Did you also take a statement from MINOR

8 A. Yes, I did.

9 Q. Did you say where her pants were in relation to the
10 Defendant's hands?

11 A. I'll have to refer back to my notes just to be sure.
12 This was in 2008.

13 Q. If you need your statement, I'll give it to you.

14 A. I have a copy.

15 Q. Okay.

16 A. She said that her pants had been pulled down and that
17 the Defendant had his hand on her vagina area.

18 Q. Okay. With her pants being pulled down?

19 A. That's correct.

20 Q. Okay. When she disclosed to you, what were her
21 mannerisms?

22 A. MINOR was -- she seemed very, very intelligent. And
23 she was very direct about the situation that happened and
24 she seemed hurt and angry.

25 Q. Later on did you learn about MINOR making any

1 disclosures of sexual abuse?

2 A. Yes, I did.

3 Q. Did you have the opportunity to speak with him?

4 A. Yes, I did. MINOR was brought into the Sheriff's
5 Office by his mom on July the 21st of 2008. And at that
6 time he disclosed a sexual situation also.

7 Q. When he disclosed, what did you do?

8 A. He was, if I recall, just going into the third grade.
9 And he had difficulty speaking about what had happened.
10 When he came in, we spoke about school and just things like
11 that. But then when I asked him about the relationship
12 between he and his stepfather, he became extremely nervous
13 and he looked down and, according to my notes, started
14 scratching his legs. It was shortly after that -- I didn't
15 speak. I didn't ask many questions at that point and
16 referred him to a forensic interview.

17 Q. Okay. And did that forensic interview take place?

18 A. Yes, it did.

19 Q. Were you there for it?

20 A. Yes, I was.

21 Q. Where did it take place?

22 A. It took place at the -- I want to say the Rape Crisis
23 in Greenville, South Carolina.

24 Q. All right. Do you know if goes by a new name?

25 A. Valentine? I'm not sure of the new name that it has.

1 Q. All right. But you were present during that interview?

2 A. Yes, I was.

3 Q. And was it recorded with audio and video?

4 A. Yes.

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

7 THE COURT: Any cross-examination.

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

10 CROSS-EXAMINATION

11 BY MR. DEJONG:

12 Q. So the first allegations came to you on July the 14th
13 of 2008?

14 A. It was assigned to me on the 15th. That's correct.

15 Q. Okay. But the first allegations that came in. I'm
16 sorry.

17 A. Right.

18 Q. Was July the 14th of 2008?

19 A. Yes, sir.

20 Q. Now, during the course of your working on this case,
21 was an alleged offense date determined?

22 A. For which ---

23 Q. MINOR

24 A. For MINOR

25 Q. Yes.

1 A. July the 7th of 2008 was the date.

2 Q. So the allegations came to the attention of law
3 enforcement one week later?

4 A. Yes, sir.

5 Q. Now you say the mother came in on the 15th?

6 A. Yes, that's correct.

7 Q. Do you know who came in on the 14th?

8 A. No, sir.

9 Q. Okay. Well, were you aware that on the 14th that a
10 statement had been taken from MINOR

11 A. Yes, sir.

12 Q. And then you took another statement the following day?

13 A. That's correct.

14 Q. After you had interviewed and talked with MINOR, right?

15 A. That's correct.

16 Q. All right. Now, how many times did you talk with

17 MINOR

18 A. I spoke with her that day, on the 15th.

19 Q. Okay. Other times?

20 A. I don't recall speaking with her at other times.

21 Q. All right. Now, I may have misunderstood or not heard
22 you correctly, but I thought you used the word sexual
23 relations. There were no sexual relations in this case, was
24 there?

25 A. What do you mean?

1 Q. Well, that's what I'm trying to figure out, if you said
2 sexual relations what you mean. No intercourse?

3 A. Right.

4 Q. No penetration?

5 A. Not with MINOR that's correct.

6 Q. All right. And the allegations were a touching, right?

7 A. Yes, sir.

8 Q. Okay. Now, how long did you spend with MINOR and her
9 mother?

10 A. I really don't remember the time frame that day.

11 Q. I beg your pardon?

12 A. I do not remember the time frame that day with her.

13 Q. Well, fifteen minutes, half hour, hour, two hours?

14 A. I'm not really sure that day how long I spent with her.

15 Q. I'm sorry?

16 A. I'm not sure that day how long I spent with her. I'm
17 sure it was more than fifteen minutes.

18 Q. Okay. And that was basically the extent of your
19 investigation, right?

20 A. With MINOR.

21 Q. Yes. All right. Now, when MINOR made his allegations,
22 did that case come directly to you?

23 A. The case was sent to me also. She -- the mom brought
24 him in to speak to me, since I'd already spoken to MINOR.

25 Q. Well, my question probably wasn't very clear. Was

- 1 there any other officer involved, other than you?
- 2 A. No, sir.
- 3 Q. Okay. Now, how many times did you talk with MINOR
- 4 A. In reference to that, it was only the one time.
- 5 Q. All right. You say that he went to Greenville for this
- 6 interview. Did you transport him?
- 7 A. No, sir.
- 8 Q. But you were there?
- 9 A. Yes, sir.
- 10 Q. And to your knowledge, was MINOR aware that you were
- 11 there?
- 12 A. Yes, sir.
- 13 Q. Now, did you have any dealings with a -- well, let me
- 14 back up. You're a school research -- school resource
- 15 officer for which school?
- 16 A. Edwards Middle School.
- 17 Q. Edwards Middle?
- 18 A. Uh-huh (affirmative).
- 19 Q. Nothing to do with Liberty?
- 20 A. No, sir.
- 21 Q. So if I understand you right, when MINOR came to you,
- 22 he was not forthright. He was hesitant?
- 23 A. There was some hesitation with him.
- 24 Q. Well, you said he was hesitant, right? Correct? You
- 25 said he was hesitant, right?

1 A. He was nervous. He was hesitant.

2 Q. Right. Well, who did transport him to Greenville, if
3 you know?

4 A. I'm not really sure. It wasn't me.

5 Q. Well, when MINOR was in Greenville, did you see him?

6 A. Yes, I did.

7 Q. Before the interview or after the interview, during the
8 interview?

9 A. It was before.

10 Q. Did you speak to him?

11 A. Yes, sir.

12 Q. Before the interview started did you talk with him?

13 A. I spoke to him, but I'm not sure exactly what we talked
14 about, just different things.

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

16 Q. Did you ever speak to Mr. Beekman?

17 A. Yes, sir.

18 Q. How many times?

19 A. Twice, that I remember.

20 Q. Did he ever give a statement?

21 A. Yes, he did.

22 Q. And are there any admissions in that statement of any
23 kind?

24 MS. BARWICK: Your Honor, I'm going to object. If
25 he wants to put his client on the stand, he can. But

1 otherwise, he can't get out his client's statement.

2 THE COURT: What's the purpose of your question as
3 to the statement?

4 MR. DEJONG: I asked if he ever gave a statement.

5 THE COURT: And she responded about the content.
6 Are you asking about the content of the statement now?

7 MR. DEJONG: Just asked if there was any admission
8 in the statement?

9 THE COURT: I'm going to sustain the objection as
10 the question is asked. I'll allow you to ask further
11 questions about the statement.

12 Q. Thank you, ma'am.

13 THE COURT: Any redirect?

14 MS. BARWICK: No, sir, Your Honor.

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

17 THE COURT: The State may call its next witness.

18 MS. BARWICK: Your Honor, the State would like, if
19 Your Honor wishes, to give us about a five to ten minute
20 break.

21 THE COURT: All right. Let's take a short break.
22 Ladies and gentlemen, as you go back to your jury room what
23 I would like for you to do, sometimes when you're back
24 there, you may have a need that you need to take care of
25 with us. You may have a question for me. You may have a

1 need from one of the jurors to make a phone call about
2 picking up a child or adjustment on the thermostat or snacks
3 or whatever it may be, we need to have a spokesperson, if
4 you will, from your jury. I'm going to ask of the first
5 twelve of you that a foreperson be selected.

6 What the foreperson does is merely that's a
7 spokesperson. It doesn't mean that person has more votes
8 than anyone else when it comes time to make your decision.
9 But whatever communication you need, that foreperson would
10 just write out the particular need or question that you
11 have, give it to one of the bailiffs and we can accept it
12 back here and get it to the appropriate person to respond to
13 for you. What your foreperson will be is somewhat your
14 presiding officer, your liaison with the Court and with the
15 Clerk's office. When all the evidence is in and the case is
16 concluded and I've instructed you on the law, the foreperson
17 would be the one who will facilitate that discussion you
18 have one with another to get everyone's input about the view
19 of the facts, and on behalf of the fellow jurors write out
20 the verdict form for the jury.

21 So if you would, from the first twelve just select a
22 person, write that name out. If you would, give it to the
23 bailiff while you're taking your break. That will give you
24 a little job to do while we're out. When you come back in,
25 the foreperson will occupy the seat on the front row closest

1 to the witness chair here. Sometimes when exhibits are
2 offered into evidence, they're passed around if not shown on
3 an overhead, and for the lawyers to give the document or the
4 -- whatever the tangible exhibit may be to a juror, let the
5 foreperson see it, pass it around to others. So that
6 foreperson will occupy that seat as you've already done.
7 Some of you may want to sit in the front row, some on the
8 back row. The alternates have their designated seats, but
9 the rest of you can sit anywhere you like. But we'll have a
10 designated foreperson occupying that seat. So if you would
11 select a foreperson. Don't discuss the case, of course, at
12 this time. But we'll call you back in just a few moments
13 when we're ready for the next witness. We'll take a short
14 break.

15 (WHEREUPON, the jury exited the open court at
16 approximately 2:55 p.m.)

17 THE BAILIFF: The door's closed.

18 THE COURT: We'll take a short break. How many
19 more witnesses do you think the State will have?

20 MS. BARWICK: Your Honor, today the State
21 anticipates two more witnesses. Then if the State can
22 request a break, if we happen to finish up early, just
23 because of scheduling issues, have Shauna Galloway in the
24 morning and then the State would rest.

25 THE COURT: Okay. The witnesses that come this

1 afternoon, are they going to take up the rest of the day,
2 you think?

3 MS. BARWICK: Your Honor, I believe the State will
4 be done, except for Shauna Galloway, by four o'clock this
5 afternoon.

6 THE COURT: By four. Ms. Galloway can't come this
7 afternoon?

8 MS. BARWICK: Your Honor, just the scheduling
9 issues.

10 THE COURT: Okay.

11 MS. BARWICK: We could get her here if absolutely
12 needed.

13 THE COURT: Well, we'll see how it plays out. All
14 right. Let's take a short break.

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

17 THE COURT: If they're ready you can have them
18 come in.

19 (WHEREUPON, the jury entered the open court at
20 approximately 3:15 p.m.)

21 THE COURT: All right. Solicitor, you may call
22 your next witness.

23 MS. BARWICK: The State would call Savannah
24 Mauldin to the stand.

25 THE CLERK: Place your left hand on the bible and

1 raise your right hand.

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

5 THE WITNESS: I do.

6 THE CLERK: Have a seat and state your name for
7 the record.

8 THE WITNESS: Savannah Mauldin.

9 SAVANNAH MAULDIN,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MS. BARWICK:

13 Q. Savannah, do you know MINOR and MINOR

14 A. Yes.

15 Q. Are you related to them?

16 A. Yes, ma'am.

17 Q. How are you related?

18 A. They're my cousins.

19 Q. Okay. How old are you?

20 A. Twenty-two.

21 Q. So three years ago you would have been nineteen?

22 A. Yes, ma'am.

23 Q. Do you remember after the July 4th holiday back in 2008
24 going over to your grandmother's house?

25 A. Yes, ma'am.

1 Q. And who was over there?

2 A. Me, MINOR MINOR and my grandma and Tina.

3 Q. And who?

4 A. My grandma and Tina.

5 Q. Is Tina MINOR and MINOR mom?

6 A. Yes, ma'am.

7 Q. When you were over there, how was MINOR acting?

8 A. He was just not acting his self. He acted liked
9 something was bothering him, kind of upset.

10 Q. Did y'all see any drawings that he had done?

11 A. Yes.

12 Q. Okay. What were those drawings of?

13 A. The one that I remember was a picture of Rick hanging
14 by a tree.

15 Q. Okay. And where did you -- where did this drawing come
16 from?

17 A. It was on the kitchen table.

18 Q. Okay. Was it laid out flat or wrinkled?

19 A. That one was laid out. There was another drawing.

20 Q. Okay. Tell me about that drawing?

21 A. I don't remember what that one had on it, but I know it
22 was crinkled up and thrown in the garbage.

23 Q. Did you start talking to MINOR at all?

24 A. I did.

25 Q. Did you ask him about any sexual abuse that might have

1 happened to him?

2 A. I just asked him what was bothering him.

3 Q. Did he respond?

4 A. He did.

5 Q. Did he disclose any sexual abuse to you at that time?

6 A. Yes.

7 Q. Okay. Did he go into detail at all with you about it?

8 MR. DEJONG: Objection, Your Honor. She's asked

9 the questions she can ask. There are others she can ---

10 THE COURT: Rephrase your question as far as what
11 you're trying to elicit from the witness.

12 Q. Did he disclose everything to you?

13 A. No.

14 MR. DEJONG: Objection, Your Honor. How in the
15 world would she know that. That calls for speculation.

16 MS. BARWICK: Your Honor, we're going to get to
17 that point.

18 THE COURT: Okay. Rephrase your question again.
19 I sustain the objection.

20 Q. Do you feel like he disclosed everything to you?

21 A. No.

22 Q. After y'all had that discussion, what did he do?

23 A. He started getting very upset, hyperventilating,
24 pulling his hair. He went to the back, sat in the closet
25 and just ---

1 Q. Which closet?

2 A. It was in the -- it's a bedroom/laundry room area. And
3 he was just hyperventilating. Upset.

4 Q. Okay. Did MINOR ever go into the room with him?

5 A. Yes.

6 Q. Were you in the room when she went in there?

7 A. I was standing right outside the room.

8 Q. Did you hear MINOR talk about anything?

9 A. I did.

10 Q. Did she make a disclosure to MINOR of sexual abuse?

11 MR. DEJONG: Your Honor, I'm going to object to
12 that. This witness was not a party to that conversation.
13 And not being a party to the conversation, I believe that is
14 hearsay.

15 THE COURT: Well, did I understand that she was

16 ---

17 MS. BARWICK: She was listening to the
18 conversation. I'm not going to have her state what was
19 said.

20 MR. DEJONG: She wasn't a party to the
21 conversation. I'm sorry. Ms. Barwick, I interrupted you.
22 She was not a party to that conversation.

23 THE COURT: I'll overrule your objection.

24 Q. Did you hear MINOR make a disclosure of sexual abuse to

25 MINOR

1 A. Yes.

2 Q. What did MINOR do in response?

3 A. He told us more information about sexual abuse that had

4 ---

5 Q. Okay. I'm sorry. Finish your sentence.

6 A. He just told us more things that had happened to him.

7 Q. More than what he had told you previous?

8 A. Yeah.

9 Q. Was it in more detail?

10 A. Yes.

11 Q. How was he acting?

12 A. Very upset. Hyperventilating.

13 Q. That upset?

14 A. Yes.

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

17 THE COURT: You may cross-examine the witness.

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

20 CROSS-EXAMINATION

21 BY MR. DEJONG:

22 Q. The people that were there -- do you remember what day
23 of the week this was?

24 A. I'm almost positive it was Saturday.

25 Q. Do you remember what date?

1 A. It was around the 19th.

2 Q. All right. Now, did -- this was what has been, I
3 guess, referred to as grandmother's house, right?

4 A. Yes, sir.

5 Q. Did you live there at that point in time?

6 A. No, sir.

7 Q. How did you come be there at that time?

8 A. I went to spend the day.

9 Q. Okay. And before this time, how much time did you
10 spend with MINOR and MINOR

11 A. I used to go spend a lot of time with them.

12 Q. Pardon me?

13 A. I saw them a good bit.

14 Q. You saw them a good bit. How much time did you spend
15 with them?

16 A. I don't know.

17 Q. All right. Now, these pictures you were talking about.
18 Do you know when they were drawn?

19 A. Do I know what? I'm sorry.

20 Q. When they were drawn?

21 A. They were drawn the day that I was at my grandma's.

22 Q. All right. And do you know whether or not before this
23 day MINOR had talked to MINOR

24 A. About?

25 Q. Her allegations?

1 A. She did not.

2 Q. But then as you say -- when you first started talking
3 to him, MINOR was pretty calm, right?

4 A. He was calm, but, you know, something was bothering
5 him.

6 Q. And then he talked to MINOR and he became more
7 agitated, more upset, right?

8 A. No.

9 Q. After he talked to MINOR you said, I believe, he gave
10 more detail. Is that what you said?

11 A. Yes.

12 Q. I'm sorry?

13 A. Yes.

14 Q. Okay. Did anyone suggest that you talk to MINOR

15 A. They were all sitting -- I mean, we were all pretty
16 much around the same room.

17 Q. All being you, Tina, grandmother, MINOR and MINOR
18 right?

19 A. Yes.

20 Q. Right?

21 A. Yes.

22 Q. And this was on the 19th?

23 A. I don't remember the exact date. I know it was around
24 the 19th.

25 Q. And you were seventeen at the time?

1 A. I was about nineteen.

2 Q. About nineteen at the time. Okay. Twenty-two now?

3 A. Yes, sir.

4 Q. All right.

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

6 Q. When you were -- you said you were all seated in the
7 room, I think, right?

8 A. We weren't all seated in the room. Me and him were
9 seated.

10 Q. Okay. Where was Tina?

11 A. Standing in -- there's like a counter and she was
12 standing behind the counter.

13 Q. Where was grandmother?

14 A. Standing behind the counter.

15 Q. Where was MINOR

16 A. I don't remember.

17 Q. That's a pretty small room you were in, right?

18 A. Yeah.

19 Q. And you said that MINOR didn't talk to MINOR before you
20 talked to him, about her allegation, right?

21 A. Right.

22 Q. But you have no way of knowing that, do you?

23 A. That I know she didn't.

24 Q. Right. But you have no way of knowing that, do you?

25 A. He didn't know anything about ---

1 Q. No, ma'am. I'm sorry. I don't mean to be rude. My
2 question is, you have no way of knowing that, do you?

3 A. No.

4 Q. Thank you, ma'am.

5 MR. DEJONG: Nothing further.

6 THE COURT: Any redirect?

7 MS. BARWICK: No, sir, Your Honor.

8 THE COURT: Thank you, ma'am. You may step down,
9 Ms. Mauldin.

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

12 THE COURT: You may call your next witness.

13 MS. BARWICK: The State would call Dr. Henderson
14 to the stand.

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

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

20 THE WITNESS: Yes, I do.

21 THE CLERK: State your name for the record,
22 please.

23 THE WITNESS: Nancy Ann Henderson.

24 NANCY HENDERSON,

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

1

DIRECT EXAMINATION

2

BY MS. BARWICK:

3

Q. Dr. Henderson, where do you work?

4

A. I work for Greenville Hospital System.

5

Q. And what's your position there?

6

A. I'm head of the section of child abuse and neglect at
7 the hospital.

8

Q. Are you a medical doctor?

9

A. Yes, I am.

10

Q. Okay. Can you please tell the jury a little bit about
11 your training?

12

A. Okay. I did my undergraduate training at Rutgers
13 College of Pharmacy, which was a five year undergraduate
14 degree. And then I went to Bowman Gray School of Medicine,
15 which is in Winston-Salem, North Carolina. And that's where
16 I got my medical -- did my medical school and I got my
17 medical degree. And then I did my three year pediatric
18 residency at T.C. Thompson Children's Hospital in
19 Chattanooga, Tennessee. And then since then I've been
20 boarded in pediatrics and sub-boarded in adolescent medicine
21 and child abuse pediatrics.

22

Q. Okay. And what kind of specialized training have you
23 done in doing medical exams on children?

24

A. Well, as I just was mentioning, I'm board certified in
25 child abuse pediatrics, which required me to be practicing

1 in the field for five years and fifty percent of my practice
2 involved in that area. And then in 2009 I sat for an exam
3 with the board and passed that. And then that has to be re-
4 certified every ten years.

5 Q. Have you testified as an expert in pediatrics before?

6 A. Yes, I have.

7 Q. How many times?

8 A. I've been asked to come to court probably about twenty
9 to thirty times a year.

10 Q. Okay. And how many times do you think you've actually
11 testified in court as an expert? Just a rough guess.

12 A. Probably the majority of those times.

13 Q. Okay.

14 MS. BARWICK: Your Honor, at this time, the State
15 move her in as an expert in pediatrics.

16 MR. DEJONG: No voir dire, Your Honor.

17 THE COURT: All right. Any objection? Ladies and
18 gentlemen, let me just explain to you about an expert
19 witness. An expert witness is a person who, because of
20 background or training or expertise in some field is
21 qualified to give an opinion. Most of the time in a trial,
22 a witness can testify to what that witness saw or heard or
23 sensed in some way, but we have an exception for an expert
24 witness who in that field of expertise can give an opinion
25 and also give a basis of that opinion. The fact that an

1 expert is allowed to give an opinion that's evidence as all
2 other evidence for you to treat as you see fit. You can use
3 it any way that you think is proper, along with all the
4 other evidence. You may continue, Solicitor.

5 MS. BARWICK: Thank you, Your Honor.

6 Q. Did you have a chance to examine MINOR CHILD 2

7 A. Yes, I did.

8 Q. And when -- do you remember the date of that?

9 A. Yes, it was July 31st, 2008.

10 Q. And who came to the exam with him?

11 A. His mom and dad.

12 Q. Okay. And before conducting the exam, did you speak
13 with MINOR

14 A. Yes, I do. I talk to all the patients before I
15 actually do the physical part of the exam.

16 Q. And what's the purpose of talking with the patients
17 beforehand?

18 A. Well, when I talk to the patient I want to understand
19 what's happened. I want to understand what concerns they
20 have about their body. I want to make sure that they are
21 safe where they are living. I need to know what's happened
22 so I can understand and decide what kind of test, if any,
23 are needed to look for sexually transmitted infections and
24 things like that. And certainly, also, to make appropriate
25 referrals based on that information.

1 Q. So a medical diagnosis?

2 A. Yes.

3 Q. In this case when you sat down with MINOR did he tell
4 you anything about any complaints he had?

5 A. Yes, he did.

6 Q. And what complaints did he have?

7 A. Well, he initially shared about a lot of stinging he
8 had in his genital area and because of that stinging he was
9 really pulling at that area very, very often.

10 Q. Okay. And did he tell you what the source of that
11 stinging was?

12 A. Well, after he shared about that, he had shared about
13 what had happened to him.

14 Q. And what did he say happened to him?

15 A. He had said that he had been touched on his genital
16 area and also had shared that someone had put his private
17 part into his bottom, into MINOR bottom. And also that he
18 had to touch that person's private part as well.

19 Q. Okay. Did that help you enable -- or did that enable
20 you to determine what kind of tests to perform?

21 A. Yes, when there was -- because of the history of a --
22 the private part going into his bottom, it really increases
23 the risk for a sexually transmitted infection. So because
24 of that we went ahead and did -- I went ahead and did rectal
25 cultures looking for sexually transmitted infections and

1 also recommended getting HIV testing and testing for
2 syphilis.

3 Q. Were you able to do that HIV testing?

4 A. No. He really did very well for the interview part and
5 for the medical exam, but at the end after he got dressed
6 and concluded everything, we were getting ready for that
7 blood work and that part was just so difficult for him that
8 he just was unable to cooperate that day for it. So we just
9 elected to -- I gave them a prescription and he was going to
10 follow that up at his pediatrician's office to get the blood
11 work done another day.

12 Q. Let's talk about the actual exam that you conducted on
13 him. Can you tell the jury the procedures that you went
14 through to conduct that exam?

15 A. Yes, ma'am. So what we do is when the child comes in,
16 they come in with an advocate with them that often is the
17 parent and I have a child life specialist who will go over
18 the exam with them so that we understand body part names and
19 exactly what's going to happen. We get them to just kind of
20 feel comfortable with the medical equipment, the stethoscope
21 and the otoscope to look in the ears and the mouth. And
22 then for this type of exam we use a piece of equipment
23 called a colposcope, which is not at all invasive, doesn't
24 hurt the child, but it just allows for magnification, like a
25 microscope with an excellent light source and allows us to

1 get a very good look at the genital area. So we have
2 someone explain that, let the child play with it so that
3 they feel comfortable with it. And then I do talk with the
4 parents to find out what kind of behaviors and symptoms the
5 child is having, then I talk with the child by themselves
6 again to understand, you know, what's going on and what
7 concerns they have. And then I do the physical exam, which
8 is a complete head-to-toe exam, including looking at the
9 genital area, with the colposcope as I had mentioned. And
10 then for MINOR went ahead and did rectal cultures. Also had
11 him go to the bathroom in a cup. It's another good way to
12 look for urinary tract infections as well as sexually
13 transmitted infections that way. And then let him go ahead
14 and get dressed. And then we usually do the blood work and
15 talk to the child and the family about findings that we have
16 and then for recommendations.

17 Q. Does part of your history-gathering with the symptoms,
18 what kind of symptoms was he exhibiting?

19 A. Well, the parents had shared that there were quite a
20 few symptoms that he had been having. I think one of the
21 things they were most concerned about was all the touching
22 of his genital area, which had been going on for quite a bit
23 over the summer. Mom had shared that he was having a lot of
24 anxiety in her presence and had taken some medicine for
25 that, also some melatonin to help with sleep. They also

1 shared about some bed wetting that had gone on in the past,
2 not so much at the time that I was seeing him. He also had
3 some episodes of soiling with bowel movement in his pants
4 and a lot of stomachaches. And I think that those were the
5 majority of symptoms.

6 Q. Are those symptoms consistent with a child who has been
7 sexually abused?

8 A. Those symptoms are not specific at all for sexual
9 abuse. We see that a lot in children when there is a lot of
10 stress and anxiety. But certainly in children that are
11 sexually abused, a lot of these symptoms often do go along
12 with that.

13 Q. And tell me about this melatonin. What is that?

14 A. It's a natural product, very safe, and so it's one that
15 I often will recommend. It's not addicting so it's often
16 used with children who are having difficulty in sleeping and
17 it's been pretty effective for them.

18 Q. Is it over-the-counter?

19 A. Yes, it is.

20 Q. Have you ever suggested somebody use it?

21 A. Yes, I have.

22 Q. Okay. And would you suggest its use in children?

23 A. Yes.

24 Q. So that's not something abnormal?

25 A. No, not at all.

1 Q. Okay. Are you paid to be here today?

2 A. No, I'm not.

3 Q. Is the Solicitor's Office paying you?

4 A. No, they're not.

5 Q. Okay. Are you here because you're in fact under a
6 subpoena from the Solicitor's Office?

7 A. Yes, I am.

8 Q. That being said, thank you for your time here. I
9 really want to talk about the positioning that MINOR was in
10 when you did this, the anal exam. Is that an appropriate
11 terminology for this?

12 A. Yeah. Anal or rectal exam.

13 Q. A rectal exam. What position was he in for you to be
14 able to do this?

15 A. So to do that part, which is usually the last part of
16 the exam, we have the child -- they're on just a regular
17 exam table and they're on their side, usually they're laying
18 on their left side with their knees kind of tucked up toward
19 their tummy and they have a sheet or cover over them. They
20 usually -- we usually have them wear like a big sports T-
21 shirt so they feel as comfortable as possible, and then
22 usually the parent is on side and I am on the other side of
23 the table, so I'm the only one at that part of the table.
24 And I have the colposcope and that is kind of on one side
25 and I am sitting down and I spread apart the buttock area to

1 get a good look using that light and magnification at the
2 rectal area.

3 Q. And how long do you think this exam took?

4 A. The entire exam?

5 Q. Yes.

6 A. It probably takes about fifteen minutes, fifteen,
7 twenty minutes.

8 Q. What were the results of the exam?

9 A. He had a little bit of redness covering the outer part
10 of his buttocks area and he had a little bit of redness on
11 the top part of his penis, but otherwise, his exam was
12 normal.

13 Q. Okay. Let's talk about that a little bit. What kind
14 of things are you looking for, you know, abnormalities?
15 What kind of abnormalities would you expect to see?

16 A. Well, I look for everything, you know, because when I'm
17 seeing a child, I'm looking at their overall regular medical
18 health, so I'm looking for any kind of general pediatric
19 problems. I'm looking for rashes, looking for unusual
20 scars, bruises, things like that. In the genital area, I'm
21 looking again for any kind of scarring, any kind of urethral
22 discharge that could be a sign of infection. And in looking
23 at the rectal area, I'm looking at the tone there. I'm
24 looking for any scars, rashes, things like that.

25 Q. Okay. Let's talk about the rectal area. In MINOR did

1 you find any abnormalities outside of that redness?

2 A. No, ma'am.

3 Q. Okay. Would you -- is it normal to be normal or is it
4 normal to be abnormal in these kind of cases?

5 A. Well, in the majority of cases and where children are
6 abused and where there is a history of penetration, penile
7 penetration to the rectal area, it is actually very common
8 that ninety percent or more of children will have normal
9 exams, meaning not any tears, not any change in their rectal
10 tone, when the exam is done.

11 Q. Okay. Would the length of time between the assault and
12 the exam, how would that affect the results if it would at
13 all?

14 A. Well, it could affect it. That rectal area has an
15 extremely good blood supply so that small tears, lacerations
16 can heal very, very quickly within hours to days so that if
17 there was something and you didn't see a child right then
18 and there, we might miss that because, again, it can heal so
19 quickly.

20 Q. Would five hours be enough time for it to heal?

21 A. Well, it all depends on the depth, the depth of the
22 injury. So if it's very, very superficial then within hours
23 it can -- the skin can kind of get new cells on top and can
24 heal.

25 Q. Right. And you said this happened -- that your exam

1 happened on the 21st of July?

2 A. It was the 31st of July.

3 Q. I'm sorry. The 31st of July.

4 A. Yes, ma'am.

5 Q. So just for hypothetical purposes, if the assault
6 happened on July 6th of 2008, would you expect his rectal
7 exam to be normal or abnormal?

8 A. Well, like I just said, it would be very common and,
9 you know, in the information that MINOR had shared, he did
10 not share any bleeding that had occurred. So even if I had
11 seen him right then and there, there is a very good chance
12 that there wouldn't have been any evidence at that point
13 either.

14 Q. And does bleeding always, you know, does bleeding
15 always result during anal penetration?

16 A. No, no. It often will not because a lot of times what
17 happens is that area, because of what its normal job is, it
18 can stretch instead of tear. So a lot of times when things
19 are inserted in the rectal area, as things come out, it
20 often will not tear. So that is why the majority of time
21 when children have things like this done, they do have
22 normal exams.

23 Q. You said MINOR had told you that there was no blood?

24 A. That's right.

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

1 witness.

2 THE COURT: You may cross-examine the witness, Mr.
3 DeJong.

4 CROSS-EXAMINATION

5 BY MR. DEJONG:

6 Q. So let me see if I've got this straight, Doctor. A
7 normal rectal exam after allegations of penile penetration
8 is consistent with penile penetration?

9 A. In a child that discloses penile penetration, it is
10 consistent to have a normal exam, yes, sir.

11 Q. It's also consistent to have a normal rectum, anal exam
12 if you have not been abused. Is it not?

13 A. That's true, yes, sir.

14 Q. Now, you work in a -- I believe what you called a child
15 abuse ward, section or whatever, right?

16 A. I work at the hospital, Greenville Hospital.

17 Q. Well, what do you do for Greenville Hospital?

18 A. I'm a child abuse pediatrician and because of that job,
19 I go out to the advocacy center and evaluate children.

20 Q. So what you're doing is you're dealing with children
21 who are abused or who are alleged to be abused on a daily
22 basis. Right?

23 A. Children are referred to me when there are concerns
24 about abuse on a daily basis, yes.

25 Q. Now, is the Julie Valentine Center part of the Hospital

1 System?

2 A. No, sir.

3 Q. All right. So are you contracted to the Julie
4 Valentine Center?

5 A. No, sir.

6 Q. Do you do that pro bono, for free?

7 A. I'm paid by the hospital and I just do my exams. These
8 are exams that children would come to the hospital for. We
9 just do it at the Julie Valentine Center because it's a
10 child friendly environment.

11 Q. Well, my question was, does the Julie Valentine Center
12 contract with the hospital to do this?

13 A. No.

14 Q. So that is not part of your normal duties at the
15 hospital?

16 A. No, it is part of my normal duties. I am there three
17 days -- two days a week as part of my normal job with the
18 hospital system to do exams there.

19 Q. So you're at the Julie Valentine Center two days a
20 week?

21 A. Yes.

22 Q. Now, when a child comes to you at the Julie Valentine
23 Center, it's because there have been allegations of child
24 abuse, right?

25 A. Yes.

1 Q. And you enter into an exam looking for child abuse?

2 A. Trying to evaluate what's happened to the child.

3 Q. Yes, ma'am. Now, let's -- hypothetical. -- Given an
4 eight-year-old without allegations of any penile
5 penetration, and you have the exam results that you've got
6 in this case, could you say that there had ever been any
7 child abuse?

8 A. If there's a child that comes in and makes no
9 disclosure and has no behaviors that are concerning and has
10 a normal exam, I do not have concerns about that they have
11 been abused.

12 Q. Right. So now when you say, well, we have allegations
13 of abuse, but this exam can still be consistent with
14 allegations of abuse, right?

15 A. Yes.

16 Q. All right. So I guess you could say if there weren't
17 allegations, that with his normal exam you could still say
18 there was abuse.

19 A. We look at it, you know, it's just like other types of
20 diseases, you have to look at kind of all the parts, your
21 physical exam, your history, the behaviors, all of those
22 things come together to make a diagnosis.

23 Q. Yes, ma'am. You found some redness on the, if I
24 understood you, basically the buttocks, right?

25 A. Yeah. Kind of the distal part outside of the anal

1 area.

2 Q. All right. I'm not trying to be rude, but ---

3 A. A little further in.

4 Q. A little further in?

5 A. Yes.

6 Q. Okay. This was July the 31st of 2008. What was the
7 temperature like, do you know?

8 A. I don't remember.

9 Q. It was in Greenville, South Carolina, right?

10 A. Yes, it was.

11 Q. Hot?

12 A. I don't remember what the temperature was.

13 Q. Okay. All right. Heat can create redness and rashes,
14 can't it?

15 A. Yeah. There was a non-specific finding.

16 Q. Sure. And, indeed, you're not saying that that redness
17 had anything to do with any sort of sexual molestation?

18 A. No.

19 Q. The same thing with you found some redness on the
20 penis?

21 A. Yes.

22 Q. The same thing. You're not saying that was any
23 indication of sexual abuse, are you?

24 A. That's true.

25 Q. That could have been as a result of any number of

- 1 things?
- 2 A. Yes, sir, that's true.
- 3 Q. Aside from sexual abuse?
- 4 A. Yes, sir.
- 5 Q. Okay. I was a little confused that -- plus, I'm hard
6 of hearing. Did you say that MINOR complained of stinging
7 in his genital area?
- 8 A. Yes.
- 9 Q. Stinging was the word you used, right?
- 10 A. Stinging.
- 11 Q. And when we're talking about stinging in the genital
12 area, are we speaking of the penile scrotum area as being
13 the genital area or are we speaking of the whole lower
14 region of being that?
- 15 A. Well, he was referring to the whole region, but I think
16 a lot of the front area as well.
- 17 Q. Okay. And, again, with regard to the front area, we'll
18 refer to it as that, you found nothing other than this
19 redness?
- 20 A. That's correct.
- 21 Q. That you cannot attribute to sexual molestation?
- 22 A. Right. To non-specific finding.
- 23 Q. Okay. Now, you said he said private part put in his
24 bottom. Was that his words?
- 25 A. Yes.

1 Q. Okay. Well, did you find any discharge of any kind?

2 A. No, sir.

3 Q. And the reports of the behavior that you took, that was
4 reporting by the parents, right?

5 A. That's correct.

6 Q. Both parents there?

7 A. Yes.

8 Q. Okay. Do you know the dates of the allegations when
9 they allegedly occurred?

10 A. My understanding, they were about three weeks prior to
11 me seeing him.

12 Q. On MINOR

13 A. Yes, on MINOR

14 Q. Okay. All right. Now, so you found no tearing and no
15 scaring?

16 A. Yes, sir, that's true.

17 Q. And you said the rectum is basically designed to
18 stretch, correct?

19 A. That's true.

20 Q. Okay. Designed to stretch from the inside out, right?

21 A. That's its normal function, yes.

22 Q. I'm sorry?

23 A. That's its normal function, yes.

24 Q. Right. Not necessarily designed to stretch from the
25 outside in?

1 A. That's not the normal thing that happens.

2 Q. Correct. So to say that that is normal is not exactly
3 accurate, is it?

4 A. That it can stretch?

5 Q. No. We know it can stretch, but I'm saying stretching
6 from the inside out is normal?

7 A. That's normally what happens.

8 Q. Yes. Stretching from the outside in isn't normal?

9 A. We'll we're talking about the same area that's
10 stretching so it's not something like going in your mouth or
11 out of your mouth, it's the same process that's happening.

12 Q. Would it -- so basically, other than -- well, let me
13 back up here. On these symptoms, did you see any anxiety in

14 MINOR

15 A. Well, I did, especially at the end when it became time
16 for the blood work he was extremely, extremely anxious.

17 Q. Well, blood work entails sticking needles in people,
18 doesn't it?

19 A. Yes, it does.

20 Q. And a lot of adults don't like needles stuck in them,
21 right?

22 A. Most kids -- actually, it's something I do all the time
23 and most kids actually do fairly well. He was an extreme
24 with that as far as the difficulty for him.

25 Q. But some of that nervousness could account for having a

1 needle stuck in you?

2 A. Sure. It could be hard for some people.

3 Q. Or maybe more than one needle. I don't know how many
4 needles you all stick.

5 A. Just one time.

6 Q. Just one, okay. But the symptoms that -- well, what
7 you and/or the Solicitor call symptoms, these things
8 described by the parents, as you said, they are not child
9 molestation specific, right?

10 A. That's true.

11 Q. You could have all of those, which you call symptoms,
12 arising from many different things?

13 A. That's true.

14 Q. And stress could be one of those you said, correct?

15 A. Yes.

16 Q. And different people stress differently, correct?

17 A. It's severe stress, but everyone reacts differently?

18 Q. Well, a hypothetical question. Given two siblings, one
19 of which is twelve years of age, one of which is eight years
20 of age, who are very close, and the eight-year-old hears
21 allegations of some inappropriate touching by his sister.
22 Stress?

23 A. You know, I don't know. I don't know. I don't know
24 how it was told to him. Every child is so different, I

25 really could not -- I don't know how a child might react to

1 it.

2 Q. Other than the actual physical exam, your report is
3 basically based on reports by other people, persons, right?

4 A. And the patient.

5 Q. Right.

6 A. It's based on the parents, the patient and my exam.

7 Q. Yes, ma'am. And even with all of that you found no
8 abnormalities in this eight-year-old child?

9 A. On the physical exam none, other than what I already
10 stated.

11 Q. With regard to tearing and scaring, an object going
12 into an eight-year-old rectum, would the tearing and scaring
13 have anything to do with the size of the object that went
14 into the rectum?

15 A. A lot of times I think it could be related to the
16 amount of force, the direction of the object going in. But
17 as I said, sometimes, you know, size doesn't have anything
18 to do with it because when you think of, at least for me in
19 my area, think of the size of things coming out, it can let
20 a lot of very large things come out. So the size in and of
21 itself may not cause any scaring or tears.

22 Q. But this isn't things coming out. This is the size of
23 something going in?

24 A. Yes.

25 Q. Thank you, ma'am.

1 THE COURT: Any redirect?

2 MS. BARWICK: No, sir, Your Honor. May she be
3 excused?

4 MR. DEJONG: No objection.

5 THE COURT: Without objection, the doctor may be
6 excused. Thank you. You may step down.

7 Could I see the attorneys here just for a moment.

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

10 THE COURT: Mr. Foreman, ladies and gentlemen,
11 normally we would not break this early, but based upon
12 scheduling of witnesses and the length of witnesses who may
13 be testifying, I think this might be a good time for us to
14 just break today. We'll start back at nine o'clock in the
15 morning. Let me remind you again not to discuss the case
16 and not let anyone discuss the case with you. I remind you
17 again about the importance of your fulfilling your oath and
18 not doing any kind of independent research or checking
19 anything or investigating words or terms that you've heard.
20 That would be improper, would be against the rules of our
21 Supreme Court, against my instruction to you. You're going
22 to have everything you need to make a good decision in this
23 matter based upon what's presented here in the courtroom and
24 what you hear in this room and this room alone.

25 We'll be ready to start back at nine o'clock in the

1 morning. If you'll be back in your jury room then, we'll
2 proceed with our next witness. Have a good evening ladies
3 and gentlemen. I'll see you back tomorrow.

4 (WHEREUPON, the jury exited the open court at
5 approximately 3:58 p.m.)

6 THE COURT: Yes, sir, Mr. Dejong.

7 MR. DEJONG: Your Honor, I would respectfully
8 request that you reconsider your ruling on taking Mr.
9 Beekman into custody.

10 THE COURT: I've considered it. Again, my
11 standard of the law, I think it's pretty clear that he's not
12 under bond anymore. I'll certainly be around this
13 afternoon. If he wants to secure a bond, I'll be glad to
14 revisit it but not on his recognizance. I'll deny your
15 motion.

16 MR. DEJONG: Thank you.

17 THE COURT: All right. We'll be back ready to go
18 at nine o'clock in the morning.

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

21 JULY 27, 2011

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

24 THE COURT: Thank you. Please be seated, ladies
25 and gentlemen. Yes, sir, Mr. DeJong.

1 MR. DEJONG: Thank you, Your Honor, may it please
2 the Court. I have been informed by my client this morning,
3 and Your Honor will recall when you took him into custody,
4 Mr. Beekman is on short-term disability and part of that is,
5 Your Honor, he takes medication for anxiety. His
6 prescriptions were taken to Pickens County Law Enforcement
7 Center. His anti-anxiety medication is prescribed to be
8 taken three times a day. The jail would not give him his
9 anti-anxiety medication this morning. I am not a doctor,
10 but I certainly know that a lot of these medications have to
11 be taken on schedule to be and remain therapeutic.
12 Obviously, this is a very stressful day for Mr. Beekman. To
13 deny him his medication, Your Honor, is pretty close to the
14 denial of his Fourteenth Amendment Rights to due process. I
15 don't know if Mr. Beekman is going to testify or not. We
16 have discussed that. He gave me an indication yesterday
17 that it was his desire to testify, which certainly that is
18 his decision. And I will ask for a break after the State
19 rests to further discuss that. But especially, Your Honor,
20 if he testifies, to be denied this medication, which it's my
21 understanding he is to take it three times a day. Is that
22 correct, Mr. Beekman?

23 MR. BEEKMAN: Yes.

24 MR. DEJONG: And that is your anti-anxiety
25 medication, right?

1 MR. BEEKMAN: Yes.

2 MR. DEJONG: If that is the case, Your Honor, to
3 put this man on the witness stand without taking his
4 prescribed medication, I think is a violation of due
5 process. I think it almost gets paramount to cruel and
6 unusual punishment under the Eighth Amendment. I understand
7 the jail has to have rules and regulations. This is a pre-
8 adjudicatory detention, for want of a better term. He is
9 being denied his medication as prescribed by a physician.
10 So I make the Court aware of that at this point in time. I
11 may ask to revisit that issue after we make the decision as
12 to whether Mr. Beekman desires to testify.

13 THE COURT: Well, if he needs his medication,
14 whether or not he testifies, he needs to be alert to assist
15 in your defense of his case. Did he have his medication
16 yesterday?

17 MR. DEJONG: Will you stand up, please, Mr.
18 Beekman. I don't know the answer to that question. Did you
19 have your medication yesterday, sir?

20 MR. BEEKMAN: They didn't give it all to me.

21 THE COURT: All right. If you take your
22 medication now, does it need any kick-in time or does it
23 take effect pretty soon after you take it?

24 MR. BEEKMAN: It takes effect pretty fast. They
25 also didn't give me my blood pressure medicines.

1 THE COURT: All right. Let's see if we can't get
2 -- let's get his medicine up here. Any other matters?

3 MR. DEJONG: No. Well, ---

4 THE COURT: All right. I understand that one of
5 the jurors called the Clerk's office today with food
6 poisoning, was what she said, talked to the clerk personnel
7 and said she couldn't be here. I did not demand a doctor's
8 excuse. I had my law clerk call her and tell her to take
9 care of her health. So that was juror Jackson. So we
10 certainly don't need an incapacitated juror here. We went
11 through a laborious process to get an alternate just for
12 this occasion. I ask Counsel, again, if there's any
13 objection to the Clerk randomly drawing the name of one of
14 the two alternates to serve as the twelfth juror now? Any
15 objection from either side?

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

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

19 THE COURT: We'll sit tight until the medication
20 -- it shouldn't be but a few minutes until we have it here.
21 Could I see the attorneys just for a moment up here as far
22 as scheduling.

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

25 (WHEREUPON, the court stood at recess for a short

1 break.)

2 THE COURT: All right. Has your client had his
3 medication that he needs for ---

4 MR. DEJONG: There's still some issue according to
5 him, Your Honor, with regard to the Klonopin. My
6 understanding, he says he takes that three times a day.
7 Apparently, the jail said they gave it to him at nine
8 o'clock last night, but he hasn't had anymore today. I
9 haven't seen the bottle.

10 THE COURT: What has he had today?

11 MR. BEEKMAN: Welbutrin and Atenolol.

12 THE COURT: And what are those for?

13 MR. BEEKMAN: One's an anti-depressant. One's a
14 blood pressure medicine.

15 THE COURT: Is that what you wanted for today, the
16 anti-depressant?

17 MR. BEEKMAN: I need the Klonopin.

18 THE COURT: And how often do you take it?

19 MR. BEEKMAN: I take it three times a day. Part
20 of the problem, Your Honor, is that the doctor writes a
21 prescription and if it doesn't work right, he changes the
22 way you take it after he writes it.

23 THE COURT: So are -- do you have the medication
24 you need now to proceed?

25 MR. BEEKMAN: No. But let's just, let's just do

1 whatever.

2 THE COURT: If you need more we'll try to figure
3 this out. If you need more medication later, we'll try to
4 work that out. You're ready to proceed then?

5 MR. BEEKMAN: I think so.

6 THE COURT: All right. Is the State ready to
7 proceed?

8 MS. BARWICK: Yes, sir, Your Honor.

9 THE COURT: All right. All right. If the jury's
10 ready, you can have them come in Mr. Teal.

11 (WHEREUPON, the jury entered the open court at
12 approximately 9:51 a.m.)

13 THE COURT: Mr. Foreman, ladies and gentlemen,
14 thank you for your patience with us. We've had some matters
15 we needed to take care of outside of your presence. We also
16 have one of your jurors who was unable to be here today so
17 we've -- going to have to have one of those alternates serve
18 after all. The process by which we go when we have two
19 alternates is to randomly select one of those alternates as
20 the juror. That's what the law requires us to do. We've
21 gone through that process as well, plus checking on the
22 welfare of your juror who called in sick today, along with
23 other matters. So you don't need to move right now, because
24 as I've told you all along, the alternate needs to be paying
25 attention just as much, but the alternate who was randomly

1 selected among the two was Ms. Stone. So she'll be the
2 juror who'll be serving. The remaining alternate, Mr.
3 Ashes, will stay in that capacity as we proceed. So, again,
4 you don't need to switch seats around now, but that'll be
5 the process we'll follow.

6 We're now ready to have our next witness testify.
7 Solicitor, you may call your next witness.

8 MS. BARWICK: The State would call Ms. Shauna
9 Galloway-Williams.

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

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

15 THE WITNESS: Yes.

16 THE CLERK: State your name for the record,
17 please.

18 THE WITNESS: Shauna Galloway-Williams.

19 **SHAUNA GALLOWAY-WILLIAMS,**

20 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

21 **DIRECT EXAMINATION**

22 **BY MS. BARWICK:**

23 Q. Ms. Williams, where do you work?

24 A. I'm the Executive Director of the Julie Valentine
25 Center.

1 Q. And did it used to go by a different name?

2 A. It did. We used to be the Greenville Rape Crisis and
3 Child Abuse Center.

4 Q. And what is the purpose of the Julie Valentine Center?

5 A. The Julie Valentine Center provides services related to
6 child abuse and sexual assault recovery. So we provide a
7 full range of services from investigation and treatments,
8 advocacy related to anything, child abuse related or sexual
9 assault, including prevention and education.

10 Q. And what is your role at the Julie Valentine Center?

11 A. As Executive Director, I'm responsible for oversight,
12 fiscal oversight, administrative oversight of the entire
13 center, but I also still provide clinical services and have
14 clinical responsibilities, which means that I still conduct
15 forensic interviews, which I've been doing there for about
16 seven years.

17 Q. Is your role as a supervisor?

18 A. Yes.

19 Q. And can you tell the jury any specialized training you
20 had in child counseling and conducting forensic interviews?

21 A. Yes. Well, first of all, I have my bachelor's degree
22 in psychology. I also have a master's degree in counseling,
23 and I'm a licensed professional counselor in the State of
24 South Carolina. I've provided child and adolescent mental
25 health treatment for about eleven years. And during that

1 time I've conducted forensic interviews for seven of those
2 years. During that period of time my specialization has
3 been in working with children who have been abused,
4 neglected or have witnessed some sort of trauma, and more
5 specifically child sexual abuse.

6 Q. What kind of education have you had in relation to
7 these two topics, the forensic interviewing and the child
8 counseling?

9 A. Well, in addition to my degrees, my master's degree and
10 being licensed and my actual experience, I have also
11 participated in two nationally recognized trainings in the
12 area of forensic interviewing. One of those was with the
13 national children's advocacy center and the other was with
14 the national child protection training center. That one's
15 also -- was referred to as Finding Words, but it's now
16 called Child First.

17 Q. And are there any Boards that you have to go through or
18 any peer review processes?

19 A. As a forensic interviewer?

20 Q. Yes, ma'am.

21 A. We do participate in peer review. In fact, our center
22 this year participated in a national peer review where we,
23 through video conferencing, would share our interviews and
24 have them evaluated by other centers, and then they would
25 then share their interviews with us. We also do an internal

1 peer review where we will at times have another staff member
2 observe our interviews and review our reports before they go
3 out to the referring agencies.

4 Q. Have you ever testified in either Family Court or a
5 Court like this, in General Sessions, in regards to being an
6 expert in either forensic interviewing or child counseling?

7 A. Yes.

8 Q. And how many times have you done that for forensic
9 interviewing?

10 A. In General Sessions or in Family Court?

11 Q. We'll say both together and then we'll separate.

12 A. Okay. Well, together it would probably be about forty
13 times. In General Sessions, I've been qualified as an
14 expert ten times, and then in Family Court at least thirty
15 or more times.

16 Q. And what about in child counseling? How many times as
17 an expert in both Family and General Sessions?

18 A. Generally, I'm qualified as both, an expert in forensic
19 interviewing as a licensed professional counselor who
20 specializes in working with children who've been abused.

21 Q. So it would be about the same number, about forty?

22 A. Right. Right. There might be a few times when I
23 wasn't qualified as both and maybe just as a counselor or
24 just as an interviewer, but in general, it's both.

25 MS. BARWICK: Your Honor, at this time, the State

1 would like to introduce her as expert in forensic
2 interviewing and child counseling.

3 THE COURT: Any voir dire from the Defense or any
4 objection?

5 MR. DEJONG: A little Voir Dire, please, Your
6 Honor.

7 THE COURT: Yes, sir, you may ask some questions
8 of the witness.

9 MR. DEJONG: Thank you, Your Honor.

10 **VOIR DIRE EXAMINATION**

11 **BY MR. DEJONG:**

12 Q. Now, Ms. Galloway-Williams, counseling and forensic
13 interviewing are two different things, aren't they?

14 A. They are. There are some differences between the two.

15 Q. And in one sense counseling that you were involved in
16 deals with persons who have been found to be victims,
17 correct?

18 A. Sometimes. Sometimes we're counseling children where
19 they might have behavioral or emotional problems and we're
20 not sure why they're having those. There may be some
21 suspicion that they were abused or neglected.

22 Q. Okay. Let's get away from the counseling aspect to the
23 forensic interviewing. When did you get your training in
24 forensic interviewing?

25 A. The first training I went to was in 2004.

1 Q. And you say first, was there a second?

2 A. Yes. Of the two that I spoke of, the national
3 protocols. I've had additional forensic interview training
4 but those two are really the core courses related to
5 interviewing. So in 2004, I went to the national children's
6 advocacy center for forensic interview training, and then in
7 -- just a second. Let me refer to my CV. I'm sorry.

8 There's a lot of training on here. I completed Finding
9 Words South Carolina in 2007. That's now called Child First
10 and was presented by the National Association to Prevent
11 Child Abuse of Children, the National Child Protection
12 Training Center and Cornerhouse.

13 Q. So as far as forensic interviewing goes, your last
14 training was in '07.

15 A. No. That was the last sort of core training that I
16 went to. The last training that I went to in forensic
17 interviewing or related to forensic interviewing would have
18 been in June of this year when I went to the National Child
19 Protection Training Center in Winona, Minnesota and attended
20 a training called From Crime Scene to Trial. And although
21 we weren't actually conducting forensic interviews there,
22 the core of it was related to the investigation and
23 prosecution of child abuse cases. And that was June 15th
24 through the 17th of 2011.

25 Q. Thank you, ma'am.

1 MR. DEJONG: Nothing further, Your Honor.

2 THE COURT: All right. I find the witness is
3 qualified in the field of child counseling and forensic
4 interviewing and will allow her to give her opinions.

5 Again, ladies and gentlemen, I explained to you
6 yesterday about expert witnesses are allowed to give their
7 opinions. The fact that they can do that doesn't mean you
8 have to accept the evidence. You're going to be the judge
9 of all the evidence in the case, that of the expert
10 witnesses and other witnesses and other matters as well, but
11 she will be allowed, as an expert, to testify to her
12 opinion.

13 You may continue, Solicitor.

14 MS. BARWICK: Thank you, Your Honor.

15 DIRECT EXAMINATION CONTINUED

16 BY MS. BARWICK:

17 Q. Ms. Williams, will you explain to the jury what a
18 forensic interview is?

19 A. Sure. A forensic interview is basically a fact-finding
20 interview. The point of it is to gather information from
21 children without leading or suggesting them. So that means
22 we're very careful about the type of questions that we ask.
23 We're also very careful to pay attention to a child's
24 developmental level. We're trained in understanding child
25 development. Clearly, a child's developmental and

1 communication skills change with their age. So, for
2 instances, a five-year-old might communicate differently in
3 an interview than maybe a twelve-year-old. And what I would
4 expect a child to be able to share with me at different
5 stages would be different. The forensic interview is
6 videotaped. At our center we videotape every single
7 interview that we do. Prior to the forensic interview we
8 gather background information. Most of our interviews are
9 referred to us from either law enforcement or the Department
10 of Social Services, because most of the interviews are
11 investigative in nature. Part of the process involves
12 gathering that background information from a primary care
13 giver. So when a child is brought to our office for an
14 interview, generally I meet with the mom or dad or guardian,
15 whoever brings the child there, and gather background
16 information about their child, their family and essentially
17 why they're there to talk to me that day. That information
18 is gathered just with that care giver. The child is not
19 present during that time, in the same room. Once I've
20 gathered that information, then I ask the child to come back
21 to the interview room with me. And at that time, the care
22 giver or the parent is not with us. So it's just a
23 conversation that I'm having with a child that is videotaped
24 and audiotaped. And the parents are not observing. The
25 only individuals that are allowed to observe at that time

1 are law enforcement or DSS if they're present for the
2 interview.

3 Q. Is the child made aware of who's observing?

4 A. Yes. One of the first things that we do when we bring
5 the child into the interview room is I give them an
6 explanation, sort of like what I just told you. I let them
7 know that it's my job to ask questions and to talk to kids
8 and that there's a video camera and a microphone in the
9 room, and I let them know if anybody's observing. And if
10 there's not anyone observing, I let them know that as well.

11 Q. And how many forensic interviews do you think you've
12 conducted in your professional career?

13 A. At least seven hundred.

14 Q. And what about -- how many children do you think you've
15 counseled in your professional career?

16 A. Just counseling or counseling and forensic interviews?

17 Q. Just counseling.

18 A. I would say I've seen over seven hundred children for
19 counseling as well.

20 Q. I understand. Can you explain to the jury what RATAC
21 is correct me if I'm not pronouncing it right.

22 A. Okay. When we're conducting forensic interviews, we're
23 following what we refer to as a protocol. Basically,
24 instructions or sort of the format that we're going to
25 conduct our interview. And as part of -- one of those

1 protocols, we use the acronym RATAC, which is a funny name,
2 but it stands for rapport, anatomy, touch, abuse scenario,
3 and closure. So those are the five key elements that you're
4 looking for in any forensic interview that's being
5 conducted. I've been trained in two different types of
6 protocols, one that primarily uses that RATAC model, and
7 then the other one, which is a looser protocol of that. So
8 what you basically are doing is looking for those five core
9 components in the interview. And they may follow in that
10 order, they may follow in that RATAC order or you may kind
11 of go back and forth between them. So what that means is
12 the R, the first thing that we do with the child is
13 establish rapport. It's a very unusual situation to have a
14 total stranger asking you to come back to a room and ask you
15 questions and be on videotape. So the first thing that we
16 do is try to make the child feel comfortable and establish
17 rapport by asking them general questions, who they are, what
18 they like to do, who they live with. And just start that
19 conversation. Then we also want to identify anatomy. So at
20 some point in the interview the child is going to be
21 presented with anatomically correct drawings and asked to
22 identify all the parts of the body from head to toe. We
23 also will do a touch inquiry. If a child comes back into
24 the interview room and they go ahead and start talking about
25 some kind of touch that they've gotten, then we'll ask them

1 questions about that. But if not, we might ask them about
2 different types of touches. Good touches, bad touches,
3 general types of touches, hugs, kisses, tickles, spankings,
4 and then even asking about inappropriate touches, touches
5 that they didn't like, touches to the private parts, those
6 kind of things. And then we also get to the abuse specific
7 questions. So if the child makes a disclosure or makes a
8 statement then we'll ask more focused questions, ask them to
9 tell us more about what they're talking about. And then
10 rather than sending the child out of the room with all of
11 that still up in the air, we always close the interview. So
12 it kind of starts and ends the same way. You want them to
13 be comfortable when they come in the room. You want them to
14 be comfortable when they're leaving and so we return to sort
15 of general topics before they leave the room.

16 Q. And how do you address the issue of whether these
17 children are competent to tell you these things?

18 A. Well, one of the things that we do is, again, we're
19 skilled in understanding children's developmental level.
20 And so when I'm asking them the general questions about what
21 they like to do, where they go to school, I'm paying
22 attention to how they answer questions like that. And so
23 when they answer questions about any specific abuse-related
24 information, I compare how they answer those questions. And
25 there may be differences or similarities and that can be

1 explained based on the information that they're sharing.

2 Q. Do you have any discussions with them about, you know,
3 the difference between the truth and a lie?

4 A. Sometimes I do. You know, we let children know that
5 it's important to tell the truth. We may, if there's an
6 opportunity during the interview to introduce that, you
7 know, if they start talking about something that is clearly,
8 you know, Sponge Bob related, we let them know that, you
9 know, we're there to talk about things that are true and
10 real. Generally, beyond the age of seven, though, there's
11 sort of the assumption that a child is competent. There's a
12 truth/lie task that we used to use in interviews where we
13 asked children to identify the difference between the truth
14 and a lie and that's used with children who are seven and
15 under.

16 Q. I understand. What kind of questioning format do you
17 use in these interviews?

18 A. Well, we use a range of questions, but what we're
19 trying to use more of during the interview are non-leading
20 and non-suggestive questions. Obviously, you can't have a
21 conversation or conduct an interview with entirely non-
22 leading non-suggestive questions. At some point, there have
23 to be some focus questions or maybe some multiple choice
24 questions. But the goal is to ask as many non-leading
25 questions as possible so that essentially you're having the

1 child give you information rather than me giving information
2 to them, which is, again, sort of an unusual situation for
3 children because usually we, as adults, are telling them
4 everything and they're just supposed to be taking it in. So
5 it's a really different kind of communication for most kids.

6 Q. And during these interviews how do you make sure that
7 they have a firm knowledge of their anatomy?

8 A. Again, we present anatomical drawings. So these are
9 drawings of a boy and a girl without clothes on, and we ask
10 them to identify the different parts of the body. Sometimes
11 a child may go ahead and start talking about their body, may
12 go ahead and identify a body part, and if that's the case
13 before I've brought the drawing out, then I'll bring a
14 drawing out and say, well, is there one of those parts here?
15 And then we'll go through and name all the parts. But I do
16 like to find out what each child calls their own body parts
17 because it's very different in different households. Some
18 children have the correct anatomical names for body parts,
19 but most of them don't. And so it's important to know what
20 they're calling the different parts of their body.

21 Q. Do you ever actually use dolls that show the different
22 parts?

23 A. Yes. If a child has made a disclosure, if they have
24 made a statement about having been abused during a forensic
25 interview, then we will use anatomically correct dolls. And

1 what we'll do is let -- instruct the child that these are
2 dolls. We don't play with these dolls. They're just dolls
3 that we use to demonstrate, and then we have the child
4 demonstrate with the dolls what they have already told us.
5 But I only introduce those dolls once the child has made a
6 statement that something has occurred.

7 Q. Can you talk to the jury a little bit about grooming
8 and what it is?

9 A. About grooming?

10 Q. Yes, ma'am.

11 A. Essentially, grooming is what we refer to as sort of
12 preparing a child or sort of testing the waters with a child
13 to see how far someone might be able to go with them if
14 they're going to abuse them. For instance, sometimes we
15 consider giving extravagant gifts, giving a lot of extra
16 attention, spending a lot of extra time, sort of showering a
17 kid with things that they would like in exchange for other
18 behaviors. It also may involve sort of testing the waters
19 with different kinds of touches. One of the things we see
20 with grooming is that sometimes those who abuse children may
21 introduce touches that could be confused between a sexual
22 touch or an inappropriate touch and a normal touch. And
23 they progressively move from those sort of normal confusing
24 touches to more inappropriate touches, just to see how a
25 child's going to respond to that. And, also, to sort of add

1 to the confusion that a child might experience about that
2 touch. So what I mean by that would be sort of a touch like
3 in the area of care giving. So someone who's grooming a
4 child might assist a child in cleaning their private parts
5 or doing something to their body, which might seem normal,
6 with the exception of the fact that maybe that child's too
7 old to need that kind of care, or if it makes the child feel
8 uncomfortable. And so the person who's doing this sort of
9 grooming behavior might wait to see how the child responds
10 before they then move on to a different type of touch.

11 Q. In your experience have you seen a lot of the kind of
12 escalation of touching as to the severity of it?

13 A. In some cases, yeah. You'll see, you know, that it
14 moves. As children start telling more and more about what's
15 happened they might begin to identify sort of innocuous
16 touches that then move into more specific kind of touches
17 and then progress. It doesn't always go that way, but you
18 do see that sometimes.

19 Q. And let's talk a little bit about the child's memory.
20 When children are younger, can you kind of explain that to
21 the jury, how they remember things?

22 A. How children remember things?

23 Q. Yes, ma'am.

24 A. Well children, like adults, remember things that are
25 meaningful to them. A lot of times they remember things

1 that, you know, they attach things to those memories. They
2 might remember going to a specific place because they had a
3 really good time doing it. They might remember something
4 because they had a really bad time doing it. And a lot of
5 times they will remember significant events and they may be
6 able to tell, you know, sort of core details about what has
7 happened, but may not be able to give all the specifics.
8 And when they're reporting information, just like you and I
9 would be reporting information, they might tell a story and
10 tell that same story over and over, but might lose a detail
11 or change a detail, but basically stick to those same core
12 pieces of information that they're sharing.

13 Q. I'm sure you would agree, kids sometimes lie, right?

14 A. Yes.

15 Q. Can you tell the jury a little about when children lie
16 and the sophistication of it?

17 A. Well, that's really the way I generally explain it is
18 that children lie, adults lie. Children generally lie to
19 keep themselves from getting in trouble if they've done
20 something they know they shouldn't have done. But children
21 aren't very sophisticated liars. And what I mean by that is
22 when they lie, they're saying something to keep themselves
23 from getting out of trouble most times. And they're not
24 able to -- they don't have the forethought or foresight to
25 know what they're going to have to do to continue covering

1 that lie up. If the child tells a lie, they're not
2 necessarily going to be thinking about all the contextual
3 issues that may be asked of them about that lie later.

4 They're just telling, generally telling a lie to get
5 themselves out of trouble or to keep somebody else from
6 getting out of trouble or something else like that.

7 Q. Do you have an example for the jury as, you know, the
8 kind of sophisticated lie that you're talking about?

9 A. Well, I mean, in general the -- you know, my children
10 lie when I say have you done such and such, which is a silly
11 question for me to ask when I already know the answer that
12 they have done it. You know, like the kid going to the
13 cookie jar and you say, have you eaten a cookie? And the
14 kid has crumbs on their face and, of course, they've eaten a
15 cookie but they say, no, I have not eaten a cookie. Okay,
16 that's not a very sophisticated lie. You know, if the child
17 continues -- if I continue to pursue that and they said,
18 well, these cookie crumbs that you see on my face came from
19 such and such, and this one came from here. And then they
20 continue to keep that up. And then I ask them a few weeks
21 later or over time that same question, they continue to keep
22 that up, it's really the idea that a more sophisticated liar
23 is going to be able to think ahead of what the next step is
24 and how they're going to cover their lie and continue that
25 lie. And children just -- particularly younger children,

1 just don't have that developmental capacity yet to do that.

2 A lot of adults don't have that capacity either.

3 Q. Right. I understand. As far as MINOR goes, did you
4 conduct a forensic interview on him?

5 A. I did.

6 Q. And what was the date of that forensic interview?

7 A. I conducted a forensic interview with MINOR on July
8 29th, 2008.

9 Q. What about MINOR did you conduct one on her?

10 MR. DEJONG: Objection, Your Honor.

11 THE COURT: Let me see the attorneys here just for
12 a moment.

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

15 THE COURT: Mr. Foreman, ladies and gentlemen,
16 we've got a legal matter we need to resolve outside of your
17 presence. If you'll just go back to your jury room just
18 briefly, we'll get this resolved. Don't discuss the case
19 and we'll call you back just as soon as we can.

20 (WHEREUPON, the jury exited the open court at
21 approximately 10:17 a.m.)

22 THE BAILIFF: The jury's secure, Your Honor.

23 THE COURT: All right. What's your objection, Mr.
24 DeJong?

25 MR. DEJONG: Your Honor, apparently, she -- Madam

1 Solicitor is trying to get into the forensic interview of
2 MINOR CHILD 1 As I read the statute, there's nothing
3 admissible about a forensic interview if at the time of the
4 forensic interview, the person being interviewed was twelve
5 years of age or older. Now, the Solicitor wants to raise an
6 issue on questioning that I did on cross-examination
7 yesterday. Under the statute, I don't think that makes any
8 difference. And number two, it doesn't open the door for
9 her to get into a forensic interview that she's not entitled
10 under the statute to get into. As I read the statute, it's
11 totally barred.

12 I disagree with her even bringing out the fact that
13 there was a forensic interview for a couple of reasons.
14 Number one, it's not relevant under the statute. It is not
15 admissible under the statute. Number two, it only leads to
16 speculation or conjecture on the part of the jury about
17 something that they're not entitled to have anyway. Quite
18 candidly, Your Honor, I would move at this point in time for
19 a mistrial for that question being asked in the presence of
20 the jury. It's not appropriate. Madam Solicitor knows the
21 law.

22 MS. BARWICK: Your Honor, I'm going to object to
23 him making me sound like I'm being unethical here.

24 MR. DEJONG: I'm not saying you're unethical. I'm
25 saying the law is the law. It's not a personal attack, Ms.

1 Barwick. It's what the statute says, Your Honor. That's
2 what the legislature says. It is not admissible. We've
3 argued and argued whether they should be admissible at all.
4 The Court of Appeals and the Supreme Court have ruled on
5 that. But on the non-admissibility, it is totally
6 inadmissible and she should not be allowed to go into it.
7 She has gone into it, and I respectfully move for a
8 mistrial.

9 THE COURT: All right. Solicitor, I'll be glad to
10 hear from you on both issues.

11 MS. BARWICK: Your Honor, I'm kind of confused as
12 to what law Mr. DeJong is talking about. The law on
13 forensic interview, 17-23-175, just lays out the groundwork
14 to admit statements that are done in a forensic interview.
15 Nothing in the law indicates that the State can't mention
16 that a forensic interview was done or any opinions that Ms.
17 Shauna Galloway-Williams came with from the disclosure.
18 She's been qualified as an expert. She can say whether
19 disclosure was compelling or not. The State is not seeking
20 to introduce MINOR forensic interview tape. The only
21 statement that the State wishes to bring in from that
22 forensic interview as to proof of prior consistent
23 statement. Because when Mr. DeJong cross-examined MINOR
24 MINOR said on direct my pants were pulled down and he
25 touched me on my privates. Mr. DeJong said, but you have

1 told someone before that he touched you under your clothing,
2 under your -- you know, under your clothing.

3 Ms. Shauna Galloway-Williams will say, and this is the
4 only statement I will elicit from her, that MINOR said, he
5 had his hands in my pants. And then after she made that
6 statement, she said that her pants, panties and bloomers
7 were all pulled down. That just is to show a prior
8 consistent statement to address the defense putting into the
9 mind of the jurors an inconsistent statement.

10 THE COURT: Solicitor, why should a mistrial not
11 be declared?

12 MS. BARWICK: Your Honor, there's nothing in the
13 law that says that we can't make up or mention -- we cannot
14 bring up or mention a forensic interview. The only thing
15 that the law says is that if I want to introduce the actual
16 statements, then I have to go through these factors set out
17 by 17-23-175.

18 THE COURT: But the definition -- she's not a
19 child for purposes of the section.

20 MS. BARWICK: That's correct, Your Honor.

21 THE COURT: So what in the section is applicable
22 to her?

23 MS. BARWICK: Your Honor, this section about
24 forensic interviewing talks about its admissibility of out-
25 of-court statements of a child under twelve. I'm not

1 seeking to admit any out-of-court statements, other than the
2 one solely to refute any inconsistent statement.

3 THE COURT: But doesn't say the entire section ---

4 MS. BARWICK: I'm sorry, Your Honor?

5 THE COURT: The section refers to 17-23-175,
6 correct?

7 MS. BARWICK: I'm not following Your Honor.

8 THE COURT: For the purposes of this section ---

9 MS. BARWICK: Okay.

10 THE COURT: --- would you agree that that's the
11 law. Section means this law?

12 MS. BARWICK: I'm still not following Your Honor's
13 question.

14 THE COURT: Okay. You see -- the statute applies
15 to children, correct?

16 MS. BARWICK: Yes, sir.

17 THE COURT: Is that the only time the statute
18 applies to children?

19 MS. BARWICK: This statute says -- puts the
20 factors, and it lays out the factors if I want to introduce
21 that child's statement. I am not seeking to introduce the
22 child's statement. I'm not.

23 THE COURT: I understand. Well, you are. Through
24 your examination you're trying to get a statement from the
25 child into evidence, aren't you? Isn't that the purpose of

1 this?

2 MS. BARWICK: Your Honor, I believe that we need
3 to look at these as two separate things.

4 THE COURT: Well, that's my very point. If you're
5 wanting to get testimony of what the child said in through
6 this witness, there's rules about hearsay and so forth.
7 What significance does having a forensic interview have to
8 do with that?

9 MS. BARWICK: Your Honor, all right, let's say the
10 State doesn't even want to introduce what the child said.
11 Say that's off the table. If that's off the table, there's
12 nothing preventing the State from asking if a forensic
13 interview was done, if something was disclosed and what was
14 her opinion about that disclosure.

15 THE COURT: And what about hearsay rules?

16 MS. BARWICK: She's not going to testify to what
17 the child said.

18 THE COURT: Oh, she's not going to testify to what
19 the child told her?

20 MS. BARWICK: That's how I'm starting it ---

21 THE COURT: I thought I understood that you wanted
22 to have her say what the child said.

23 MS. BARWICK: Your Honor, Your Honor has asked me
24 why we shouldn't have a mistrial. The State has not
25 elicited any testimony from Ms. Shauna Galloway-Williams at

1 this point as to what that child said.

2 THE COURT: Okay. All right. Let's move beyond
3 mistrial now. What is the purpose of your interrogation,
4 this line of interrogation to the witness?

5 MS. BARWICK: To see if she spoke with the child,
6 when the forensic interview occurred, was she competent, did
7 she follow the guidelines and safeguards discussed, did she
8 disclose.

9 THE COURT: All right. But wait, wait, wait. Why
10 are we asking her those questions? The statute's -- you're
11 asking questions about the statute, correct?

12 MS. BARWICK: Your Honor, ---

13 THE COURT: You're going through the line-up of
14 the statute?

15 MS. BARWICK: Yes, sir.

16 THE COURT: The statute says, this statute only
17 applies to children.

18 MS. BARWICK: I am not seeking to introduce any
19 statements.

20 THE COURT: Well, but the statute is not
21 applicable. You don't have to follow those guidelines if
22 it's not applicable to who she's interviewing.

23 MS. BARWICK: Yes, sir, I don't have to, but I'm
24 choosing to as part of my strategy.

25 THE COURT: Well ---

1 MS. BARWICK: And, Your Honor, if I can finish. I
2 want to ask her if the child disclosed, if MINOR disclosed,
3 did she disclose the time and place where the assault
4 occurred and did you find her -- how did you find her
5 disclosure? She can say, as I anticipate, compelling. And
6 then the State will leave it at that. The State's not going
7 to introduce any statements. And nothing in the statute
8 about forensic interviewing says that we can't bring up a
9 forensic interview. It just says we cannot bring into
10 evidence any out-of-court statements.

11 THE COURT: All right.

12 MS. BARWICK: Now, if we can just ---

13 THE COURT: So all you're asking for is for her to
14 say that she interviewed her and she stated that she was
15 abused and a time and a place?

16 MS. BARWICK: And if ---

17 THE COURT: Or disclosed it.

18 MS. BARWICK: Yes, sir. And if the disclosure, if
19 she found -- how did she find the disclosure?

20 THE COURT: Just like with -- how did she find the
21 disclosure? Okay.

22 MS. BARWICK: What was the resulting ---

23 THE COURT: Well, then -- all right. Mr. DeJong,
24 you understand the purpose of the questions now?

25 MR. DEJONG: I understand the purpose of the

1 questions, but it hasn't changed my objection.

2 THE COURT: Well, I understood the questions were
3 a little more broad at the bench here. Why should this
4 witness, as any other witness investigating a case, not be
5 allowed under 801(d) to state time and place of what was
6 reported?

7 MR. DEJONG: Well, I think you do have to narrow
8 it down to 17-23-175, the forensic interviewer. Now, she
9 said I don't want to get any statements that were made by
10 the alleged victim in, but she's doing that through the back
11 door.

12 THE COURT: How's that?

13 MR. DEJONG: How can this witness make a statement
14 that she made a compelling disclosure ---

15 THE COURT: Well, let's go a step at a time.
16 Let's don't go to the end.

17 MR. DEJONG: Okay.

18 THE COURT: I did conduct a forensic interview.
19 She disclosed to me, time and place. Is that objectionable
20 in your view?

21 MR. DEJONG: I still think it is, Your Honor,
22 because the whole purpose of 17-23-175 was to get in out-of-
23 court statements. She is a forensic interviewer. She has
24 been qualified as that. If they want to call it a forensic
25 interview, it's a forensic interview, period. And under

1 forensic interview, under the definition of child, this
2 alleged victim does not fit.

3 THE COURT: Well, are you saying that because this
4 witness has an expertise in forensic interviewing that she
5 is disqualified then to be a witness as to time and place
6 under Rule 801?

7 MR. DEJONG: I think under forensic interviewing,
8 yes. It's still a statement, out-of-court statement.
9 That's what the whole 17-23-175 goes to, out-of-court
10 statements on forensic interviewing. And the only exception
11 under the forensic interviewing is under the definition of
12 the child.

13 THE COURT: But how about the exception under
14 801(d) that we've already had other witnesses testify to
15 that they could report that there had been sexual conduct
16 where that person was the alleged victim and that the
17 statement is limited to the time and place of the incident.
18 Why is this witness disqualified to say that?

19 MR. DEJONG: I'm sorry. Which rule is Your Honor

20 ---

21 THE COURT: Well, it's the same one that the
22 deputies testified to, time and place. Haven't we had two
23 or three witnesses on that already?

24 MR. DEJONG: We've had several witnesses testify.

25 THE COURT: Right. Why can this witness not

1 testify to the same parameters, because this witness talked
2 to her.

3 MR. DEJONG: Okay. If you want to take it by that
4 step, but I still -- it comes in as a counselor. But I
5 still don't think -- I may be quibbling over words here,
6 what you call tomato and I call tomato, but I'm saying it
7 can't come in under the forensic interviewer.

8 THE COURT: All right.

9 MR. DEJONG: And I don't think there should be any
10 discussion about a forensic interview with the alleged
11 victim, MINOR CHILD 1 Period.

12 THE COURT: All right. I understand your
13 objection to the question, but are you saying that this
14 witness cannot testify to time and place?

15 MR. DEJONG: She can testify to time and place,
16 but I don't think as a forensic interviewer.

17 THE COURT: All right.

18 MR. DEJONG: And, Your Honor, not to interrupt,
19 but I think in this case it compounds the issue because the
20 jury is going to see a forensic interview presumptively, if
21 Your Honor makes that final ruling, they're going to see a
22 forensic interview of MINOR CHILD 2 one of the alleged
23 victims. Now, they're not going to see a forensic interview
24 of MINOR CHILD 1 And that, in my opinion in this case, is
25 going to create confusion and conjecture on the part of this

1 jury, especially in light of when we're calling it a
2 forensic interview. Why can't we see the forensic interview
3 of MINOR CHILD 1

4 THE COURT: You sound like the Solicitor two days
5 ago.

6 MR. DEJONG: On which part?

7 THE COURT: That the confusion of the jury because
8 one's played and one's not. But the Solicitor chose to ask
9 the question for the reason that she did.

10 All right. Anything else? Yes, Ms. Barwick?

11 MS. BARWICK: Judge, I was just reading over the
12 statute again. It says, in a General Session Court
13 proceeding or delinquency proceeding in Family Court, an
14 out-of-court statement of a child is admissible if the
15 statement was given in response and audio and visual
16 recording of the statement, the child testifies at the
17 proceeding and can be cross-examined on the out-of-court
18 statement, circumstances surrounding the making of the
19 statement. This statute doesn't apply to us because we're
20 not introducing any statements.

21 THE COURT: Well, the statute applies to children
22 as I read it, Section 3. For purposes of this section, a
23 child is somebody under twelve. So this section has no
24 applicability whatsoever to anyone that's twelve or older.

25 MS. BARWICK: Right. And the statute has no

1 application whatsoever because I'm not trying to introduce
2 an out-of-court statement?

3 THE COURT: Well, that's -- well, I understand now
4 you're not.

5 MS. BARWICK: And I'd like to argue on the other
6 if I can.

7 THE COURT: And what's the other?

8 MS. BARWICK: The other is if Your Honor decides
9 that that line of questioning is reasonable, the State would
10 also like to introduce a prior consistent statement because
11 the Defense has already alleged an inconsistent statement.
12 To not allow the State to ---

13 THE COURT: Well, okay. I thought you just a
14 while ago said you weren't going to ask for that.

15 MS. BARWICK: No, I said let's look at this by
16 itself and then once we're able to look at that, if I could
17 continue ---

18 THE COURT: I feel like I have a moving target
19 here. You're wanting this witness to testify that the
20 child, the twelve-year-old child, gave her a statement as to
21 time and place about an abuse, correct?

22 MS. BARWICK: Yes, sir.

23 THE COURT: And then I understood earlier you
24 wanted her to be able to say that I thought that was a
25 credible statement. And I thought that's what you said was

1 all that you were seeking to offer.

2 MS. BARWICK: Yes, Your Honor.

3 THE COURT: Have you changed your mind?

4 MS. BARWICK: No, sir.

5 THE COURT: All right. So is that all you're
6 seeking to offer?

7 MS. BARWICK: If Your Honor says that that line of
8 questioning is appropriate to ask about the forensic
9 interview, if a disclosure of time and place and the
10 compelling, I would also like to get that out that there was
11 a prior consistent statement.

12 THE COURT: Under what basis?

13 MS. BARWICK: Under the rules of evidence. He
14 opened the door. He mowed down the door by trying to say
15 that this child made an inconsistent statement in her
16 testimony yesterday.

17 THE COURT: Do you have an objection to that, Mr.
18 DeJong?

19 MR. DEJONG: I'm sorry. I was trying to read the
20 rules of evidence. As to the prior consistent statement?

21 THE COURT: Yes, sir.

22 MS. DEJONG: I don't think just because there's a
23 prior inconsistent statement -- I'm trying to remember the
24 law on that right now, but I don't think a prior consistent
25 statement is allowed in unless there is a showing that there

1 was a recent reason for the person to change their story. I
2 don't think the rule on prior inconsistent statements and
3 consistent statements is the same. I thought there was a
4 rule on prior consistent statements. That's what I was
5 trying to find. I know there is a rule-on prior
6 inconsistent statements and what we have to go through on
7 prior inconsistent statements. But the problem I think --
8 and, again, I did not anticipate having to argue this issue.
9 I don't have the law in front of me, but ---

10 THE COURT: Let's look at 801.

11 MR. DEJONG: 801?

12 THE COURT: (d). Is that what you're relying on
13 Solicitor? You said the law. Tell me which law you're
14 relying on.

15 MS. BARWICK: Your Honor.

16 THE COURT: Yes, ma'am.

17 MS. BARWICK: 801(d)(1)(b) says consistent with
18 the declarant's testimony is offered to rebut an expressed
19 or implied charge against the declarant of recent
20 fabrication or improper influence or motive.

21 THE COURT: So you're trying to put testimony in
22 that's consistent with the testimony of the child?

23 MS. BARWICK: Yes, sir. Because yesterday on
24 cross-examination the Defense implied that she had recently
25 fabricated that her pants were pulled down and tried to say

1 that she'd earlier said that he'd just reached under her
2 pants.

3 MR. DEJONG: Your Honor, I take issue with that.
4 Nothing in that prior inconsistent statement was any
5 inference or implication of a recent fabrication. And I
6 think the recent fabrication is what opens the door for
7 that. This is an old, old, old inconsistent statement.

8 Maybe to refresh the Court's memory, on July the 14th
9 of 2008, she told the police officer one thing. And on July
10 the 15th, 2008, she told the Detective Teddi Palis something
11 different. That is not an inference or whatever the other
12 word is in there.

13 THE COURT: And her testimony in Court was
14 consistent with one of those?

15 MR. DEJONG: Her testimony in Court was consistent
16 with the second statement she gave. It was inconsistent
17 with the first statement she gave. And that was the prior
18 inconsistent statement I'm bringing -- was bringing out.
19 There was nothing in my opinion that would indicate that it
20 was a recent fabrication or improper inference. I simply
21 asked about a prior inconsistent statement.

22 THE COURT: All right. Mr. DeJong, your motion
23 for a mistrial is denied. I believe the mention of a
24 forensic interview is not fatal to the trial of this case in
25 anyway. The fact that it's not admissible under the

1 statute, because of the age of the child does not create a
2 valid mistrial for the question being asked.

3 I will allow the State to ask the question as to time
4 and place under rule 801(d) as far as this witness. I don't
5 think because she's an expert witness negates her ability to
6 testify to that. So I will allow that. But I will not
7 allow any evidence as to the prior consistent or
8 inconsistent statement. I don't think that overcomes the
9 rule against hearsay, unless you can give me some other
10 argument to change my mind, Ms. Barwick. But I believe the
11 rule prohibits her, as it would anybody else, to say that
12 she made an inconsistent statement or a consistent statement
13 here.

14 MS. BARWICK: Thank you, Your Honor, for your
15 ruling. Just so I can be clear when the jury comes back
16 out, can I rephrase my question to say, did you have a
17 chance to meet with MINOR How do you want me to address
18 that?

19 THE COURT: Well, do you need to rephrase it? My
20 ruling is that his objection to the question has been
21 overruled.

22 MS. BARWICK: Okay.

23 THE COURT: But by that ruling, it doesn't mean
24 you need to pursue asking about forensic interviews with the
25 child, with the young girl.

1 MS. BARWICK: Okay. Yes, sir. I'll just ask her
2 when she met with the child.

3 THE COURT: And did she talk about an abuse and
4 time and place.

5 MS. BARWICK: Am I able to ask about whether her
6 disclosure was compelling in her expert opinion?

7 THE COURT: What about that Mr. DeJong?

8 MR. DEJONG: Well, again, Your Honor, I object to
9 that because that has got to be based on forensic interview
10 statements made by a person twelve years of age or old and
11 we're just back to ---

12 THE COURT: So you can't have a forensic interview
13 -- can you have a forensic interview outside the statute?
14 Can you have a forensic interview of an adult?

15 MR. DEJONG: Well, sure you can have a forensic
16 interview of an adult.

17 THE COURT: So how does the statute prohibit her
18 from giving that opinion?

19 MR. DEJONG: But on a forensic interview of the
20 adult, I don't think you can bring in out-of-court
21 statements because that's what this statute says. The out-
22 of-court statements cannot be brought in.

23 THE COURT: But she's not -- I gather from what
24 she said she's not saying what she said, she's just saying
25 the deception of what she said or was it credible, based on

1 her expertise as a child counselor that -- she's talked
2 already about how children deceive and so forth. Do you
3 believe she, as an expert in that field, cannot say -- still
4 not give an opinion as to whether or not that was credible
5 information that she gave her as to time and place? That's
6 what we've got down.

7 MR. DEJONG: The time and place ---

8 THE COURT: Well, that's all she's going to be
9 asking.

10 MR. DEJONG: But now she wants to go on and get
11 the opinion. And I think Your Honor said the magic word
12 there, to say that she's credible. That is simply this
13 witness vouching for the credibility of another witness,
14 Your Honor, and that's improper.

15 THE COURT: How do you intend to ask that question
16 and how do you intend to allow that to be a proper question,
17 Solicitor, as to whether or not she found her to be -- what
18 phrase did you say?

19 MS. BARWICK: Compelling.

20 THE COURT: Compelling?

21 MS. BARWICK: And I don't want it to sound like a
22 leading question because I know I'll draw an objection on
23 that. I will simply ask her after her forensic interview
24 with MINOR did she make any findings as to her disclosure?
25 What were those findings?

1 THE COURT: Any objection to that, Mr. DeJong?

2 MR. DEJONG: Your Honor, I don't want to be
3 repetitive and I mean no disrespect. My objection is based
4 on the forensic interview, out-of-court statements of a
5 child twelve or older. And, according to the Solicitor,
6 this witness is going to say it was a compelling disclosure.

7 THE COURT: Well, I -- based on what I have now,
8 I'm going to deny you your request to ask that question, Ms.
9 Barwick. All right.

10 MS. BARWICK: Do I need to just phrase it
11 differently? And I don't mean any disrespect.

12 THE COURT: No, ma'am. No.

13 MS. BARWICK: I thought Your Honor had ruled ---

14 THE COURT: What I have on the record so far, I
15 will not allow the question.

16 MS. BARWICK: Yes, sir.

17 THE COURT: Time and place only.

18 MS. BARWICK: Thank you, Your Honor.

19 THE COURT: How much longer do you expect the
20 direct examination of this witness to be, not counting the
21 video?

22 MS. BARWICK: Not counting the video, probably
23 about ten to fifteen minutes.

24 THE COURT: Mr. DeJong, do you intend to cross-
25 examine this witness before the video is played or ---

1 MR. DEJONG: No, sir, after the video is played.

2 THE COURT: After the video.

3 MR. DEJONG: And I'm not asking this. We've got a
4 witness on the stand, but maybe between -- at some point in
5 time could we take a little down the hall break?

6 THE COURT: Well, that's what I was trying to do.
7 If you're going to delay your cross examination until after
8 the video is played, let's take our break now.

9 Ms. Galloway-Williams, let me remind you while you're
10 on the stand not to be discussing your testimony with
11 anyone.

12 Let's take about a ten minute break and then we'll be
13 ready to complete the direct and show the video.

14 MR. DEJONG: Thank you, Your Honor.

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

17 THE COURT: Thank you. Please be seated. All
18 right. I understand we are ready to proceed so we won't
19 have another break. I just wanted to reaffirm on the record
20 that I'd made a finding of the admissibility of the
21 videotape. Certainly, you can object to it again if you
22 need to, Mr. DeJong, I'm not hampering you there in anyway,
23 at the appropriate time or you can make your objection now.
24 I presume that that's going to be offered fairly soon. But
25 if you want to object otherwise, my ruling has been made on

1 the admissibility of it.

2 MR. DEJONG: I understand that, Your Honor. But I
3 think I'm going to have to object to the video at the time
4 the State offers it.

5 THE COURT: That's what I'm telling you.

6 MR. DEJONG: Yes, sir.

7 THE COURT: I just wanted to reaffirm what I've
8 said. I'm not sure -- I tried to state all the factors I
9 used in looking at that, but certainly the factors that I
10 stated before, guaranteed the trustworthiness of the
11 statement based upon the techniques used by the interviewee
12 and the internal coherence of the detailed account that was
13 given. And I have determined, having reviewed the tape two
14 days ago now during lunch, that it was within the standard
15 of trustworthiness under the statute. So we will -- I'll
16 not have to put that back on the record again. All right.

17 If the jury's ready, Mr. Teal, you can have them come
18 in.

19 (WHEREUPON, the jury entered the open court at
20 approximately 11:08 a.m.)

21 THE COURT: Thank you, ladies and gentlemen.
22 You've been patient. We're now ready to proceed with the
23 examination of this witness.

24 Solicitor, you may continue with your examination.

25 MS. BARWICK: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUED

1

2 **BY MS. BARWICK:**

3 Q. When you met with MINOR did she make a disclosure of
4 sexual abuse?

5 A. Yes.

6 Q. And did she disclose where and when it happened?

7 A. Yes.

8 Q. And what did she say? I'm sorry. No, not that
9 question and not that answer either. All right. And did
10 you also have a forensic interview with MINOR CHILD 2

11 A. I did.

12 Q. And you said the date of that was?

13 A. The date of his interview was July 29th, 2008.

14 Q. Okay. Did he also make a disclosure of sexual abuse?

15 A. Yes, he did.

16 Q. And did he disclose the time and place?

17 A. Yes.

18 Q. Okay. And where did he say it happened?

19 A. He said it happened in the home where he was living
20 with his mother, sister, and stepfather.

21 Q. And did he say how old he was when it happened?

22 A. He said he was eight years old when it happened.

23 Q. Thank you. Let's talk about disclosure a little bit
24 with the jury. Do children disclose in every case?

25 A. No. What we know statistically is that most children

1 don't tell. And most children don't tell right away. The
2 research that's been conducted with adults who've been asked
3 as adults if they ever disclosed childhood sexual abuse,
4 indicates that somewhere around seventy percent of adults
5 never disclose. And so we know that there is a large number
6 of children who don't disclose abuse.

7 Q. Can you tell the jury a little bit about delayed
8 disclosure?

9 A. Delayed disclosure refers to the fact that most
10 children don't tell right away after an incident of abuse
11 has occurred. There are lots of reasons for this,
12 explanations for this. The main reason that I hear from
13 children and that the research shows us is fear. Children
14 fear that they're going to get in trouble if they tell.
15 They fear what's going to happen to themselves, what's going
16 to happen to someone else. They fear what's going to happen
17 to their family. They may fear that something's going to
18 happen to them because they've actually been threatened or
19 it could be that they fear something's going to happen to
20 them because they've seen violence and that's threatening.
21 But it may also just feel threatening to a child because the
22 person that committed this act is an adult. They're bigger,
23 they're stronger, they're the ones who are sort of in
24 control of things. And so just by virtue of an adult
25 committing this act on a child, that has sort of a

1 threatening effect on a child and may keep them from
2 telling. Other reasons that children don't tell, you know,
3 a lot of times when children are abused, probably about
4 eighty percent of the time, children are abused by someone
5 that they know, they love and they trust. Whether that's a
6 family member, a family friend, a teacher, a mentor, it's
7 someone that they have a relationship with. And so a lot of
8 times that makes it even harder for them to tell that
9 something's happened. It's that whole idea of loving
10 someone and caring about someone, but not liking what
11 they're doing. A lot of us tolerate those kind of
12 relationships and we have to just because that's the nature
13 of relationships with people. But that has a strong impact
14 on whether a child will disclose what's happened to them.
15 The other things that may cause a child not to tell are just
16 the idea that they aren't going to be believed. Children
17 just don't think that -- children are often called liars and
18 are often questioned about the things that they say. And so
19 a lot of times, they just don't think that if they told
20 anyone that anyone would believe that this really happened.
21 Other times, children just don't know that it's -- they know
22 something's not right but they really can't put it to words
23 and don't really know what's going on, which was really why
24 the name Finding Words was given to one of the forensic
25 interview trainings.

1 Q. Do you think shame or guilt might play a role in any of
2 that?

3 A. Certainly. I know when we're looking at child sexual
4 abuse or adult sexual assault, shame and guilt play very
5 heavily into that. We're talking about sexual acts, things
6 that most of us aren't comfortable talking about with our
7 closest friends. We're not comfortable talking about it in
8 public. And so it just has this element of shame just
9 associated with it, particularly for a child. And depending
10 on their age and whether they even realize that, you know,
11 what's happening to them, it can be even more shameful for
12 them. Kids from a very young age know that they're supposed
13 to keep those parts covered. I mean, even our very young
14 children we tell them to, you know, keep their clothes on
15 even when they want to rip them off and run around the house
16 naked.

17 Q. Do you think children have an easier time or a harder
18 time speaking about it when it's the same sex abuse?

19 A. I think that can have an impact. I mean,
20 statistically, we say that one in four girls and one in six
21 boys are going to be sexually abused by the age of eighteen.
22 You know, what we see in treatment and in disclosures that
23 come out is that a lot of times boys, it's harder for them
24 to tell. They're less likely to tell. We know that it's
25 happening to boys, but for numerous reasons it's harder for

1 them to tell. And I think that what I've seen from my
2 clinical experience and what some of the research shows is
3 that sometimes that's related to the fear of homosexuality
4 or being perceived as being homosexual if the act has been
5 committed by an adult male or another male. And that can
6 have a pretty significant impact on whether a young boy
7 discloses or not. And I see that a lot. I've seen that a
8 lot in counseling.

9 Q. You kind of touched on living with the perpetrator, how
10 does that affect disclosure?

11 A. Well, certainly, you know, if you're living under the
12 same roof with the person that's committing this act as a
13 child, this may be the primary care giver. They may come to
14 understand that if I told about what was happening, we might
15 not have someone to pay the bills. We might not have
16 someone -- a place to live. It really sort of strengthens
17 that fear and anxiety around telling. You know, sometimes
18 disclosures are delayed until a child has been removed or is
19 away from that person that's committing the abuse. So
20 that's another reason why sometimes, you know, a child may
21 have been abused and then three to four years later they're
22 disclosing because maybe they haven't had contact with that
23 person and it's that, you know, the idea that they may feel
24 safer and may be safer to tell.

25 Q. Let's talk a little bit about some of the things that

1 you are looking for in a forensic interview.

2 A. Some of the things that we're looking for?

3 Q. Yes, specific things.

4 A. Specific to the disclosure?

5 Q. Yes.

6 A. Really what we're looking for are details and the type
7 of details that a child is able to give within their
8 developmental level. So, you know, for instance for a child
9 who's seven or eight, we'd expect that they'd be able to
10 tell us who, what, when, where, and probably how something
11 happened. For a younger child, they may not be able to tell
12 all of those things. For a child who's twelve and over, we
13 would expect that they could tell us all of those things.
14 Those are sort of the core details. What happened, where
15 did it happen, how did it happen, the basics. And then
16 we're also looking to see if they can give us what we call
17 contextual details or sensory details, things that would
18 really distinguish what they're saying as something that
19 they might have been told versus something that they
20 experienced. So a contextual detail would be one of those
21 sensory things, what did it feel like, what did it smell
22 like in the room, what do you remember, any of those things
23 that your five senses would have brought to you. When a
24 child can share those types of details, it certainly sort of
25 adds to the -- whether or not their statement is compelling

1 or not.

2 Q. And I apologize. I know I feel like I'm jumping around
3 with you a little bit. When you spoke with MINOR did she
4 say where the abuse occurred?

5 A. Yes.

6 Q. And where did she say that abuse occurred?

7 A. In the home where she lived with her mom and step-dad
8 and brother, in the living room.

9 Q. Okay. And when did she say it occurred?

10 A. It occurred -- she didn't give me a specific date,
11 which again in child's terms when I'm looking for a time
12 frame, I'm not necessarily looking for month, day and year.
13 I'm looking for a time to attach it to. So she said that it
14 happened after they had come back from a vacation in
15 Charleston and that it happened, and she told her mom later
16 that day.

17 Q. I understand.

18 A. So it was in the same day of, you know, when the report
19 was made.

20 Q. Yes. Now, let's move over to MINOR forensic
21 interview. When he made a disclosure, how did you find that
22 disclosure? Do you have an opinion as to that disclosure?

23 A. Yes. I described MINOR disclosure as a compelling
24 disclosure because he was able to provide both those core
25 and contextual details about what he was describing. He was

1 able to say who, what, when, where, how. But he also gave a
2 lot of pretty vivid description about what it felt like.
3 Probably one of the most compelling details that he shared
4 was related to his body positioning, how he was positioned
5 when this incident occurred and how Rick was when he
6 performed this act, as well.

7 Q. Do you recognize this?

8 A. I do.

9 Q. And what is it?

10 A. It's a copy of the forensic interview that I conducted
11 with MINOR CHILD 2 on July 29th, 2008.

12 Q. And would it be a clear and accurate depiction of how
13 that interview happened?

14 A. Yes.

15 MS. BARWICK: Your Honor, at this time, the State
16 would like to introduce State's Exhibit Number 5 into
17 evidence?

18 THE COURT: Any objection?

19 MR. DEJONG: And I object, Your Honor.

20 THE COURT: All right. I overrule your objection.
21 You may -- the exhibit is admitted into evidence and may be
22 published.

23 (WHEREUPON, State Exhibit Number 5 was admitted into
24 evidence.)

25 MS. BARWICK: I apologize, Your Honor.

1 THE COURT: Mr. Foreman, ladies and gentlemen, as
2 this is played if you have difficulty hearing volume-wise,
3 please let us know so that the volume will be at the right
4 level for you to be able to hear everything. If it's too
5 loud, let us know, we'll certainly have the player tone it
6 down.

7 While they're working on the equipment if you need a
8 stretch break, feel free to stretch. I'm sure they'll have
9 it working soon.

10 (WHEREUPON, State Exhibit Number 5 was published in
11 open court.)

12 MS. BARWICK: Your Honor, the State has no further
13 questions for this witness.

14 THE COURT: You may cross-examine the witness, Mr.
15 DeJong.

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

18 **CROSS-EXAMINATION**

19 **BY MR. DEJONG:**

20 Q. So you're basically an investigative arm for law
21 enforcement. Is that right?

22 A. Actually, we're not an arm of law enforcement. A lot
23 of our referrals come from law enforcement or DSS, but as a
24 children's advocacy center, we view ourselves as a neutral
25 party, sort of a liaison between the community partners that

1 are involved in investigating, prosecuting and treating
2 children.

3 Q. Okay. And you're the Executive Director of the Julie
4 Valentine Center, right?

5 A. Yes.

6 Q. Who hired you?

7 A. Who hired me?

8 Q. Uh-huh (affirmative).

9 A. I was initially hired by a former executive director
10 when I was working as a clinical -- well, actually, I
11 started out working as a forensic interviewer on a contract
12 basis and through my private practice at the Greenville Rape
13 Crisis and Child Abuse Center. And that was -- I was hired
14 by Donna Roy who was the executive director at the time. I
15 was then hired by the Board of Directors. That's who
16 selected the Executive Director.

17 Q. How many members sit on your Board?

18 A. Right now I have nineteen Board members.

19 Q. One of which is an Assistant Solicitor for the
20 Thirteenth Circuit, right?

21 A. That's correct.

22 Q. And one of which is a police officer for Greenville
23 County, right?

24 A. That's correct.

25 Q. Okay. Now, you say that you have peer review and

1 people look at your forensic interviews, right?

2 A. Yes.

3 Q. And I guess you do the same thing for other people,
4 right?

5 A. Yes.

6 Q. How do you develop this -- what are you looking for on
7 peer review?

8 A. Well, when we review each other's interviews, we look
9 to see if the interviewer is following protocol. When we're
10 doing our national peer review, it's pretty interesting,
11 because not all of the children's advocacy centers follow
12 the same protocol. So sometimes we're looking at
13 interviewers who conduct interviews different from ours.
14 But, essentially, you're looking for the same type of thing.
15 Are the interviews being conduct in a forensically sound
16 manner? Are the interviewers asking neutral questions or
17 leading questions. And that's pretty much what we're
18 evaluated on, based on protocol.

19 Q. What is your error rate?

20 A. What do you mean by that?

21 Q. Well, I suspect if you're being reviewed you could make
22 errors, right?

23 A. Yes.

24 Q. What is your error rate on your peer review?

25 A. Well, we don't track any sort of statistic error rate

1 if that's what you're asking. When we do peer review, we're
2 basically looking for feedback on the interviews that you're
3 bringing in. And most of us bring in interviews where we
4 really think we've done a bad job, essentially, because we
5 want to know how to do those interviews better. So, yes, we
6 do all make mistakes. And it's a learning opportunity both
7 for the interviewer and for the other interviewers who are
8 reviewing.

9 Q. So peer review is basically for somebody to maybe share
10 with you that you're not doing it quite right, correct?

11 A. Well, they share with you what you're doing well and
12 what you're not doing well.

13 Q. Right. But it's not a peer review where you fail or
14 you don't fail or whatever, right?

15 A. We're not being graded. That's not part of the peer
16 review process. That's not really one of the standards. I
17 can't imagine any groups that are doing forensic interview
18 peer review where they're giving a letter grade or a
19 pass/fail. I don't know of any.

20 Q. Well, how many different protocols are there?

21 A. Well, the main two that are recognized nationally are
22 the National Children's Advocacy Center Protocol, which I've
23 been trained in. And then Child First, which was formerly
24 Finding Words and also referred to as Cornerhouse. But
25 there's also APSAC, NHIC, and I'm not really sure what that

1 stands for. But those are two additional protocols that I
2 can name. South Carolina recognizes Finding Words. We
3 consider ourselves a Finding Words state and we were
4 actually one of the first states nationally to implement
5 that as a training. It's a pretty big deal for South
6 Carolina.

7 Q. So with all of these different protocols, is peer
8 review based on somebody that may be an NHIC peer reviewing
9 you that uses -- whatever that strange name is. I don't --
10 do they peer review you, even though you're using something
11 else?

12 A. It depends. If we're doing the National Children's
13 Advocacy Center peer review, where we're doing that by
14 closed circuit and we are being reviewed by other
15 interviewers that are in other centers across the nation,
16 they may be using a different protocol there. But
17 essentially, the components of all these protocols are the
18 same. I'm looking for investigative interviews. We're
19 using non-leading, non-suggestive questioning. Almost all
20 the interviews contain a section of the interview where
21 you're doing anatomy identification, touch inquiry, and
22 you're using questions in such a way that you are eliciting
23 information from a child rather than giving them that
24 information. So even though the protocols may have things
25 that are different about how you're actually conducting the

1 interview, the components of it are essentially the same.

2 Q. Well, I understand leading questions, but there's such
3 a thing as positive reinforcement also, isn't there? Aside
4 from the leading question, you can positively reinforce the
5 child, right?

6 A. Explain what you're asking me, please.

7 Q. Well, for example, I see on the video that when you
8 asked MINOR initially, he said wee wee and bottom, right?
9 Then you follow up on that. He says, well, it felt like
10 that. He didn't say it the second time. It felt like that.
11 You positively reinforced, saying, when he put his wee wee
12 in your bottom, right?

13 A. I restated the statement that he had made in my
14 interview.

15 Q. Yes, ma'am. But you restated it after he changed
16 somewhat what he had initially said.

17 A. It's a focused narrative question where I use a
18 statement that he's already made and ask him to explain in
19 more detail about that.

20 Q. Yes, ma'am. When Ms. Barwick was asking you questions,
21 you readily agreed that children lie, right?

22 A. Yes.

23 Q. And actually, the fact that children lie came out of
24 the studies from the California Child Daycare cases a few
25 years ago, right?

1 A. That's one of them.

2 Q. Yes, ma'am.

3 A. Certainly.

4 Q. There were two big cases in California and up until
5 that point in time everybody said all kids can't lie
6 basically, right?

7 A. Yes. I'm sorry. I was nodding.

8 Q. And after the California Daycare Center cases, they
9 said, oops, kids really can lie, right?

10 A. Yes. After those cases, they said kids can lie. And
11 since then there's been a lot of research on how children
12 tell and what influences children to lie. And basically,
13 it's all about suggestibility.

14 Q. Yes, ma'am. And not only suggestibility, but as you
15 move down the road on these allegations these children can
16 embellish, right?

17 A. Can children embellish?

18 Q. Right.

19 A. When children are lying they could embellish their lie.

20 Q. Yes, ma'am. And, again, that came out of the
21 California Daycare Center cases where there were a lot of
22 bizarre allegations made, right?

23 A. And those were related to how the children were
24 questioned about those allegations. It was an interviewer
25 error, which is why we ask questions in a different way than

1 those interviews did in the eighties. We were able to learn
2 from other's mistakes.

3 Q. And in part, it was also the repetition of the
4 interviewer, was it not?

5 A. There were a lot of errors that those interviewers were
6 making. They were making -- they asked leading questions,
7 suggestive questions. And by a leading question, that's
8 putting part of the answer in the question when you ask it.
9 They also -- and they also did repeatedly interview. There
10 were lots of things that were going on with those. If
11 you're not familiar with these cases, which I don't know
12 that everyone is, there was a daycare case. There were
13 children that multiple interviewers began interviewing
14 multiple children and it really kind of got out of hand to
15 the extent that they weren't sure what had really happened
16 at this daycare. And some of the allegations were very
17 bizarre. And it really shed light on the fact that we
18 needed become more scientific about how we were asking
19 questions and interviewing children and that it was not just
20 going in there, talking to an adult. You really had to be
21 careful about how you were asking questions of children.

22 Q. Well, with all of this science now that you're talking
23 about, that certainly has not done away with false
24 allegations, has it? There are still false allegations?

25 A. Certainly. I think the research says statistically

1 they're about two percent.

2 Q. That would depend on which research you read, I guess.

3 A. Certainly.

4 Q. But that would be on the low side ---

5 A. Yes.

6 Q. --- according to your testimony, correct?

7 A. Well, the research shows that between two and four
8 percent of allegations are false.

9 Q. Yes, ma'am. And we don't know how those false
10 allegations arise, do we?

11 A. Well, what we see more of are false denials, like where
12 there's actual evidence that a child has been abused, which
13 is very rare, but in cases where maybe a child has a
14 sexually transmitted disease or someone has actually seen
15 something occur and a child denies that, that's where some
16 of those false allegation numbers come from. So it's like a
17 false denial.

18 Q. Yes, ma'am. There are false allegations made by
19 children, the allegations never happened, right?

20 A. There are some false allegations made by children.

21 Q. Yes, ma'am. And there's no specific way of knowing
22 where or how those false allegations arise? No science on
23 that?

24 A. In assessing how those allegations arise? That's why
25 it's so important that we find out where a child and the

1 circumstances around how a child discloses. You know, I
2 talked about earlier that most children delay disclosure. I
3 don't know if we mentioned this earlier or not but most
4 children don't purposefully disclose abuse. The majority of
5 children don't purposefully set out to say they're going to
6 disclose abuse. They usually have what we call an
7 accidental disclosure or a tentative disclosure where either
8 they have said something that concerns someone and they
9 start asking questions about it or someone sees a concerning
10 behavior. And so what I'm saying is the circumstances
11 around how a child discloses are always important pieces of
12 information for us. I mean, that's sort of the scientific
13 part of it, is gathering all that information. In most
14 child abuse cases, the only evidence we have is that child's
15 statement, which is why we conduct a forensic interview.

16 Q. That's exactly where I'm going.

17 A. Right. And so exactly what I'm saying is that those --
18 what happens just before a child discloses, what happens
19 after the child discloses and what happens during that
20 disclosure is important information and would help us to
21 understand or to find out if an allegation might be false.

22 Q. Well, ---

23 A. Or true.

24 Q. I'm sorry, ma'am. I didn't mean to interrupt you.

25 A. That's okay.

1 Q. When a case comes to you there are certainly
2 allegations of abuse, right?

3 A. There's either been -- yes. There's an allegation of
4 abuse. There's an investigation, concerning behavior or a
5 statement that's been made.

6 Q. And you're looking for abuse?

7 A. No. I would much rather find out that it is something
8 that did not occur. In my opinion, I would rather every
9 child not have been abused. So I'm not looking for abuse.
10 I'm looking to identify what has happened. You know, we go
11 into it with hypothesis, this could have happened. This
12 could have not happened. You know, it's not my job to go in
13 there and say, check off, this kid was abused. And we don't
14 always find that a child was abused.

15 Q. Of the seven hundred cases you did forensic interviews
16 on them, how many did you find there was not abuse?

17 A. I don't know statistically. I don't have a number, an
18 exact number. Of the cases that I've done, when I render an
19 opinion I either say that the child has made a compelling
20 disclosure, no disclosure or problematic disclosure. We
21 track that information now in our database. We haven't
22 always done that. So I don't know exactly how many. But,
23 you know, there certainly have been cases where children
24 have come in and have given a problematic statement of abuse
25 where I don't know what happened and I don't know whether,

1 you know, we don't know the exact circumstances of the
2 disclosure. And then there have been some where children
3 come in and they don't make a disclosure. They've made a
4 statement to someone else and they come into our interview
5 and they don't share any information at all. And then there
6 are those cases where there's been a disclosure and we do
7 find out that it wasn't abuse, that maybe it was touching
8 that happened in a care giving sense, you know, someone
9 giving someone a bath or, you know, changing a diaper or
10 something like that. Those are the rare cases, but we have
11 had some of those too.

12 Q. Of the compelling disclosures, how many of those were
13 false allegations?

14 A. How many of the compelling disclosures were false
15 allegations?

16 Q. There's no way to know, is there?

17 A. I mean, I don't know. I mean, if ---

18 Q. Absolutely. Because what you find on a compelling
19 disclosure is subjective to you, correct?

20 A. What I find out, a compelling disclosure is based on
21 our protocol and how we evaluate the information the
22 children shared during our interviews. That's what makes it
23 a forensic interview versus a conversation or an interview
24 that I would have with someone else. It's all based on the
25 protocols that we follow and the research behind how to talk

1 to children and ask them questions.

2 Q. And how you evaluate it? That's what you said, right?

3 How we evaluate it?

4 A. The interview that I conducted and the information that
5 I've gathered and -- yes. The report is a -- the report has
6 my signature on it and it is my recommendation and
7 conclusion.

8 Q. And that is subjective to you based on what you say is
9 your protocol, right?

10 A. It's based on the education, experience and protocols,
11 yes. In the same way -- it's not really like a diagnosis.
12 I don't want to say that it's a diagnosis, but it's in the
13 same -- I would equate it to, you know, kind of like when
14 you go into the doctor and the doctor asks you what your
15 symptoms are. It may not be something that you can actually
16 see and lay your hands on, but the doctor's going to check
17 off those symptoms and if you meet most of those, then he's
18 going to give you a diagnosis. That's kind of, you know, in
19 some ways what we're looking at here. You're gathering
20 information and does this information meet this criteria or
21 this criteria? You know, I've got this hypothesis or this
22 hypothesis that this has happened and which way -- which one
23 holds more weight.

24 Q. Well, in the gathering the information, you gather that
25 information from more than one source, correct?

1 A. Yes.

2 Q. And one source that you gathered the information from
3 is law enforcement?

4 A. Yes.

5 Q. Or DSS?

6 A. Yes.

7 Q. Either case. And certainly the information you are
8 gathering from them is either -- well, abuse, it may be
9 physical abuse in a DSS case, sexual abuse in a criminal
10 case, correct?

11 A. Usually, they haven't made a finding at that point. So
12 I'm reviewing either an incident report or an intake form
13 that's been completed by the Department of Social Services.
14 So they're investigating an allegation that's been made.

15 Q. But you're reading the reports of law enforcement
16 officers?

17 A. Which are generally the statements made by the child or
18 parent that has made the report. But they are -- yes, I
19 review the incident report that has been completed by law
20 enforcement. In these particular case, those contain
21 statements made by the children, as well as their parents.

22 Q. And when you read those statements you don't know at
23 that point in time who the child has talked to, how many
24 times the child has talked to somebody about these
25 allegations or how many people they have talked to, do you?

1 A. When I just read the incident report or get the intake?

2 Q. Yes, ma'am.

3 A. No, I don't know that until -- hopefully, I can gather
4 that information from the child or from their family. At
5 that point, though, I generally know whether they have
6 talked with law enforcement, DSS, if they've had another
7 interview, if they've had a medical exam at the emergency
8 room. Sometimes we get referrals from children who are
9 already in counseling so they may have been questioned by
10 their counselor.

11 Q. Well, that's where new allegations arising from their
12 counseling, if I understand your answer correctly, right?

13 A. Sometimes. New allegations might arise while they're
14 in counseling. They may be in counseling for some
15 behavioral problems or emotional problems and come to find
16 out that the source of that is the child abuse that they've
17 never disclosed.

18 Q. All right. Children can lie, they make false
19 allegations. Children can also be manipulative, can they
20 not?

21 A. Yes. Children can be manipulative.

22 Q. Very manipulative?

23 A. Mine are very good at it.

24 Q. Yes, ma'am. And they know how to manipulate adults?
25 They have learned that?

1 A. They do.

2 Q. And children are subject to all the emotions that we
3 adults are and one of those devastating emotions is anger,
4 is it not?

5 A. Yes. Children experience anger.

6 Q. Yes, ma'am. And children can experience a desire for
7 revenge for whatever reason?

8 A. They can be angry and want -- yes. I guess I can agree
9 to that.

10 Q. And children also can be very attention-seeking, can
11 they not?

12 A. Yes. Children enjoy attention.

13 Q. And where you have siblings, where one sibling may be
14 getting greater attention than another, or their perception
15 of that, they might do things or take actions to get more
16 attention? That wasn't a very clear question, but I don't
17 know if you followed it or not. I'll restate it if you want
18 me to.

19 A. So you're asking if children will do things to seek
20 attention?

21 Q. Yes, ma'am. Basically. Bottom-line.

22 A. Yes. Children do things to seek attention, positive
23 things, negative things.

24 Q. And children, as I believe you have already said,
25 basically -- not all, but most I think we would say, want to

1 please adults?

2 A. Yes. Most children want -- yes, they want to please
3 adults. They want to be liked just like most adults want to
4 be liked by others.

5 Q. So in terms of that, the allegations are made to a
6 police officer, to a parent, to a teacher, now this child
7 wants to please adults and continue those allegations,
8 correct?

9 A. I think that's taking a huge leap from agreeing that
10 children are manipulative and lie and all these other things
11 I agreed with, to say that they would then make sexual abuse
12 allegations, because most children don't want -- even if
13 they're, you know, very attention seeking and want the
14 attention of someone they love very much that they're not
15 getting, most of them aren't going to put out there that
16 they've been sexually abused, particularly not -- not if
17 they've been sodomized by someone, and more likely not a
18 boy. It just is very uncommon that that would happen.

19 Q. Well, I was fascinated watching this video. MINOR
20 initial desire to talk to you was more about the allegations
21 of abuse to his sister than to himself. Do you agree with
22 that?

23 A. He came in talking about the allegations about his
24 sister as well as himself.

25 Q. Okay. And with regard to the allegations to his

1 sister, he exhibited a certain amount of anger over that?

2 A. Yes. He was very angry that that happened to his
3 sister.

4 Q. And talked about that on several occasions during this
5 particular interview?

6 A. Yes. Very protective of his sister.

7 Q. Very.

8 A. And had he known that that was happening to her -- I
9 think that he said that a couple of times. Had he known
10 that was happening to her, he would have done something.

11 Q. Right. I am not sure and I may have missed something
12 when Ms. Barwick was asking you questions, you said part of
13 the -- if I understood you, part of your protocol was
14 basically to determine or share with or make a determination
15 that a child knew the difference between telling the truth
16 and lying. Is that correct?

17 A. Well, like I said before, generally with children who
18 are seven and under, we used to do -- at this time, in 2008,
19 we were still doing a truth/lie task where we actually asked
20 children -- I'm doing this because it was a flip chart, and
21 we asked children to identify whether this child was telling
22 the truth or telling a lie. With children who are over the
23 age of seven, we don't normally assess whether they
24 understand the difference between truth or lie, but we do
25 let them know that in the interview we expect that we only

1 talk about things that are true and real.

2 Q. On your interview, a couple of things. I noticed you
3 used the anatomical drawings with MINOR Is that correct?

4 A. Yes.

5 Q. And then after you used the anatomical drawings, you
6 come back in and use the anatomical dolls?

7 A. Yes.

8 Q. Now, you already had at that point in time the
9 disclosure, to use your word, okay? I call it allegations.
10 You call it disclosure. Tomato/tomato, I guess, okay?

11 A. Right.

12 Q. But you've already had the allegations made to you at
13 that point in time with the anatomical drawings, correct?

14 A. Yes.

15 Q. Now you come back and reinforce that with the
16 anatomical dolls?

17 A. Well, it's not reinforcing it with the dolls. It's
18 giving the child an opportunity to demonstrate. What the
19 child can show with an anatomical doll is much different
20 than a drawing. A drawing is a drawing, it's flat. There's
21 no real -- there's no dimension to it at all. You can't
22 take clothes on and off. You can't demonstrate how body
23 parts are moving and what they're doing, but with a doll you
24 can manipulate all of those features, the body parts, the
25 clothing. And in his particular interview, that's where he

1 was able to share such compelling information about body
2 positioning and how he was during that disclosure that he'd
3 made.

4 Q. I believe he said in the body positioning in his -- the
5 video that he was laying on the bed, straight out, correct?

6 A. He said he was laying -- yeah. He was laying straight
7 out, flat.

8 Q. With his bottom in the air?

9 A. With his bottom in the air.

10 Q. Okay. This case, with regard to time element, the only
11 time element you have on this case was eight years of age.

12 Is that correct?

13 A. Yes. He was eight when this happened.

14 Q. Did you ever attempt to use birthdays, anything other
15 than the 4th of July. And I don't recall you really ever
16 used that. Did you use anything to try to get a better idea
17 of when these dates were?

18 A. Due to his age I didn't get anything really specific.

19 I mean, I would not expect that he could give me a day,
20 month and year. He was eight years old. His birthday had
21 been in November. So when I saw him, you know, he was about
22 half-way between nine. So it happened somewhere November
23 and July when the allegations were made or the disclosure
24 was made.

25 Q. Correct. Roughly eight month time frame?

1 A. So there was eight months where those incidents could
2 have occurred.

3 Q. Now, in this case you asked MINOR if he had ever seen
4 anything done to his sister, correct?

5 A. Yes.

6 Q. All right. And then at some point in time -- and I
7 believe he said, no?

8 A. Correct.

9 Q. And then later on in the interview or at some point in
10 the interview he said he grabbed me like he grabbed my
11 sister, correct?

12 A. Yes.

13 Q. Now certainly that would indicate that there had been
14 discussions somewhere along the line of what had allegedly
15 happened to his sister and what he now says allegedly
16 happened to him. Would you agree with that?

17 A. Yes. He had some knowledge of what had happened to his
18 sister.

19 Q. And it had to come from someplace?

20 A. Sure.

21 Q. Right. And you've talked about grooming. I don't want
22 to go back over grooming. But children can be scripted too,
23 can't they?

24 A. Can be scripted?

25 Q. Yes, ma'am.

1 A. You mean coached?

2 Q. Yes, ma'am.

3 A. Children can be coached. But that's one of the things
4 we're also looking for in interviews and that's why it's so
5 important that we identify those contextual details and get
6 more than just the who, what, when, and where when an
7 allegation is brought to light.

8 Q. Well, in this case you asked MINOR about when this
9 allegation of this anal penetration was over, what happened
10 next. First he drifts off down to a different area and then
11 you bring him back. And then at first he can't remember,
12 then he ran. Is that right?

13 A. He said he ran, yes.

14 Q. All right. And then he ---

15 A. And then waited for his mom to get home.

16 Q. And then I think later on in the same context he said
17 he went to his bedroom and watched the Disney Channel,
18 right?

19 A. Yes. He said after watching the news he went to his
20 room and watched the Disney Channel.

21 Q. And that was all arising out of the same incident.
22 That was the allegations of the penile penetration, right?

23 A. Right.

24 Q. Now, MINOR said he had certain fears during this video,
25 right?

1 A. Yes.

2 Q. But as I understood the video, he never said that Mr.
3 Beekman ever said anything to him about harming him, the
4 family or anybody else?

5 A. Right. He did not identify that he had made any verbal
6 statements to him about harming him. But as I mentioned
7 earlier, a lot of times there are other things that feel
8 threatening and make children feel afraid.

9 Q. And I think it was in the area of where you were
10 talking about -- generally about living with Rick, he said
11 he didn't like him because he would lie and get us in
12 trouble. Is that correct?

13 A. Yes. That is correct. Something to that effect.

14 Q. And that time frame you did not narrow down either.
15 That could have been from day one or at some later point or
16 after some time these allegations were made, right?

17 A. Well, I would assume it wasn't after the allegations
18 were made because they weren't in the same household.

19 Q. I'm not asking what you assume. I'm asking you if you
20 know?

21 A. Well, I asked him the question about what it was like
22 living with him. So it would be based on the time period
23 that they were living together.

24 Q. Do you know how long that was?

25 A. He said they'd been there about three years. But I can

1 look back in my notes to find out exactly what mom and dad
2 reported. He said three years.

3 Q. Towards the end of the interview you leave the
4 interview room and I believe you went out and talked to
5 Teddi Palis. Is that correct?

6 A. Correct.

7 Q. She was the law enforcement officer on this?

8 A. Yes.

9 Q. Now, before you left to do that, you had already used
10 the anatomical dolls, correct?

11 A. Yes.

12 Q. And now you come back and use the anatomical dolls
13 again ---

14 A. Yes.

15 Q. --- after you talked to Teddi Palis?

16 A. Yes.

17 Q. Now, children like to please, right?

18 A. Yes, children do have a tendency to want to please.

19 Q. Right. This child had already shown you with the
20 anatomical dolls what had happened, right?

21 A. Yes. He'd already used the dolls to show what had
22 happened.

23 Q. And now you come back and ask him again to show and he
24 gets more graphic in his detail.

25 A. He provided more detail the second time, yes.

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

2 THE COURT: Yes, sir.

3 MR. DEJONG: Thank you, ma'am.

4 THE COURT: Any redirect.

5 **REDIRECT EXAMINATION**

6 **BY MS. BARWICK:**

7 Q. Your board members, are they paid or are they
8 volunteers?

9 A. They are all volunteer.

10 Q. And what about you, has the Solicitor's Office paid you
11 to be here?

12 A. No.

13 Q. And are you here because you're under a subpoena to be
14 here?

15 A. Yes. I'm here because I was subpoenaed.

16 MS. BARWICK: Nothing further, Your Honor.

17 THE COURT: All right. Thank you. You may step
18 down, Ms. Galloway-Williams. Any objection to this witness
19 being excused?

20 MR. DEJONG: No objection, Your Honor.

21 THE COURT: Thank you, ma'am.

22 Mr. Foreman, ladies and gentlemen, this would be a good
23 time, I believe, for us to take a lunch break. I remind you
24 again not to discuss the case while you're out and about.
25 Be sure that you protect yourself from any untoward

1 THE COURT: All right. Thank you.

2 All right. If the jury's ready, Mr. Teal, you can have
3 them come in.

4 (WHEREUPON, the jury entered the open court at
5 approximately 2:30 p.m.)

6 THE COURT: Mr. Foreman, ladies and gentlemen,
7 we're now ready to proceed with the trial of the case.
8 Solicitor.

9 MS. BARWICK: The State rests, Your Honor.

10 THE COURT: Anything from the Defendant?

11 MR. DEJONG: The Defense rests, Your Honor.

12 THE COURT: Ladies and gentlemen, from what the
13 attorneys have just told you, all of the evidence has been
14 presented to you. We are now at the part of the trial in
15 which the attorneys will have a chance to address you in
16 their closing statements. I've told you from the beginning
17 that opening statements and closing statements are not
18 evidence. While this is not evidence and all the evidence
19 has now been presented, I urge you to listen carefully as
20 each of these attorneys address you. I'm confident that
21 they can give you some valuable insights to help you in your
22 deliberations.

23 After they've had a chance to address you in closing,
24 I'll instruct you on the law. And after I instruct you on
25 the law then, of course, that will be the time for you to

1 make your decision as to the facts of the case.

2 Solicitor, you may address the jury.

3 MS. BARWICK: Thank you, Your Honor. Mr. DeJong.

4 CLOSING STATEMENT

5 BY MS. BARWICK:

6 Good afternoon. I hope everyone had a good lunch.

7 We're at the close of the case as Your Honor just told you.

8 Cases like these are hard to hear. Cases of child sexual
9 abuse, they're crimes of fear and crimes of shame and crimes
10 of guilt.

11 When I speak about fear, I know Shauna Galloway-
12 Williams told you fear comes in a lot of forms. Fear's the
13 reason why MINOR didn't disclose right away. Let's talk
14 about his fear a little bit. The MINOR you saw, the MINOR
15 that you saw in the court testifying, that MINOR was eleven
16 years old. The MINOR that this happened to was eight years
17 old. You can look at the Defendant, look at him. He's
18 bigger than MINOR. Imagine the fear that MINOR felt laying
19 on his stomach with his butt in the air and this man sat
20 behind him and sodomized him. Imagine that fear. Imagine
21 that kind of fear. The sense of helplessness, the kicking,
22 the screaming, not being able to get out of that situation.
23 The fear that if he told, something might happen to him,
24 something might happen to his family, his sister, a sister
25 who he loved very much, or maybe even his mother. Imagine

1 that kind of fear. Fear that he can't tell anybody. The
2 only thing he could do was kick and lay in his closet asleep
3 at night praying that the Defendant wouldn't see him. That
4 kind of fear.

5 Shame. Shame so bad you saw it yesterday. He couldn't
6 even talk to you hardly about what happened to him. You saw
7 the victim. Do I have to tell you? Don't you already know?
8 Shame. Shame of being called a homosexual. Shame. Shame
9 of having to, if he does tell, have to tell his mom
10 something as personal as being sodomized by a grown man.
11 Shame.

12 Let's talk about guilt. You heard on the video if I
13 had known what he had done to my sister, I would have done
14 something. Guilt. He thinks that if he had just told
15 sooner, maybe this wouldn't have happened. Fear. Shame.
16 Guilt. You know what, he got to experience something else.
17 He got to experience a little bit of -- he was taken out of
18 that home where he never had a fear of what this man would
19 do to him again. That's why he told. And he knew that it
20 wasn't just him. He found out it happened to his sister,
21 too. That's why he told. Shauna Galloway-Williams told you
22 most people don't tell. They reach adulthood and they don't
23 tell. He told. We are very lucky. We have something in
24 this case that we very rarely have and that is a disclosure.
25 We have a disclosure. No, we don't have DNA. We don't have

1 fingerprints. We don't have anything like that. No, we
2 don't. We have something, which is still stronger than what
3 we have in those cases, we have a little boy who was able to
4 come up here yesterday and tell you what happened to him.

5 Let's talk about MINOR, some of the fears she might
6 have felt. Here she is sleeping, in a deep sleep, and what
7 did she wake up to? What did she wake up to? Not one, not
8 two, but three layers clothing pulled down with his hands on
9 her privates. That's what she got a wake-up to. No, she
10 didn't tell right away. She told the minute she was able to
11 get her mom alone. It might have taken a little bit of time
12 to process. If she wanted to lie about it, what would she
13 have done? If this was a lie, she would have told her
14 daycare worker, she would have told her grandma. No, what
15 she wanted to do -- this is a very shameful, it's very
16 embarrassing, she waited. The first time she got the chance
17 to sit down with her mother alone and say, mom, look what
18 happened to me.

19 Let's talk about a little bit of guilt that mom might
20 be feeling over this case. You know, she told you she
21 regrets her decision. It took about a week for this to go
22 to law enforcement. Do we really blame a mother for not
23 wanting to put her child on the stand and have her child go
24 through this? Any mother would not want her child to have
25 to come up here and testify about something as sick as this.

1 Let's talk about the father's guilt. Ted Wheeler got
2 up there and he said you know what I did, I punished the
3 children when they didn't do what Ted -- I'm sorry. I
4 punished the children when they didn't do what Rick told
5 them to do. He punished them.

6 The fear of getting in trouble. Shauna Galloway-
7 Williams said that's one reason for not disclosing, fear of
8 getting in trouble, fear of not being believed. You heard
9 that nobody believed MINOR when he said, Rick's lying.
10 Rick's lying. But nobody believed him. Fear of not being
11 believed. Why lie? Why would a child want to lie about
12 this? There is no reason a child would want to lie about
13 this.

14 Let's talk about MINOR a little bit. What did he gain
15 out of this? If he didn't like Rick, he was already out of
16 the house. Why did he need to tell? He had what he wanted.
17 Rick was out of the house. He didn't have to deal with him
18 anymore. No reason. Why would he scratch on himself and
19 claw at himself and hide in the closet? He has not received
20 anything of gain out coming forth and telling what has
21 happened to him. All he has received is punishment. He had
22 to talk to complete strangers about something so shameful
23 and embarrassing as this. I get nervous sometimes just even
24 having to stand in a room full of people and say my name. I
25 can't imagine having to stand up in front of a group of

1 strangers and say something as embarrassing as this.

2 Eight-year-old little boys, nine-year-old little boys,
3 eleven now, what's common about all of them? They don't
4 want their friends at school to see their mom kissing them
5 goodbye. They don't want their friends at school to see
6 their dad's hug them. They're embarrassed. He had to go
7 and talk about this to his mother, his cousin, his
8 grandmother, his sister, to Teddi Palis, to Shauna Galloway-
9 Williams, to the medical examiner, to me. That's eight.
10 Twelve of you, thirteen of you, that's twenty-one, not to
11 mention everybody else that's in this courtroom.

12 What other punishment did he receive out of this. He
13 had to go through a medical exam where they had to hold him
14 to try to take an HIV test from him. He went through a
15 medical exam where his rectum got examined and prodded.
16 This doesn't sound like much of a reward to me. And there's
17 certainly no reason for him to get up here yesterday and
18 carry on a lie. He could have said, no, I'm not coming.
19 I'm not talking about it. Done. Why carry it on? Because
20 he's not lying. He has nothing to gain out of this.
21 Nothing.

22 Let's talk about MINOR the same thing. Who wants to
23 come up here and talk about this? The same exact thing.
24 She did not receive any benefit out of this. You heard
25 testimony that, yes, they loved Rick. They were close to

1 Rick. Rick was not as strict as their own father. Rick let
2 them get away with a lot of things. Didn't make them clean
3 up their rooms or anything like that. Wouldn't they make up
4 a lie about their father, somebody who punishes them.
5 Wouldn't that be the case? No. You know, I didn't always
6 get along with my parents, but I never, never thought about
7 making up some kind of vicious lie about sexual abuse. I
8 wouldn't have known how to and to carry it along for this
9 amount of time and be this consistent about the core details
10 of what happened. They've been consistent from day one.
11 They're consistent now.

12 Let's talk about the hours of counseling that they've
13 had to go through. MINOR testified they'd been going to
14 counseling since it happened. It's been three years ago.
15 Actually, it's been a little bit more than three years ago.
16 An hour a week, sometimes, you know, two hours a week,
17 because there would be two times they'd go to a counselor.
18 Let's say an hour a week, that's fifty-two weeks in a year.
19 That's over a hundred and fifty hours of counseling to
20 continue to talk about this. It's the truth. It was the
21 truth then. It's the truth now.

22 If they really wanted to make up a lie, wouldn't MINOR
23 have said he raped me? He put his penis in me. Wouldn't
24 that have been the case? Wouldn't MINOR have been saying
25 that it happened, the penetration happened more than once?

1 If you're going to make up a lie, you're going to make it a
2 strong lie and you're going to say it's the worst thing that
3 could happen to you. You're going to say that Rick's an
4 awful person. That was not the case in this case. If they
5 needed to be corrected about something, the kids, wouldn't
6 they have corrected if I misunderstood something? That's
7 same way that MINOR did at the interview that he did. They
8 weren't above correcting something that was wrong. They
9 stuck with the details.

10 Their credibility is essential too. And credibility,
11 you can judge that just based on what the person says, but
12 also based on how they looked, what their mannerisms are and
13 that's why we have you and that's why you're able to listen
14 to them but also look at them and determine if they're
15 telling you the truth or a lie. When we talk to people on
16 an everyday basis, what do we do? We look at them. And you
17 listen and say, does this make sense? Does it look like
18 they're telling me truth?

19 You can convict this Defendant based on what the
20 victims said alone. All the other witnesses were
21 corroborating witnesses. They are the icing on the cake.
22 You can convict if you believe these children. And setting
23 him free would be the same as saying what these children
24 told me was a lie.

25 Let's talk about beyond a reasonable doubt a little

1 bit. And it's what you hear, maybe it's a lighter note.
2 Beyond a reasonable doubt, I told you yesterday -- yes, it
3 would have been yesterday, is something that would have to
4 leave you firmly convinced in acting in the best accord in
5 your own affairs. And it's something an older attorney -- I
6 like to watch him in trial a lot, and he brings this up and
7 I think it's a good analogy. I don't know who goes deer
8 hunting. I don't know who's against it or who's for it, but
9 it's the best way I know how to explain it.

10 Say you're up in a deer stand and you have a hunting
11 partner with you. In this case, the Defense attorney is
12 your hunting partner. And you take your gun and you line up
13 the cross-hairs and you pull it up to your shoulder and the
14 deer is right there in your cross-hairs, right there. You
15 fire your gun. You hear your gun go off. You see the deer
16 run. You see it drop thirty yards. You go and you see the
17 bullet right under his shoulder, the bullet wound. You say,
18 I shot that deer. The Defense attorney says, no, you
19 didn't. You didn't shoot that deer. I'm pretty sure a
20 snake jumped up and bit it and caused it to fall down.
21 Well, that's not reasonable doubt. Or the Defense attorney
22 might say, you know what, that deer looks a little
23 overweight. He might have had a heart attack. Now, that
24 doesn't make sense. That's not a reasonable doubt.
25 Finally, he might say, well, you know what, I bet you

1 someone in the deer stand about five hundred feet that way,
2 he show the deer the same exact time as you and you heard
3 his gun go off at the same time your gun went off and he
4 shot the deer. That's not a reasonable doubt. What's
5 reasonable in that situation is that you shot the deer.
6 It's your deer and you're the one who killed it.

7 Let's talk a little bit about the Defendant. I'm sure
8 some of you have heard the term that somebody's MO. Well,
9 what does MO mean? It means modus operandi, some fancy
10 term. I believe it's Latin. I'm not really sure. But
11 basically it means how someone acts. What is their common
12 scheme and what is their plan? Well, let's think about this
13 a little bit. His common scheme and his common plan is
14 this. He would turn the TV on the news so if somebody were
15 to walk in when he was committing these acts that he would
16 have an excuse to be alone with the child. The news was on.
17 Another thing he likes to do, and this is a game of attack
18 that worked for a while with MINOR it didn't work quite so
19 well with MINOR he would pull their pants down slightly,
20 not all the way, didn't get them naked. If somebody walked
21 it the room it would be a lot easier to explain than if he'd
22 got them naked, wouldn't it? He would do it when nobody
23 else was around. This is the kind of crime that people
24 commit behind closed doors. Predators choose who they're
25 attacking, where they're going to attack them and under what

1 circumstances. He chose. Shauna Galloway told you about
2 grooming. He groomed them. Bought them some expensive nine
3 hundred dollar dog. He groomed them by wanting to buy her
4 some more bathing suits, even though they were having money
5 problems, treating them nice, not punishing them. That's
6 grooming. That's what he was doing in this case. He was
7 also doing such things as testing out for how far he could
8 go. With MINOR he started just by touching him and the
9 touching led itself to anal intercourse. He lead up to see
10 how far he could go each time so that those touches became
11 worse and worse. Another thing that he did was, I call it
12 fishing. He asked the children's mother or he told her
13 stories that MINOR walked in on me in the shower, now he's
14 going to tell his dad what my penis looks like. That's
15 fishing. When I mean fishing that is him seeing if MINOR
16 has said anything yet, to see if he could continue to go
17 farther.

18 And MINOR told you what made it stop was my sister
19 telling on him. That's what made it stop. MINOR believed
20 that the touching would have continued and he's still in
21 fear. He's afraid of people looking at him, that's with the
22 photographs. He's still scared about it all.

23 Now, I want to talk about MINOR encounter. I feel
24 like I've focused a lot on MINOR Let's talk about
25 MINOR He said -- well, he didn't say anything. What I'm

1 getting at is MINOR was on the couch and she woke up and
2 what did the Defendant do? He said, where is the remote?
3 That was his quick explanation to get out of it. He thought
4 he was going to get out of this like he's been getting out
5 of MINOR all along. Where is the remote? He made a
6 crucial mistake because the TV had already been changed from
7 the Disney Channel to the news. He'd already changed the TV
8 and the remote was right in front of him. That was the
9 quickest way he could explain why he was touching her. I
10 don't know about you, but I never keep the remote down my
11 pants. There's no need for him to pull the pants down, the
12 pants, the bloomers, the panties, to look for a remote.
13 MINOR mother testified that MINOR came into her room, with
14 Rick in the bed, the Defendant in bed, and said I couldn't
15 sleep. You don't think Rick heard that? You don't think
16 Rick saw the mother giving her a sleeping pill? This is his
17 chance of attack. He knew he was going to prey on her.

18 And let me ask you this. There were four other TV's in
19 the house, four. All four of them with cable. Why did he
20 have to go into the living room when two kids are sleeping
21 to go watch the news. He could watch the news in his room.
22 His wife's going to be up shortly. He could have watched
23 the news in there. Why did he have to sit on the same couch
24 as MINOR There's a rocking chair clearly available for him
25 to sit in. And why was he scrunched up on the edge of the

1 couch? Because he had just been caught. Why did he ask
2 MINOR if she was mad at him? Because he wanted to know if
3 she would tell. He got away with MINOR for so long, he
4 thought maybe MINOR wouldn't tell. He knew MINOR had told
5 when the mother said, we're going to grandma's house. And
6 he said, nope, you've got to clean your room. He's never
7 been concerned about cleaning any room before. He don't
8 want her to go to Grandma's house.

9 Let's talk about this telephone conversation between
10 the Defendant and the mother. He said, if -- and if your
11 memory's better than mine, remember it how you choose to
12 remember it. Ted is going to take the kids away if you
13 pursue this. And if you'll just forget about it and come
14 back to the house, we could work through this. He did not
15 want their mother telling and even brought up, and in my
16 mind it's a threat, that if you go through with this, your
17 kids are going to be taken from you. And if you come back,
18 we can work through this and you don't have to tell. Why
19 would someone say that? He's a predator. He chose his
20 prey. They were in his house. He knew he had authority
21 over them. That's why he did it.

22 Mr. DeJong is going to be able to have the last word.
23 He'll be able to do his closing after me. I always like
24 having the last word because I always sit down and I feel
25 like I've missed something. But please use your common

1 sense in deciding this. Please use your common sense. Who
2 has something to gain here and who has something to lose? I
3 know it's been a long trial and I thank you for your time.
4 And I'm not going to use anymore of it. But I beg you when
5 you go back there to use your common sense. This
6 presumption of innocence that Mr. DeJong talked about
7 yesterday ends as soon as you begin deliberating and I'm
8 confident you will find him guilty. Thank you.

9 THE COURT: Mr. DeJong you may address the jury in
10 your closing statement.

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

13 **CLOSING STATEMENT**

14 **BY MR. DEJONG:**

15 Mr. Foreman, ladies and gentlemen of the jury, in this
16 case, as in any case, you have no enemies to punish. You
17 have no friends to reward. I say that because that is
18 indeed the case, but it also goes in with the burden of
19 proof.

20 The burden of proof as we talked about yesterday, I
21 believe it was, is on the State in this case to prove the
22 case beyond a reasonable doubt. And basically, that's what
23 this case is about. You have no friends to reward, no
24 enemies to punish. This case is about has the State proved
25 their case beyond a reasonable doubt?

1 Now, in this Country we only have two verdicts, guilty
2 and not guilty. One or two countries, European countries,
3 they have another verdict called not proved. We don't have
4 that. We just have guilty and not guilty. But in terms of
5 reasonable doubt, I don't know that beyond a reasonable
6 doubt, I don't know if any of y'all have served on juries
7 before, but you may have heard the term by the preponderance
8 of the evidence. Preponderance of the evidence is basically
9 putting something on the scale and if that scale tips ever
10 so slightly, that is evidence by a preponderance of the
11 evidence. We have clear and convincing, that is a higher
12 standard. However, the highest standard in our judicial
13 system of burden of proof is beyond a reasonable doubt.

14 Now, His Honor will share with you momentarily
15 reasonable doubt. You take the law from him as you hear it.
16 But basically, reasonable doubt is, if you are firmly
17 convinced the Defendant is guilty, you must find him guilty.
18 However, if you believe that there is a real possibility the
19 Defendant is not guilty, then you must give the Defendant
20 the benefit of that doubt and find him not guilty.

21 And as we talked yesterday, I'm not going to belabor
22 the point, the day is wearing on, but what goes along with
23 that is the presumption of innocence. And in talking about
24 presumption of innocence, let me just share briefly with
25 you, it is obvious at this point in time that the Defendant

1 did not testify in this case. Mr. Beekman did not take the
2 witness stand. Now, I think His Honor will charge you when
3 he charges you on the law, the fact that he did not testify
4 you are not to draw any inferences or any conclusions from
5 that whatsoever. Indeed, I believe he will share with you
6 that is something that is not even to be discussed by you
7 while you're deliberating on Mr. Beekman's innocence or
8 guilt. And he will give you the reasons for that. But as I
9 shared with you yesterday, Mr. Beekman has nothing to come
10 into this courtroom to prove to you. He is presumed to be
11 innocent. And the fact that he did not testify, there is to
12 be no presumption whatsoever in regard to him not
13 testifying. Presumption, inference or anything else. It
14 should not even enter into your deliberations.

15 In this case, there are two indictments, ladies and
16 gentlemen. I will share with you and I think His Honor will
17 share with you, that you must look at those two indictments
18 separately and distinctly and arrive at a separate and
19 distinct verdict on each one of those. However, you can't
20 look at one and make a decision and say, well, go to that to
21 this. You must weigh the testimony as to each indictment,
22 look at the presumption of innocence, look at the burden of
23 proof, and then say whether or not the State has met its
24 burden of proof.

25 I'm not going to belabor the evidence a great deal, but

1 I think we need to talk about the evidence or I need to talk
2 about what you have heard from the witness stand, perhaps
3 starting backwards talking about Ms. Shauna Galloway-
4 Williams. Who, according to her, works with abused
5 children. Doesn't go in with any kind of agenda because she
6 is looking at abused children, who are alleged to have been
7 abused. She just does these findings. Well, in terms of
8 that, ladies and gentlemen, Ms. Galloway does talk and she
9 likes to talk, that's fine. But in terms of that, also
10 think about the fact of what she did share with you, that
11 children lie, children make false allegations, children get
12 angry, children are manipulative, children want to please
13 adults. I'm leaving one out. I can't remember what it is
14 that we talked about, but I think there were five or six
15 areas that we talked about. Well, think about that. I'm
16 asking you, because these are children that are testifying,
17 not to take everything they say at face value because they
18 do lie. They do make false allegations. Ms. Galloway-
19 Williams doesn't really want to talk about false
20 allegations. She wants to talk about denial as being false
21 allegations. I don't submit to you that that is not a false
22 allegation. A false allegation is one where somebody makes
23 an allegation against someone of sexual molestation and it
24 is false, period. And they do arise. And basically she
25 said two percent, and with a little prompting she came up

1 with four percent, and that was by her testimony.

2 Now, plugging that into the equation -- well, let's
3 just talk about Dr. Henderson for a minute and then we'll go
4 on to MINOR Dr. Henderson also deals with children who
5 have been alleged to have been abused. I find it
6 fascinating -- and one thing about that, digressing a little
7 bit and maybe even to Ms. Galloway-Williams -- there's no
8 real time elements in here with MINOR Indeed, I think Dr.
9 Henderson said she was under the impression, you take it the
10 way you heard it, that the offense, alleged offense had
11 happened some three to four weeks prior to her examination.
12 Now, what she found was absolutely nothing. Zero, zilch,
13 nothing. And, of course, she says normal would be normal.
14 Well, I guess that's a good thing for normal to be normal.
15 Mr. Beekman is seated at counsel table. You've looked at
16 him for two days. He's a big man. And the doctor says,
17 well, it's normal for things to come out and I'm not trying
18 to be rude and crude, ladies and gentlemen, I just have to
19 talk about it. And I don't dispute that it is normal for
20 things to come out. I do dispute that it's things for
21 normal for things to go in and she wanted to equivocate on
22 that. And I would submit to you, and you've seen the
23 alleged victim here today, he's not a large young person. I
24 don't know how well you saw him on the video on July the
25 21st of 2008. Very small. Mr. Beekman is a large man and

1 they're claiming rectal, anal penetration. And they're
2 saying there's nothing unusual about no tearing, no scaring,
3 nothing like that. Do they have a hidden agenda? Is it
4 their job, as they perceive it, to prosecute these cases and
5 get convictions, to come in and say it's normal to be
6 normal? Because there was no -- absolutely no medical
7 evidence in this case.

8 Now, let's start with MINOR. I think you have to back
9 up in to this whole scenario, ladies and gentlemen, the week
10 of July the 4th. What exactly happened in Charleston, we
11 don't know. We've got a couple of different versions of it.
12 MINOR said that she just locked Mr. Beekman out of the room
13 and that was the extent of it. The mother, the State's
14 witness, testified, yes, something did transpire out in the
15 parking lot. As I recall her testimony, she doesn't recall
16 exactly what it was, but there was something that had
17 transpired out in the parking lot. I think the sixth one
18 was revenge, if I'm not mistaken. Children get angry for
19 whatever reason, like adults do. Sometime that anger is
20 justified and sometimes that anger is not justified.
21 Sometimes there's a desire for revenge. I don't know if
22 revenge is ever justified or -- sometimes it's justified and
23 sometimes it is not. But the feeling and the emotion is
24 there.

25 Now, supposedly on July the 7th of 2008, Mr. Beekman

1 went into the living or the dining room and according to
2 MINOR touched MINOR. Now, the Solicitor wants to talk about
3 consistency. Ms. Galloway-Williams wants to talk about
4 significant events and details. Well, let's talk about
5 details. On July the 7th of 2008, this offense allegedly
6 happened. On the evening of that day, the alleged victim,
7 MINOR reports to mother. Mother doesn't do anything other
8 than leave. Parenthetically, an interesting aside, did she
9 ever talk to Mr. Beekman? Did she ever talk to Rick to try
10 to see what his side of the story was? No, she did what so
11 many people in our society want to do. If they child says
12 something, we believe it, they don't lie. They do lie.
13 They do get angry. They do want revenge. So here's a child
14 who has been medicated by her mother at some early time in
15 the morning. I don't recall any evidence or testimony in
16 this case that Mr. Beekman was ever aware that that child
17 had been given sleeping pills. The mother medicates this
18 child with a sleeping pill. This child says she has vivid
19 dreams with or without sleeping pills. And they are very
20 vivid after we kind of discuss what vivid means. She said
21 she has very, very vivid dreams.

22 Now, the consistency issue I raise to you, you may say
23 it's not a big point but I find it fascinating. The first
24 police officer she reported to, who was -- I don't remember
25 his name. It was the one in uniform who came in and

1 testified yesterday -- said that MINOR made a statement to
2 him. Her allegation initially was that Mr. Beekman's hands
3 were under her clothes. Now, they go home. On the 15th
4 they talk to Teddi Palis. Now, I don't know what transpired
5 between the 14th and the 15th. We won't know. But I submit
6 to you that between the 14th and the 15th somebody, whether
7 it was MINOR, the father, the mother, or maybe even the
8 police officer on the 15th, that this story isn't quite good
9 enough. We've got to have something a little better than
10 that. So now let's get your clothes down. So the next day
11 the clothes are down. And that was then finally what was
12 supposedly disclosed, that her clothes were down. So I
13 submit to you those statements are not consistent. Actually
14 it's not consistent at all. Now, think about this, also,
15 ladies and gentlemen. Think about the routine that this
16 family household had. The routine was Mr. Beekman would get
17 up about four-thirty in the morning to do his morning things
18 in the shower. He would get to the living room/kitchen area
19 to drink coffee, as I recall Ms. Aiken's testimony, around
20 five-thirty. There's no logic here, no sense here. This
21 was a routine because the mother, now Ms. Aiken, would get
22 up and drink coffee with Mr. Beekman. What kind of fool
23 would be touching a stepdaughter when mama might walk into
24 the room at any moment? It's just not precise timing. As I
25 understand it, there wasn't a gong went off and these things

1 happened. Yes, there are windows of time here. Nobody in
2 their right mind, I would submit to you, would do that.
3 That would be crazy. That would be begging to get caught.
4 Now, MINOR says she didn't disclose to her mother then
5 because she didn't have time. Mr. Beekman left for work at
6 G.E. where he'd worked for a number of years at six o'clock,
7 according to Ms. Aiken. She took -- she, Ms. Aiken, took
8 the children to the babysitter. I don't remember if it was
9 seven forty or eight. I think it was seven-forty. You take
10 it as you heard it from the witness stand. There was an
11 hour -- I believe there was an hour and forty minutes window
12 in there where MINOR was home with her mother and nothing
13 was said. Nothing was said to Missy, the babysitter at the
14 daycare center where they had been going to, my
15 understanding from the testimony, for a long period of time.
16 Then on the night of July the 7th, MINOR then says she
17 discloses. Well, again, that's all for you to decide. I
18 would just ask you not to forget the Charleston incident and
19 the emotions that kids have, that we have, that we all have.
20 Now, let's shift gears just a little bit here to MINOR
21 MINOR sat here and told you he knew of MINOR allegations
22 before he made his allegations. That was his testimony.
23 Everybody else wanted to dance around that, but MINOR said,
24 I knew that MINOR had made these allegations before I came
25 forward and made my allegations. I'll ask you to consider

1 two things, and that is consider both his testimony and
2 consider him on the video. I'm not saying the allegations
3 were true, but in MINOR mind they were true. MINOR and
4 MINOR had a very close relationship. They were very
5 protective of each other. But now MINOR said he was angry
6 and wanted to kill him. Talked about pellet guns and all of
7 that. Well, he couldn't kill him. But he can do the next
8 best thing. He could say it happened to me too. Now these
9 were his allegations, if you will, and please, as I
10 understand it on July the 8th of 2008, Ms. Aiken took MINOR
11 and MINOR and left and never looked back. So these kids
12 were out of the house for some period of time. MINOR makes
13 her allegations, goes to the cops on the 14th and then after
14 all of that, MINOR makes his allegations. MINOR
15 allegations came out, I believe, two weeks after the fact --
16 or one week after MINOR went to the cops, two weeks after
17 the allegations were made by MINOR. And he was angry.
18 Wanted to kill him. Wanted to protect his sister. Kids are
19 bombarded in our society by everything anymore, from sex and
20 music, the commercials, the advertising, but I would submit
21 to you it is not unusual that an eight-year-old in our
22 society would have some idea of sex and sexual acts.

23 MINOR said when he talked to Ms. Galloway-Williams that
24 he was on the bed facing the bed, his bottom was in the air
25 when this act took place, according to him. He came in and

Closing Statement by Mr. DeJong

1 testified to you yesterday that he was on the floor on all
2 fours. That is certainly not consistent. Ms. Galloway-
3 Williams says that's a significant event, they would
4 remember what is a significant event, even for an eight-
5 year-old, I think they could get the story straight.

6 And also what I found fascinating by both MINOR and
7 MINOR testimony was this, as long as you can allow them to
8 stay on the script, they did all right. Once you moved them
9 out, tried to move them out of the script a little bit, they
10 couldn't remember anything. They didn't know anything,
11 nothing. Well, children can be scripted. Shauna Galloway-
12 Williams a little bit agreed with me on that, not
13 wholeheartedly, but they can be scripted. Who did these
14 kids talk to? These are serious, severe allegations and I
15 don't think somebody said this and then it goes on and
16 nobody talked about it. Everybody in the family talked
17 about it with the kids, I submit. So you have an issue here
18 of now MINOR saying I want to protect my sister. I'm angry.
19 Or maybe he did this to get attention. Somewhere between
20 the 7th and the 14th MINOR was getting a lot of attention.
21 And MINOR said, I want some attention. I want my fair
22 share, could be as to why these allegations were made. Part
23 of the thing MINOR testified, I think we brought it out on
24 cross-examination, he liked to sneak around the house and
25 hide. Well, now, they want to make a big deal out of that,

1 that he was in the closet. Well, he liked to play with
2 action figures and hide. I think he didn't say the hide
3 part, but sneak around the house and hide. He didn't say
4 sneak around the house and hide, but Ms. Galloway-Williams
5 did say he did like to play with action figures. And we
6 talked about that yesterday, about him playing with action
7 figures, sneaking around and hiding.

8 So I would ask you to look at those instances. Don't
9 take it at face value because the kids said it is true.
10 Remember all of those questions. Listen to His Honor's
11 charge. Listen to all of it, but listen to the charge on
12 reasonable doubt. If you believe there's a real possibility
13 that the Defendant is innocent, you must give him the
14 benefit of that doubt and find him not guilty. I would ask
15 you to go back into the jury room after Your Honor charges
16 you. You can come back with a verdict that says, State, you
17 have failed in your burden of proof on both counts and he is
18 not guilty. And I would ask you to bring a verdict back of
19 not guilty on both charges.

20 Thank you so much for your time and your attention.

21 **CHARGE**

22 **BY THE COURT:**

23 Mr. Foreman, ladies and gentlemen, it's now my
24 responsibility to instruct you on the law of the case. I
25 have before me indictments that have charged the Defendant

1 in this case with criminal sexual conduct with a minor in
2 the first degree, and a separate indictment that charges him
3 with lewd act upon a child. I remind you the fact that the
4 Defendant has been arrested, has been charged, has been
5 indicted, is not evidence. It's not to be considered by you
6 as evidence in the case. It doesn't create any presumption
7 whatsoever of guilt. The indictment's merely the papers by
8 which the case is brought before this court for disposition
9 by a jury such as you.

10 There are two separate indictments, each of those is
11 separate and distinct, one from another, and you must decide
12 these indictments separately, on the evidence, the law
13 that's applicable to each one, uninfluenced by any decision
14 you may have on the other indictment. In other words, the
15 Defendant can be convicted or acquitted on either or both of
16 the offenses charged. And you'll be asked to write separate
17 verdicts of guilty or not guilty for each of the charges
18 that we have before us today.

19 The Defendant has entered a plea of not guilty to these
20 indictments. That plea places the burden on the State to
21 prove guilt beyond a reasonable doubt. A person charged
22 with committing a criminal offense in South Carolina is
23 never required to prove himself innocent. That's an
24 important rule of law, that in a criminal trial no matter
25 how serious the charge may be, a Defendant will always be

1 presumed innocent of the crime for which that indictment was
2 issued, and unless guilt has been established by evidence
3 satisfying you of guilt beyond a reasonable doubt. The
4 presumption of innocence doesn't end when you begin your
5 deliberations. It continues, stays with the Defendant,
6 accompanying him throughout the trial until you've reached a
7 verdict of guilt, based upon evidence satisfying you of that
8 guilt beyond a reasonable doubt.

9 Often, the presumption of innocence concept has been
10 described as a robe of righteousness that's placed about the
11 shoulders of an individual accused and remains with that
12 Defendant until it's been stripped from him by evidence
13 satisfying you of that Defendant's guilt beyond a reasonable
14 doubt. In other words, presumption of innocence isn't a
15 mere legal theory or legal phrase. It's a substantial right
16 to which every Defendant is entitled, unless you the jury
17 are satisfied from the evidence of the Defendant's guilt
18 beyond a reasonable doubt.

19 The phrase beyond a reasonable doubt has been used, and
20 you may ask yourself, what is a reasonable doubt in the law?
21 A reasonable doubt's the kind of doubt that would cause a
22 reasonable person to hesitate to act. Now, with the burden
23 of proof beyond a reasonable doubt, some of you may, in the
24 past, have had an opportunity to serve as a juror in civil
25 cases, in Magistrate's Court, or Common Pleas Court here in

1 the State and a Judge told you that it was only necessary to
2 prove a fact more likely than true than not true by what was
3 called the preponderance of the evidence or the greater
4 weight of the evidence. In criminal cases, the State's
5 proof is more powerful than that. It must be proof beyond a
6 reasonable doubt. And that would be proof that would leave
7 you firmly convinced of the Defendant's guilt.

8 Now, ladies and gentlemen, there are very few things in
9 this world that we know with absolute certainty and in
10 criminal cases the law doesn't require proof that overcomes
11 every possible doubt. If, based upon your consideration of
12 the evidence, you're firmly convinced that the Defendant is
13 guilty of the crimes charged, then you must find the
14 Defendant guilty. If, on the other hand, you think there's
15 a real possibility that the Defendant is not guilty, you
16 must give the Defendant the benefit of the doubt and find
17 him not guilty.

18 Now, I remind you that during the course of the trial,
19 you and I have had certain duties to perform. As the Trial
20 Judge, it's been my responsibility to preside over the trial
21 of the case and to rule on the admissibility of evidence
22 that's been offered during the course of the trial. You're
23 to consider only the competent evidence that is before you.
24 You consider obviously the testimony that's been presented
25 from the witness stand, the exhibits that have been offered

1 into evidence and that alone. My job also is to instruct
2 you on the law that's applicable to the case. I'm the sole
3 Judge of the law in this case. It's your duty as jurors to
4 accept that law and apply the law just as I state it to you
5 now. Some of you may already have an idea of what the law
6 is in a case such as this or even a notion of what the law
7 ought to be in a case such as this. If you have such an
8 idea and it's in conflict with what I now tell you the law
9 is, then, of course, you must abandon such a notion or an
10 idea because under your oath you have sworn to accept the
11 law and apply the law just as I state it to you now.

12 Every case that's tried in this courtroom before a
13 jury, that jury becomes the sole exclusive judge of the
14 facts in a case. A Trial Judge can't intimate or state or
15 comment on or make any statement whatsoever to a trial jury
16 about the facts in a case. Since you, the jury, are the
17 sole judge of the facts in this case, you're not to infer
18 from what I've said during the process of the trial, in
19 ruling on the admissibility of evidence or otherwise,
20 anything I say to you now during this course of this
21 instruction to you, that I have an opinion about the facts
22 in the case. I don't have an opinion about the facts. The
23 Constitution in South Carolina prohibits a Trial Judge from
24 having an opinion about the facts in a case. It's a matter
25 solely up to you, ladies and gentlemen, the jury, to make

1 that determination and you decide the effect, the value, the
2 weight and the truth of the evidence presented during the
3 trial.

4 Normally, there's two types of evidence. There's
5 direct evidence and there's circumstantial evidence. Direct
6 evidence is the testimony of a person who claims to have
7 actual knowledge of a fact such as an eyewitness. It's
8 evidence which immediately establishes the main fact to be
9 proved. Circumstantial evidence is proof of a chain of
10 facts and circumstances that indicate the existence of a
11 fact. It's evidence which immediately establishes
12 collateral facts from which a main fact may be inferred. In
13 other words, it's based on inference and not on personal
14 observation or knowledge. The law makes absolutely no
15 distinction between the weight or the value to be given
16 either direct or circumstantial evidence nor is a greater
17 degree of certainty required of circumstantial evidence than
18 of direct evidence. You should weigh all the evidence,
19 ladies and gentlemen, and after weighing that evidence if
20 you're not convinced of the guilt of the Defendant beyond a
21 reasonable doubt, then you must find the Defendant not
22 guilty. And, again, I remind you, when I'm saying about the
23 charge, that's each charge separate and distinct. You'll
24 decide those individually.

25 Now, necessarily, you're going to need to determine the

1 credibility of the witnesses who've testified in the case.
2 Credibility simply means believability. It's your duty as
3 jurors to analyze and evaluate the evidence and determine
4 which evidence convinces you of its truth. In determining
5 the believability of witnesses who've testified in the case,
6 you can believe one witness over several witnesses. You can
7 believe several witnesses over one witness. In your
8 discretion, you can believe part of the testimony of a
9 witness and you can reject the remaining part of the
10 testimony of that very same witness. In your discretion,
11 you can believe the testimony of a witness in its in
12 entirety or you can reject the testimony of a witness in its
13 entirety. You can consider whether any witness had
14 exhibited to you any interest or bias or prejudice or other
15 motive in the case. You can consider the appearance of the
16 witness while on the witness stand. You can ask yourself,
17 was that witness straight forward or hesitant in answering?
18 Was the testimony of that witness consistent or
19 inconsistent? Was that testimony strengthened or weakened
20 by other testimony or other evidence. It's totally your
21 prerogative and yours alone to determine the credibility of
22 the witnesses.

23 Now, I stated to you briefly that the rules of evidence
24 ordinarily would not permit a witness to testify as to
25 opinions or conclusions but there is an exception for

1 witnesses that we call expert witnesses. That witness, who
2 by education or experience, has become an expert in some art
3 or science or profession or calling may state an opinion as
4 to relevant and material matters in the case and may also
5 state the reason for those opinions. You should consider
6 any expert opinion received in evidence in this case, and
7 like other evidence, give it the weight you think it
8 deserves. If you decide the opinion of an expert's not
9 based on sufficient education and experience or if you
10 conclude that the reasons given in support of that opinion
11 are not sound or that the opinion is outweighed by other
12 evidence, you can disregard that opinion entirely. An
13 expert witness testimony is to be given no greater weight
14 than that of any other witness simply because the witness is
15 an expert. Furthermore, you're not required to accept an
16 expert's opinion even though it may be uncontradicted.

17 Now, in order to establish criminal liability, criminal
18 intent is required and it must be proven by the State beyond
19 a reasonable doubt. Criminal intent's always a matter that
20 must be determined by a jury from the circumstances
21 surrounding the situation. Obviously, there's no way to
22 prove intent to a mathematical certainty. There's no way
23 that medical science has devised to dissect a person's brain
24 and determine what that person had in mind, so the law says
25 that criminal intent may be inferred from the circumstances

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1 shown to have existed. It's not necessary to establish that
2 intent by direct and positive evidence, but it may be
3 established by inference in the same way as any other fact,
4 taking into consideration the acts of the parties, all the
5 facts and circumstances of the case. Criminal intent's a
6 mental state. It's a conscious wrongdoing. It's up to you
7 to determine what the Defendant intended to do based upon
8 the circumstances shown to have existed.

9 Now, I instruct you, ladies and gentlemen, and I
10 emphasize to you the fact that the Defendant in this case
11 did not testify is not a factor to be considered by you in
12 anyway whatsoever in your deliberations and in your
13 consideration of the question of the guilt or innocence of
14 the Defendant. It must not be considered by you in any
15 manner whatsoever. A Defendant has a Constitutional right
16 to remain silent and the assertion of this right must not be
17 considered by you in your deliberations. I repeat, under
18 your oath, you're to draw no conclusions whatsoever from the
19 fact that the Defendant in this case did not testify. The
20 fact that he chose not to testify should not even be
21 discussed by you in the jury room. The burden of proof is
22 on the State of South Carolina, as I've stated to you, and
23 the Defendant's not required to prove his innocence. That
24 burden of proof stays on the State to prove guilt beyond a
25 reasonable doubt.

1 You've heard evidence that the Defendant may have
2 committed a bad act or acts, not the subject of a
3 conviction, other than that for which the Defendant is now
4 on trial. This testimony, if you conclude it to be true,
5 may only be considered by you on the question of a common
6 scheme or plan and for no other reason and for no other
7 purpose. You can give this evidence the weight and the
8 value, if any, that you find it should have on that sole
9 issue of common scheme and plan. You must not consider this
10 evidence as proof of the Defendant's guilt of the charges
11 we're trying today.

12 Now, in this particular trial the Defendant has been
13 charged with first degree criminal sexual conduct with a
14 minor. The State must prove beyond a reasonable doubt that
15 the Defendant engaged in a sexual battery with the victim.
16 A sexual battery is sexual intercourse, cunnilingus,
17 fellatio, anal intercourse or any intrusion, however slight,
18 in any part of a person's body or of any object into the
19 genital or anal openings of another person's body, except
20 when that intrusion is accomplished for medically recognized
21 treatment or diagnostic purposes. The State must then prove
22 beyond a reasonable doubt that the victim was less than
23 eleven years old at the time of the sexual battery. Consent
24 or willingness or indifference or ignorance on the part of
25 the minor, if any, as to what was taking place does not in

1 anyway affect the charge of criminal sexual conduct with a
2 minor. As to this charge the testimony of the victim does
3 not need to be corroborated. Still, the State of South
4 Carolina is required, as in all cases, to prove each and
5 every element of the crime charged, that being criminal
6 sexual conduct with a minor in the first degree.

7 The Defendant is also charged with committing a lewd
8 act on a minor. The State must prove beyond a reasonable
9 doubt that the Defendant was over fourteen years of age.
10 Next, the State must prove that the Defendant willfully and
11 lewdly committed or attempted a lewd or lascivious act on or
12 with the body of -- the parts of the body of a child under
13 the age of sixteen years with the intent to arouse, appeal
14 to or gratify the lust, the passions or the sexual desires
15 of either the Defendant or of the child. Willfully means
16 voluntarily and intentionally with the specific intent to do
17 something the law forbids. Lewd means obscene or lustful or
18 indecent or lecherous. Lascivious means tending to incite
19 lust or lewd, indecent, obscene or tending to deprave the
20 morals in respect to sexual relations.

21 Now, on each of these charges, there's two possible
22 verdicts you can find. Either -- if you find on each one
23 individually the State has met its burden of proof then, of
24 course, your verdict would be guilty if they've met that
25 burden of proof beyond a reasonable doubt. If you find the

1 State has not met its burden, your verdict, of course, would
2 be not guilty.

3 Mr. Foreman, I've prepared verdict forms. I believe
4 they'll be self explanatory for you. As you examine each of
5 the two separate charges, I have two separate verdict forms.
6 You'll merely check the appropriate block, either guilty if
7 the State has met its proof, not guilty if it hasn't. Sign
8 your name as foreperson, date it and let the bailiffs know
9 that you have reached your verdict. There's no significance
10 whatsoever in the order in which they're listed. One has to
11 be listed before the other. You verdicts must be a
12 unanimous verdict. All twelve of you must agree upon that
13 verdict. Your verdict cannot be based upon sympathy or
14 passion or prejudice or emotion or any other consideration
15 not in evidence in the case.

16 And I'll remind you, Mr. Foreman and ladies and
17 gentlemen, you're free to ask me any questions regarding the
18 law in this case. Remember, however, it's impermissible for
19 me to answer any questions that you have regarding the facts
20 of the case. That's your duty as the sole fact finders.

21 At this time, I'm going to ask if you would go back to
22 your jury room. Don't start your deliberations just yet.
23 There's a final matter of law I need to take care of with
24 the attorneys. In just a few moments we'll either have you
25 back or give you instructions to begin your deliberations.

1 But don't talk about the case just yet. If you will all
2 retire back to the jury room.

3 (WHEREUPON, the jury exited the open court at
4 approximately 3:37 p.m.)

5 THE BAILIFF: The jury's secure, Your Honor.

6 THE COURT: Any exceptions to the charge, from the
7 State?

8 MS. BARWICK: No, sir, Your Honor.

9 THE COURT: From the Defense?

10 MR. DEJONG: Yes, Your Honor. I take exception to
11 the charge of the -- that was requested by the State, the
12 testimony of the victim may not be corroborated with -- may
13 not be corroborated -- I'll put a period there -- under 16-
14 3-652 through 653.

15 THE COURT: All right. Your objection is noted on
16 that. Any other matters? If y'all will make sure the
17 exhibits are in order, the verdict forms.

18 All right. Mr. Teal, if you'll have Mr. Ashes, the
19 alternate, come out, please.

20 (WHEREUPON, the exhibits and verdict forms were
21 delivered to the jury to begin deliberations at
22 approximately 3:38 p.m.)

23 (WHEREUPON, the alternate juror entered the open
24 court.)

25 THE COURT: Mr. Ashes, thank you very much for

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1 serving with us. Your fellow jurors have -- well, we lost
2 one this morning but the others have survived and you're
3 free to go or you're free to stay. I think the jurors are
4 calling back tonight after six o'clock. I don't know
5 whether we've got another trial to start or not, but you
6 just give them your badge and you're free to go now or
7 you're certainly welcome to stay.

8 MR. ASHES: So I'm to call at six?

9 THE COURT: You need to call after six if you
10 would. Just follow the message there, okay, sir?

11 MR. ASHES: All right.

12 THE COURT: Thank you very much. You can go out
13 either way you want to go. Mr. Teal will take it. You can
14 head out that way then. Thank you.

15 (WHEREUPON, the alternate juror was dismissed.)

16 THE COURT: We'll be at ease until we hear from
17 our jury.

18 (WHEREUPON, court stood at recess awaiting the verdict
19 of the jury.)

20 THE COURT: All right. We have a jury question
21 that was just sent out. The foreperson has written, could
22 we have a copy of Laura's testimony? Obviously, I'll call
23 them back out and tell them we don't have a copy of the
24 testimony, that we can play it for them if they want to hear
25 it, as I usually do, tell them we'll play it as often and as

1 long as they want to hear it. Any time they feel like
2 they've heard enough, then we'll let them make the call as
3 to how much they want to hear and at what stage they want to
4 -- if they want to back it up at any time, we'll accommodate
5 them whatever way we need to. They might not even want to
6 hear it, I don't know, if they can't get a copy. But that's
7 the question, could we have a copy of -- could we have copy,
8 Laura's testimony, is what the note says. We'll mark that
9 as Court Exhibit Number 1.

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

12 THE COURT: All right. If the jury is prepared,
13 they can come in.

14 (WHEREUPON, the jury entered the open court at
15 approximately 4:34 p.m.)
16

17 THE COURT: Mr. Foreman, I've received a note from
18 you asking if you could hear Laura's testimony. Obviously
19 we have the testimony -- or could we have copy? We don't
20 have the capability of making copies of it. We have it that
21 we can play back for you. We can play any portion of it.
22 We can play it as many times as you need to hear it. I'll
23 be glad -- our Court Reporter, while we kept you back there,
24 she's prepared to play it now if you want to hear it. If
25 you don't want to hear it, that's fine too. But we can play

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1 it for you, but we can't copy it for you.

2 I'm going to let her start playing it now. If you need
3 adjustment on the volume in anyway, please let me know. If
4 there's any time you feel like you need to hear more of it,
5 you communicate with me, Mr. Foreman, and we'll stop it when
6 we need to. We'll let it play as many times as you feel
7 necessary, you and your fellow jurors.

8 All right. Ms. Hanks, if you can play the testimony of
9 MINOR please.

10 (WHEREUPON, the testimony of MINOR CHILD 1 was played
11 in open court.)

12 THE COURT: Mr. Foreman, ladies and gentlemen,
13 you've heard the requested testimony. I'm going to ask you
14 to go back to continue your deliberations. I know that the
15 hour is getting a little later today. If some of you need
16 to make some calls, you certainly can. If you would like to
17 have supper brought in, the Clerk can make arrangements for
18 that.

19 Mr. Foreman, what I'm going to ask you to do after
20 you've deliberated a while longer, if the consensus of the
21 jury is that they would rather come back tomorrow and
22 continue their deliberations, I'll certainly be glad to
23 entertain that as well. But I want you to have the
24 flexibility you need to continue your deliberations in a
25 proper manner. If you need food snacks or if you need to

1 hear more testimony, we're here to do what you need to make
2 sure that your deliberations are conducted properly. So if
3 you'll go back and continue your deliberations. Just write
4 a note if there's anyone that needs to make calls or if you
5 need any assistance from the Clerk's office or any other
6 questions or testimony you need from the Court.

7 I'll ask you to go back to your jury room at this time.
8 (WHEREUPON, the jury exited the open court at
9 approximately 6:02 p.m.)

10 THE COURT: All right. We'll be at ease until we
11 hear from our jury.

12 (WHEREUPON, the Court stood at recess awaiting the
13 verdict of the jury.)

14 THE COURT: I've got a note from the foreperson of
15 the jury, would like to adjourn for today and come back
16 tomorrow. So I'll call them out and dismiss them for the
17 day with instructions not to discuss the case with anyone in
18 the interim. I'll verify it tomorrow when they come back
19 that they haven't, and then let them start their
20 deliberations again at nine o'clock tomorrow.

21 If they're ready you can have them come in, sir.

22 (WHEREUPON, the jury entered the open court at
23 approximately 6:25 p.m.)

24 THE COURT: Mr. Foreman, I understand that the
25 jury would like to adjourn for the evening and continue your

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1 deliberations tomorrow. If you'll be back at nine o'clock
2 in the morning.

3 I need to remind you again, ladies and gentlemen, and I
4 hope you understand the importance of my reminder, the case
5 is now in your hands. The importance of your not discussing
6 it with anyone, don't let anyone discuss it with you, your
7 family, your friends or anyone else. You may go out with
8 some friends or your family tonight, have dinner, whatever.
9 But for the fact that you're serving on a jury, that's all
10 you really need to talk about, and if they want to insist,
11 please encourage them that you can't do that. You've made a
12 high commitment. You've made a -- taken an oath to try this
13 case between these parties and not with any other extraneous
14 matter. Again, I remind you not to do any kind of
15 independent research over words you've heard or things that
16 you've heard. That would be improper as well. And, of
17 course, I'll need to verify that in the morning. We'll go
18 through that again to make sure you haven't. I'm confident
19 you're a good conscientious jury and you're going to do the
20 things under your oath that are required for you to do.

21 Would you rather start -- we'll start at nine o'clock.
22 I didn't know if you wanted to start earlier or not, but
23 we'll be ready to start at nine o'clock. Everybody be back
24 in your jury room at nine o'clock. When everyone's here --
25 of course, you should not start your deliberations, Mr.

1 Foreman, until all twelve of you are here. When all twelve
2 of you are here, we'll get the exhibits back for you and you
3 can continue your deliberations.

4 Have a good evening, ladies and gentlemen. I'll see
5 you back in the morning.

6 (WHEREUPON, the jury exited the open court at
7 approximately 6:27 p.m.)

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

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

11 MR. DEJONG: Thank you, Your Honor.

12 MR. BARWICK: Thank you, Your Honor.

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

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

17 JULY 28, 2011

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

20 (WHEREUPON, deliberations of the jury continued at
21 approximately 9:00 a.m.)

22 THE COURT: All right. I understand we've got a
23 verdict from the jury. Obviously, they've deliberated long
24 and hard on this case. I'm well aware of the fact that
25 there's a lot of emotion involved in a case of this nature.

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1 Lots of cases have such emotion. I don't know what the jury
2 verdict will be. It may bring satisfaction to some. It may
3 bring disappointment to others. I want everyone in the
4 courtroom to understand that we're going to accept this jury
5 verdict with proper decorum. We're going to respect what
6 they've done. If anybody in the courtroom, the parties, the
7 attorneys, the witnesses or otherwise who feel like they
8 cannot control their emotion when the verdict is given as
9 far as any outcries or bursts of emotion -- emotion is a
10 natural thing to have and I'm not trying to thwart that in
11 any way, but I want to make sure the jury is respected in
12 what they decide. If you feel like you just can't control
13 your emotion, this would be a good time to just step
14 outside. We'll get the verdict and you can come right back
15 in. But I want to make sure everyone understands that we're
16 going to have the proper respect for the jury who has worked
17 hard as the fact finder. Does anybody need to leave at this
18 time. I want y'all to be fully aware of what the Court's
19 instructions are. If you need to leave, this will be a good
20 time for you to just step out and leave the courtroom.

21 All right. Mr. Evans, if the jury is ready, you can
22 have them come in.

23 (WHEREUPON, the jury entered the open court at
24 approximately 12:04 p.m.)

25 THE COURT: Mr. Foreman, I understand the jury has

1 reached a verdict. Is that correct?

2 MR. FOREMAN: Yes, it is.

3 THE COURT: Is it a unanimous verdict?

4 MR. FOREMAN: Yes, sir.

5 THE COURT: If you would, please, hand the verdict
6 forms to the bailiff.

7 (WHEREUPON, the verdict forms were handed up to the
8 Court.)

9 THE COURT: Mr. Clerk, you may publish the
10 verdict.

11 THE CLERK: This is case number 2009-GS-39-1405,
12 the State of South Carolina versus Richard Burton Beekman.
13 We, the jury, by unanimous consent find the Defendant,
14 Richard Burton Beekman, as to the charge of first degree
15 criminal sexual conduct with a minor, guilty.

16 Case number 2009-GS-39-1404, the State of South
17 Carolina versus Richard Burton Beekman. We, the jury, by
18 unanimous consent find the Defendant, Richard Burton
19 Beekman, as to the charge of lewd act on a child, guilty.

20 Is this your verdict and still your verdict so say you
21 all by raising your right hand?

22 (WHEREUPON, all jurors' right hands were raised.)

23 THE CLERK: Thank you very much.

24 THE COURT: Is there any matter we need to take
25 care of with the jury before they're discharged in this

1 case?

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

3 THE COURT: From the Defense?

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

6 THE COURT: Mr. Foreman, ladies and gentlemen,
7 thank you very much for your service in this case. You've
8 been a conscientious group that you've listened attentively.
9 I know it's not been an easy case, but you've been a
10 diligent group to work with and I'm honored to have a chance
11 to be a fellow judge with you. You've performed a valuable
12 service to your community. You've performed a valuable
13 service to your State. You've fulfilled a role of being
14 part of our government in action as jurors because as
15 jurors, you're serving in the Judicial Branch of Government.
16 You can't pass laws. You can't execute the laws and see
17 that they're carried out unless you are elected to one of
18 those positions, either as a legislator or an executive
19 branch or a government, but you've served the third branch
20 of government as a judge of the facts, the fact finder and
21 I'm grateful for that.

22 Some of you may have a need for a statement from the
23 Clerk's office for your employer, to show that you have been
24 on jury service this week. If that's the case, please stop
25 by the Clerk's office and they'll provide that for you. I

1 understand from the Solicitor's office that we're not going
2 to need any of our jurors for the rest of the week. We have
3 some motions and other matters to take care of tomorrow
4 after we do some other work that we've been doing today. So
5 you're dismissed for the week.

6 You may have remembered from Monday when I qualified
7 you, that I told you you could be exempted from jury service
8 if you have served in the last two calendar years. That
9 means for 2012 and 2013 you can excuse yourself from jury
10 service. I hope you'll elect not to do that if you are
11 called again. One day you may find yourself sitting at a
12 table. You may be involved in an automobile accident or
13 have a contract dispute or may have been accused of an
14 offense, and I'm confident that if that were to happen to
15 you, that instead of sitting where you are that you're
16 sitting at one of the tables, you'll want good solid
17 citizens such as yourself to sit there in that box and
18 decide what the facts are. Thank you so much for your
19 service. I greatly appreciate it.

20 You're dismissed at this time. The foreperson, I need
21 for you if you would, just remain in the hallway just for a
22 moment. There's a couple of other papers I need to have you
23 sign. The rest of you, you're dismissed. Thank you very
24 much for your service to us this week.

25 (WHEREUPON, the jury exited the open court at

1 approximately 12:10 p.m.)

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

3 THE COURT: Is there anything we need to take care
4 of before sentence is imposed?

5 MR. DEJONG: Your Honor, at this point in time, I
6 would move for a new trial on behalf of Mr. Beekman in that
7 the evidence does not substantiate the verdict, Your Honor.

8 THE COURT: I think the jury has examined the
9 evidence, Mr. DeJong, and the evidence certainly was capable
10 of their interpretation of it. I respectfully deny your
11 motion.

12 MR. DEJONG: Thank you, Your Honor.

13 THE COURT: Any other matters?

14 If not, we'll have him come forward. Mr. DeJong, have
15 you client come forward.

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

18 THE COURT: All right. Mr. DeJong, I'll be glad
19 to hear from you and -- well, first of all, is there anybody
20 from the State that wants to address the Court before I hear
21 from the Defense?

22 MS. BARWICK: Yes, sir, Your Honor. The victims
23 would like to address the Court.

24 THE COURT: Okay. I'll be glad to hear from you.
25 Again, state your name for the record just so we'll have a

1 proper recordation of who's speaking now.

2 MR. WHEELER: Ted Wheeler.

3 THE COURT: Yes, sir. I'll be glad to hear from
4 you, sir.

5 MR. WHEELER: Your Honor, thank you. This is very
6 emotional. I feel like my family has got a life sentence
7 from this tragedy that's happened and I know that the jury
8 made the right decision because I've been living with this
9 for three years and I know a lot of things the jury hasn't
10 heard. And it's just beyond comprehension. I hope no one
11 ever has to go through this. I know people do and it's just
12 amazing to me. And I just hope that you put him away for as
13 long as you possibly can. That's all I've got to say. It's
14 just destroyed our family. He's done so much damage to my
15 son, it's unbelievable.

16 THE COURT: All right. Thank you, sir.

17 MS. BARWICK: Anyone else?

18 THE COURT: Anyone else want to address me?

19 MS. BARWICK: No one else from the family, Your
20 Honor.

21 THE COURT: Anything else from the State as far as
22 prior records or any other matters?

23 MS. BARWICK: Your Honor, he does not have a prior
24 record. As Your Honor knows, he's facing significant time
25 and the State feels that he is well deserving for as much

1 time as Your Honor feels comfortable giving him.

2 THE COURT: Mr. DeJong, I'll be glad to hear from
3 you and I'll certainly be glad to hear from your client if
4 he'd like to address me.

5 MR. DEJONG: Thank you, Your Honor, may it please
6 the Court. Mr. Beekman is fifty-five years of age. He will
7 actually be fifty-six in October of this year. He resides
8 in Liberty. Has resided there for a number of years. He
9 owns his own house out there. He is now divorced. He was
10 divorced approximately a year after these allegations arose.
11 Worked for G.E. Gas Turbine -- I don't ever know how to
12 pronounce that -- in Greenville since 1988. He was a
13 machinist over there. Has an Associate's Degree from Tri-
14 County Tech. As I'm sure Your Honor hear during the
15 testimony, he also volunteered with the Liberty Rescue
16 Squad, I believe. He has been on temporary disability with
17 G.E., Your Honor. A large part because of his volunteering
18 with the Liberty Rescue Squad he was involved in
19 volunteering there, he had to go to the scene of a couple of
20 pretty bad wrecks where some young children were very
21 seriously injured or killed. As a result, he was diagnosed
22 with post-traumatic stress disorder. He has been taking
23 medication for both anxiety and for depression for some time
24 now.

25 As indicated by the Solicitor, Your Honor, he has no

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1 record. The sadness of this case, Your Honor, as I see it
2 is, in one regard, the Legislature has certainly tied the
3 Court's hands. As I understand the current state of the
4 law, criminal sexual conduct in the first degree with a
5 minor, the new sentencing went into effect, I believe, in
6 2006, which requires a minimum mandatory of twenty-five
7 years, can carry up to life. At Mr. Beekman's age, the
8 minimum mandatory is a life sentence, Your Honor, and I'm
9 not faulting Your Honor. I'm just simply stating that even
10 with the minimum mandatory, at eighty-five percent of that,
11 he would be well over seventy years of age by the time he
12 was released.

13 Where there is life, there is hope. I would ask the
14 Court to impose the minimum mandatory sentence in light of
15 his lack of prior record, his work record. Obviously, the
16 jury has found him guilty. At this point in time, there's
17 nothing we can do about that. But in light of all of that,
18 Your Honor, I would ask that you give him the minimum
19 mandatory. Anything you give him on the other charge, I
20 would ask that you run that concurrent, Your Honor.

21 THE COURT: Thank you, Mr. DeJong. Mr. Beekman,
22 anything you would like to say to me before I impose
23 sentence?

24 MR. BEEKMAN: I'm not guilty, Your Honor. And
25 when this all happened my life was destroyed too. I lost --

1 I never had a family and I loved them. And when this all
2 happened, I felt like my family had been taken from me just
3 suddenly. And I've had severe problems with depression
4 because of this. I know I'm not guilty of doing what I'm
5 accused of doing, Your Honor. I'm not guilty.

6 THE COURT: Thank you, sir.

7 It's always a difficult -- it was difficult for the
8 jury. It's difficult for a Judge to impose sentence to try
9 to do justice to everyone. We often impose our own prisons.
10 And before we look at bars, we're imprisoned. And certainly
11 because of things that have happened, we sometimes imprison
12 ourselves. I certainly hope these victims realize that
13 there is a release from what has occurred to them and that
14 there's hope and they can overcome the event that happened
15 and they can have freedom. Even if you're behind bars
16 there's ways to enjoy that freedom that can be found.

17 This is case 2009-GS-39-1405, the sentence of the Court
18 is the Defendant be committed to the State Department of
19 Corrections for a period of thirty years.

20 Case 2009-GS-39-1404, the sentence of the Court is
21 Defendant be committed to the State Department of
22 Corrections for a period of fifteen years. This sentence
23 will be consecutive to that previously imposed.

24 We'll take a short break and be ready to hear more
25 pleas.

State of South Carolina -vs- Richard B. Beekman (2009-GS-39-1404-1405)
Charge

424

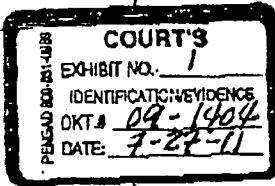
1

MR. DEJONG: Thank you, Your Honor.

2

3

(END OF REQUESTED TRANSCRIPT OF RECORD)



Could we have copy

Laura's

Testimony?

WITNESSES

WDR

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2009

THE STATE

vs.

RICHARD BURTON BEEKMAN

INDICTED

Teddi Palis

Pickens County Sheriff's Office

8/9/2008

ARREST WARRANT NUMBER

J487851

ACTION OF GRAND JURY

TRUE BILL

date SEP 15 2009

Henry M. Bann
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
LEWD ACT UPON A CHILD

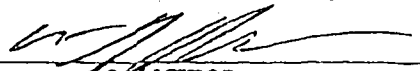
At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That RICHARD BURTON BEEKMAN did in Pickens County, on or about the 7th day of July, 2008, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of L. W., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

374 STATE OF SOUTH CAROLINA

COUNTY OF Pickens
STATE VS.
Richard Burton Beekman

AKA:

Race: WHITE Sex: M Age: 55

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Barwick, Jenny

SC Bar#

Defendant

John W. DeJoy

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2009 GS 39-1405☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS3901404

A/W#: 1487851

Date of Offense: 7/7/2008

S.C. Code § : 16-15-140

CDR Code #: 2468

SENTENCE SHEET

0-15yrs

☒ CONVICTED OF or ☐ PLEADS

[Signature]

[Signature]

[Signature]

[Signature]

days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

[Signature]

375

WITNESSES

Jeddi Palis

Pickens County Sheriff's Office

8/9/2008

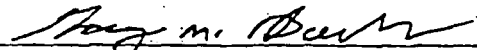
ARREST WARRANT NUMBER

J487852

ACTION OF GRAND JURY

~~TRUE BILL~~

Date SEP 15 2008


Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

WDR

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2009

THE STATE

vs.

RICHARD BURTON BEEKMAN

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

INDICTED

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

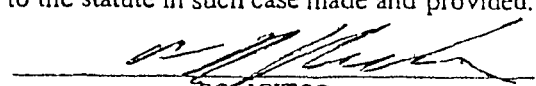
At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That RICHARD BURTON BEEKMAN did in Pickens County, between June 1, 2006 and July 31, 2008, commit a sexual battery on T. W., who was less than eleven years of age. This is in violation of §16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

COUNTY OF Pickens

STATE VS.

Richard Burton Beekman

AKA:-

Race: WHITE Sex: M Age: 55

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

INDICTMENT/CASE#: 2009GS3901405

A/W#: J487852

Date of Offense: 6/15/2006

S.C. Code § : 16-03-0655(A)(1)

CDR Code #: 0385

SENTENCE SHEET

25-life

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Barwick, Jenny

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: _____

SCCA/217 (03/2011)

Presiding Judge

Judge Code: _____

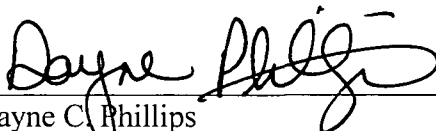
Sentence Date: _____

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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."

December 20th, 2012


Dayne C. Phillips
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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

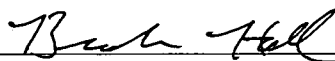
RICHARD BURTON BEEKMAN,

APPELLANT

Appellate Case No. 2011-196688

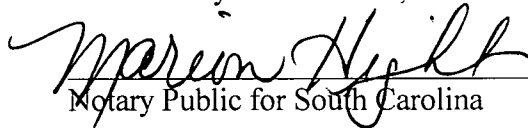
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 20th day of December, 2012.

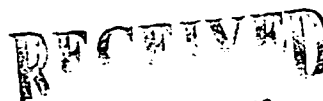


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 20th day of December, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.



DEC 20 2012

SC COURT OF APPEALS