

STATE OF SOUTH CAROLINA

In The Court of Appeals

---

APPEAL FROM CLARENDON COUNTY

Ralph F. Cothran, Circuit Court Judge

---

RECEIVED

JAN 02 2013

SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

HENRY LEE FELDER,

APPELLANT

---

RECORD ON APPEAL

---

DAVID ALEXANDER  
Appellate Defender

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

Attorney for Appellant

ALAN WILSON  
Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General  
Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211  
(803) 734-3727

Attorneys for Respondent

INDEX

INDEX.....i  
TRIAL TRANSCRIPT.....1  
INDICTMENT .....246  
SENTENCING SHEETS.....248  
CERTIFICATE OF COUNSEL.....250

**\*\*STATE'S EXHIBIT 1, (DVD INTERVIEW AND CONFESSION), IS BEING TRANSPORTED TO THE COURT OF APPEALS. \*\***

State of South Carolina ) In the Court of General Sessions  
 ) Third Judicial Circuit  
 County of Clarendon ) 2009-GS-14-0518

The State of South Carolina, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Transcript of Record  
 )  
 Henry Lee Felder, )  
 )  
 Defendant. )  
 )  
 \_\_\_\_\_ )

October 17, 18, 2011  
 Manning, South Carolina

B E F O R E:

The Honorable Ralph F. Cothran, Judge, and a jury.

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

Christopher R. DuRant, Assistant Solicitor  
 Attorney for the State

T. Micah Leddy, Esquire  
 Attorney for the Defendant

Elizabeth B. Harris, CVR-M  
 Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
----------------------------	-----------------

*MONDAY, OCTOBER 17, 2011*

Jury Voir Dire . . . . .	6
--------------------------	---

Jury Selection . . . . .	9
--------------------------	---

*Jackson vs. Denno Hearing*

Thomas Ham

Direct Examination by Mr. DuRant . . . . .	29
--	----

Cross-examination by Mr. Leddy . . . . .	33
--	----

Opening Remarks by the Court . . . . .	55
--	----

Opening by Mr. DuRant . . . . .	60
---------------------------------	----

Opening by Mr. Leddy . . . . .	63
--------------------------------	----

*State's Case in Chief*

Sabrina Johnson

Direct Examination by Mr. DuRant . . . . .	67
--	----

Cross-examination by Mr. Leddy . . . . .	78
--	----

Minor

Direct Examination by Mr. DuRant . . . . .	79
--	----

Cross-examination by Mr. Leddy . . . . .	99
--	----

Redirect Examination by Mr. DuRant . . . . .	103
--	-----

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Thomas Ham

Direct Examination by Mr. DuRant . . . . .	105
Cross-examination by Mr. Leddy . . . . .	119
Redirect Examination by Mr. DuRant . . . . .	129

*TUESDAY, OCTOBER 18, 2011*

Gaye Allen Cook

<i>Voir Dire</i> Examination by Mr. DuRant . . . . .	153
Direct Examination by Mr. DuRant . . . . .	155
Cross-examination by Mr. Leddy . . . . .	160

*In-camera Hearing*

Kathy Saunders

Proffered Examination by Mr. DuRant . . . . .	172
Proffered Examination Resumes . . . . .	181
Proffered Examination by Mr. Leddy . . . . .	183

*In-camera Hearing Concludes*

Kathy Saunders

<i>Voir Dire</i> Examination by Mr. DuRant . . . . .	191
Direct Examination by Mr. DuRant . . . . .	195
Cross-examination by Mr. Leddy . . . . .	199

*End of State's Case in Chief*

		4
1	Closing by Mr. DuRant . . . . .	208
2	Closing by Mr. Leddy . . . . .	211
3	Jury Charge . . . . .	215
4	Verdict . . . . .	232
5	Polling of the Jury . . . . .	232
6	Sentence of the Court . . . . .	244
7	Certificate Page . . . . .	245
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>
S-1	DVD of Interview and Confession (Audio Not Transcribed)	54	115
S-2	Handwritten Note	54	138
C-1	Jury Note		230

1 MONDAY, OCTOBER 17, 2011

2 THE COURT: All right, y'all ready to proceed?

3 MR. DURANT: Yes, sir.

4 THE COURT: You may call your first case.

5 MR. DURANT: Judge, state calls *State vs. Henry Lee*  
6 *Felder* in indictment 2009-GS-14-518, charged with two  
7 counts of criminal sexual conduct with a minor second  
8 degree. Mr. Felder is represented by Micah Leddy of the  
9 Lexington County Bar.

10 THE COURT: Okay.

11 MR. DURANT: Richland County Bar.

12 JURY VOIR DIRE

13 THE COURT: All right, ladies and gentlemen, if you  
14 will give me your attention, we are about to begin the  
15 trial of the *State vs. Henry Lee Felder*. Is there any  
16 member of the jury panel connected by blood or marriage,  
17 close personal friends, or social relations with Mr.  
18 Felder? If so, please stand.

19 Yes, ma'am.

20 JUROR: Mariesa Ragin, a classmate and a neighbor.

21 THE COURT: Okay.

22 (A PAUSE.)

23 THE COURT: The fact that you were a classmate and a  
24 neighbor of his -- how close do you live to him?

25 JUROR: I'd say about 200 feet or little more than

1 that.

2 THE COURT: Okay. Would that affect your ability to  
3 be fair and impartial to both sides in this case?

4 JUROR: Sir, repeat that again.

5 THE COURT: The fact that you are a classmate of his  
6 and a neighbor of his, would that affect your ability to  
7 give both the State of South Carolina and Mr. Felder a fair  
8 and impartial trial?

9 JUROR: No.

10 THE COURT: You could be fair?

11 JUROR: Yes, sir.

12 THE COURT: Okay. Thank you, ma'am.

13 MR. DURANT: Judge, I didn't hear the name and number.

14 THE COURT: 110, Ms. Ragin. You got a potential, a  
15 witness list?

16 MR. DURANT: Yes, sir. I gave it to the court  
17 reporter.

18 THE COURT: All right, ladies and gentlemen, I'm going  
19 to read out a potential witness list, and I need to know if  
20 you're connected by blood or marriage, close personal  
21 friends, or social relations with any of these witnesses:

22 Investigator Lin Ham, Sabrina Johnson, Minor

23 Minor #3 Kathy Saunders, Danna Collins, Gayle [sic]  
24 Cook. Is it Danna, Deanna?

25 MR. DURANT: Danna.

1 THE COURT: Any member of the jury panel connected by  
2 blood or marriage, close personal friends, or social  
3 relations with any of those potential witnesses? If so,  
4 please stand.

5 (NO ONE STANDS.)

6 THE COURT: The attorneys in this case, the defendant  
7 is being represented by Micah Leddy of the Richland County  
8 Bar; the state is being represented by Chris DuRant. Any  
9 member of the jury panel connected by blood or marriage,  
10 close personal friends, social relations, or have been  
11 represented by any of these attorneys? If so, please  
12 stand.

13 (NO ONE STANDS.)

14 THE COURT: Any member of the jury panel formed or  
15 expressed an opinion about any of the issues or matters  
16 involved in this case? This case allegedly occurred in  
17 Clarendon County on or about July 13, 2009. Anybody know  
18 anything about this case?

19 (NO ONE STANDS.)

20 THE COURT: Any member of the jury panel aware of any  
21 bias or prejudice toward the State of South Carolina or  
22 this defendant? If so, please stand.

23 (NO ONE STANDS.)

24 THE COURT: Any member of the jury panel served on the  
25 grand jury that heard this case? If so, please stand.

1 (NO ONE STANDS.)

2 THE COURT: Any member of the jury panel due to  
3 religious or moral reasons unable to sit in judgement of  
4 your fellow man? If so, please stand.

5 (NO ONE STANDS.)

6 THE COURT: Any member of the jury panel know of any  
7 reason whatsoever they can't give the State of South  
8 Carolina and this defendant a fair and impartial trial? If  
9 so, please stand.

10 (NO ONE STANDS.)

11 THE COURT: Any further requests from the state?

12 MR. DURANT: No, sir.

13 THE COURT: From defense?

14 MR. LEDDY: No, Your Honor.

15 THE COURT: Okay. Madame Clerk, if you will give us a  
16 jury? It will be five and ten.

17 (A PAUSE.)

18 *JURY SELECTION*

19 CLERK OF COURT: Ladies and gentlemen, you remember me  
20 telling you this morning if we drew a jury, that you would  
21 come through the center aisle here. Come up to the mic,  
22 and turn around and face the tables, and then listen for me  
23 to tell you, give further instructions. We're down to that  
24 time now. If you have any belongings, please bring them  
25 with you when you come up.

1           Number 102, Shaneaker T. Pearson -- excuse me,  
2           Peterson.

3           (AFRICAN-AMERICAN FEMALE COMES FORWARD.)

4           CLERK OF COURT: Just come right up to the mic here.  
5           Turn around and face the tables and stand there. I'm going  
6           to ask them two questions. You just stand there until I  
7           tell you what to do, okay?

8           What say the state?

9           MR. DURANT: Please excuse Ms. Peterson from this  
10          trial.

11          CLERK OF COURT: You can have your seat back in the  
12          jury pool, ma'am. Thank you so much.

13          Number 124, Brandy V. Tisdale.

14          (WHITE FEMALE COMES FORWARD.)

15          CLERK OF COURT: What say the state?

16          MR. DURANT: Please present Ms. Tisdale.

17          CLERK OF COURT: The defense?

18          MR. LEDDY: Please seat the juror.

19          CLERK OF COURT: Go over to the bailiff, ma'am. Have  
20          a seat in the jury box. Thank ma'am.

21          Number 26, Robert H. Coker.

22          (WHITE MALE COMES FORWARD.)

23          CLERK OF COURT: What say the state?

24          MR. DURANT: Please present Mr. Coker.

25          CLERK OF COURT: The defense?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. LEDDY: Please excuse Mr. Coker.

CLERK OF COURT: You can have a seat back in the jury box.

Number 99, Sherva B. Parker.

(AFRICAN-AMERICAN FEMALE COMES FORWARD.)

CLERK OF COURT: What say the state?

MR. DURANT: Please present Ms. Parker.

CLERK OF COURT: The defense?

MR. LEDDY: Please seat this juror.

CLERK OF COURT: Go over to the bailiff, ma'am, and have a seat in the jury box. Thank you.

Number 129, Kayla N. Ragin.

(AFRICAN-AMERICAN FEMALE COMES FORWARD.)

CLERK OF COURT: What say the state?

MR. DURANT: Please present Ms. Ragin.

CLERK OF COURT: The defense?

MR. LEDDY: Please excuse this juror.

CLERK OF COURT: You can have a seat back in the jury box now. Thank you.

Number 107, Joyce E. Privitera.

(WHITE FEMALE COMES FORWARD.)

CLERK OF COURT: What say the state?

MR. DURANT: Please present Ms. Privitera.

CLERK OF COURT: Defense?

MR. LEDDY: Please seat this juror.

1 CLERK OF COURT: Have a seat in the jury box, ma'am.

2 Go over to the bailiff.

3 Number 88, Casey L. McElveen.

4 (WHITE FEMALE COMES FORWARD.)

5 CLERK OF COURT: What say the state?

6 MR. DURANT: Please present Ms. McElveen.

7 CLERK OF COURT: The defense?

8 MR. LEDDY: Please seat this juror.

9 CLERK OF COURT: Have a seat in the jury box, ma'am.

10 Go over to the bailiff. Thank you.

11 Number 22, Apolinar Calderon.

12 (HISPANIC MALE COMES FORWARD.)

13 CLERK OF COURT: What say the state?

14 MR. DURANT: Please excuse Mr. Calderon.

15 CLERK OF COURT: Have a seat back in the jury box,

16 sir.

17 Number 40, Frizeal O. Edwards.

18 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)

19 CLERK OF COURT: What say the state?

20 MR. DURANT: Please present Ms. Edwards.

21 CLERK OF COURT: Defense?

22 MR. LEDDY: Please seat this juror.

23 CLERK OF COURT: Have a seat in the jury box, ma'am.

24 Go over to the bailiff.

25 Number 112, Randy E. Reitan.

1 (WHITE MALE COMES FORWARD.)

2 CLERK OF COURT: What say the state?

3 MR. DURANT: Please present Mr. Reitan.

4 CLERK OF COURT: Defense?

5 MR. LEDDY: Please present this juror.

6 CLERK OF COURT: Have a seat in the jury box, sir. Go  
7 over to the bailiff.

8 Number 60, Elizabeth A. Hale.

9 (WHITE FEMALE COMES FORWARD.)

10 CLERK OF COURT: Was say the state?

11 MR. DURANT: Please excuse Ms. Hale from this trial.

12 CLERK OF COURT: Okay, Ms. Hale, you can have a seat  
13 back in the jury box. Thank you, ma'am.

14 Number 67, William O. Hodge.

15 (WHITE MALE COMES FORWARD.)

16 CLERK OF COURT: What say the state?

17 MR. DURANT: Please present Mr. Hodge.

18 CLERK OF COURT: Defense?

19 MR. LEDDY: Please excuse this juror.

20 CLERK OF COURT: Have a seat back in the jury box,  
21 sir. Thank you.

22 Number 17, Aretha L. Brown.

23 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)

24 CLERK OF COURT: What say the state?

25 MR. DURANT: Please present Ms. Brown.

1 CLERK OF COURT: Defense?

2 MR. LEDDY: Please seat this juror.

3 CLERK OF COURT: Go over to the bailiff, ma'am. Have  
4 a seat in the jury box.

5 Number 25, Brett A. Coker.

6 (WHITE MALE COMES FORWARD.)

7 CLERK OF COURT: What say the state?

8 MR. DURANT: Please present Mr. Coker.

9 CLERK OF COURT: Defense?

10 MR. LEDDY: Please seat this juror.

11 CLERK OF COURT: Have a seat in the jury box, sir.  
12 Thank you.

13 Number 21, Santana Butler.

14 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)

15 CLERK OF COURT: What say the state?

16 MR. DURANT: Please excuse Ms. Butler.

17 CLERK OF COURT: Have a seat back in the jury box,  
18 ma'am.

19 Number 66, Joe M. Hilton.

20 (AFRICAN-AMERICAN MALE COMES FORWARD.)

21 CLERK OF COURT: What say the state?

22 MR. DURANT: Please present Mr. Hilton.

23 CLERK OF COURT: Defense?

24 MR. LEDDY: Please seat this juror.

25 CLERK OF COURT: Have a seat over there. Thank you,

1 sir.

2 Number 13, David E. Bradham.

3 (WHITE MALE COMES FORWARD.)

4 CLERK OF COURT: What say the state?

5 MR. DURANT: Please present Mr. Bradham.

6 CLERK OF COURT: Defense?

7 MR. LEDDY: Please seat this juror.

8 CLERK OF COURT: Have a seat in the jury box, sir.

9 Number 109, Terry L. Welch.

10 (WHITE MALE COMES FORWARD.)

11 CLERK OF COURT: What say the state?

12 MR. DURANT: Please present Mr. Welch.

13 CLERK OF COURT: Defense?

14 MR. LEDDY: Please seat the juror.

15 CLERK OF COURT: Have a seat in the jury box, sir.

16 Number 7, Elizabeth, Coker Barrineau.

17 (WHITE FEMALE COMES FORWARD.)

18 CLERK OF COURT: What say the state?

19 MR. DURANT: Please present Ms. Barrineau.

20 CLERK OF COURT: Defense?

21 MR. LEDDY: Please excuse this juror.

22 CLERK OF COURT: Have a seat back in the jury box,

23 ma'am.

24 Number 115, Kirk A. Salek.

25 (WHITE MALE COMES FORWARD.)

1 CLERK OF COURT: What say the state?

2 MR. DURANT: Please present Mr. Salek.

3 CLERK OF COURT: The defense?

4 MR. LEDDY: Please excuse this juror.

5 CLERK OF COURT: Number 37, David W. Duke, III.

6 (WHITE MALE COMES FORWARD.)

7 CLERK OF COURT: What say the state?

8 MR. DURANT: Please present Mr. Duke.

9 CLERK OF COURT: The defense?

10 MR. LEDDY: Please seat the juror.

11 CLERK OF COURT: Have a seat in the jury box, sir.

12 THE COURT: Will an alternate be enough, or y'all  
13 think we need two?

14 MR. DURANT: Judge, I would say one would be enough.

15 THE COURT: Okay.

16 CLERK OF COURT: Number 83 William, William J.  
17 Letourneau, Letourneau. I got it, Letourneau.

18 (WHITE MALE COMES FORWARD.)

19 CLERK OF COURT: What say the state?

20 MR. DURANT: Please seat Mr. Letourneau.

21 CLERK OF COURT: Defense?

22 MR. LEDDY: Please seat this juror.

23 CLERK OF COURT: That will be your seat right in  
24 front, Mr. Letourneau, right there.

25 THE COURT: Are there any matters of law pertaining to

1 the selection of the jury on behalf of the state?

2 MR. DURANT: No, sir, Your Honor.

3 THE COURT: On behalf of defense?

4 MR. LEDDY: No, Your Honor.

5 THE COURT: Okay. Mr. Solicitor, what you want me to  
6 tell the panel?

7 MR. DURANT: Call back after 6.

8 THE COURT: 6? Okay. Ladies and gentlemen who were  
9 not selected to serve on this panel, I'm going to excuse  
10 you and you're free to go, and I'm going to ask you to call  
11 the clerk's office back after 6:00 tonight. There's a  
12 number that's been provided to you, if you'll notice. If  
13 you'll call back after 6, it will be a recorded message to  
14 tell you either report back tomorrow some time, or to call  
15 back tomorrow some time. So, if you do that and keep  
16 calling until you get through, and be sure you get whatever  
17 the message is, I'd appreciate that. Thank you, and you  
18 are free to go.

19 (THE JURY PANEL EXITS.)

20 THE COURT: Ladies and gentlemen, I'm going to ask you  
21 to step to the jury room a minute. I got to deal with some  
22 matters of law and scheduling matters with the attorneys.  
23 I'll get you back out just as quick as I can to either  
24 begin the testimony in this case, or I may end up having to  
25 send you to an early lunch, and we'll stay and work through

1 whatever legal matters we've got.

2 But at this point, please don't discuss this case back  
3 there or try to speculate what it's about, but go to the  
4 jury room. I'll get you back out in a few minutes and give  
5 you some further instructions.

6 (THE JURY EXITS AT 11:01 A.M.)

7 THE COURT: Okay, from a scheduling standpoint, we  
8 discussed in chambers. So, has anything changed? We going  
9 to need to deal with *Jackson vs. Denno* issue or anything  
10 else?

11 MR. DURANT: Judge, I've got one motion just to ensure  
12 compliance with the rape shield statute. Other than  
13 that...

14 THE COURT: Okay. So, it's 11:00. How long you think  
15 all these motions are going to take, and what time you want  
16 me to -- I need to bring the jury back?

17 MR. DURANT: The video on the defendant's statement is  
18 about an hour and fifteen minutes, Judge.

19 THE COURT: Okay. So, that will be 12:30. Probably  
20 be 2:30 before...

21 MR. DURANT: There will be some limited testimony on  
22 that issue as well, Judge.

23 THE COURT: Okay.

24 MR. DURANT: My guess is that motion will take the  
25 better part of two hours.

1 MR. LEDDY: Yeah. Your Honor, I understand his motion  
2 *in limine* for compliance with the rape shield statute. I'm  
3 not aware of any evidence or testimony that could come out  
4 or be solicited that would violate that, and I don't intend  
5 to violate that in the first place. But I understand with  
6 him making the motion.

7 I also would move *in limine* for the state's witnesses  
8 all being instructed that they cannot corroborate the  
9 testimony of the alleged victim in the case except to  
10 certain exceptions that are in the statute and have been  
11 recognized by our court.

12 And I would specifically point to the social worker in  
13 the case that came out in advance sheets on September 19th,  
14 *State vs. Jennings*. That the video of the ARC interview,  
15 or the interview at the Care place, and the testimony, any  
16 testimony from the social worker that would -- could be  
17 inferred by the jury as being that she believed or found  
18 the allegations to be credible. That should not be  
19 allowed, and I would move *in limine* to instruct them that  
20 it's not going to be allowed. And we'd move if such  
21 questions were asked or such statements were made, I'd move  
22 to make objections at the appropriate time. But I would  
23 ask for an instruction from the court to that effect just  
24 so we can avoid that.

25 THE COURT: Okay. You want to respond to that, Mr.

1 DuRant?

2 MR. DURANT: Just briefly, Judge. My understanding of  
3 the law was that testimony is allowed that's limited to  
4 time and place of the incident, and that's the intention of  
5 the state.

6 THE COURT: Right. Okay. So, do you have any issues,  
7 *State vs. Jennings*? Are you -- cross that bridge when we  
8 get to it. I don't know it. Okay.

9 MR. LEDDY: I have a copy of it if you'd like one,  
10 Your Honor.

11 THE COURT: Okay. All right. Then I propose, at  
12 least from this point, is to send the jury to lunch, and it  
13 looks like it's probably going to be 2:30 before we can get  
14 started. Is that a fair guess, do y'all think?

15 MR. DURANT: Judge.

16 THE COURT: It gives us two hours, and then give you  
17 a chance to get lunch and then start back at -- I mean,  
18 you think we can get it back at 2, or you think 2:30 is  
19 better?

20 MR. LEDDY: I can eat really fast if we get back at 2,  
21 Your Honor, if there's a local place you can advise.

22 THE COURT: And I've worked out that scheduling  
23 problem I had for tomorrow, so I don't have to cut it short  
24 tomorrow; I can go a full day.

25 MR. DURANT: Okay. That's fine, Judge, and I'll

1 address the rape shield motion now if you'd, if you'd like.

2 THE COURT: Okay. Well, let me -- before we do all  
3 that, let me get rid of this jury.

4 MR. DURANT: Okay.

5 MR. LEDDY: Yes, sir.

6 THE COURT: No sense sitting back there, and then  
7 we'll deal with all the legal issues, and I'm probably  
8 going to bring them back at 2:30 simply in an abundance of  
9 caution.

10 Somebody bring me the jury.

11 (THE JURY ENTERS AT 11:05 A.M.)

12 THE COURT: Ladies and gentlemen, I've got some legal  
13 matters to take care of, and it's probably going to take a  
14 couple hours to deal with it. Instead of keeping y'all  
15 locked up back there, I'm just going to send you to lunch  
16 early and ask you to be back at 2:30.

17 I will swear you when you get back. You don't know  
18 anything about this case. Don't try to discuss it over  
19 lunch, allow anyone to talk to you about it. If someone  
20 tries, just simply tell them you're on the jury, and you  
21 can't discuss it. And if you will report that to me, I  
22 would appreciate it.

23 You have a nice lunch, and I'll see you back at 2:30.  
24 Now, if something happens to you over lunch and you have an  
25 emergency, please call because we can't get started until

1 all of you show back up. And so if I don't hear from you,  
2 or if you don't call the clerk's office and you don't show  
3 up, I'm going to send the deputies to look for you with the  
4 instructions to put you into custody and bring you to me.  
5 So, if you have an emergency, call. Have a nice lunch, and  
6 I'll see you at 2:30.

7 JUROR: What's the latest we'll be because I work  
8 night shift.

9 THE COURT: Probably 5 or 5:30, but I can't control  
10 that once I give it to y'all.

11 (THE JURY EXITS AT 11:07 A.M.)

12 THE COURT: You want to -- whatever motion y'all want  
13 to start with.

14 MR. DURANT: Judge, I think the rape shield motion  
15 would be quick. I just passed up a copy of the motion.

16 THE COURT: Okay.

17 MR. DURANT: Judge, this motion is based on South  
18 Carolina Code 16-3-659.1, which is commonly known that the  
19 rape shield statute.

20 The motion, Judge, my -- I got, received from the  
21 defense attorney this morning some school records in this  
22 case. And one of the records indicates that the victim was  
23 suspended from school at some point. Speaking with her and  
24 her family about that, I understand that that incident  
25 involved an allegation that was sexual in nature between

1 her and a classmate.

2 Judge, the rape shield statute clearly allows that  
3 evidence only in three circumstances: to show source or  
4 origin of semen, pregnancy, disease. None of those  
5 instances are at issue here. All right, Judge, we  
6 therefore ask that the defendant be prohibited from  
7 inquiring about that incident at all.

8 THE COURT: Okay.

9 MR. LEDDY: Your Honor, I have no need to go into that  
10 incident. The only thing I would say is that I don't know  
11 if the state intends to -- there were some records that  
12 were provided to me through discovery that have to do with  
13 the physical examination that was conducted on Miss  
14 Johnson. And there were -- whether or not the state  
15 intends to solicit testimony, they are consistent with or  
16 conclude -- I can't think of the word. Conclusive --  
17 that's a hard one to remember -- for sexual activity. I  
18 don't know if they intend to elicit that in order to show  
19 that she had been sexually active and for the jury to infer  
20 that it was my client that was involved with her.

21 You know, I would think that the same law would  
22 prohibit the introduction of that evidence, and so I would  
23 just ask if the solicitor intends to get into that.

24 MR. DURANT: Judge, I do intend to elicit testimony  
25 from the medical examiner as to her exam and its potential

1 indication of penetration at some point.

2 Judge, the issue at the school is irrelevant to that  
3 because that -- and I'll be glad to proffer testimony if  
4 Your Honor prefers. But I understand from speaking with  
5 the victim and her family that allegation was, Judge, for  
6 lack of a better phrase, oral sex and not penetration.

7 THE COURT: Okay, and what's your position on that?

8 MR. LEDDY: Well, my position is that if it, if it, if  
9 it's not admissible, what, what would otherwise not be  
10 admissible under the statute, I would say that would open  
11 the door to it because -- and I don't want to go into it  
12 because I don't -- I think it's kind of a distraction. But  
13 I think I would have to because the only inference is,  
14 well, this particular person has physical signs consistent  
15 with sexual activity. And here's the one person we've ever  
16 heard of that is accused of having sexual activity with  
17 her. And that would just unfairly limit the scope of my  
18 cross, and would keep him from having a complete defense  
19 and to confront his accuser under the Sixth Amendment and  
20 his right to due process under the Fifth and Fourteenth  
21 Amendments, Your Honor.

22 MR. DURANT: Judge, I'm not trying to limit him from  
23 questioning the victim whether or not she'd had sex before.  
24 Now, Judge, my understanding of this incident at school did  
25 not involve actual penile penetration, Judge. Therefore,

1 it's irrelevant. He can certainly ask if she'd had sex  
2 before, but inquiring about this incident, Judge, would be  
3 prejudicial to the state because it did not involve sex.

4 THE COURT: So, your position is he can, he can ask  
5 her if she's had sex before?

6 MR. DURANT: I, I, I believe that he can. If I --  
7 well, I do intend to solicit that testimony that, that I  
8 believe will indicate that she has at least after these  
9 allegations, Judge. But -- so, I don't know -- I don't  
10 believe that I can limit him from questioning her as to  
11 whether or not she had had sex with anyone else. But far  
12 as questioning her about this specific incident -- and,  
13 Judge, I ---

14 THE COURT: Do you have any problem with that? I know  
15 that you're talking about a school incident, but clearly if  
16 he's going to offer testimony from some doctor, medical  
17 personnel that her hymen wasn't intact and that there's  
18 some of penetration or some sexual activity, then assuming  
19 that there's not current and recent injuries, I don't --  
20 and I don't know whether there's any tearing or any  
21 injuries that they're going to testify to that would happen  
22 within some time frame.

23 But now I guess what he's saying is if that evidence  
24 comes in, you can ask if, you know, she's been sexually  
25 active at all, which would cover, imply, you know, that

1 they're not implying the only sexual activity she's ever  
2 had was with your client.

3 MR. LEDDY: Yes, sir. That's the -- that's what I  
4 want to keep from happening is that -- to put the blind,  
5 put blind -- basically what you'd be doing is putting  
6 blinders on the jury with only one possible inference that  
7 they could possibly draw, and that wouldn't be fair to him.

8 THE COURT: Okay. All right. Well, I ---

9 MR. LEDDY: And to, to ---

10 THE COURT: And I don't -- basically what he's telling  
11 me, that won't be an issue. Is that right? And if it is,  
12 we'll just have to, I guess, deal with it at the time it  
13 comes up.

14 MR. DURANT: Judge, I believe incidents like this are  
15 specifically what the rape shield statute was designed to  
16 keep out is a victim having to testify about an irrelevant,  
17 immaterial incident.

18 THE COURT: Right. I don't think he can go into any  
19 detail about any prior sexual activity. What, isn't that  
20 the rape shield deal with?

21 MR. LEDDY: I agree with that, and unless somebody  
22 says no, she -- there was no -- she told me that there had  
23 never been anything like that, you know, and create and  
24 open the door to it.

25 THE COURT: Okay, and it's a narrow one in any case.

1 I mean, the door can technically be opened based on the  
2 questioning, but right now you can't go there, and you  
3 understand?

4 MR. LEDDY: Sure.

5 THE COURT: All right. So, the next point we need to  
6 deal with is the video?

7 MR. DURANT: Yes, sir.

8 THE COURT: Okay.

9 MR. DURANT: It will take me a few minutes to get that  
10 set up.

11 THE COURT: Okay. Is there anything else beside that?  
12 So, y'all's plan is for me to view this video. Then put  
13 the officer on the stand for any potential questions, and  
14 I'll rule on the *Jackson vs. Denno* issue. Any other legal  
15 issues?

16 MR. DURANT: Not that I'm aware of.

17 MR. LEDDY: Not, not that I have.

18 THE COURT: Then I'll take a few minute break and let  
19 set up everything up. Then if you'll -- somebody will come  
20 get me.

21 MR. DURANT: Okay.

22 THE COURT: I'll review the video.

23 MR. DURANT: Thank you.

24 THE COURT: We'll in recess until y'all call me.

25 (OFF THE RECORD.)

1 THE COURT: Thank you. You can be seated. Okay.

2 MR. DURANT: Judge, you ready to start the video?

3 THE COURT: I am.

4 MR. DURANT: This is as loud as it goes.

5 (DVD PLAYED FOR THE COURT. AUDIO NOT TRANSCRIBED FOR  
6 TRANSCRIPT.)

7 THE COURT: Is that the end of it?

8 MR. LEDDY: I think that's the last thing of substance  
9 on there, Your Honor. I think it's -- just plays for a  
10 few minutes, if I'm not mistaken.

11 THE COURT: Other than him just sitting there then?

12 MR. LEDDY: I think that's just him sitting there the  
13 rest of the time.

14 THE COURT: Okay.

15 (PLAY OF DVD IS STOPPED.)

16 THE COURT: Okay, any other evidence that the state  
17 wants to offer as far as this is concerned?

18 MR. DURANT: Judge, I'd call Officer -- Investigator  
19 Lin Ham just briefly.

20 THE COURT: Okay. If you'd come around, please, sir,  
21 and place your left hand on the Bible.

22 THOMAS HAM, BEING DULY SWORN,  
23 TESTIFIES AS FOLLOWS:

24 MR. DURANT: And, Judge, we stipulate that the  
25 defendant was in custody at the time of the statement. Was

T. HAM - DIRECT EXAMINATION BY MR. DURANT

29

1 a police interrogation.

2 THE COURT: Okay.

3 DIRECT EXAMINATION BY MR. DURANT:

4 Q. Investigator Ham, who do you work for?

5 A. Clarendon County Sheriff's Office.

6 Q. How long have you worked there?

7 A. Since March of 2002.

8 Q. Were you the lead investigator on the *State vs. Henry*  
9 *Lee Felder*?

10 A. Yes, I was.

11 Q. Did you have a chance to take a statement from him?

12 A. Yes, I did.

13 Q. When was that?

14 A. That was on October 1, 2009.

15 Q. Where?

16 A. That was at the Clarendon County Sheriff's Office.

17 Q. Who was present?

18 A. Myself and Investigator Mason Moore was assisting me  
19 on this one.

20 Q. Did the defendant appear to be under the influence of  
21 any alcohol or drugs prior to ---

22 A. No, he did not.

23 Q. Did he appear to have any physical or mental  
24 disability that would impair his ability to understand what  
25 was being said?

1 A. No, he did not.

2 Q. Was the defendant at any time during the interview,  
3 did he ask or was he denied access to a telephone or a  
4 bathroom something to eat or drink?

5 A. No, he was not.

6 Q. Prior to questioning Mr. Felder, did, did you read him  
7 what's commonly known as Miranda rights?

8 A. Yes, I did. I actually read them to him at his house  
9 also.

10 Q. Okay. Well, let's back up then. Before you took the  
11 defendant to the sheriff's office, you went to his house  
12 and got him?

13 A. Myself and Investigator Mason Moore went to his house.

14 Q. Did you inform him at his house that he was under  
15 arrest?

16 A. Yes, he was.

17 Q. And did you read him his rights at that time?

18 A. Yes, I did.

19 Q. Did he give any statements to you at the house?

20 A. He told us that he knew we were coming. He just  
21 didn't know when.

22 Q. Okay. Other than that, did he give any substantive  
23 statement at the house?

24 A. Not to me. He talked with his daughter and his wife,  
25 and his mother and his sister came over.

T. HAM - DIRECT EXAMINATION BY MR. DURANT

31

1 Q. Did you ask him any questions at the house?

2 A. No, I did not.

3 Q. Okay. When you read him those Miranda warnings at the  
4 -- well, first of all, was the video or is the statement at  
5 the sheriff's office, was that video and audio taped?

6 A. Yes, it was.

7 Q. Okay, and is that what we just saw in court?

8 A. That's, that was it.

9 Q. When you read him those rights at the sheriff's  
10 office, what did -- where did you read them from?

11 A. I read them from a card that I had in my notebook.

12 Q. Okay. Do you have a copy of a similar card with you?

13 A. I, I usually keep one in my wallet, but -- it's, it's  
14 usually right beside the picture of my daughter, but the  
15 picture part of my wallet has come out. My wallet's about  
16 that thick.

17 Q. Okay.

18 A. So.

19 Q. Before you advised him of those rights, did you inform  
20 him about the nature of the investigation and what he was  
21 being ---

22 A. Yes.

23 Q. What the allegations were?

24 A. He, he knew what we were coming for.

25 Q. As far as his Miranda rights are concerned, did you,

1 did you tell him he had the right to remain silent?

2 A. Yes, I did. You hear that on the tape.

3 Q. Did you tell him that anything he said could and would  
4 be used against him in court?

5 A. Yes, I did. It's on the tape.

6 Q. Did you tell him that he had the right to talk to an  
7 attorney?

8 A. Yes, I did. It's on the tape.

9 Q. Did you tell him that he had the right to have that  
10 attorney present with him during the questioning if he'd  
11 like?

12 A. Yes, I did. It's on the tape.

13 Q. Did you tell him that if he couldn't afford an  
14 attorney, that one would be appointed to represent him?

15 A. Yes, I did. It's on the tape.

16 Q. Did you tell him that he could decide at any time to  
17 exercise those rights and stop the interview?

18 A. Yes, I did. That's also on the tape.

19 Q. Did he appear to understand those rights?

20 A. Yes. Having these rights in mind, he said he would  
21 talk with us.

22 Q. Did you ask him if he wished to talk with you, having  
23 those rights in mind?

24 A. Yes.

25 Q. And how did he respond?

T. HAM - DIRECT EXAMINATION / CROSS-EXAMINATION

33

1 A. He said he did.

2 Q. Okay. Did any questioning commence before you had  
3 read him those rights?

4 A. No.

5 Q. Let me ask you this. Were there any promises given to  
6 the defendant during the process?

7 A. No, sir, there weren't.

8 Q. No promises of leniency or?

9 A. No. I just told him, you know, you tell me the truth,  
10 I can help you out as much as I can.

11 Q. And by helping him out, what did you -- what do you  
12 mean?

13 A. A lot of times, these cases when they come to court end  
14 up, they're offered a plea before court which is  
15 significantly less than the maximum. I told him that I  
16 would, you know, try to help him out, try to talk with the  
17 solicitor to see, you know, what kind of deal we could work  
18 out.

19 Q. You never actually promised a deal yourself?

20 A. No, I did not.

21 MR. DURANT: No further questions.

22 MR. LEDDY: Thank you, Your Honor.

23 CROSS-EXAMINATION BY MR. LEDDY:

24 Q. Now, you stated just now that there was questioning  
25 prior to his Miranda rights?

1 A. No.

2 Q. Okay, and now you didn't have him sign a Miranda form,  
3 did you?

4 A. No. It's on the video.

5 Q. Okay. Is that common practice to not use -- give him  
6 his rights in writing to let him sign off on it?

7 A. No. We don't do that.

8 Q. Okay, and is it your testimony that there was no  
9 interaction prior to the videotape coming on?

10 A. Not in -- not there, no. We spoke at the house while  
11 we were letting him get his clothes together and  
12 everything, that he would initiate conversation. It's  
13 pretty much nervous, nervous chatter, I would say.

14 Q. Okay. Do you recall on the video, when we were just  
15 watching on the video, do you recall the part where you  
16 said I ask for total cooperation and said I'll do what I  
17 can for you?

18 A. Yeah.

19 Q. Okay. When did you ask for total cooperation?

20 A. I said that's what I ask for is total cooperation.

21 Q. And you did that prior to the video going on because  
22 it's not on the video.

23 A. No. I said I ask for total cooperation.

24 Q. Okay. When did you ask him for that?

25 A. On the video.

T. HAM - CROSS-EXAMINATION BY MR. LEDDY

35

1 Q. Okay. All right, now you said just a moment ago that  
2 when you said you'd help him out, that was -- what you  
3 intended by that was you would give him a better plea  
4 offer?

5 A. I would talk with the solicitor.

6 Q. Okay. So, that was a promise that you made to him,  
7 right?

8 A. I told him I'd talk with the solicitor as long as he  
9 was honest with me.

10 Q. Okay. So, you weren't lying to him when you told him  
11 that, were you?

12 A. No.

13 Q. Okay. So, if he had confessed to the hotel, you were  
14 going to talk to the solicitor?

15 A. Yes.

16 Q. Okay, and before you asked him about the van, you told  
17 him that you'd talk to the solicitor, but you wanted total  
18 cooperation?

19 A. That I wanted total cooperation, yes.

20 Q. Okay, and that you'd help him out?

21 A. That I'd help him out as best I could.

22 Q. All right. All right, and you told him that this  
23 isn't the end of the world?

24 A. That's correct. It wasn't.

25 Q. And that we can get past this?

T. HAM - CROSS-EXAMINATION BY MR. LEDDY

36

1 A. Yes, sir. We can.

2 Q. Okay, and did you mean by that that he could avoid  
3 jail?

4 A. No. In no means did I say that he wasn't going to  
5 jail.

6 Q. What you meant was you'd talk to the solicitor about a  
7 plea offer?

8 A. That we could get past this and move on with our  
9 lives.

10 MR. LEDDY: All right, I don't have any further  
11 questions, Your Honor.

12 THE COURT: Okay. Anything from the state?

13 MR. DURANT: No, sir.

14 THE COURT: You can step down.

15 WITNESS: Thank you.

16 (THE WITNESS EXITS THE STAND.)

17 THE COURT: Anything further from the state on this  
18 issue?

19 MR. DURANT: There are no further witnesses. I just  
20 would ask the court...

21 THE COURT: Anything you want to bring up?

22 MR. LEDDY: Your Honor, I mean, it's a long video,  
23 but, and -- but I think it's clear there were promises of  
24 leniency made to my client in exchange for him cooperating.  
25 And I think that it's clear that there -- when he first

1 gets in there, he says now we got to turn on the video. I  
2 know we've already been through his Miranda. It's clear  
3 there was some prior interaction there, okay?

4 And the only reason for that not being on the video  
5 was -- is exactly what he says at the very beginning of the  
6 interview is now you can't say I said this and you said  
7 that and all of that. Well, that's because you don't want  
8 to get into the argument that we're having right now is  
9 what did -- what was said before that. And what was said  
10 before that is alluded to about three-quarters of the way  
11 through the video where he says I asked for total  
12 cooperation. I want to go in there and help you out. And  
13 that's what I want to tell the judge, I want to tell the  
14 solicitor.

15 And that's *quid pro quo*. You tell me what I want to  
16 hear, and I promise I'll help you out, and that's exactly  
17 one of the tests that's meant to be -- that's one of the,  
18 one of the things taken, to be taken into consideration by  
19 court in determining whether or not somebody, somebody said  
20 something voluntarily.

21 And the fact that he was read his Miranda rights,  
22 Miranda is meant to be a prophylactic to prevent  
23 questioning in an unduly coercive environment and to  
24 apprise somebody of their rights before questioning begins.  
25 And if the Miranda is not read, then it raises the

1 presumption that it is involuntary.

2           However, involuntariness was -- an involuntary  
3 confession and answers was something that derived from the  
4 common law long before Miranda and has been with us for  
5 years. And one of the tests for whether or not it's a  
6 voluntary statement is the promises of leniency, and that's  
7 throughout this.

8           Not only that, but the threat that tell me what I want  
9 to hear, or it's going to be in the newspaper tomorrow that  
10 you're a child molester, and how many more people are going  
11 to show up at my door. That was a direct threat that was  
12 made to him for his insistence on maintaining his innocence  
13 for something.

14           So, based on that, under the totality of the  
15 circumstances in this case, I don't see how you can say  
16 that he was not in a police-dominated atmosphere, and he's  
17 cowering against the wall. And maybe that's out of shame,  
18 but maybe that's out of police -- the fact that he's in a  
19 police station and he's under arrest, and they're trying to  
20 extract this confession for this incident in a hotel that  
21 he doesn't want to give.

22           THE COURT: Okay. Thank you, sir.

23           State want to respond to that?

24           MR. DURANT: Just briefly, Judge. As far as to what  
25 might have occurred before the video, Judge, I asked

1 Investigator Ham, and he clearly responded no to the  
2 question of whether or not any questions were asked the  
3 defendant before the interview at the sheriff's offices.  
4 And he did, in fact, say no. He said there was some  
5 discussion as he was getting his orders -- or his matters  
6 in order to go to the sheriff's office, but no, no  
7 substantive conversation. He said they didn't ask him any  
8 question.

9 Judge, as far as the statement I ask for total  
10 cooperation that Mr. Leddy asked Investigator Ham about it  
11 a couple of times, and each time he corrected him. Said  
12 no, I ask, and he said that. And, Judge, from what I  
13 understand, the present tense of I am asking, and that's  
14 what -- on the video when he says I ask for total  
15 cooperation, I interpret that to mean I am asking now for  
16 total cooperation.

17 Judge, as far as the promise of leniency is concerned,  
18 Judge, I understand *State vs. Arrowood*, 375 S.C. 359 states  
19 that an officer's offer to attest to the defendant's  
20 cooperation does not constitute a promise of leniency.  
21 And, Judge, that's what Investigator Ham did in this case.  
22 He offered to speak to the solicitor's office about the  
23 case, and to let our office know and the court know the  
24 defendant had been cooperative. Judge, *State vs. Arrowood*  
25 says that's not a promise of leniency.

1           Judge, it's kind of a unique situation on the video in  
2           that statements that Mr. -- the defense alleges, alleges  
3           are coercive don't lead to any new information. They all  
4           occur after Mr. Felder confesses to events in the van.  
5           And, Judge, I believe part of the totality of the  
6           circumstances test is whether or not the defendant's will  
7           was overborne by that activity. In this case, Mr. Felder,  
8           in light of those questions and comments, never admitted to  
9           any incident in the hotel, never admitted to this video  
10          that was asked about. That he simply never gave any new  
11          information. So, Judge, those questions or -- that are  
12          alleged to have been coercive did not result in any new  
13          information from the defendant.

14          So, Judge, we, the state argues that the statement  
15          under the totality of the circumstances was freely and  
16          voluntarily given in accordance with Miranda and the case  
17          law.

18          THE COURT: Okay.

19          MR. LEDDY: Your Honor, I would just say that  
20          Arrowood, just looking at it quickly, it looks like it  
21          would be distinguishable for the very reason that he had  
22          signed a statement saying I've read this, and this is my  
23          statement, and I gave it freely and voluntarily. And  
24          there's never any question did you give all this freely and  
25          voluntarily. He's not asked that. He said do you want to

1 talk to us, and he starts talking, and then he's getting  
2 promises, threats, and voices raised and body language  
3 analysis done.

4 So, I think it's distinguishable in the law, but every  
5 single one of these cases is in appeals court that's taken  
6 the facts as found by the trial court, and they're not  
7 going to disturb those absent an abuse of discretion or  
8 just some plain, you know, just horrendous error.

9 And the one -- the cases where the trial court found  
10 the opposite, I mean, it's unlikely that -- unless there  
11 was a not guilty, it wouldn't be an appeal, right? So, the  
12 fact that other courts on appeal find the standard of abuse  
13 of discretion, have not found enough error in order to  
14 overturn a case doesn't mean that the trial court wasn't  
15 wrong when it made that decision. It just wasn't wrong  
16 enough to be reversed, or it could have been harmless, and  
17 that's all. That's what I would say.

18 THE COURT: Okay. Thank you, sir.

19 I find that clearly this defendant was in custody at  
20 the time he gave his statement. That Miranda warnings were  
21 appropriate, and Miranda warnings were given. And based on  
22 the video, the officer's testimony he gave Miranda warnings  
23 at the time of his arrest at the house, and then obviously  
24 again on the video, the defendant waived his right under  
25 Miranda and freely and voluntarily gave a statement to law

1 enforcement. The court has the benefit of having that  
2 statement on video, and that the defendant confessed to the  
3 sexual altercation, at least one count in the van.

4 The real question that counsel raised is the fact that  
5 the police officer told him that he would notify the  
6 solicitor and the court if he cooperated. And at that  
7 point, he is trying to elicit additional sexual activity in  
8 the motel room. The defendant never admitted to any sexual  
9 activity in the motel room even after repeated questions  
10 from the police.

11 But I noticed on the video that at no time was the  
12 police officer's interrogation suggestive or threatening in  
13 any way for the majority of the interrogation. He was  
14 seated at the table; the police officer was seated at the  
15 table. He didn't raise his voice in a threatening manner.  
16 He didn't bam on the table. He didn't make any threats  
17 toward the defendant, or the officer who sat there quietly  
18 and listened to the interview. There seemed to be cordial  
19 dialogue between the two. At one point at the end of the  
20 interview, the officer did get up and walk around the room,  
21 but at no point did he stand over or threaten the defendant  
22 in any way.

23 And I think, based on the totality of the  
24 circumstances that -- and under *Jackson vs. Denno* issue and  
25 *Arrowood* and a litany of cases, that his confession is

1 freely and voluntarily given, and I'm going to allow it  
2 admitted into evidence in this case.

3 MR. LEDDY: Your Honor, as far as the video itself,  
4 can we bring up the -- I'd move *in limine* that the  
5 substance of his statements, that the officer wants to  
6 testify to the substance of the statements from the stand,  
7 then that would be one thing.

8 As far as the admissibility of this particular video,  
9 it is filled with things that I think are not admissible,  
10 and I was just sort of discussing briefly with the  
11 solicitor about whether or not these things could be  
12 redacted. There's a lot of talk about a video being made  
13 and shown to these girls. That would be -- that's exactly  
14 the crime that Alvin Greene, the Senate candidate, was  
15 charged with. That would be obviously under, would come in  
16 only under a 404(b) exception under *Lyle*. It's not  
17 relevant to our case. It's on that video, a whole bunch of  
18 talk about it, and it's reprehensible. And so it can't  
19 help but prejudice my client. And since it's not relevant  
20 and highly prejudicial, under 404(b), even if it were  
21 admissible under 404(b), it wouldn't be admissible under  
22 403.

23 And statements taken from Michelle Scott that are  
24 alluded to aren't, aren't provided in discovery. I don't  
25 know whether she was actually ever interviewed or not.

1           There's a whole bunch of interpretation of my client's  
2 body language by the investigator, and the investigator  
3 might be able to do that, but I don't think it's a  
4 recognized area of science, and I don't think that he would  
5 qualify as an expert if it were. And so I don't think that  
6 any of that should be admissible where he's using my  
7 client's body, body language to interpret whether or not  
8 he's truthful in his statements.

9           It's also full of hearsay. There's hearsay about what  
10 Minor is meant to have said and what Michelle is meant to  
11 have said. That's not admissible in this video any more  
12 than it would be in the video that's discussed in *Jennings*.

13           There's all this speculation about all these other  
14 victims that the investigator is so sure is going to show  
15 up at his door the next day, and how he's been doing this  
16 for so long and knows that there's going to be all these  
17 other victims. And that's just going to put the jury in a  
18 position of feeling like they're not weighing the evidence  
19 as presented in this case but are they -- they're going to  
20 be put in a position where they can't help but feel that  
21 they have to individually and as a whole step in to protect  
22 society from Mr. Felder. And that's not the role of the  
23 jury, and it's not fair them to put all that on their  
24 shoulders and deal with all of This.

25           There's also the comment from the investigator saying

1 he has a rock-solid case, which is nothing but a comment on  
2 the veracity of the statements that have been given by  
3 these witnesses, these hearsay statements, and that's not  
4 admissible.

5 Then there's the statement to him saying don't -- this  
6 -- don't befriend me. I don't want you around my children.  
7 That's, you know, that's just a demonizing statement, and  
8 that's prejudicial to Mr. Felder, and that's not, it's not  
9 relevant because it doesn't go to make any of the issues  
10 before the court more or less likely to be true. It's  
11 highly prejudicial, and that shouldn't be allowed to be  
12 heard in court either.

13 So, the easiest way to avoid all that is to not show  
14 this videotape and to just have the investigator say I  
15 interrogated him, I questioned him, and he admitted to  
16 this, he denied to -- but he denied the other, and that  
17 will be that. Otherwise, I think that it's got to be  
18 carefully redacted, and then we're going to watch it and  
19 let me argue about it all over again as to what is on there  
20 now should not be on there.

21 THE COURT: Okay. All right, does the state want to  
22 respond to that?

23 MR. DURANT: Judge, I would just defer to your  
24 discretion as to how to move forward. Obviously, we would  
25 prefer to present the video. I think that the defendant's

1 demeanor -- and for the jury not to hear it out of the  
2 defendant's mouth when we had the capability for them to  
3 see that would be prejudicial from the -- to the state.

4 I think that the officer telling what the defendant  
5 said as opposed as to defendant -- or the jury seeing the  
6 defendant say it himself, the effect is not the same.

7 Do recognize that probably would present some issues  
8 as far as redaction is concerned, but defer to Your Honor's  
9 discretion.

10 THE COURT: Well, what about this video he keeps  
11 referring to?

12 MR. DURANT: Judge, it, that ---

13 THE COURT: Is there video out there?

14 MR. DURANT: We don't know, Judge. My argument, here,  
15 here's where that comes into play. The victim, part of her  
16 -- I guess furnishing the context for how the, these sexual  
17 advances began with the defendant, speaks about in her  
18 statement with the forensic interviewer the fact that the  
19 defendant showed her and her sister a video of him and  
20 another lady, another girl having sex at church.

21 Judge, I, I intend to solicit that testimony from the  
22 victim as well just to furnish a context for how these  
23 advances began and, and how the defendant began to solicit  
24 her for sex, and that's the video that is asked about time  
25 and time again on the, on the statement.

1 THE COURT: So, your understanding is the victims are  
2 going to testify that he showed them this video?

3 MR. DURANT: That's right, Judge. We don't have that  
4 video.

5 THE COURT: Okay.

6 MR. DURANT: I just understand that the victim's going  
7 to testify that she was shown a video by the defendant of  
8 him, while she was a minor, of him and another female  
9 having sex.

10 THE COURT: Okay.

11 MR. LEDDY: Your Honor, I would just -- I have no idea  
12 how that would possibly be admissible. With all due  
13 respect to Mr. Durant, I just don't see how it's relevant  
14 to our case. Motive is not an issue in this case. I mean,  
15 it's not, it's not an element of the offense. The elements  
16 are only her age, my client's age, and whether or not there  
17 was a sexual battery. Whether or not there was a sexual  
18 battery is neither more or less likely true if the  
19 videotape that nobody, nobody can show me exists was shown.  
20 Even if it does exist and was shown, it's not relevant to  
21 this case. It's not relevant to whether or not there was a  
22 sexual battery between -- on this victim by my client.

23 THE COURT: Well, how would ---

24 MR. LEDDY: All it is is propensity of.

25 THE COURT: --- it not be relevant if that is, if

1 that's the pretext that started this whole process?

2 MR. LEDDY: Well, it's not relevant how it all  
3 started. They went to the same church; that's how they  
4 know each other. All she's got to do is make an  
5 identification of my client. That should be easy enough.  
6 She says I know him from a church. I've known him, you  
7 know, forever, however long.

8 But that's propensity evidence that he is -- and, I  
9 mean, it goes to paint him as a sexual predator that has  
10 engaged in these affairs with young women and videotaped  
11 them and shown them. It's reprehensible, Judge. If it  
12 happened, it's horrible, and the jury has to -- is not  
13 allowed to hear character evidence about my client unless  
14 his character comes into issue by getting on the stand,  
15 which he has not done.

16 MR. DURANT: Judge, just so you -- the court's fully  
17 aware as kind of the context of this, the video is alleged  
18 to have been shown in December of '08. And first  
19 allegation of, the sexual allegation of the defendant was  
20 in July of '09 to just...

21 THE COURT: Well, that kind of ---

22 MR. DURANT: I just don't want ---

23 THE COURT: Time frame there causes you some problems.

24 MR. DURANT: --- to be having the argument later. So,  
25 I just wanted to make sure you...

1 MR. LEDDY: I agree with Your Honor that that would  
2 make it even more irrelevant.

3 THE COURT: Yeah. I -- then it doesn't seem, at least  
4 at this point, that the video testimony is going to be  
5 admissible because of the connection in time and the fact  
6 that he's disseminating sexual -- he wasn't charged with  
7 that. Now the question about how to deal with the video  
8 confession.

9 MR. DURANT: Judge, I, the reason why I got up several  
10 times during the video was to make a note at one point I  
11 thought that there was testimony regarding the video. And  
12 I believe that we can redact it, and it may be just as  
13 simple as stopping the video and then restarting it if Your  
14 Honor...

15 THE COURT: Well, is it a situation that you want the  
16 whole video played, redacted out, or just a portion? I  
17 mean, my recollection is that he confesses to having sex in  
18 the van early in the video, and he never confesses to  
19 having sex anywhere else. So, if you played that portion  
20 when he confesses to having sex in the van, then the, then  
21 the whole rest of the video basically is kind of the police  
22 arguing with him about the motel room and the issues about  
23 that, which I assume were your problems. But also he's  
24 adamant that it didn't happen but one time.

25 So, what about redacting the video? It would be easy

1 to redact, I think, and just play the first twenty or  
2 thirty minutes of it and not the last of it versus stopping  
3 it and starting it kind of reduction.

4 MR. LEDDY: Your Honor, the stopping and starting, the  
5 only thing I'm worried about is that if something gets  
6 accidentally played, and then we're giving curative  
7 instruction and all that nonsense, then we're going to be,  
8 you know, repeating ourselves.

9 THE COURT: Well, what, what if you just stopped it  
10 after he confesses to the van?

11 MR. DURANT: Judge, I'd also -- well, I believe  
12 acknowledging that the letter, he wrote the letter is  
13 also ---

14 THE COURT: Right. So, the fact that he wrote the  
15 letter and the fact it occurred in the van, could it not be  
16 cleaned up at that point and play those two?

17 MR. DURANT: Well, I'll acknowledge that would be the  
18 easiest way to do it. There are some statements later in  
19 the video going back to the letter that I would like.

20 THE COURT: Okay.

21 MR. DURANT: And, Judge, I'll stipulate to stopping  
22 the video after the acknowledgment of writing the letter.

23 THE COURT: So, he's basically got a two-count  
24 indictment, and he's admitting to one count and not the  
25 other?

1 MR. LEDDY: Correct, Your Honor.

2 THE COURT: Okay, and what's the state's position on  
3 that? I mean ---

4 MR. DURANT: As far as?

5 THE COURT: Has he admitted to the point that he wants  
6 to plead to one count and ---

7 MR. DURANT: Judge, it ---

8 THE COURT: --- go to trial on the other, or have the  
9 state dismiss the other one and plead to one?

10 MR. LEDDY: Your Honor, we had, had worked out the one  
11 from the hotel would be dismissed in exchange for a plea to  
12 the other one, but my client would like to go to trial,  
13 which is his right.

14 THE COURT: Okay.

15 MR. LEDDY: And so that's -- now I'll just try it.

16 And as far as how to redact it, I'll just -- I don't  
17 know how exactly how much -- what kind of software they  
18 have to do that. My experience with that has been mostly  
19 with a DUI prosecutor who does not like to go through that  
20 process.

21 THE COURT: Well.

22 MR. LEDDY: You know, so we'd work out stipulations,  
23 but I can't tell him how to try his case.

24 THE COURT: Oh, I understand, and I can let him try to  
25 redact it. And if it makes sense and if it works out,

1 fine. If he can't, it will be easy at least to play the  
2 first portion, which ---

3 MR. DURANT: Well, Judge, I, I would stipulate to  
4 stopping it after the letter. Of course, we would need to  
5 go back and watch it and make sure we're ---

6 THE COURT: Okay, and see ---

7 MR. DURANT: --- clear with it.

8 THE COURT: --- if it gets to -- once you get to the  
9 letter, maybe it doesn't have any, anything about the video  
10 prior to that or anything that's technically objectionable,  
11 and you can stop it there. All right, so I'll let y'all  
12 see if y'all can figure that out over lunch.

13 MR. LEDDY: Very good. Your Honor, I would inquire if  
14 your law clerk has gotten any word from DSS about their  
15 request of -- they have left me a message that was very  
16 garbled that they wanted to quash their subpoena for the  
17 records, and so I think that their ---

18 THE COURT: Well, they need to show up and do that.

19 MR. LEDDY: Yes, sir. That's what I was thinking,  
20 too.

21 (A PAUSE.)

22 THE COURT: Well, we need to try to get in touch with  
23 them or have them here at 2:00 or so and see what their --  
24 well, let me ask you this. From, from a time schedule, you  
25 need these records to cross-examine the victim? What do

1 you, what do you want from these records?

2 MR. LEDDY: I don't know if I will or not. I'll have  
3 to look through them. I believe the procedure is for you  
4 to see just if they're relevant. If they're irrelevant,  
5 I'm not entitled to them, don't need to see them. And if  
6 they are relevant to an issue, including her character or  
7 truthfulness or bias, then ---

8 THE COURT: Okay.

9 MR. LEDDY: --- I would need them to effectively  
10 cross-examine her.

11 THE COURT: Okay. She going to be the first witness?

12 MR. DURANT: Judge, the intent was to call her mother  
13 first.

14 THE COURT: I mean, I'm not ---

15 MR. DURANT: I'm not sure we wouldn't have the same  
16 problem with the mom.

17 THE COURT: You can call them in any order you want  
18 to. I'm just trying to figure out how much time I got to  
19 review these records. I'm not trying -- you know, you ---

20 MR. DURANT: Right.

21 THE COURT: I don't want to affect the way you want to  
22 call your case. You call it in the way you think is the  
23 most ---

24 MR. DURANT: And I'm planning on calling her mom  
25 first, but I wouldn't be surprised if the defendant had --

1 or the defense had the same issue there and wanting you to  
2 review them beforehand.

3 MR. LEDDY: If the state's okay with allowing me to,  
4 you know, recross after we get them if we get them later,  
5 then I'm fine with that.

6 THE COURT: Well, I'll try to, I'm going to try to get  
7 them now. So, see if you can get them over here by 2:00  
8 and at least have them here by 2:00.

9 MR. LEDDY: All right.

10 THE COURT: Or somebody show up at 2:00 and explain to  
11 me why. Just don't not show up. I'll send a deputy down  
12 there to get them, okay? Then y'all do what you can on the  
13 redaction end of it. We'll be back at 2 and see where we  
14 stand.

15 MR. DURANT: Yes, sir, Judge.

16 MR. LEDDY: Thank you, Your Honor.

17 THE COURT: Okay, we'll be in recess until 2:00 now.

18 (DVD OF INTERVIEW AND CONFESSION MARKED AS STATE'S  
19 EXHIBIT NUMBER 1 FOR IDENTIFICATION.)

20 (OFF THE RECORD.)

21 (HANDWRITTEN NOTE MARKED AS STATE'S EXHIBIT NUMBER 2  
22 FOR IDENTIFICATION.)

23 THE COURT: State ready to proceed?

24 MR. DURANT: Yes, sir.

25 THE COURT: Have we got the jury here?

1 BAILIFF: Yes, sir.

2 THE COURT: Defense ready?

3 MR. LEDDY: Yes, Your Honor.

4 THE COURT: I propose to bring the jury in, have Ms.  
5 Marilyn swear them, and then we'll get started with it.  
6 I'll make a few brief remarks, and we'll get started.

7 MR. LEDDY: Very good, Your Honor.

8 THE COURT: Okay.

9 (THE JURY ENTERS AT 2:42 P.M.)

10 CLERK OF COURT: If you will remain standing.

11 (WHEREUPON, THE JURY IS SWORN.)

12 THE COURT: Ladies and gentlemen, we are about to  
13 begin the trial of this case. It's *State vs. Henry Lee*  
14 *Felder*, and I'm going to make some brief remarks, just kind  
15 of give you an idea of how this trial is going to go and  
16 what your responsibilities will be.

17 Mr. Felder's been charged with the crime of criminal  
18 sexual conduct with a minor in the second degree, and I  
19 will explain to you elements of those charges later. But  
20 the indictment that brings us to court is not evidence in  
21 this case. He has entered a plea of not guilty of this  
22 indictment and, therefore, it places the burden upon the  
23 State of South Carolina to prove each and every element of  
24 this indictment beyond a reasonable doubt.

25 Your job is to listen to the evidence in this case and

1 determine the true facts. My job is to rule upon the  
2 admissibility of that evidence, what, under our rules what  
3 evidence you can and cannot hear, as well as to charge you  
4 on the law in this case. I'm not allowed to have an  
5 opinion about the facts in this case. That is solely up to  
6 you. So, it's your job to determine what the true facts  
7 are. My job is to instruct you on the law, and you are to  
8 take that law and apply it to the facts you determine to be  
9 true, and reach a verdict that speaks the truth. That's  
10 what you are here to do.

11 Now, you are to make this determination based on the  
12 evidence in this case, and the evidence is going to come to  
13 you in basically three forms. First of all, through sworn  
14 testimony from this witness stand. Witnesses will come up  
15 here under oath and testify to you. The other ways you may  
16 receive evidence is through exhibits that have been  
17 introduced by either party in this case. And if under our  
18 rules those exhibits follow the criteria, I will admit them  
19 in, and you can look at them, and they will be evidence in  
20 this case. And the third way is any stipulations made by  
21 the attorneys. So, you are to decide this case based on  
22 the evidence.

23 I need you to keep an open mind throughout this trial.  
24 Pay close attention to the evidence in this case. When you  
25 reach a verdict, it will be a correct verdict.

1           Now, the lawyers are going to make opening statements  
2 to you in a few minutes. The opening statements of the  
3 attorneys is not evidence in this case. It is simply their  
4 road map, so to speak, as to where they think the evidence  
5 is going to take you in this case, and what they think this  
6 case is about. Even the questions the attorneys ask are  
7 not evidence.

8           At the end of the case, the attorneys are going to  
9 get up and make a closing argument to you, and they're  
10 going to argue to you as to what they think the evidence  
11 shows in this case. Then I will charge you on the law,  
12 and you will go back in your jury room and reach a verdict  
13 on this case.

14           Now, I need -- I'm going to try to take a break every  
15 hour, hour and a hour, but if you need one sooner than  
16 that, please raise your hand because I need you to pay  
17 close attention. And if some reason you're uncomfortable,  
18 you're not going to be able to pay attention. So, if  
19 you're uncomfortable and you need a break, just get my  
20 attention. We'll stop, take that break, and come back and  
21 continue with the evidence in this case.

22           Now, at certain times during the trial, the lawyers  
23 may make objections, and I may have to send you to the jury  
24 room to rule on that objection because I may have to deal  
25 with certain factual issues to make that determination.

1 So, I've got to do it outside your presence, so I'll send  
2 you to the jury room. And when we take a break, I may send  
3 you to the jury room, and I will tell you you can't discuss  
4 this case. You can't talk about this case when you go to  
5 the jury room.

6 And you may say, well, why can't we talk about at  
7 least what we've heard so far? Why can't we talk about the  
8 testimony of this witness or that witness? And the reason  
9 you can't is if you start talking about it early in the  
10 case, at the end of the case, you're going to want to  
11 defend that opinion you had earlier on to your fellow  
12 jurors. If you heard from one witness and you go back  
13 there and say, well, I think this case is about so and so  
14 and so and so. And at the end of the case, you're going to  
15 want to defend that theory you had at the very beginning,  
16 and that wouldn't be proper.

17 I don't want you to start forming opinions about this  
18 case until you've heard all the case, you've heard all the  
19 evidence that's going to be introduced, as well as the law  
20 that I charge you. And then and only then will it be  
21 proper for you to discuss the case. And that way you will  
22 have fulfilled your oath. It's very important that you get  
23 this right for both sides, and so that's why we have these  
24 rules, and it works.

25 Now, we're not going to finish this case today. So,

1 you're going to get to go home tonight, and when you get  
2 home, your family's going to want to know what you've been  
3 doing all day. But you can't tell them yet because if you  
4 do, they're going to have an opinion as to what they think  
5 you ought to do. You need to wait until the end of the  
6 case. When this case is over with, you can go tell your  
7 families anything you want to about this case.

8 As well as you can't go home and do any independent  
9 research about any of the issues that may come up in this  
10 case. You can't go home and get on the computer, or Google  
11 anybody, or try to do any independent research because  
12 you've got to decide this case based on the evidence that  
13 happened in this courtroom and not something you do on your  
14 own. So, that's why it's important, and that's why I tell  
15 you decide this case based on the evidence in this  
16 courtroom and nothing else.

17 Now, as I told you, at the end of the case I'm going  
18 to charge you on the law. I'm going to explain the  
19 elements of the crimes which Mr. Felder has been indicted  
20 for.

21 As I've told you earlier, it's the burden upon the  
22 State of South Carolina to prove these elements beyond a  
23 reasonable doubt. He's entered a plea of not guilty, and  
24 so that plea will continue with him throughout this trial  
25 until the state has presented evidence that satisfies you

1 of that guilt beyond a reasonable doubt. So, you are to  
2 give him the benefit of that doubt, and I will explain to  
3 you in the charge what reasonable doubt is and what  
4 standards you are to use in deciding this case as far as  
5 that's concerned.

6 And if you'll pay close attention, the attorneys are  
7 going to make an opening statement to you. The state goes  
8 first because they got the burden of proof, then the  
9 defendant. The defendant doesn't have to make an opening  
10 statement; he doesn't have to prove anything. Under our  
11 system of justice, the state has the burden of proof. But  
12 most times, the defense attorney does make an opening  
13 statement to you, but he doesn't have to. So, if you'll  
14 pay close attention, we'll get started, and then we'll  
15 start with the evidence. Thank you.

16 Mr. Solicitor.

17 MR. DURANT: Thank you, Your Honor. May it please the  
18 court? Mr. Leddy.

19 Ladies and gentlemen of the jury, this case is about a  
20 grown man that took advantage of a fifteen year-old girl.  
21 Seated right there is Henry Felder, a deacon and a musician  
22 in his church, a man that the victim in this case, Minor  
23 Minor a fifteen year-old girl at the time, had come to  
24 trust. A man that took advantage of that trust, took  
25 advantage of her youth, took advantage of her shy, timid

1 personality, and with his forty-five year-old man's body  
2 sexually assault her.

3 My name is Chris DuRant. I'm an assistant solicitor  
4 here in Manning. I was originally at the solicitor's  
5 office in Laurens County and Newberry County, but I'm from  
6 Gable here in Clarendon County. And when Amy Land left, it  
7 opened up a position, and I jumped at the chance to come  
8 home. My job as an assistant solicitor is to represent the  
9 interests of the state. That's to represent your  
10 interests. And my burden in doing so is to prove the  
11 elements of whatever crimes are charged beyond a reasonable  
12 doubt.

13 Well, what is a reasonable doubt? You'll probably  
14 hear a lot about that in this trial.

15 First of all, let me say that if any point, I say  
16 anything that contradicts what Judge Cothran tells you the  
17 law is, by all means disregard what I say and apply the law  
18 as Judge Cothran gives it to you. He is the finder of the  
19 law, so apply it as he, as he tells it to you.

20 But what is a reasonable doubt? Well, you'll hear at  
21 the end of the trial, the judge will tell you that proof  
22 beyond a reasonable doubt is such proof that will leave you  
23 firmly convinced of the defendant's guilt.

24 And the crime that Henry Felder is charged with today  
25 is criminal sexual conduct with a minor in the second

1 degree. Folks, what that means is he's charged with  
2 committing a sexual battery upon a girl between the ages of  
3 fourteen and sixteen, and that he was in a position of  
4 authority or older than the victim.

5 These are the simple facts of the case. On two  
6 occasions -- one back in July of 2009 and one on August of  
7 2009 -- Henry Felder had sex, a forty-five year-old man,  
8 Henry Felder, had sex with fifteen year-old Minor  
9 twice.

10 First time was at a hotel here in Clarendon County.  
11 He picked her up under the guise that there was going to be  
12 somebody else, another friend at the hotel. They went  
13 there. That friend never showed up. He started asking her  
14 some sexual questions, and then he had sex with her.

15 After that, he continued to contact her, continued to  
16 send her letters asking to have sex again and again.  
17 Finally, Mr. Felder asked her to help him out with a  
18 revival. They were both in a band at church; they were  
19 both musicians playing at their church. They went to go  
20 play at a revival at another church, play music there.

21 First two nights of the revival were fine. Mr. Felder  
22 picked up, picked up Minor the victim in this  
23 case, but he had his daughter there with him. So, the  
24 three of them went to the revival.

25 On the third night, I submit to you you'll hear Henry

1 Felder showed up alone, showed up alone in his van. Miss  
2 Minor jumped in the back seat like she had the  
3 prior, prior two nights. He took her down a dirt road,  
4 sexually assaulted her again. Had sex with her in the back  
5 of his van.

6 Finally, the victim's mom in this case found one of  
7 those letters I told you about that he had been sending  
8 her. She brought this case to the attention of law  
9 enforcement, to the attention of the solicitor's office,  
10 and now we're bringing it to your attention.

11 At the end of the case, ladies and gentlemen, we're  
12 going to ask you for one thing, and that's justice. Make  
13 no mistake about it: justice is your goal. Do not fall  
14 short. Thank you.

15 THE COURT: Mr. Leddy.

16 MR. LEDDY: Thank you, Your Honor.

17 Ladies and gentlemen of the jury, I'm Micah Leddy and  
18 I am an attorney, and that is my client, Henry Felder, and  
19 you're going to see people point at him. That right now is  
20 an innocent man. He sits before you an innocent man. And  
21 unless and until the state carries their burden of proof,  
22 put before you competent evidence that convinces you beyond  
23 a reasonable doubt to the contrary, he has to leave that  
24 way.

25 And that's what I'm going to come back and ask you to

1 do because your job is to sit in judgment of the facts. To  
2 weigh the case that will be presented to you by Mr. DuRant.  
3 The system's job is to dispense justice, but your job is to  
4 weigh the facts and to weigh the case that's brought to you  
5 by the solicitor.

6 And one thing you might be apprehensive about when you  
7 heard that this was a CSC, a rape case involving a minor,  
8 is having to sit through a bunch of testimony and to look  
9 at pictures, and hear medical reports that are things that  
10 you don't want to see, and things that you don't want to  
11 hear about. And you may be very pleased to find out that  
12 you will not hear a single piece of physical evidence or  
13 have to look at any physical photographs because there  
14 isn't any.

15 This case is, what you're going to hear is allegations  
16 that are, statements that are made by a fifteen year-old  
17 girl. And then you're going to hear that my client, there  
18 are two alleged incidents to have occurred, and you're  
19 going to hear that he confesses to one and that he  
20 vehemently denies the second one. And your job is going to  
21 be to listen to all the testimony and decide if he's  
22 innocent of one, both, or one or neither. But you're going  
23 to have to weigh all the evidence in each one of those  
24 charges, and that's your duty, and that's what I'm asking  
25 you to do.

1           Prejudice is something that you have to get past as a  
2 human being. It's in all of us, and it clouds our ability  
3 to objectively weigh things and to actually say has this  
4 been proven or not. An example of that is in my  
5 neighborhood, we have a real problem with people breaking  
6 into our homes right now, and my wife works out of the  
7 house. And so when I was told over our homeowners list  
8 server the other day that somebody had been arrested, I was  
9 very, very pleased to hear that. And it has nothing to do  
10 with whether or not the guy is innocent or guilty. I don't  
11 know anything about him or the evidence that's actually  
12 against him. All I know is that my gut reaction is thank  
13 goodness they caught somebody. Maybe I won't have to worry  
14 about my lawn mower wandering off this week.

15           And that is right there, that is an example of  
16 prejudice, and that's what you have to overcome because in  
17 this case, as soon as you hear rape of a child, that turns  
18 on that switch in anybody's mind. It's inevitable and  
19 unfortunate, but it has to be addressed in your own mind  
20 when you go to weigh this evidence, when you go to weigh  
21 this testimony.

22           It's something that you are going to have to take into  
23 consideration because the flip side of the coin of being  
24 accused of something as horrible as abusing your position  
25 of trust is to be falsely accused of it. And to be falsely

1 accused of something, the worse it is, the worse it is to  
2 be falsely accused of it. And that's just the way that it  
3 is, and that makes it ever so important that a jury sit and  
4 objectively applies the law to the facts that are presented  
5 to them.

6 So, that's all I ask that you do in this case, and  
7 it's going to be very brief, I think. You may be  
8 accustomed to hearing about trials on television that have  
9 gone on for weeks and weeks and weeks. That's not going to  
10 be the case; it's going to be brief. There's not going to  
11 be that many witnesses. One reason for that is there's not  
12 that much evidence for you to hear.

13 But, nevertheless, that does not reduce the importance  
14 of it. It makes it no less important that it won't take  
15 very long for you to hear all the evidence in this case.  
16 It makes it even more important that you pay attention  
17 every moment because there won't be that many to make up  
18 for. But this case is very important to the state, but  
19 it's also important to my client and to our system in  
20 general. Thank you.

21 THE COURT: Solicitor.

22 MR. DURANT: State calls Sabrina Johnson.

23 THE COURT: Okay. If you'd come around here, please,  
24 ma'am, and place your left hand on the Bible.

25 SABRINA JOHNSON, BEING DULY SWORN,

S. JOHNSON - DIRECT EXAMINATION BY MR. DURANT

67

1 TESTIFIES AS FOLLOWS:

2 DIRECT EXAMINATION BY MR. DURANT:

3 Q. Ms. Johnson, where do you live?

4 A. Davis Station.

5 Q. Okay. Which road?

6 A. We stay between two highways. One goes towards Davis  
7 Cross Road, and one can take you to Summerton, but I think  
8 one is Highway 25 and the other one is Secondary 120.

9 Q. Do you work?

10 A. Yes.

11 Q. Where do you work?

12 A. South Carolina Department of Transportation.

13 Q. Here in Manning?

14 A. Yes.

15 Q. Are you married?

16 A. Yes.

17 Q. Who is your husband?

18 A. Robert Johnson.

19 Q. Do you have children?

20 A. Two.

21 Q. Both of them with Mr. Johnson?

22 A. Yes.

23 Q. What are their names?

24 A. Minor #3 Venice Johnson and Minor Maria Johnson.

25 Q. What are their birth dates?

1 A. Minor #3 birthday is February the 20th, '91, and  
2 Minor birthday is December 6, '93.

3 Q. Do you and your husband live together?

4 A. Not right now.

5 Q. Where does he live?

6 A. Does the street from me basically.

7 Q. Okay. How far away?

8 A. It ain't even a mile. It's not even a mile.

9 Q. Ms. Johnson, do you know why we're here?

10 A. Yes.

11 Q. Can you tell me, tell me what you know about why we're  
12 here?

13 A. That someone myself and my family truly trusted, and  
14 we got really close with the family, and he betrayed my  
15 trust and did something to my child that I didn't  
16 appreciate.

17 Q. How did you first come to find out about it?

18 A. Well, one Sunday morning, me and my husband was just  
19 going through my daughter's room. You know how you check  
20 behind your kids, and then we found a letter and we read  
21 it.

22 Q. You said found a letter. Can you tell me a little  
23 more about that?

24 A. It's in this letter, someone promising her money to  
25 get her cell phone and a SIMs card and ---

S. JOHNSON - DIRECT EXAMINATION BY MR. DURANT

69

1 MR. LEDDY: Your Honor, objection. It's hearsay.

2 THE COURT: You object to what?

3 MR. LEDDY: Hearsay.

4 THE COURT: Okay. I sustain that objection.

5 BY MR. DURANT:

6 Q. Where did you find this letter?

7 A. Under the covers of the bed.

8 Q. I'm going to show you what's been marked as State's  
9 Exhibit 2 and ask you if you recognize it.

10 A. This is a letter we found.

11 Q. Okay. After you found the letter, what did you do?

12 A. I went, and Minor was in the living room, and I went  
13 and I sat down, and I talked to her. I said Minor I said  
14 have you had sex with anybody, you know, because of what  
15 this letter saying. So, she's, like, no, Momma, you know,  
16 but I say you sure you never have ---

17 MR. LEDDY: Objection. Hearsay.

18 MR. DURANT: Judge, I believe now she's testifying as  
19 to what she asked her daughter.

20 THE COURT: She can testify as to what she asked her  
21 daughter. I don't -- I think ---

22 MR. DURANT: And ---

23 THE COURT: --- the question is in response.

24 BY MR. DURANT:

25 Q. Don't tell us what the letter said, but in response to

1 the letter, what did you, what did you do?

2 A. Well, like I said, I, I talked to her for about ten  
3 minutes because, you know, when I, when I was asking her  
4 about sex and whatever, and I -- you know, because I knew  
5 what I saw in this letter. So, I kept pressing. I say you  
6 sure, blah, blah, blah, and she was, like, no ---

7 MR. LEDDY: Your Honor, objection. Hearsay.

8 THE COURT: You can't say what she said back to you,  
9 okay?

10 WITNESS: Okay.

11 THE COURT: You can only say what you said and you  
12 did, okay?

13 BY MR. DURANT:

14 Q. Okay.

15 A. Okay. So, I kept probing anyhow, okay? I kept ---

16 Q. You confronted Minor about the letter?

17 A. Not at that time -- yeah, yeah, I confronted her about  
18 the letter, yeah.

19 Q. In fact, is the condition that the letter is in now,  
20 is that the condition that it was found by you?

21 A. No. It was torn in half, and I took some tape and  
22 taped it back together so I could -- yeah.

23 Q. After you -- after speaking with Minor about the  
24 letter, did you gain an understanding about who it might be  
25 from?

S. JOHNSON - DIRECT EXAMINATION BY MR. DURANT

71

1 A. Yes.

2 Q. Who did you understand the letter to be from?

3 A. She said Tubby.

4 Q. Who's Tubby?

5 MR. LEDDY: Your Honor, objection. It calls for  
6 hearsay and is hearsay.

7 THE COURT: Okay. I'll sustain the objection. You  
8 can't say what she said, okay?

9 BY MR. DURANT:

10 A. Okay. Well, Tubby.

11 Q. Okay.

12 MR. LEDDY: Your Honor, I object to that. That calls  
13 for speculation.

14 THE COURT: Okay.

15 Q. After ---

16 THE COURT: I sustain that objection as well.

17 BY MR. DURANT:

18 Q. Ms. Johnson, after this conversation with Minor what  
19 did you do next?

20 A. I kind of paced around the house because it kind of  
21 messed my mind up, you know? I'm, like, I know better. I  
22 know good and well better, you know. And so then I took  
23 Minor and I got in my car, and my husband worked right  
24 down the street, so I went to get my husband. And he was  
25 already gone on a truck route, so he wasn't there.

1           Then I went back to the church, and I called on the  
2 telephone because I wasn't dressed for church that morning.  
3 I called on the telephone. I say can someone tell Deacon  
4 Felder I need to see him at the back door? And when he  
5 came out, he came out the door, and I looked at him. I  
6 said you need to get in your car, and you need to follow me  
7 down this road. But -- so, he did that, and we went down  
8 the road.

9 Q. Was anybody else with you?

10 A. Minor was in the back seat of the car.

11 Q. Was anybody with Mr. Felder?

12 A. No.

13 Q. Tell me to what -- did he follow you down the road?

14 A. Yes.

15 Q. And what happened then?

16 A. I think I had something in my hand. I had a tire iron  
17 in my hand. And he said -- you know, when I said you had  
18 sex with my daughter, and he said oh my god. You know, he  
19 just stopped and paced.

20 MR. LEDDY: Objection. Hearsay, Your Honor.

21 MR. DURANT: Judge, I ---

22 THE COURT: Overruled.

23 MR. DURANT: That's not hearsay. It's a statement  
24 against interest.

25 THE COURT: Overruled.

S. JOHNSON - DIRECT EXAMINATION BY MR. DURANT

73

1 BY MR. DURANT:

2 Q. How did, how did he respond when you said it?

3 A. Oh my god, you know, and he paced around the road, and  
4 then I kind of raised the little tire iron that I had in my  
5 hand, and he said go ahead, Brina. He said go ahead  
6 because -- and I said -- you know, but I didn't do it. And  
7 then at a certain point, we kept talking. And then he said  
8 go I'm'll go out there in the highway and let one of these  
9 cars hit me and kill me.

10 And I said no, you're not going to do that, I said,  
11 because I'll flag traffic. I said I flag traffic at work,  
12 so you're not going to do that. And I said you're going to  
13 get back in your car, and you're going to go to the church  
14 and get your stuff, and me and you going to the sheriff's  
15 department, and you're going to turn yourself in.

16 Q. Is that how the meeting ended?

17 A. No. While I was sitting outside in my car waiting,  
18 which took a little bit, and by that time he must have went  
19 in and talked to the pastor, and the pastor came outside  
20 with him. So, me and him and the pastor ended up behind  
21 the church.

22 So, we went to babbling. You know, babbling, talking.  
23 And I finally said, I said Rev, this fool had sex with my  
24 child, and somebody was hunting in the neighborhood because  
25 a shotgun went off, boom. And my pastor made a statement,

1 say if that happened, he said, you're going to hear plenty  
2 of this, you know. But the conversation went on till I  
3 guess the church really got to missing the pastor, and  
4 people start peeping out the window. So, we broke the  
5 meeting up.

6 Q. Okay. After that meeting, did you, did you contact  
7 law enforcement or the sheriff's office and, and inform  
8 them of the allegation?

9 A. Not right them. Me and him and the pastor had agreed  
10 to meet again. And when, when I confronted him in front of  
11 the pastor, he told Rev he didn't mean to do it, and he's  
12 sorry, and he would never do it again, blah, you know, all  
13 this stuff.

14 And then I can't quite remember. I don't think it was  
15 the same day. I want to say maybe it might have been that  
16 Monday me and him and Rev agreed to meet again. And by  
17 this time, my mind start getting confused, and I told --  
18 you know, me and him and the pastor are talking. He said  
19 I'm so sorry and this, this, that, and the other.

20 And at this point, I done made an agreement with the  
21 pastor. I said, well, you, I said you trained or you  
22 licensed, whatever, to counsel. I say, well, we'll let you  
23 counsel him. We'll let you counsel him from now on, blah,  
24 blah, blah. And basically at that time, I think we were  
25 planning on covering this thing up.

S. JOHNSON - DIRECT EXAMINATION BY MR. DURANT

75

1           And so the week went on, and I think that Thursday  
2 night, you know, it really got on me, and I really couldn't  
3 sleep because it was worrying my mind, what I had done done  
4 and bringing you -- covering this thing up, blah, blah,  
5 blah, you know. And I called the pastor back that Friday  
6 morning. I said Rev, I know what we told that boy, I say,  
7 but I got to turn this thing in. So, we set up a meeting,  
8 and him and Rev and me, we met at Taw Caw Park and we  
9 talked.

10       Q.    And Henry Felder, you, and your pastor met at Taw Caw  
11 Park after that. What happened then?

12       A.    We sat down and we talked. And I told him, I said I  
13 know what we told you. I said but my obligation is to my  
14 child, and I cannot cover this thing up and not -- my, my  
15 obligation is my child. I got to turn this in.

16       Q.    Did you then go to the sheriff's office?

17       A.    He was supposed to and by this time, because I still  
18 hadn't told my ---

19       Q.    Did you go to the sheriff's office?

20       A.    Not right away, no.

21       Q.    Okay. When did you go to the sheriff's office?

22       A.    I went back home, and my pastor went with me because I  
23 hadn't told my husband nothing yet.

24       Q.    Okay.

25       A.    And he said, well, Brina, he's going to be an upset

1 man. He said I'm going to be there with you. So, I called  
2 my husband and we told my husband. Then shortly after  
3 that, me and the pastor went on to the sheriff's  
4 department, but when we got there, he still was not there,  
5 and he still hadn't been there.

6 Q. Did you give the sheriff's office a copy of the  
7 letter?

8 A. Yes.

9 Q. That I showed you a minute ago?

10 A. Yes.

11 Q. After meeting with the sheriff's office, did you and  
12 Minor ever go to meet with anybody else?

13 A. No. You mean officials?

14 Q. Well, anybody. Did you and Minor go talk with anybody  
15 else about what, what ---

16 A. Well, we end up talking to one of his daughters.

17 Q. Okay.

18 A. The week -- go ahead.

19 Q. Did the people at the sheriff's office send you to  
20 talk to anybody about the case?

21 A. No.

22 Q. Did Minor ever go to be interviewed by anybody about  
23 the case?

24 A. Yes, she -- oh, oh the Care House, I'm sorry. We  
25 went to the Care House. Ms. Rainey took me and my daughter

S. JOHNSON - DIRECT EXAMINATION BY MR. DURANT

77

1 to the Care House in Florence at some point, yeah. I'm  
2 sorry.

3 Q. Since then, has Minor been meeting with anybody else  
4 about it?

5 A. No. Uh-uh. Oh, her counselor.

6 Q. Okay. She has gone ---

7 A. She has a counselor, and we go see her every other  
8 week.

9 Q. And where is she?

10 A. Florence.

11 Q. If you would, could you describe to the court your  
12 daughter's demeanor before these allegations?

13 A. She's, she was a very shy person. You talk to her,  
14 head's down. A loner. Kind of always stay off on a corner  
15 somewhere to herself.

16 Q. Have you noticed any change in her demeanor or her  
17 mood since then?

18 A. Well, she's a little more outgoing than she was,  
19 and she's, she's more outgoing than she was back then,  
20 yeah.

21 Q. And is that since, since this all came to light, or  
22 since being with a counselor?

23 A. Well, after she started meeting with the counselor,  
24 she start talking a little more and -- yeah.

25 Q. Ms. Johnson, do you -- have you noticed an effect on

1 your daughter since this all...

2 A. She don't like to -- she has a bed, but she don't  
3 sleep in her bed. She sleeps in the living room on the  
4 sofa or a chair. She won't sleep with the lights out. And  
5 then she wears two pair of pants now. She always put on  
6 two pair of pants.

7 MR. DURANT: I don't have any further questions at  
8 this time.

9 CROSS-EXAMINATION BY MR. LEDDY:

10 Q. Ms. Johnson, you said that -- can you tell the court  
11 approximately what day it was that you had this  
12 confrontation with Mr. Felder?

13 A. I'm almost sure it was the first Sunday in September  
14 '09.

15 Q. First Sunday in September. All right, and so it was  
16 several days later that you contacted the police?

17 A. Yeah, uh-huh.

18 Q. Okay, and it was several days later that you contacted  
19 your husband?

20 A. Yeah.

21 Q. During your separation with your husband, have you  
22 ever know Mr. Felder romantically?

23 A. No.

24 MR. LEDDY: I don't have anything further, Your Honor.

25 THE COURT: Anything from the state?

Mi , - DIRECT EXAMINATION BY MR. DURANT

79

1 MR. DURANT: No further questions.

2 THE COURT: You can step down; watch your step.

3 (THE WITNESS EXITS THE STAND.)

4 MR. DURANT: State calls Minor

5 THE COURT: Okay.

6 Minor BEING DULY

7 SWORN, TESTIFIES AS FOLLOWS:

8 DIRECT EXAMINATION BY MR. DURANT:

9 Q. Hey, Minor Could you just state your name for the  
10 record?

11 A. Minor

12 Q. How old are you?

13 A. Seventeen.

14 Q. When's your birthday?

15 A. December 6, '93.

16 Q. '93?

17 A. Yes, sir.

18 Q. What grade are you in now?

19 A. I'm a senior now in high school.

20 Q. Where do you go to school?

21 A. Manning High.

22 Q. Do you do any activities in school?

23 A. I play softball, ROTC, FBLA. I used to do band, but I  
24 don't do that anymore.

25 Q. How long have you been doing those?

1 A. I've been playing softball since seventh grade, band  
2 since ninth grade, ROTC since last year, and FBLA since  
3 ninth grade.

4 Q. Where do you live, Minor

5 A. I live in Davis Station, South Carolina.

6 Q. Who lives there with you?

7 A. My mother, and my sister used to live there.

8 Q. Was that your mother that just testified?

9 A. Yes, sir.

10 Q. Do you have any other brothers and sisters besides the  
11 sister you just mentioned?

12 A. A half sister.

13 Q. And what are your sisters' names?

14 A. Minor #2 [phonetic] Johnson and Minor #3

15 Q. How old are they?

16 A. She is twenty, and Shemaria is four.

17 Q. Where does your father live?

18 A. He lives down the street.

19 Q. How long has your father lived apart from you?

20 A. For a few years now.

21 Q. Do you know why we're here today, Minor

22 A. Yes.

23 Q. Can you tell me why?

24 A. Because I -- I'm here because he is accused of raping  
25 me.

Mi . . . - DIRECT EXAMINATION BY MR. DURANT

81

1 Q. When you say he, who are you talking about?

2 A. Henry Felder.

3 Q. Could you point Mr. Felder out in the courtroom?

4 How do you know -- when you say he is accused of  
5 raping you, who is accusing him?

6 A. I am.

7 Q. How do you know Mr. Felder?

8 A. We've always gone to the same church since I've been  
9 born, and he taught me how to play the bass guitar.

10 Q. How long did you say you've been going to the same  
11 church?

12 A. Since I've been born.

13 Q. And you played the bass guitar. Is that in a church  
14 band or just casually?

15 A. In church.

16 Q. Okay. Is he a member of that band as well?

17 A. Yes, sir.

18 Q. How long have you been a member of the band?

19 A. About -- a few years with -- four, I believe. About  
20 three or four.

21 Q. Can tell us, what's your relationship like with Mr.  
22 Felder? How has that been?

23 A. It was pretty good. He was, like, a really good  
24 mentor. Like, I kind of saw him as a father figure really,  
25 but then that changed.

1 Q. Can you tell me when that changed?

2 A. Summer of 2009.

3 Q. Tell us what happened.

4 A. Well, it was one day during the summer. My mother had  
5 to work, and Minor #3 lived in Columbia then, so I was home  
6 alone. And I was sleep, and I woke up to him knocking on  
7 the door, and he asked me to come with him to -- to go with  
8 him to a hotel so he could try to break things off with  
9 someone else he was seeing at the time.

10 And so I believed him because I had a lot of trust  
11 with him, and so I went with him. He asked me if I had  
12 anything -- if I ate anything that day. I said no. So,  
13 while -- he gave me some money to go in the convenience  
14 store to get something to eat, and he went into the hotel  
15 to pay for it.

16 Q. Okay. Can you tell us when that was?

17 A. I know it was a week before band camp started.

18 Q. What month was it?

19 A. July.

20 Q. Do you remember the date?

21 A. I think it was the 13th.

22 Q. Can you tell me, you said he came to your house and  
23 woke you up. What time of day was it?

24 A. I'd say it was about, maybe between 9 and 11 because I  
25 don't get up that early.

Mi . - DIRECT EXAMINATION BY MR. DURANT

83

1 Q. Was anybody else at home?

2 A. No.

3 Q. Was anybody else with Mr. Felder?

4 A. No.

5 Q. And he asked you to come with him to a hotel? Is  
6 that...

7 A. Yes, sir.

8 Q. Did he tell you anybody else was going to be there?

9 A. He said that Michelle was going to be there because he  
10 was going to try to break things off with her, but no one  
11 else.

12 Q. Did you tell your mom or anybody else where you were  
13 going?

14 A. No, because we didn't, we don't have a house phone,  
15 and my cell phone was off at the time.

16 Q. Did it strike you as strange, or was it normal for him  
17 to ask you to come ride to a hotel with him?

18 A. It wasn't normal, but I kind of trusted him in a way  
19 that I didn't think that would have happened.

20 Q. Okay, and you did go to the hotel?

21 A. Yes, sir.

22 Q. Can you tell me where that hotel is?

23 A. It's in Ram Bay, and it's by a convenience store and  
24 across the street from Georgio's.

25 Q. What -- do you remember, remember the name of it?

Mi

- DIRECT EXAMINATION BY MR. DURANT

84

1 A. At the time the name was Econo, Econolodge.

2 Q. After you got something to eat from the store, while  
3 you were getting something to eat from the store, what was  
4 Mr. Felder doing?

5 A. He was at the hotel paying the bill, I guess.

6 Q. Did he go to the room first?

7 A. Yes.

8 Q. What floor was the room on?

9 A. It was on the ground floor.

10 Q. Are there two floors in the hotel, or how many?

11 A. Two.

12 Q. Where was Mr. Felder when you went to the room?

13 A. He was standing beside the door on a chair. He was  
14 doing something above the door. I don't know what, but he  
15 was doing something about the door.

16 Q. Inside or outside?

17 A. Inside.

18 Q. When you walk -- can you describe for me, if you  
19 remember, what -- the appearance of the hotel room when you  
20 walked in? I mean, was there one bed or two beds or?

21 A. When you walk in, there's a dresser and a TV on the  
22 left-hand side, and there's a bed, and closer to the window  
23 is a lamp and a chair, and then further back is a bathroom.

24 Q. Okay. When you walked in the hotel, what did you do?

25 A. I sat ---

Mi - DIRECT EXAMINATION BY MR. DURANT

85

1 Q. Into the room, I mean.

2 A. I sat in the chair by the window.

3 Q. And Mr. Felder was standing up?

4 A. Uh-huh.

5 Q. After you sat down in the chair, tell me what  
6 happened.

7 A. Well, he sat on the edge of the bed, and he called  
8 Michelle again, and she said he -- she couldn't get away at  
9 that time. And she -- he said he was going to wait a  
10 little while longer, okay, and then he hung up.

11 And then I don't really remember what we were talking  
12 about, but I know he started asking me did I finger myself.  
13 Could I show him, yeah.

14 Q. How did it -- was there any kind of lead in to that  
15 conversation? How did it turn sexual?

16 A. I really don't remember.

17 Q. And at that time, you were still sitting in the chair?

18 A. Yes, sir.

19 Q. And you told me that he asked you to perform an act on  
20 yourself?

21 A. Uh-huh.

22 Q. I know it's not fun to talk about, but did you do  
23 that?

24 A. Yes, sir.

25 Q. At that point, did you still have your clothes on?

1 A. I did.

2 Q. Okay, and what did you do with those?

3 A. I left them on, and then he told me to take them off.

4 Q. And was he still sitting on the bed at that time, or  
5 where was he?

6 A. I believe he started -- he was standing up. He stood  
7 up and he told me to take them off.

8 Q. Did you take them off?

9 A. Yes.

10 Q. Why did you take your clothes off, Minor

11 A. Because I, I was a little afraid of what might happen  
12 if I didn't cooperate. So, I just wanted to get out.

13 Q. And again I know it's not fun to talk about, but could  
14 you tell us what happened after you took your clothes off?

15 A. He told me to lay on the bed, and then he ate me out.  
16 Can I say it that way? And then he entered me with his  
17 penis. And after that, he told me that -- after he  
18 ejaculated, he told me to go in the bathroom and clean up.  
19 And all the while I was doing that, he was, he kept, he was  
20 steadily talking, saying after two or three more times, it  
21 won't hurt anymore.

22 And then he called Michelle again, and she said she  
23 still couldn't get away. And he said he'd wait about ten  
24 more minutes and then he was leaving. But he was going to  
25 keep the room for longer that day.

Mi . - DIRECT EXAMINATION BY MR. DURANT

87

1 Q. And, Minor just so we're all clear, you used a phrase  
2 a minute ago. Were you talking about oral sex?

3 A. Yes, sir.

4 Q. Did he also engage in vaginal sex with you?

5 A. Yes.

6 Q. Had you ever had sex before then?

7 A. No.

8 Q. After you had sex, what did he say to you?

9 A. He just said after two or three more times, it  
10 wouldn't hurt anymore.

11 Q. How long did y'all stay at the hotel after?

12 A. About ten minutes.

13 Q. And did -- what happened after that?

14 Q. Then he took me home, and that was basically it.

15 Q. Okay. Minor after this first encounter with Mr.  
16 Felder at the hotel room, did he ever contact you or talk  
17 to you in any way, or did he contact you after that and  
18 talk to you about it?

19 A. He came back to the house every day that week, but I  
20 pretended like I wasn't there. So, he went away after a  
21 while.

22 Q. When you say came to the house, do you mean same time  
23 every day or?

24 A. I believe it was the same time every day, but he just  
25 came, knocked on the door, waited a while, and then he left

1 when I didn't answer.

2 Q. You didn't have a car or anything that he would have  
3 known?

4 A. No.

5 Q. Other than coming to the house to contact you, did he  
6 ever attempt to contact you in any other way to talk about  
7 it?

8 A. During band camp, we have a hour, we had a hour break  
9 to go get lunch. And me and my friends would walk across  
10 the street to Wal-Mart or somewhere to get something to  
11 eat. And every day we walked, he was there.

12 Q. And that's band camp that was here at the high school?

13 A. Yes, sir.

14 Q. Did he approach you at, at Wal-Mart when...

15 A. The first day he was in his van, and he pulled up and  
16 handed me a ten, and inside the ten was a note. I don't  
17 really remember what the note said, but yeah.

18 Q. So, he gave you money and a note at Wal-Mart?

19 A. Uh-huh.

20 Q. Do you remember even -- can you summarize what the  
21 note might have said?

22 A. No.

23 Q. Was that the first note he gave you?

24 A. No.

25 Q. Was it, was it --- so, it wasn't the only note that he

1 gave you?

2 A. Mm-hmm.

3 Q. Do you remember how many notes he gave you?

4 A. Between five and six.

5 Q. What would he say in the notes?

6 A. He just said how he wanted one more time. About  
7 giving me money. Turning my phone on for me and stuff like  
8 that.

9 Q. Did you ever respond to any of these notes?

10 A. I wrote back to maybe one or two of them.

11 Q. And what would you say?

12 A. One of them I know I told him I was gay, so he could  
13 leave me alone. But after that, he just said that we could  
14 try a three-some with the girl that he was supposed to meet  
15 at the motel that day. But I said no because I knew her  
16 and I didn't...

17 Q. Did you ever agree to have sex with him again?

18 A. No.

19 Q. Minor I want to show you what's been marked as  
20 State's Exhibit 2 and ask you if you recognize this.

21 A. Yes, sir.

22 Q. What is it?

23 A. It's one of the notes he gave me.

24 Q. Do you know when he gave you that note?

25 A. I believe that one he gave me during Bible study.

1 Q. During Bible study? Was Bible study at church, or  
2 where was that?

3 A. Church.

4 Q. And where would y'all exchange the other notes? Were  
5 they at church as well or?

6 A. Yes.

7 Q. This note appears to have been ripped and taped back  
8 together. Can you tell me how that happened?

9 A. When I read it, I ripped it in half. It like -- I was  
10 going to, like, throw it away, but I didn't.

11 Q. What did you do with it?

12 A. I put it under the cover of Minor #3 bed in her room.

13 Q. Is that the note your momma found?

14 A. Yes, sir.

15 Q. Minor after the incident in the hotel, did you ever  
16 have sex with -- did Mr. Felder ever have sex with you  
17 again?

18 A. Yes, sir.

19 Q. When was that?

20 A. One day during a revival for church.

21 Q. Was the revival at your church?

22 A. No.

23 Q. Well, tell me how you became involved in a revival at  
24 another church.

25 A. Well, me, Minor #3 Henry Felder, and his daughter

Mi . - DIRECT EXAMINATION BY MR. DURANT

91

- 1 Minor #4 we usually go to different churches and play for  
2 them if they don't have any musicians. So, he asked me if  
3 I would help him out, him and Minor out. I didn't really  
4 want to do it, but he asked my mother and she said yeah  
5 because she had no idea at the time.
- 6 Q. Who's Minor #4
- 7 A. His youngest daughter.
- 8 Q. Okay. So, did you actually help with that revival?
- 9 A. Yes, sir.
- 10 Q. When was that?
- 11 A. It was during August.
- 12 Q. What year?
- 13 A. 2009.
- 14 Q. Okay. Do you remember the week?
- 15 A. I think it was maybe the third week of August.
- 16 Q. Okay. How do you remember the week?
- 17 A. It was a week after school started.
- 18 Q. Do you happen to remember a specific date?
- 19 A. I know the date that the incident happened was the  
20 26th.
- 21 Q. Okay. How do you know that date?
- 22 A. Because I think it was a Wednesday, and I was supposed  
23 to go back to school the next day.
- 24 Q. Was this the -- you mentioned you were helping out  
25 with a revival. Was this the first night, second night?

1 What night of the revival was it?

2 A. This was the third night; it was the last night.

3 Q. The revival was Monday, Tuesday, Wednesday?

4 A. Yes, sir.

5 Q. Well, tell me what happened. You were to play music  
6 at a revival, but where was the church?

7 A. The church is just outside of Summerton down a kind of  
8 dirt road. You can see it from the road, but then the  
9 trees are blocking it once you pull up on it.

10 Q. Okay. Well, tell me what happened. Did he come and  
11 pick you up for the revival?

12 A. The first two nights he came and picked me up, his  
13 daughter was already with him. So, I didn't think anything  
14 would happen.

15 Q. Did anything happen the first two nights?

16 A. No.

17 Q. Tell me about the third night.

18 A. The night, my mom had to work overtime, so she didn't  
19 come home yet, and so I locked up. I went out to the van.  
20 His daughter wasn't there, so I got in the back seat  
21 because I didn't feel comfortable getting in the front.  
22 And he said we were going to his house to pick Minor up  
23 because she was in Manning, and she had to go home and get  
24 dressed first.

25 Q. Was his house on the way to the church?

Mi . - DIRECT EXAMINATION BY MR. DURANT

93

1 A. In a way, yeah.

2 Q. Okay. So, did you -- he began driving towards his  
3 house to pick up his daughter?

4 A. Yes, sir.

5 Q: And what happened?

6 A. He turned down a road. I believe the name of it is  
7 Furman Road, and the whole way he's talking, just steady  
8 talking about him and Michelle, how he just want to have  
9 sex with me one more time. And then he turned down this  
10 road. It's, it's parallel to 95, and he parked. He backed  
11 into a hole so no one could see his van.

12 Q. What kind of road was it? Paved road? Dirt road?

13 A. Dirt road.

14 Q. Was the dirt road on the way to church?

15 A. It was kind of like a little detour.

16 Q. Did you ask him why he was going that way?

17 A. No.

18 Q. You had mentioned some conversation he was having  
19 about, asking you if he -- well, tell me what he was saying  
20 in the car before.

21 A. He was just steady talking about him and Michelle, and  
22 then he just asking -- like, he's telling me he wanted  
23 another time with me, and he's talking about turning my  
24 phone on and all that.

25 Q. Michelle was the girl that was supposed to be at the

1 hotel?

2 A. Yes, sir.

3 Q. And you mentioned you went down a dirt road and  
4 stopped. Tell me what happened then.

5 A. And then he -- it's like his seat's kind of like a  
6 bucket seat. So, he pulled up the arm of it so he could  
7 get out easier.

8 Q. Where were you sitting?

9 A. I was sitting in the middle, in the middle part.

10 Q. Is that a bench seat in the middle or?

11 A. It's a bucket seat.

12 Q. Okay. One on each side?

13 A. Uh-huh.

14 Q. Tell me what happened.

15 A. It -- that -- he was on his knees and he was, like,  
16 let me just have one more time with you. And I was, like,  
17 no. And, like, he pulled my shirt aside and started  
18 fondling me. And then it's, like, one more time, just one  
19 more time.

20 And, like, I saw, like, a utility flashlight that  
21 truck drivers had, but it was all the way in the front, so  
22 I couldn't really reach it so I could try to get away, but  
23 I just -- yeah.

24 Q. Can you tell me what -- after he -- I think you said  
25 that he pulled your shirt aside or -- what happened next?

1 A. And then he unbuckled my pants and, like, the back  
2 seat of his van lays out to a bed type of thing. He laid  
3 that out, and he told me to get back there, and then we had  
4 sex one more time. And he, after that, he handed me a,  
5 like, a half a, a half a towel type of thing and told me to  
6 wipe up, and I did. He threw it beside the passenger's  
7 seat.

8 Q. Minor . why did you get in the back seat?

9 A. I was afraid.

10 Q. Who took your pants off?

11 A. He did.

12 Q. Did he have oral sex with you or vaginal sex or?

13 A. Vaginal sex.

14 Q. Did he say anything to you afterwards?

15 A. He, on the way to his house, he was telling me to  
16 give him the codes out the back of my phone so he could  
17 make sure he got it right so he could turn it on and  
18 everything.

19 Q. So, you had a cell phone. It was wasn't activated?

20 A. Yes, sir.

21 Q. And he offered to get it activated for you?

22 A. Uh-huh.

23 Q. Did he ever offer to give you any other gifts?

24 A. Besides my phone and money? No.

25 Q. After the incident in the van, did you ever have sex

1 with Mr. Felder again?

2 A. No.

3 Q. Did you -- after your mom found that latter, what  
4 happened?

5 A. She asked me who it was from. I didn't tell her right  
6 off the bat, and so she continued to ask me. And then I  
7 finally told her that it was Tubby, and she was mad. She  
8 just jumped in the car and she just, she just drove away.  
9 And then she came back and told me that we're going to the  
10 church and get in the back seat. And that's when she  
11 called the church to get him out, and they went down the  
12 road and talked.

13 Q. Is Tubby Henry Felder?

14 A. Yes, sir.

15 Q. After your mom confronted Mr. Felder, did you have to  
16 go and meet with anybody at the sheriff's office about the  
17 case?

18 A. Yes, sir.

19 Q. Did you tell them what happened?

20 A. Yes.

21 Q. And did you meet with anybody else after that?

22 A. Ms. Cook.

23 Q. And who's Ms. Cook?

24 A. She's a therapist.

25 Q. Okay. Who is -- who sent you there?

Mi . - DIRECT EXAMINATION BY MR. DURANT

97

1 A. The sheriff's office.

2 Q. Did you, did you just meet with her one time or?

3 A. I met with her -- I meet with her every other week.

4 Like every two weeks I meet with her.

5 Q. Have you been -- so, you still meet with her?

6 A. I just met with her last Thursday.

7 Q. And have you -- you've been meeting with her for two  
8 years now?

9 A. About one, just one.

10 Q. About what?

11 A. One.

12 Q. Okay. Did you meet with -- anybody else interview you  
13 about what happened?

14 A. No.

15 Q. Did you ever go to the Care House and speak with  
16 anybody there?

17 A. Yes.

18 Q. Minor is the, is the man that had sex with you, sex  
19 with you at the hotel and in the van here in the court  
20 today?

21 A. Yes, sir.

22 Q. Would you point him out to the jury?

23 A. In the black.

24 Q. Minor I'm going to hand up State's Exhibit 2 again to  
25 you. I believe you told me a little while ago that letter

1 is the one your mom found?

2 A. Yes, sir.

3 Q. Who gave it to you again?

4 A. Henry Felder.

5 Q. Minor if you don't mind, would you read the letter  
6 for me?

7 A. First thing, bank account. I can get a second  
8 card and give it to you. Your name don't got to  
9 be on it or the account. No one, no one knows  
10 about this account. Only you and I. If anything  
11 do happen, you still be able to get everything  
12 out without ever going inside. Now the phone. I  
13 am going to get you a new SIM card. Just tell me  
14 what to do, give you the money, or we find a way  
15 to go -- and go together. If I go, I may need  
16 the phone to make sure I get the right thing.  
17 About having one more time, I understand what  
18 you're saying, but I only want to lay with you  
19 one last time. Never again will I ask you to do  
20 this. I cannot get you pregnant. I had an  
21 operation for that. Maybe that's what you're  
22 worried about. If it will help you feel better,  
23 I will use a condom. Truthfully, oral sex is all  
24 I want. Going in is okay, but I'd rather lick  
25 your sweetness. I want to go back at the motel

Mi . - DIRECT EXAM / CROSS-EXAM

99

1 where it is more comfortable. Back to the  
2 account, I can give you 2 to 300 to keep home if  
3 you want and use it any time you need. Why am I  
4 doing this? Well, I'm not sure, but I do know  
5 it's not for the sex. Things happen for a  
6 reason. Who would thought you and I would end up  
7 having sex? So, it must be there for a reason.  
8 Anyway, please, Minor let me do this one more  
9 time, one last time with you at a motel.

10 MR. DURANT: Now, Minor I don't have any other  
11 questions. If you would answer any that Mr. Leddy has for  
12 you.

13 THE COURT: Mr. Leddy.

14 MR. LEDDY: Your Honor, may we approach briefly?

15 THE COURT: Yes.

16 (OFF-THE-RECORD BENCH CONFERENCE.)

17 CROSS-EXAMINATION BY MR. LEDDY:

18 Q. Miss Johnson, I'm Micah Leddy. I just have a few  
19 questions for you. Now, I want to discuss this time that  
20 you went to the hotel, okay? Now, you testified that it  
21 was your, it was -- your goal was to run this Michelle girl  
22 off. Is that right?

23 A. Yes, sir.

24 Q. Okay. Can you explain in more detail exactly how that  
25 was supposed to happen?

1 A. All he said was that I want you to help me break up  
2 with Michelle. That's all he said.

3 Q. Okay, and how were -- did he give you any sort of plan  
4 of action on how to do that?

5 A. He told me to hide in the bathroom while she -- when  
6 she came in, and then once they started talking, I was  
7 supposed to come out.

8 Q. Okay, and I guess that was supposed to make her angry?

9 A. I guess.

10 Q. Okay. Now, when you went to the hotel, did you, did  
11 you go with him when he paid for the room?

12 A. No, sir.

13 Q. Okay. So, when you got there, you just walked  
14 straight in? You didn't have to, you didn't have to pay  
15 for the room or?

16 A. I don't know what he did, but I was at the convenience  
17 store while he was doing whenever at the hotel.

18 Q. All right, and this was on July 13th. That's right?

19 A. Yes, sir.

20 Q. And how are you so sure about that date this many days  
21 later?

22 A. Because it was a week before band camp.

23 Q. A week before band camp, okay, and are you aware that  
24 the police officers, the sheriff's department went to the  
25 hotel to obtain records?

Mi - CROSS-EXAMINATION BY MR. LEDDY

101

1 A. Yes, sir.

2 Q. And are you aware that there is no record of him being  
3 there on that day?

4 A. Yes, sir.

5 Q. Okay. So, you were supposed to help him break up with  
6 Michelle, right?

7 A. Yes, sir.

8 Q. Okay. So, you understand that he and Michelle were  
9 dating?

10 A. I wouldn't say dating. I would say seeing each other  
11 on the side.

12 Q. Okay. Can you explain that? Do you know if she had a  
13 boyfriend?

14 A. Yes, sir.

15 Q. Is that what she was saying on the phone, I can't get  
16 away from my boyfriend?

17 A. Yes, sir.

18 Q. Okay, but even though she already had a boyfriend, he  
19 needed you to come down and help get rid of her?

20 A. Uh-huh.

21 Q. You testified that at the hotel, he told you to take  
22 your clothes off?

23 A. Yes, sir.

24 Q. Do you remember when you -- do you remember going to  
25 speak to Ms. Rainey?

1 A. Yes, sir.

2 Q. Okay, and does she work at the Care place?

3 A. No.

4 Q. She doesn't, or the Care House?

5 A. She doesn't work at -- she works at the sheriff's  
6 office.

7 Q. Oh, okay. So, she -- you, can you tell the jury who  
8 was that you got interviewed by?

9 A. I don't remember her name. It's been two years.

10 Q. Okay, but you had about an hour's conversation with  
11 her, right?

12 A. Yes, sir.

13 Q. All right. Now, do you remember telling her that --  
14 what you were wearing?

15 A. Yes, sir.

16 Q. And you told her that he asked you to show how you  
17 play with yourself. Is that right?

18 A. Yes, sir.

19 Q. Okay, and do you remember her asking you if something  
20 happened to your shorts in between there?

21 A. I do not remember.

22 Q. Okay. You don't remember telling her no, that you  
23 hadn't taken them off when you went to show?

24 A. I remember I didn't take them off at that time yet,  
25 no.

Mi - CROSS-EXAM / REDIRECT EXAM

103

1 Q. Okay, but you, but you do remember saying that he told  
2 to take your clothes off. Is that right?

3 A. Yes, sir.

4 Q. Okay, and do you remember that when you were  
5 interviewed, you said that he actually took your, your  
6 clothes off?

7 A. I really don't remember, sir.

8 Q. Okay. Let me ask you this. Did he ask you to take  
9 all of your clothes off?

10 A. No.

11 Q. Okay. Can you explain that?

12 A. He only told me to take my shorts off.

13 MR. LEDDY: I don't have anything further, Your Honor.

14 THE COURT: Okay. Anything further from the  
15 solicitor?

16 MR. DURANT: Judge, just one more question.

17 REDIRECT EXAMINATION BY MR. DURANT:

18 Q. Minor Mr. Leddy asked you about the records and the  
19 dates at the hotel. At any point, did you sit down with an  
20 officer in this case and talk about dates when things  
21 happened?

22 A. Yes, sir.

23 Q. Who did you sit with? Who did you meet with?

24 A. I sat with Officer Ham and Ms. Rainey.

25 Q. And what did y'all do?

1 A. We tried to recollect the dates of when it happened.  
2 Tried to pinpoint them.

3 Q. Did you look at a calendar?

4 A. Yes, sir.

5 Q. Okay, and after your discussion with Investigator Ham,  
6 looking at the calendar, were you able to determine what  
7 date this happened on?

8 A. Yes, sir.

9 MR. DURANT: No further questions.

10 THE COURT: Okay. You can step down.

11 (THE WITNESS EXITS THE STAND.)

12 MR. DURANT: Your Honor, may we approach?

13 THE COURT: Yes.

14 (OFF-THE-RECORD BENCH CONFERENCE.)

15 THE COURT: Ladies and gentlemen, this is going to  
16 take a few minutes to set this next one. This is a good  
17 time after direct, so I'm going to send you to the jury  
18 room, and I hope I'll get you back in about fifteen  
19 minutes.

20 I remind you please don't discuss this case yet. So,  
21 if you'll go to your jury room now, I'll call you back.

22 (THE JURY EXITS AT 3:46 P.M.)

23 THE COURT: Okay, y'all want to set up the video. Do  
24 I need to do anything?

25 MR. DURANT: Not yet.

T. HAM - DIRECT EXAMINATION BY MR. DURANT

105

1 THE COURT: Okay. We'll take a fifteen minute break.  
2 When y'all get everything set up, y'all come get me.

3 (OFF THE RECORD.)

4 THE COURT: Okay, we ready?

5 MR. LEDDY: Yes, Your Honor.

6 THE COURT: Are we ready? Ready?

7 MR. DURANT: Yes, sir.

8 THE COURT: Bring us a jury.

9 (THE JURY ENTERS AT 4:11 P.M.)

10 THE COURT: Solicitor.

11 MR. DURANT: Thank you, Judge. State calls  
12 Investigator Lin Ham.

13 THE COURT: All right. If you'll come around, please,  
14 sir.

15 THOMAS HAM, BEING DULY SWORN,

16 TESTIFIES AS FOLLOWS:

17 DIRECT EXAMINATION BY MR. DURANT:

18 Q. Officer Ham, who do you work for?

19 A. Clarendon County Sheriff's Office.

20 Q. How long you been working there?

21 A. I've been there since March of 2002.

22 Q. What's your job title at the sheriff's office?

23 A. I'm a criminal investigator.

24 Q. Were you working in that capacity back in the fall of  
25 2009?

1 A. Yes, I was.

2 Q. And were you that investigator assigned to *State vs.*  
3 *Henry Felder*?

4 A. Yes, I was.

5 Q. Tell me how that case came to you.

6 A. I met with Ms. Sabrina and Minor and Rhonda, and I  
7 believe their pastor was with them at the sheriff's office.  
8 And to make a long story short, Minor started telling some  
9 allegations of sexual abuse, and I stopped the interview  
10 because I felt like I needed a, what they call a forensic  
11 interviewer -- someone that deals with children all the  
12 time -- to conduct the actual interview. And Rhonda set up  
13 the interview with, I want to say the Care House.

14 Q. And after the interview -- or do you remember when  
15 that meeting was with you and the victim and her mom?

16 A. That would have been on September the 10th.

17 Q. Tell me. Was, was Mr. Felder charged with a crime at  
18 that time?

19 A. No, he wasn't.

20 Q. When was he charged with a crime?

21 A. He was -- when did I sign the warrants, or when was he  
22 arrested?

23 Q. When, when did you sign the warrants?

24 A. Hang on. Let me find my copies of the warrants.

25 Q. What I'm really trying to get at is did you send her

T. HAM - DIRECT EXAMINATION BY MR. DURANT

107

1 to get the -- have this interview done before or after  
2 you ---

3 A. Yes, we sent her right then to get the interview done  
4 as soon as Rhonda could get it scheduled. And Rhonda took  
5 Ms. Sabrina and Minor to Florence for the interview.

6 Q. After -- was there an allegation of sexual assault  
7 made during that interview, or made during the interview  
8 with you?

9 A. Yes, it was. Yes, it was.

10 Q. Were you able to determine, based on your  
11 conversations with the mom and the victim, when that  
12 occurred?

13 A. After the interview at Care House, I spoke with Ms.  
14 Sabrina and Minor again at the sheriff's office, and we  
15 were trying to narrow down what, what dates they were  
16 because Minor was -- she knew what was happening around  
17 those dates, but she couldn't tell me a number of the -- of  
18 the date that it was. So, what I did was I printed up  
19 calendars of June, July, and August of 2009, and we sat  
20 down and looked at those.

21 She said it happened after her sister had moved to  
22 Columbia, and by looking at the calendars and talking with  
23 Ms. Sabrina and Minor we were able to determine that that  
24 was on the 14th of June when her sister moved to Columbia.

25 Then she started talking about the hotel incident is

1 what I refer to it as because we've got two here. We've  
2 got one that happened in the vehicle and one that happened  
3 at the hotel. She said it was a week prior to the start  
4 of, she calls it band camp. I was told ---

5 MR. LEDDY: Objection, Your Honor. That's hearsay.

6 MR. DURANT: Judge, I believe this falls into the  
7 exception of time and place of the incident he's talking  
8 about.

9 THE COURT: Okay. I'll allow it.

10 BY MR. DURANT:

11 A. She said it occurred a week prior to band camp. Band  
12 camp, we determined that it was on the 20th of July, which  
13 would have put to the week prior. That Monday would have  
14 been the 13th of July, and that's 2009.

15 We went on trying to determine when the second  
16 incident occurred, and that being the assault in the van.  
17 And we determined that the revival that they were speaking  
18 of, three-day revival, was August the 24th, 25th, and 26th.  
19 The 26th is when the actual assault occurred in the  
20 vehicle.

21 Q. So, Minor gave you some reference points, and from  
22 that you were able to determine the specific dates?

23 A. Yes.

24 Q. And the revival, did she indicate which date of the  
25 revival it occurred on?

T. HAM - DIRECT EXAMINATION BY MR. DURANT

109

- 1 A. She said it was the last day of the revival.
- 2 Q. And that's how you determined it was the 26th, too?
- 3 A. Yes.
- 4 Q. Did Minor tell you where it happened?
- 5 A. She told me it occurred on a dirt road off of Furman  
6 Road.
- 7 Q. Okay, and this is the revival incident?
- 8 A. Yes, this is the revival incident. This is the one  
9 that happened August of, August 26, 2009.
- 10 Q. Did she describe where that road is?
- 11 A. She told me go, turn off of 301 onto Furman Road and  
12 go down and cross over 95. It'll be the first road to the  
13 left there, which is actually Etchison Road, and it's like  
14 the little frontage road that runs parallel to I-95.  
15 They've actually got a cell phone tower down there.
- 16 Q. So, do you know the road she was speaking of? Did you  
17 know where it was?
- 18 A. Yes, I did.
- 19 Q. Have you been down that road before?
- 20 A. Yes, I have.
- 21 Q. Is it in Clarendon County?
- 22 A. Yes, it's in Clarendon County.
- 23 Q. How about the hotel?
- 24 A. The hotel that they were speaking of, that's the  
25 Econolodge, or at least it was at the time. It's changed

1 names since. It is in Ram Bay, the Ram Bay area of  
2 Clarendon County, which is between Manning and Summerton on  
3 Highway 301. Right as you cross I-95, it'll be the, be a  
4 hotel on the left right before you get to the convenience  
5 store on the left. It's directly across from Georgio's.

6 Q. Is that in Clarendon County?

7 A. That is in Clarendon County also.

8 Q. After you had signed those warrants or took out  
9 warrants on Mr. Felder, can you tell us when you served  
10 them?

11 A. October 1, 2009.

12 Q. Did you go to his house? Did he come see you? What  
13 happened?

14 A. Investigator Mason Moore and myself went to Mr.  
15 Felder's house that morning. Went up and knocked on the  
16 back door. When Mr. Felder came to the back door, and his  
17 initial response was that he knew when we were -- knew we  
18 were coming but didn't know when.

19 Q. Did you tell Mr. Felder that he was under arrest at  
20 that time?

21 A. We told him the -- once he invited us inside the  
22 residence that he was under arrest. That we have warrants  
23 for him for the two incidents. And he asked to able to  
24 get his clothes together, and asked if he could call his  
25 wife and his daughter.

T. HAM - DIRECT EXAMINATION BY MR. DURANT

111

1 Q. Did you read him what, or tell him, advise him of  
2 what's commonly known as Miranda rights at that time?

3 A. Yes, I did.

4 Q. After advising him of those rights, did you ask him  
5 any questions?

6 A. I did not question him there at the house, no.

7 Q. Okay. Did Investigator Moore question him at the  
8 house?

9 A. No. We, we waited for him to get his stuff ready, and  
10 waited for him to call his wife and his daughter, and his  
11 mother and his sister actually came over while we were  
12 there. And he wanted to tell them that he would be gone  
13 for a little while.

14 Q. Did you transport him to the sheriff's office in your  
15 patrol car?

16 A. I drive a Trailblazer, which is an unmarked vehicle.  
17 Investigator Moore and myself transported Mr., Mr. Felder  
18 to the sheriff's office, to my office, and we have in there  
19 what we call interview rooms there. You see them on TV,  
20 but it's a table in a room, and it's got a couple of chairs  
21 around it, and it's all audio and videotape.

22 Q. Did you tell him that you were taking him in there to  
23 interview him?

24 A. Yes. We walked into the interview room and, and sat  
25 down and explained that -- well, I read him his rights

1 again, his Miranda warning because it was audio and  
2 videotape.

3 Q. Let me, let me stop you right there, if you don't  
4 mind.

5 A. Okay.

6 Q. When you read him those Miranda rights, did you tell  
7 him he had the right to remain silent?

8 A. Yes, I did.

9 Q. Did you tell him that anything he said could and would  
10 be used against him in court?

11 A. Yes, and it's on, it's on the video.

12 Q. Did you tell him that he had the right to talk to an  
13 attorney?

14 A. Yes, I did.

15 Q. Did you tell him that he had the right to have that  
16 attorney present with him during questioning if you'd like?

17 A. Yes, I did.

18 Q. Did you tell him that he had the right to stop the  
19 process, stop the questioning at any point?

20 A. Yes, I did.

21 Q. Did you tell him that if he couldn't afford an  
22 attorney, that one would be provided for him?

23 A. Yes. I think I said one would be appointed to  
24 represent you before any questioning if you want.

25 Q. Did you ask him if he understood those rights?

T. HAM - DIRECT EXAMINATION BY MR. DURANT

113

1 A. I did.

2 Q. How did he respond?

3 A. He responded that he did understand the rights.

4 Q. Now, did you then ask him if he wanted to talk to you?

5 A. Yes, I did.

6 Q. And how did he respond?

7 A. He responded that he would talk with us about the  
8 situation.

9 Q. Did you explain to him that that interview was being  
10 recorded?

11 A. Yes, I did. I don't like to pull any punches with  
12 anybody. I let everybody know that it's audio and videoed  
13 for their protection as well as mine.

14 Q. Who was in the room?

15 A. It was myself, it was Investigator Mason Moore, and it  
16 was Mr. Henry Felder.

17 Q. Okay. Tell me a little bit about the interview.  
18 Did you, did you tell him that you had warrants for his  
19 arrest?

20 A. Yes. He was notified that we had two warrants for his  
21 arrest.

22 Q. And how did he respond?

23 A. It's, it's better actually to let that, let that video  
24 show that.

25 Q. Is that a -- well, let me show you what's been marked

T. HAM - DIRECT EXAMINATION BY MR. DURANT

114

1 as State's Exhibit 1 and ask if you recognize it.

2 A. That's a CD that I made of the case file. It contains  
3 the video, and it's, it's pretty much my messy handwriting  
4 on the outside of it, so yes.

5 Q. Has that, the video of that interview been altered or  
6 edited it any way?

7 A. No.

8 Q. Is it a fair and accurate representation of the  
9 interview that took place in that, in that ---

10 A. Yes, sir. It's an exact representation.

11 MR. DURANT: Judge, at this time we'd offer State's  
12 Exhibit 1 in evidence and ask to publish it to the jury.

13 THE COURT: Very well. Says the defense?

14 MR. LEDDY: Your Honor, I believe we need to just  
15 discuss exactly what it is that's being admitted, and we  
16 can do that at sidebar.

17 THE COURT: Okay.

18 (OFF-THE-RECORD BENCH CONFERENCE.)

19 MR. LEDDY: Your Honor, no objection subject to the  
20 stipulation of parties.

21 THE COURT: Okay. It's in without objection, subject  
22 to that stipulation.

23 MR. DURANT: May I beg the court's indulgence?

24 THE COURT: Okay.

25 MR. LEDDY: Your Honor, actually, can I correct myself

T. HAM - DIRECT EXAMINATION BY MR. DURANT

115

1 and renew the previous objection that I made, but subject  
2 to the stipulation?

3 THE COURT: Okay.

4 MR. LEDDY: Of both parties.

5 (DVD OF INTERVIEW AND CONFESSION MARKED INTO EVIDENCE  
6 AS STATE'S EXHIBIT NUMBER 1.)

7 MR. LEDDY: Just because the Court of Appeals and  
8 their preserve -- preservation requirements, it's the  
9 objection that I made during the *Denno* hearing, renew that.

10 THE COURT: Okay.

11 MR. LEDDY: Thank you.

12 THE COURT: That objection is noted for the record.  
13 What, what exhibit number is this?

14 MR. DURANT: 1.

15 THE COURT: Okay.

16 (EXCERPT OF STATE'S EXHIBIT NUMBER 1 IS PLAYED FOR THE  
17 COURT. AUDIO NOT TRANSCRIBED FOR THE RECORD.)

18 MR. DURANT: Beg the court's indulgence for a second.

19 (A LENGTHY PAUSE FOR TECHNICAL DIFFICULTIES.)

20 (PLAY RESUMES FOR THE COURT.)

21 MR. DURANT: May I continue, Judge?

22 BY MR. DURANT:

23 Q. Investigator Ham, you mentioned before we played the  
24 video that we were talking about two incidents here.

25 A. That's correct.

- 1 Q. Two, two separate warrants, two separate counts, both  
2 the same charge: criminal sexual conduct. Is that right?
- 3 A. That's correct.
- 4 Q. Did you inform Mr. Felder about both of them?
- 5 A. Yes, I did.
- 6 Q. Did he admit to both of them?
- 7 A. He admitted to the one in August in the van. Then we  
8 got down to where he said yes, we did have sex on the back  
9 seat of the van, as you heard on the video. The incident  
10 in July at the motel he still denies to this day. I don't  
11 understand why, but...
- 12 Q. Okay. So, he denies the hotel, but the -- and when  
13 you talk about the van incident, is that the incident that  
14 happened during the revival?
- 15 A. Yes.
- 16 Q. In August?
- 17 A. Yes.
- 18 Q. Did you know when that was? Were you and Minor able  
19 to nail that date down?
- 20 A. Yes, narrowed it down to August the 26, 2009. That's  
21 a Wednesday.
- 22 Q. On the video, you asked him to tell you where the road  
23 was that it happened on. Was that the same road that Minor  
24 described to you?
- 25 A. Yes, it was.

T. HAM - DIRECT EXAMINATION BY MR. DURANT

117

1 Q. And that road, is it in Clarendon County?

2 A. Yes, it is.

3 Q. I want to show you what's been marked as State's  
4 Exhibit 2 and ask you if you recognize this.

5 A. That's the letter that Ms. Johnson says that she  
6 found. I've actually got a copy of it is all I had.

7 Q. Okay. Did Ms. Johnson bring you this and show it to  
8 you?

9 A. She brought that to the sheriff's office and it was a  
10 copy made. I never had my hands on the actual original; I  
11 just had a copy. Ms. Johnson retained that.

12 Q. Is your copy an exact replica?

13 A. Yes, it is.

14 Q. Have you seen the original?

15 A. Yes.

16 Q. Is it word for word?

17 A. This morning, yes.

18 Q. Has it been altered or edited in any way?

19 A. No. Her copy and mine are -- her original and my copy  
20 are the same thing.

21 Q. Did you show the defendant your copy?

22 A. Yes, I did.

23 Q. During the interview?

24 A. That's what he was reading in the interview was ---

25 Q. Did he admit to having written that letter?

1 A. Yes, he did.

2 MR. DURANT: Judge, at this time we'd offer State's  
3 Exhibit 2 into evidence.

4 MR. LEDDY: Objection, and I have a matter of law on  
5 that.

6 THE COURT: Okay.

7 MR. LEDDY: It's a chain of custody issue, Your Honor,  
8 based on testimony of the officer. And I would just cite  
9 to United States vs. -- or *Melendez-Diaz*. Forget which  
10 state it was. Arizona?

11 THE COURT: Okay.

12 MR. DURANT: Judge, take that up now or?

13 (A PAUSE.)

14 MR. DURANT: Just for the court's information, that's  
15 the end of my question.

16 THE COURT: Okay. Do you, as far as your cross, is  
17 the situation you can finish your cross, and we can argue  
18 that after the jury's gone, or do I need to send them out?

19 MR. LEDDY: I think so.

20 THE COURT: Okay. Well, if you can -- he's offering  
21 it into evidence at this time. I'll -- let's hold that in  
22 abeyance until you finish your cross, and then we'll argue  
23 that.

24 MR. LEDDY: That sounds very good.

25 THE COURT: After the jury's gone. That way I won't

T. HAM - CROSS-EXAMINATION BY MR. LEDDY

119

1 have to send them out, deal with that, and bring them back.

2 MR. LEDDY: Very good, Your Honor.

3 THE COURT: Okay.

4 MR. DURANT: No further questions.

5 THE COURT: Okay.

6 CROSS-EXAMINATION BY MR. LEDDY:

7 Q. Investigator Ham, now I have not received any  
8 photographs of Mr. Felder's van. Did you go and inspect  
9 his van at any time?

10 A. No, I did not. I saw it in his backyard when we went  
11 and picked him up from his house.

12 Q. Okay. Did you look inside that van?

13 A. No, I did not.

14 Q. All right. Did you attempt to locate the towel that  
15 we've heard about today in that van?

16 A. No, I did not.

17 Q. All right. Now, you say that on September 10th that  
18 these ladies came and spoke to you. Is that right?

19 A. Hang on just a second. I got a copy of the incident  
20 report right here. Yes, sir, that's correct, September 19,  
21 2009.

22 Q. All right, and they told you something had happened on  
23 August 26th or within the last couple of weeks, right?

24 A. Yes.

25 Q. Okay, and your reaction to that was just to stop them

1 from talking. Is that right?

2 A. My reaction was to refer them to a forensic  
3 interviewer.

4 Q. Okay, let's talk about what a forensic interviewer is.

5 A. Uh-huh.

6 Q. Forensic means for us in court, right?

7 A. I guess.

8 Q. Okay. Well, do you send them there because you  
9 thought call this person had ---

10 A. Because there's some -- they're people that deal with  
11 children all the time.

12 Q. Do you deal with children all the time?

13 A. Usually with the children I will send them to them  
14 because, quite frankly, people -- you know, I don't know  
15 whether they're scared or what not of an older male.

16 Q. Yeah.

17 A. Especially in this, in this situation. I wanted her  
18 to feel more comfortable talking with the interviewer.

19 Q. Okay. Now, but you did know enough that the  
20 allegation involved somebody in the community that  
21 supposedly committed a sexual assault. Is that right?

22 A. On a prior day, yes.

23 Q. Okay, and on September the 10th, what you -- you knew  
24 a bare minimum. In fact, what you knew, that these people  
25 said that there's a guy in the neighborhood at the church

T. HAM - CROSS-EXAMINATION BY MR. LEDDY

121

1 who's committed a sexual assault, right?

2 A. Yes.

3 Q. All right, and your reaction to that was to schedule  
4 them to be interviewed by somebody else nineteen days  
5 later?

6 A. I don't control when that's set up.

7 Q. I understand that you don't control that, but did you,  
8 did you -- you took no steps whatsoever in those nineteen  
9 days. Is that correct?

10 A. Ms. Rainey set the interview up.

11 Q. Okay, and ---

12 A. And that's standard practice with us.

13 Q. Very good. Now, this complaint was made two weeks or  
14 fifteen days after the incident was supposed to have  
15 happened, occurred in that van?

16 A. Correct.

17 Q. Okay. Now, is it true that physical evidence tends to  
18 go away after a certain period of time?

19 A. Yes.

20 Q. So, the sooner you get to it, the better?

21 A. Could be. Yes.

22 Q. Okay. So, it's better to go to check it out today  
23 than it is nineteen days from today, isn't it?

24 A. Yes.

25 Q. Okay, and that wasn't done, was it?

1 A. No, it was not.

2 Q. All right, and now in your interview with Mr. Felder,  
3 you know, you made it clear that this is -- you take your  
4 job very seriously.

5 A. Yes, I do.

6 Q. Okay, and do you have to go to -- I have to go to  
7 these awful seminars in -- for continuing legal education.  
8 Do you have to do something similar?

9 A. We do continuing legal education throughout.

10 Q. Okay, and, and ---

11 A. We have to do certain number of hours per year.

12 Q. Okay, and when you first interviewed Mr. Felder, you  
13 said I have two warrants for you, and his first reaction  
14 was two?

15 A. Yeah.

16 Q. And he seemed surprised at that, didn't he?

17 A. He did.

18 Q. Okay, and when you go to these continuing legal  
19 education seminars, you learn about cases involving false  
20 confessions?

21 A. I'm trying to remember if we've ever had one.

22 Q. You never had a ---

23 A. Legal updates about false confessions, no.

24 Q. All right. Have you ever read anything just on your  
25 own time about people who've falsely confessed to something

T. HAM - CROSS-EXAMINATION BY MR. LEDDY

123

1 horrible?

2 A. Have I ever personally had anybody do that? No.

3 Q. No. Have you ever read anything about cases where it  
4 happens, though?

5 A. No, I haven't.

6 Q. Okay. Well, would you agree that people do falsely  
7 confess to things?

8 A. I guess they could.

9 Q. All right. Well, you've never heard in your life of a  
10 case that was overturned where there was a confession?

11 A. Not one of mine, no, sir.

12 Q. Okay. Well, would you agree that it's a terrible  
13 thing for somebody to be convicted on a false confession?

14 A. This isn't a false confession.

15 Q. Would you agree that it would be a terrible thing if  
16 it were?

17 A. It would be, yes.

18 Q. Okay, and it, and it would be very helpful to know  
19 whether or not it was a false confession that this occurred  
20 in this van if we had that towel in our hands and we could  
21 test it, wouldn't it?

22 MR. DURANT: Judge, I'm going to object at this point.  
23 Officer Ham is not an expert on false confessions or -- and  
24 Mr. Leddy's going to continue to ask him about it.

25 THE COURT: Okay, but my understanding, now he's left

1 false confession. He's gone to gathering the evidence and  
2 the towel. So, that was his next. Is that the question  
3 you objected to, the fact that he doesn't have a towel?

4 MR. DURANT: Judge, I, I assume that he was still on  
5 the false confession issue, Judge. That was...

6 THE COURT: Okay. Well, at least this question, he  
7 can -- if he knows the answer to this, he can -- you can  
8 ask the question. See if he can answer it.

9 BY MR. LEDDY:

10 Q. Would you agree that we wouldn't have to rely on  
11 whether or not somebody was telling the truth if we had  
12 physical evidence that couldn't be rebutted?

13 A. Well, we've got what Mr. Felder said.

14 Q. Yes, I know that we have what Mr. Felder said, and in  
15 a case ---

16 A. And we've got what the victim said.

17 Q. And, and -- all right. All right, and you said in  
18 your testimony that there's a cell phone tower close by to  
19 this location. Is that right?

20 A. Yes.

21 Q. Have you ever used cell phone towers to triangulate  
22 where somebody is on a given date?

23 A. We have recently, yes; we've just started doing that.

24 Q. Okay. Well, do you deny that that technology was  
25 available in 2009?

T. HAM - CROSS-EXAMINATION BY MR. LEDDY

125

1 A. I don't know whether it was or not. I'm really not  
2 that tech savvy with, with that. We have to call in an  
3 expert from the cell phone company to come in and explain a  
4 lot of things.

5 Q. Okay, but you didn't make phone calls to the cell  
6 phone company in this case, did you?

7 A. No. Huh-uh.

8 Q. Because?

9 A. They both led me to the same location.

10 Q. They did, and they -- and you were also able to narrow  
11 it down to a very specific frame time, weren't you?

12 A. Yes, sir.

13 Q. And did you attempt to substantiate that frame of time  
14 by going to that hotel?

15 A. I did go to the hotel, yes.

16 Q. All right, and did you get a record of Mr. Felder  
17 having stayed there?

18 A. He gave me, or he actually faxed me a copy of a  
19 receipt from there. I don't have a copy of it. I gave...

20 MR. LEDDY: Your Honor, may I approach the witness?

21 WITNESS: That's mine.

22 THE COURT: Yes, sir.

23 BY MR. LEDDY:

24 Q. Investigator Ham, is that what you received from the  
25 hotel?

T. HAM - CROSS-EXAMINATION BY MR. LEDDY

126

1 A. Yes, it is.

2 Q. Does it have a date on it?

3 A. Hang on just a second. Yes, sir. It's got 7/2/9 and  
4 7/3/9 as the date of departure.

5 Q. Now, this date that we've heard, July 13th, this  
6 wasn't pulled out of thin air, was it?

7 A. No.

8 Q. And you put it on this calendar because you narrowed  
9 it down carefully?

10 A. Because we narrowed it down, yes.

11 Q. Okay, and the date -- and the hotel does have a record  
12 of Mr. Felder being here?

13 A. Of this, this time, yes.

14 Q. Okay, and did you ask him for all the records of him  
15 being there?

16 A. I asked him if -- any of them that had Henry Felder on  
17 them.

18 Q. Okay, and that's the one that you got?

19 A. This is the one that he gave me.

20 Q. And you didn't get any other ones?

21 A. No, sir.

22 Q. Okay. You didn't get one with July 13th on it?

23 A. No, sir.

24 Q. Very good. Now, your testimony is that you, you  
25 arrived at Mr. Felder's hose, and you told him I have

T. HAM - CROSS-EXAMINATION BY MR. LEDDY

127

1 warrants for your arrest?

2 A. Yes.

3 Q. And then you let him get his clothes together and  
4 everything?

5 A. Yes.

6 Q. All right, and then -- but he -- you transported him  
7 to the police station?

8 A. Yes.

9 Q. And then you turned on the camera before you asked any  
10 questions?

11 A. Yes.

12 Q. All right, and you didn't make any, you didn't have  
13 any conversation with him on the, on the ride down there?

14 A. He had some nervous conversation on the way down, but  
15 I make it a point not to talk about the case until we get  
16 into the interview room.

17 Q. Okay.

18 A. Just to alleviate this kind of problem.

19 Q. Yes, sir. Now, during your interview you told him  
20 this is not the end of the world. Is that right?

21 A. That's correct.

22 Q. And you told him that you'd like to help him out. Is  
23 that right?

24 A. I told him if he was truthful with me, I'd see what I  
25 could do.

1 Q. Okay, but you do make it a point not to promise people  
2 anything in exchange ---

3 A. No. I, I'm not in a position to actually promise  
4 somebody something like that.

5 Q. Okay. Even if you were, it wouldn't be proper to  
6 promise somebody something in exchange ---

7 A. No. Huh-uh.

8 MR. LEDDY: Beg the court's indulgence.

9 (A PAUSE.)

10 BY MR. LEDDY:

11 Q. Now, when they came to you on September the 10th,  
12 there was no physical evidence. It was just like now. It  
13 was her just saying that this had happened?

14 A. Her saying that that had happened, yes.

15 Q. And then you held off on getting a warrant until there  
16 was an interview by somebody else?

17 A. Yes.

18 Q. Right, and soon as that -- as soon as she said yeah  
19 this happened and she said it to somebody else, that's when  
20 you felt like you had enough evidence to go get a warrant?

21 A. Yes.

22 Q. Okay. Let me ask you. Did you interview anybody that  
23 was friends with Minor

24 A. No, I did not.

25 Q. Okay, and did you interview anybody that's friends

T. HAM - CROSS-EXAMINATION / REDIRECT EXAMINATION

129

1 with her family to see if they had spoken about this at  
2 all?

3 A. No, I did not.

4 Q. Did you interview the pastor?

5 A. No. He was there during the initial contact that I  
6 had with Sabrina and Minor but no, I didn't interview him  
7 per se.

8 Q. Okay, and we've heard some testimony about the big,  
9 blue flashlight in the van. Did you ever see a big, blue  
10 flashlight?

11 A. No. That was the first I'd heard of the big, blue  
12 flashlight.

13 Q. Very good.

14 MR. LEDDY: Nothing further, Your Honor.

15 THE COURT: Okay. Anything from the state?

16 MR. DURANT: Your Honor, I do.

17 REDIRECT EXAMINATION BY MR. DURANT:

18 Q. Investigator Ham, he asked you a number of questions  
19 about false confessions. Let me ask you this. Before Mr.  
20 Felder confessed to the van incident, had you told him any  
21 details about the incident? Had you told him what Minor  
22 told you?

23 A. No, I had not.

24 Q. Or Minor told the interviewer. Had you told him what  
25 road Minor alleged it to be on?

1 A. No, I had not.

2 Q. Had you told him that Minor alleged it happened during  
3 a revival?

4 A. No, I had not.

5 Q. Had you told him that Minor alleged it happened in  
6 August?

7 A. No, I had not.

8 Q. Did he give you all those details?

9 A. Yes, he did.

10 Q. And did -- he had -- based on your -- his  
11 conversations with you up until that point, did he have any  
12 reason to know those details if he was giving you a false  
13 confession?

14 A. If he was there.

15 Q. All right, I'm going to ask you about the receipt Mr.  
16 Leddy passed up to you. Do you have ---

17 A. Yeah, I still got his copy.

18 Q. --- his copy in front of you? Is this how it came to  
19 you?

20 A. Yes, it is.

21 Q. Is it a computer printout, or is -- what, what is it?

22 A. It appears that somebody has laid the actual thing on  
23 a, on a copier and copied it and then scan -- and faxed it  
24 to me.

25 Q. So, a photocopy of maybe an invoice book, a page from

T. HAM - REDIRECT EXAMINATION BY MR. DURANT

131

1 an invoice book?

2 A. Yes.

3 Q. I want you to -- is it, is it typed or is it  
4 handwritten or?

5 A. It's handwritten.

6 Q. I want you to look at the bottom right-hand corner of  
7 that photocopied receipt and ask if -- and does it indicate  
8 how Mr. Felder paid for that hotel room?

9 A. Says paid cash.

10 Q. Do you know whether that hotel room requires a photo  
11 ID?

12 A. No, I do not.

13 Q. If no ID -- and I understand you don't know -- but  
14 if no ID was required and Mr. Felder were to have paid in  
15 cash ---

16 MR. LEDDY: Objection. This is shifting the burden of  
17 proof to him to prove that he wasn't there. It's their  
18 burden to prove he was there on a particular day. And this  
19 is all speculation. Do you know? No, I don't. Well, then  
20 wouldn't this stand to reason? That's just improper  
21 shifting of the burden to the defendant. And I think this  
22 has all been covered in excruciating detail at this point  
23 anyway.

24 THE COURT: I understand, but I don't know this is a  
25 shifting of burden. He's responding to some questions you

T. HAM - REDIRECT EXAMINATION BY MR. DURANT

132

1 asked as far as the motel receipt.

2 MR. DURANT: Judge, I think I can ---

3 THE COURT: I'll let him finish the question.

4 MR. DURANT: Just one final question.

5 BY MR. DURANT:

6 Q. If Mr. Felder had paid in cash for the hotel room,  
7 would the cash have indicated his identity?

8 A. No, it would not.

9 MR. DURANT: No further questions.

10 THE COURT: Okay. You can step down.

11 MR. LEDDY: I'm done.

12 (THE WITNESS EXITS THE STAND.)

13 THE COURT: Any reason I can't send the jury home now?

14 MR. DURANT: No, sir, Judge.

15 MR. LEDDY: No, Your Honor.

16 THE COURT: Okay. Ladies and gentlemen, you've heard  
17 all the testimony you've going to hear today, and it's  
18 5:15. I promised to get you out of here between 5 and  
19 5:30. So, we'll stay and finish the legal issues I got to  
20 deal with.

21 I remind you please do not discuss this case when you  
22 get home. I doubt if it's going to be anything on the  
23 news, but if it is, you can't listen to it. You can't read  
24 anything in the newspaper. Don't Google anything; don't  
25 get on the Internet. You got to decide based on what you

1 hear in this courtroom. You have a nice evening.

2 In the morning, you want to start back at 9 or 9:30?

3 JUROR: 9:30.

4 THE COURT: 9:30, okay. I had some issues that come  
5 up, and I was going to start at 9, but I can start at 9:30  
6 now just as well.

7 Any objection to 9:30 with y'all?

8 MR. LEDDY: No, Your Honor.

9 MR. DURANT: No, sir.

10 THE COURT: All right, we'll start back at 9:30. I'll  
11 see y'all. If y'all will, come straight to the jury room.  
12 Now, if you have an emergency, please call because we can't  
13 do anything until all thirteen of you show up. I'll see  
14 you in the morning. Thank you so much.

15 (THE JURY EXITS AT 5:19 P.M.)

16 THE COURT: Okay, Mr. Leddy, you want to tell me about  
17 your chain problem?

18 MR. LEDDY: Well, they haven't established a chain for  
19 that piece of paper, Your Honor.

20 THE COURT: Well.

21 MR. LEDDY: He testified -- I didn't know that until  
22 we got here, and he said I never saw that or touched the  
23 original. And my client has a right to confront the person  
24 who did receive it to say that they didn't do anything to  
25 alter it when they photocopied it. And that might seem

1 ridiculous, but that's exactly the argument against the  
2 ruling in *Melendez-Diaz*, which was it's ridiculous to have  
3 to have somebody come in and say they took a bag and handed  
4 it to the person who tested what was inside the bag. But  
5 that's what the Supreme Court held nonetheless.

6 THE COURT: I understand that, but in that case, we  
7 dealt with a fungible item. Isn't this letter non-  
8 fungible? I mean, the mother testified she found it in the  
9 daughter's room. The officer testified that he got a copy  
10 from her. That he read the copy to your client. Your  
11 client has already admitted in evidence that if he wrote  
12 that letter and it -- unlike drugs or some fungible item  
13 that can be tampered with or blood, this is a non-fungible  
14 item that can be readily identified. So, the chain of  
15 evidence in a non-fungible item is not near as critical as  
16 one that can be tampered with. Unless -- and the unique  
17 thing about this case is your client has already agreed  
18 that he wrote it, and he read it into the record.

19 MR. LEDDY: That was a copy of it, though, Your Honor;  
20 it wasn't that one.

21 THE COURT: I understand, but if -- unless you can  
22 show me that what he read into the record is different than  
23 the copy.

24 MR. LEDDY: Well, well, I think that it's their -- I  
25 think that they have the burden to show you that it is the

1 same, not so much that I have to show it's different.

2 THE COURT: Well, I understand that, but he asked the  
3 officer if it's the -- he showed it to him. He said it's  
4 the exact same copy I have. It's identical to the copy I  
5 have. It's identical to what he read into the record. So,  
6 he's asked those questions, unlike -- you know, it's in  
7 evidence that that original he's trying to introduce is an  
8 exact duplicate of the copy that has been testified to.  
9 And it is a non-fungible item that can be readily  
10 identified.

11 Now, I haven't seen the document, but if you take the  
12 position that that original is somehow different than the  
13 copy, then we need to address that because he's testified  
14 it's exactly the same. Now, if you want me to look at the  
15 two, I'll be glad to. If you know that there's something  
16 different on it, then we need -- you need to point out it,  
17 and it will be a whole different scenario.

18 MR. LEDDY: Well, as far as the fungibility issue, I  
19 think that the holding was it didn't rest on -- it rested  
20 on the Sixth Amendment, the very strong literal  
21 interpretation of right to confrontation that has been  
22 adopted by the majority of the courts. And the fact that  
23 something is a fungible or not fungible is just another way  
24 of saying that it bears certain *in ditio* reliability, which  
25 is exactly the holding in *Roberts* that was rejected by

1     *Crawford*, and now we have *Melendez-Diaz*. So, I would just  
2 rest my objection on that.

3           THE COURT: And I understand that, and that's a valid  
4 point except everybody that, my understanding, has come in  
5 contact with this letter has testified. You had the right  
6 to cross-examine the mother, who said she found it. You  
7 had the daughter testify, who said she received it, tore it  
8 in half. And the police officer testified and presented it  
9 to your client who's on the record. I mean, so, you had a  
10 right to confront everybody that, that we know that --  
11 putting the mother back up on the stand and saying yeah,  
12 this is the one I found in my daughter's room, and the  
13 daughter saying that's the -- she's already testified  
14 that's the one I got. I mean, you had a right to  
15 cross-examine them.

16           Would you -- I mean, if you want to cross-examine them  
17 further on that letter, I will let you put them up and deal  
18 with them. I mean, but it seems that you've admitted the  
19 *Crawford* issues have been satisfied in that you had a right  
20 cross-examine them, and I ---

21           MR. LEDDY: Well, I haven't cross-examined the person  
22 that took, took it into the possession of the sheriff's  
23 office.

24           THE COURT: They didn't ever take it into possession,  
25 my understanding from the police officer. My understanding

1 is -- now, it wasn't in evidence in the sheriff's office.  
2 Only the copy has been. The original has been with the  
3 mother the whole time. Now, if that's not right, at least  
4 that's what ---

5 MR. DURANT: That's right, Judge.

6 THE COURT: --- Investigator Ham told me, that the  
7 sheriff's department has not had that. The mother's had  
8 that. Is that not correct?

9 MR. DURANT: That's right.

10 THE COURT: So, and she testified -- I agree. If  
11 she'd given it to Barbara Procter, who happened to be the  
12 evidence custodian, and we would get Barbara to come say  
13 yeah, I got it from her -- but my understanding, it never  
14 went to the sheriff's office. They just took a copy of it.  
15 The original has always been with the mother.

16 MR. LEDDY: Well, then that's my misunderstanding. I  
17 thought that that had been with the sheriff's department.  
18 That's just my -- so, she handed it to the investigator  
19 today, and he's going to put in it evidence through the  
20 investigator, then it's a different ball game altogether.

21 THE COURT: Right, and that's -- is that not correct,  
22 Mr. Solicitor? At least that's what I've gathered from the  
23 testimony so far. If I'm wrong -- is that correct?

24 MR. DURANT: I was just waiting for the defendant, his  
25 statement, to authenticate before we entered it into

1 evidence.

2 THE COURT: Okay. All right, so.

3 MR. LEDDY: So. Well, then, the factual basis on  
4 which I rest my objection was just incorrect.

5 THE COURT: Okay, and I understand you assumed that it  
6 had gone through the sheriff's office. And I'd assumed  
7 that, that he just testified that he didn't have the  
8 original.

9 MR. LEDDY: Yes, sir.

10 THE COURT: Okay. So, you withdraw your objection  
11 now?

12 MR. LEDDY: Yes, sir.

13 THE COURT: Okay. So, it's in without objection.

14 (HANDWRITTEN NOTE MARKED INTO EVIDENCE AS STATE'S  
15 EXHIBIT NUMBER 2.)

16 THE COURT: Anything else we need to deal with before  
17 the morning?

18 MR. DURANT: No, sir. Not that I'm aware of at this  
19 point.

20 THE COURT: So, from time schedule, you think you'll  
21 -- it looks like now this case has gone faster than we  
22 first anticipated. So, we may be to the jury by the end of  
23 the morning late. Is that correct?

24 MR. DURANT: Judge, I will ---

25 MR. LEDDY: I'll just have to talk to my client about

1 whether he wants to testify, Your Honor.

2 THE COURT: And do you want me to cover that on the  
3 record now?

4 MR. LEDDY: That would be great, Your Honor.

5 THE COURT: Okay. Mr. Felder, stand up, please, sir,  
6 and raise your right hand.

7 (WHEREUPON, THE DEFENDANT IS DULY SWORN.)

8 THE COURT: You understand that -- you can put your  
9 hand down now -- that I don't know how many more witnesses  
10 the state has, but very soon it may become the point that  
11 you have the right to offer evidence in this case. You  
12 understand that?

13 DEFENDANT: Yes.

14 THE COURT: You do not have to offer anything, and you  
15 do not have to testify. And if you choose not to, I will  
16 instruct the jury that they cannot consider that in any  
17 way. They can't even talk about it in the jury room.

18 But you also have a right to testify, but if you do  
19 testify, then you'll be subject to cross-examination just  
20 like any other witness in this case. And if you have a  
21 criminal record and it qualifies under our rules, it may be  
22 brought out. And I don't know if you do or not, and I  
23 don't know whether it qualifies, but you could be impeached  
24 on it if you do. You understand that?

25 DEFENDANT: Yes.

1 THE COURT: You have to right to talk to your attorney  
2 about whether you want to testify or not testify, but only  
3 -- it is your decision. He can only advise you to that  
4 effect. Do you understand that, and it will be your  
5 decision as to whether you want to testify or offer any  
6 evidence in this case. You understand that?

7 DEFENDANT: Yes.

8 THE COURT: And you don't have to tell me at this  
9 point, but you have an opportunity to talk to your  
10 attorney, you know, over the recess tonight and tomorrow  
11 and decide whether you want to testify for not. You  
12 understand?

13 DEFENDANT: Yes, Your Honor.

14 THE COURT: You got any questions you want to ask me  
15 concerning your rights as far as testimony?

16 DEFENDANT: No, Your Honor.

17 THE COURT: Okay. Thank you, sir.

18 MR. LEDDY: Your Honor, you want us -- can we settle  
19 his record so that I can have a conversation with him after  
20 court about whether or not ---

21 THE COURT: Sure.

22 MR. LEDDY: His, his record, Your Honor, if you'd  
23 like, I can hand up a copy of his ---

24 THE COURT: Well, let me -- does the solicitor take  
25 the position he has a criminal record that he can be

1 impeached from?

2 MR. DURANT: No, Your Honor.

3 THE COURT: Okay, then it's settled.

4 MR. LEDDY: Very good.

5 THE COURT: Okay, any other issue?

6 DEFENDANT: May I speak, Your Honor?

7 THE COURT: Well, yeah, you can, but you may want to  
8 talk to your attorney first, okay? I mean, I certainly --  
9 talk to me, but you might want to at least run it by him  
10 before you say anything.

11 MR. LEDDY: I'm not sure what he wants to talk about,  
12 so let me talk to him first, if that's ---

13 THE COURT: Okay.

14 (COUNSELOR CONFERS WITH DEFENDANT BRIEFLY.)

15 THE COURT: Okay. So, anything else I need to deal  
16 with tonight?

17 MR. DURANT: No, sir.

18 THE COURT: All right. Well, then the jurors say they  
19 want to start back at 9:30. And that fact that we've gone  
20 a lot quicker, hope we'll finish tomorrow. If y'all have  
21 any unique charges, maybe y'all could get it to my law  
22 clerk by in the morning.

23 Okay, then we'll be in recess until 9:30.

24 MR. LEDDY: Thank you, Your Honor. Your Honor, can my  
25 client remain on bond for the night?

1 MR. DURANT: Actually, Judge, can we -- and I don't  
2 want to put this one the record. I want to revisit Your  
3 Honor's ruling on the rape shield issue. It's  
4 determinative of the witness that I might call tomorrow.  
5 We talked about calling the medical examiner tomorrow in  
6 regards to her exam at the Care House.

7 Judge, the question is was it Your Honor's ruling that  
8 if I called a medical examiner and she testified as to the  
9 hymen indicating past penetration, is that going to open  
10 the door for the defense to get into this alleged oral sex  
11 issue at the high school?

12 THE COURT: All right, what's your...

13 MR. LEDDY: My position is that it would. I mean, I  
14 don't -- I mean, I very carefully avoided any type  
15 discussion about that because it's not relevant to this  
16 case until, until the state puts up that witness and makes  
17 it relevant.

18 THE COURT: Well, my understanding ---

19 MR. LEDDY: Well, Your Honor, here's, here's the  
20 thing. It would be like if you ask people when Bill  
21 Clinton went through his thing, if you took a poll and  
22 thought it was reasonable for people to conclude that that  
23 -- that he had never engaged in vaginal intercourse with  
24 anybody outside the bounds of marriage, it would be  
25 ridiculous.

1 THE COURT: I understand that, but the issue in this  
2 case, whether her hymen was intact or not, and i.e. or was  
3 subject to penetration..

4 MR. LEDDY: Well, and I ---

5 THE COURT: You wouldn't take the position that oral  
6 sex would necessarily break her hymen.

7 MR. LEDDY: No, I wouldn't. However, I would say that  
8 to, to get into whether or not she has these physical  
9 manifestations of sexual activity and only leave one person  
10 as the possible culprit in the eyes of the jury would not  
11 be fair.

12 THE COURT: I understand that, but you, if you have  
13 evidence that someone else has actually had sex with her is  
14 one thing, had penetration that would have medically have  
15 broken her hymen. But if she testifies that, based on her  
16 testimony, she had not had sex and that -- in rape case,  
17 you know, you're arguing about physical evidence. If they  
18 have a doctor that says that it is evidence of penetration  
19 and sexual activity -- i.e., that her hymen has been, is  
20 not intact -- that's normally admissible in a rape case.

21 Now, I assume that the outside evidence you had that  
22 at least there's allegations from the school report that  
23 there was oral sex going on. Now, I don't know whether she  
24 was performing oral sex on someone, or someone was  
25 performing oral sex on her, but how would that have

1 penetrated -- or groping -- her hymen? So, how is, how is  
2 that -- unlike you have somebody who comes forward and says  
3 that they had sex with her, and then some third party is  
4 coming in and claiming that he had sex with her some time  
5 prior to your client having sex with her, or some time  
6 prior to the examination.

7 MR. LEDDY: Well, I think that it just, it would  
8 require you to make the assumption that if there's a  
9 documented event that's sexual in nature inside of a  
10 school, and that that, that type, the type of high-risk --  
11 it creates ---

12 THE COURT: I know the rape statute is there to  
13 protect.

14 MR. LEDDY: Well, I believe the purpose of the statute  
15 is to -- it was written mostly, I believe, for cases  
16 involving whether or not it's consensual or not. To, to,  
17 you know, to ---

18 THE COURT: I understand.

19 MR. LEDDY: To keep the defense from saying this is a  
20 person that is promiscuous and does this all the time, and  
21 of course they would have done it in this particular  
22 situation. Now they're crying rape for one reason or  
23 another. And that's the purpose of it.

24 THE COURT: Right.

25 MR. LEDDY: I mean, it applies to this statute, too,

1 but it wasn't invented for this type of case.

2 THE COURT: I understand that, but I, at this point, I  
3 don't think I'm going to allow it. Now, when the doctor  
4 takes the stand, then it may be a situation where you may  
5 have an *in-camera* hearing. If you can get the doctor to  
6 say that oral sex could have -- if the doctor makes this  
7 medical finding of her vagina, and you can get the doctor  
8 to say outside the presence of the jury that whatever  
9 information you have could have caused that same medical  
10 finding, then that's a different issue.

11 MR. LEDDY: Yes, sir.

12 THE COURT: But if the doctor says there's no way it  
13 could cause the same medical finding, then I ain't going to  
14 let you go there.

15 MR. LEDDY: Okay.

16 THE COURT: You understand?

17 MR. LEDDY: Yes, sir.

18 THE COURT: You understand what I'm saying?

19 MR. DURANT: Yes, sir.

20 THE COURT: And so whatever allegations you have,  
21 depends on what the doctor says. So, we may have to do  
22 that outside the presence of the jury if that becomes an  
23 issue, or we may can do it *in camera* and have you ask the  
24 doctor that.

25 And I don't know what the doctor's going to testify

1 to. When the doctor comes in here with certain findings  
2 and diagrams, then, you know, if she says I find, you know,  
3 vagina trauma and it's a tear at 3:00 and 6:00 which is  
4 consistent with penetration, et cetera, et cetera, then you  
5 can ask you, well, would oral sex have done the same thing.  
6 She says yeah, then you may -- it may get in. She says no  
7 way, then I, then I don't think it will.

8 MR. LEDDY: Okay.

9 THE COURT: Okay? All right, anything else we need to  
10 deal with?

11 MR. LEDDY: I can't think of anything, Your Honor.

12 THE COURT: And, you know, and one of the issues that  
13 are unique in this case -- a lot of times in a criminal  
14 sexual conduct case, consent is huge.

15 MR. LEDDY: Yes, sir.

16 THE COURT: This case, consent's not an issue.

17 MR. LEDDY: Correct. Yeah.

18 THE COURT: Okay. So, I'll see y'all. I'll be here  
19 earlier probably than 9:30 unless I shoot a deer. What  
20 time is the doctor coming? Let Mr. Leddy interview her. I  
21 mean, before we put her on the stand, just ask, you know,  
22 basically what she's going to testify to and whether his  
23 information would affect that testimony, and then we'll  
24 know up front whether it's going to come in.

25 MR. DURANT: Judge, the school records don't indicate,

1 but I understand after speaking with the victim and her  
2 family that the incident was giving oral sex and not  
3 receiving.

4 THE COURT: Okay. Well, that makes ---

5 MR. DURANT: Which in my opinion would make it even  
6 less relevant.

7 THE COURT: Yes. That's going to be totally  
8 irrelevant there.

9 Okay. All right. I'll see y'all at 9:30.

10 (WHEREUPON, THE CASE IS AT EASE.)

11 TUESDAY, OCTOBER 18, 2011

12 (COURT RESUMES AT 9:40 A.M.)

13 THE COURT: All right, we ready to go?

14 MR. DURANT: Yes, sir, Judge.

15 THE COURT: Defense ready?

16 MR. LEDDY: Yes, Your Honor.

17 THE COURT: We have all the jury here?

18 CLERK OF COURT: Yes, sir.

19 THE COURT: Are there any legal issues before I bring  
20 the jury out?

21 MR. LEDDY: Yes, sir, I think you may have forgotten  
22 yesterday afternoon to put on the record what our  
23 stipulation was as to the video that was played. Did we  
24 put that on the record that it was nineteen minutes, the  
25 first nineteen minutes only?

1 MR. DURANT: I don't think so.

2 THE COURT: Okay.

3 MR. LEDDY: Okay. It was the first nineteen minutes  
4 only.

5 THE COURT: Okay.

6 MR. LEDDY: And the rest was excluded pursuant to Your  
7 Honor's order.

8 THE COURT: All right, and so...

9 MR. LEDDY: So, if the Court of Appeals needs to  
10 review it, they should watch the first nineteen minutes.

11 THE COURT: Okay, and the state agrees with that?

12 MR. DURANT: Yes, sir. And, Judge, just for the  
13 court's information, the next witness I'm going to call is  
14 Gaye Allen Cook, who was the witness's counselor following,  
15 following these events.

16 (COUNSELORS CONFER.)

17 MR. DURANT: Judge, I'm not in possession of any  
18 reports that she's made. I understand that she has treated  
19 her simply for the purposes -- or treatment, not for  
20 purposes of...

21 COURT REPORTER: Could you repeat that, please?

22 MR. DURANT: My understanding is she has just  
23 counseled her for purposes of treatment.

24 THE COURT: Okay, and so what is she going to testify  
25 to?

1 MR. DURANT: Her, her diagnosis, behavioral symptoms  
2 and -- or her behavioral diagnosis of the victim, Judge,  
3 which I think is admissible under *State vs. Morgan*, which  
4 seems to be the leading case out of *State vs. Kansas*.

5 THE COURT: All right, and then how many more  
6 witnesses has the state got? I'm just trying to schedule.  
7 When do y'all think we'll have this to the jury? How long  
8 -- is the defense going to put up a case?

9 MR. LEDDY: No, Your Honor.

10 THE COURT: Okay. So, the state's ---

11 MR. DURANT: My last witness will be the ---

12 THE COURT: --- witness, and then going to the jury?  
13 Huh?

14 MR. DURANT: My last witness will be the medical  
15 examiner, and she is to be here at 11:15, is what she told  
16 me. She couldn't be here before then.

17 THE COURT: Okay.

18 MR. LEDDY: Your Honor, I just want to make sure that  
19 the witness, the first witness this morning understands  
20 that to comment on her belief as to whether or not the  
21 allegations are true or not is a reversible problem.

22 THE COURT: Okay.

23 MR. LEDDY: And I -- and that the solicitor has gone  
24 over that with her. And if her testimony is confined to a  
25 finding of rape trauma, I think that unfortunately that is

1 admissible under our case law. If that's all that is gone  
2 into, then we shouldn't have any problem. But I just hope  
3 that we don't have a problem because of testimony that  
4 comes out that's not supposed to.

5 MR. DURANT: Judge, I've spoken with her and informed  
6 her that she can't corroborate the, the victim's testimony.  
7 That she can't say what the victim has told her. She can  
8 only discuss her findings, and I believe she can testify as  
9 to what those are consistent with, but cannot give an  
10 opinion or vouch for the victim's story about -- for the  
11 truthfulness of it.

12 THE COURT: Okay.

13 MR. LEDDY: And if that's the case, then I don't even  
14 think there will be a cross.

15 THE COURT: Okay. All right, and then it -- so, we  
16 got two witnesses, and both of them -- we have to wait on  
17 one of them, and then the state's going to rest, and  
18 defense is not planning on putting up anything.

19 MR. LEDDY: That's right.

20 THE COURT: So, we'll go straight into closing  
21 arguments and charge.

22 MR. LEDDY: Very good.

23 THE COURT: Okay. Do y'all have anything, and I guess  
24 some -- you got any particular charges you want me to  
25 charge versus my standard and the statute?

1 MR. LEDDY: Even though I think it's been covered in  
2 previous cases, I still think that the charge on no  
3 corroboration necessary in these particular cases is  
4 misleading to the jury because that's true in any case.  
5 And it makes them think that it's a special rule for these  
6 type cases. And I think that that's -- just doesn't make  
7 any sense whatsoever.

8 THE COURT: Okay.

9 MR. LEDDY: As far as the -- and we had discussed  
10 previously charging the jury on particular *mens rea* for  
11 each element of the offense. And I, and I have discussed  
12 that with the solicitor, and I don't know if he has any  
13 objection to that.

14 But I think the jury should be charged on *mens rea* as  
15 to each element of the defense, including the requirement  
16 that the defendant knowingly engaged in this with someone  
17 under sixteen. In other words, age is an issue. It has to  
18 be proven as an elements of the offense.

19 THE COURT: Okay. Well, what's, what's your position  
20 on that, Mr. Solicitor?

21 MR. DURANT: Judge, my position is that's not the law.  
22 That's not the requirement. That's not an element of the  
23 statute in this case. The case that Mr. Leddy cites has  
24 not been applied in this context, at least not in South  
25 Carolina, and several other states have declined to apply

1 it in similar statutes.

2 THE COURT: Because our statute doesn't require it,  
3 that he have knowledge of the victim's age, does it?

4 MR. LEDDY: It doesn't require that he has knowledge  
5 that he engaged in any of it. There's no -- it's  
6 completely absent of any *mens rea*, but ---

7 THE COURT: I know, but in the back half of that  
8 videotape, he states on the videotape he knew she was  
9 fifteen, he was forty-five. Now, we get into that, then  
10 they may have -- they may play that part of the tape.

11 I was going to charge criminal intent.

12 MR. LEDDY: Yes, sir.

13 THE COURT: Just like our standard.

14 MR. LEDDY: Your Honor.

15 THE COURT: You know, and what his intent was, and you  
16 can gather that from, you know, circumstances surrounding  
17 the event, but I was going to charge *mens rea* far as age is  
18 concerned. I mean, clearly the state's got to prove her  
19 age and prove that she was under age and that he, you know,  
20 was older, and that's a requirement they've got to prove.

21 But the fact of knowledge I don't think -- I mean, my  
22 understanding it's not a requirement. And if -- of course,  
23 in his interview with the police, he admits on the  
24 interview he knew she was fifteen.

25 MR. DURANT: And, Judge, we, the state wouldn't have

1 consented to the redaction of the video that we did with  
2 the understanding that we would be required to prove  
3 knowledge of age in this case.

4 MR. LEDDY: If that's Your Honor's ruling, then I  
5 understand it, and I would -- just to make the record clear  
6 as to what case it is, it's *U.S. vs. Excitement Video*, 513  
7 U.S. 64, U.S. Supreme Court 1994 ; citing, too, *Morrison*  
8 *vs. United States*, 342 U.S. 246, 1952; and *Staple vs. U.S.*  
9 511 U.S. 600, 1994.

10 THE COURT: Okay. I'll look at those, and I'll let  
11 y'all know what I'll charge with.

12 MR. LEDDY: Thank.

13 THE COURT: All right, we ready to bring in the jury?

14 MR. DURANT: Yes, sir.

15 THE COURT: All right, bring me a jury, please, ma'am.

16 (THE JURY ENTERS AT 9:48 A.M.)

17 THE COURT: Good morning.

18 JURY: (EN MASSE) Good morning.

19 THE COURT: Mr. Solicitor.

20 MR. DURANT: Thank you, Your Honor. The state calls  
21 Gaye Allen Cook.

22 GAYE ALLEN COOK, BEING DULY SWORN,  
23 TESTIFIES AS FOLLOWS:

24 VOIR DIRE EXAMINATION BY MR. DURANT:

25 Q. Good morning, Ms. Cook.

1 A. Good morning.

2 Q. Where have you come from this morning?

3 A. Florence.

4 Q. And where do you work in Florence?

5 A. In Therapy Works, Incorporated. It's a private  
6 practice in Florence.

7 Q. And what's your job title there at Therapy Works?

8 A. I'm a child and family clinical therapist specializing  
9 in trauma and abuse.

10 Q. What kind of training do you have, must you have for  
11 that position?

12 A. I have a master's in clinical counseling. I have  
13 post-graduate studies in trauma and abuse from Gardner-Webb  
14 University. I am a licensed professional counselor in  
15 South Carolina. Prior to that, I was licensed in North  
16 Carolina, where I practiced before coming back to South  
17 Carolina. I'm also listed on the University of South  
18 Carolina's list of experts in the field of trauma and  
19 abuse. And I'm currently a supervisor in the State of  
20 South Carolina for the Best Evidence Supported Treatment  
21 Model -- trauma focused, cognitive behavioral therapy -- in  
22 which I travel across the nation in teaching people that  
23 model and helping them understand how to help victims of  
24 trauma and abuse.

25 Q. Have you had a chance to testify in South Carolina

G. COOK - VOIR DIRE EXAMINATION / DIRECT EXAMINATION 155

1 courts before?

2 A. I have.

3 Q. How many times?

4 A. In family or criminal?

5 Q. In criminal.

6 A. Criminal court, I'd say probably forty-five to fifty  
7 times, somewhere in there.

8 Q. Have you been qualified as an expert in those courts?

9 A. I have.

10 Q. In trauma and abuse?

11 A. I have.

12 MR. DURANT: Judge, at this point we'd ask -- offer  
13 Ms. Cook as an expert in trauma and abuse.

14 THE COURT: What says the defense?

15 MR. LEDDY: No objection, Your Honor.

16 THE COURT: Okay. She's qualified without objection.

17 DIRECT EXAMINATION BY MR. DURANT:

18 Q. Ms. Cook, have you had a chance in this case, have you  
19 met with the victim, Minor

20 A. I have.

21 Q. And when did those meetings begin?

22 A. I started treating Minor in August of 2010.

23 Q. And how was she referred to you?

24 A. By Rhonda Rainey, the victim's advocate for the  
25 sheriff's department.

1 Q. What did you understand the purpose of those meetings  
2 to be?

3 A. To assist her in processing things that had allegedly  
4 occurred to her.

5 Q. And how often have you met with Miss Johnson?

6 A. Back in the beginning stages in August of 2010, we met  
7 weekly, and then as she began to progress, the normal rate  
8 of treatment is we go from every week to every other week.  
9 And currently we are doing one time a month.

10 Q. I notice you define that as, you characterize it as  
11 treatment. What exactly are you treating? Do you have a  
12 -- does she have a diagnosis or?

13 A. She does.

14 Q. What is her diagnosis?

15 A. Her diagnosis is post-traumatic stress disorder. We  
16 also refer to that PTSD.

17 Q. Could you briefly just tell us what post-traumatic  
18 stress disorder is?

19 A. Sure. Post-Traumatic stress disorder was a term that  
20 way coined way back after the first war. We had people  
21 coming back, and they were different. They were  
22 experiencing nightmares, experiencing hyper arousal,  
23 experiencing things that they just weren't used to  
24 experiencing. And so a bunch of professionals got  
25 together, began to study these behaviors and noticed that

G. COOK - DIRECT EXAMINATION BY MR. DURANT

157

1 after a trauma, it's pretty common for someone to have  
2 certain characteristics. That they may be different. And  
3 that is where the term post-traumatic stress disorder was  
4 coined.

5 We also use that sometimes when we're treating victims  
6 of abuse, depending on if they qualify based on what the  
7 standards of the diagnosis are.

8 Q. What are, what are some of the symptoms of  
9 post-traumatic stress disorder?

10 A. Symptoms of post-traumatic stress disorder are being  
11 afraid to be by yourself, being startled whenever someone  
12 comes up behind you, having nightmares where you recall  
13 events that have occurred to you, depression, withdrawal.  
14 Oftentimes sleep is affected; either someone will sleep  
15 more or they will sleep less. Appetite changes normally  
16 occur: weight loss, weight increase, either one.

17 Normally with children and adolescents, what you see  
18 is withdrawal, being afraid to spend time with people that  
19 they used to spend time with. And oftentimes they will  
20 experience quite a bit of guilt over what allegedly has  
21 occurred.

22 Q. Can you tell us, since you've diagnosed Minor with,  
23 with this post-traumatic stress disorder -- and I'm  
24 assuming she's exhibited some of these symptoms?

25 A. She has.

1 Q. Which ones?

2 A. Well, what we do is when we're making this diagnosis,  
3 we use what we call the UCLA, which is the accepted  
4 evaluation tool in making a diagnosis of post-traumatic  
5 stress disorder. When we do that, we allow the client that  
6 we're treating to self report in many of these areas, and  
7 then we also through talking to this client kind of make  
8 some of those judgement calls on our own.

9 When I met Minor back in August of 2010, she reported  
10 sleeping a lot more, being afraid to be by herself, being  
11 afraid that something else might happen to her, not wanting  
12 to hang out with her friends anymore, not feeling good  
13 about herself anymore, and just wanting to be withdrawn,  
14 not wanting to really do anything. And also reported quite  
15 a bit of nightmares where she was recalling events, and  
16 quite a bit of guilt around what had occurred.

17 Q. Is your diagnosis of Minor is it consistent  
18 with someone who's been traumatized?

19 A. It is.

20 Q. Is it a consistent with somebody that's been abused?

21 A. It is.

22 Q. Sexually abused?

23 A. It is.

24 Q. Have, have you noticed a change in Minor as you've, as  
25 you've been counseling her over the past year?

G. COOK - DIRECT EXAMINATION BY MR. DURANT

159

1 A. I have.

2 Q. And tell me about that.

3 A. When I first met Minor back in August of 2010, she was  
4 exactly what I just described to you. And, and what I  
5 always explain to children and adolescents is my job is to  
6 come in, and when something has allegedly occurred, to help  
7 you kind of get your wheels stuck out of the mud because  
8 that's normally where children and adolescents are when  
9 something has allegedly occurred. And so that was my job:  
10 to help her walk through that, to help her try to work on  
11 some of the symptoms.

12 And I'm happy to say that, that she has done that.  
13 She's doing very well in school. Has rejoined many  
14 activities that she was not a part of this time last year.  
15 Reports recently sleeping a lot better. Appetite is  
16 appropriate. She seems, in my opinion, to be a normal,  
17 happy, healthy teenage girl who's very much looking forward  
18 to the future.

19 Q. So, the Minor that we see today is not the Minor that  
20 would have -- two years ago following these alleged events?

21 A. Definitely not.

22 Q. And you've seen that change?

23 A. I have.

24 MR. DURANT: No further questions, Your Honor.

25 MR. LEDDY: Very briefly, Your Honor.

G. COOK - CROSS-EXAMINATION BY MR. LEDDY

160

1 THE COURT: Okay.

2 CROSS-EXAMINATION BY MR. LEDDY:

3 Q. Now, you specialize in cases involving allegations of  
4 sexual abuse?

5 A. Any type of trauma and abuse, that's correct.

6 Q. Okay. So, any type trauma. Does that mean somebody  
7 that gets beaten by their parents also?

8 A. Physical abuse, sexual abuse, domestic violence,  
9 emotional abuse, children who've been in war, children  
10 who've had their parents die maybe in a war. Anything that  
11 qualifies as trauma and abuse.

12 Q. Okay. Very Good.

13 MR. LEDDY: Nothing further, Your Honor.

14 MR. DURANT: No redirect.

15 THE COURT: You can step down.

16 WITNESS: Thank Okay.

17 THE COURT: Thank you.

18 (THE WITNESS EXITS THE STAND.)

19 MR. DURANT: Your Honor, may we approach?

20 THE COURT: Yes, sir

21 (OFF-THE-RECORD BENCH CONFERENCE.)

22 THE COURT: All, right ladies and gentlemen, I need to  
23 take up a matter of law outside your presence, so I'm going  
24 to send you to the jury room. I remind you please don't  
25 discuss this case yet.

1 I'll get you back out just as quick as I can. I have  
2 no idea how long that will be, but if I'm going to take  
3 real long, I'll at least bring you out and tell you what's  
4 going on. I won't leave you back there all day. Thank  
5 you.

6 (THE JURY EXITS AT 9:58 A.M.)

7 THE COURT: Okay.

8 MR. LEDDY: All right, Your Honor, my, my  
9 understanding is he wants to call a nurse practitioner or a  
10 registered nurse who did the exam.

11 MR. DURANT: That's right. I understand her to be a  
12 nurse practitioner, Judge, but based on my conversation  
13 with Ms. Rainey this morning, Ms. Rainey tells me that  
14 she's now a doctor. I understand her to be, or understood  
15 her to be a nurse practitioner before, so.

16 MR. LEDDY: Okay. Well, so, what -- do you know what  
17 her qualification was when she did the examination?

18 MR. DURANT: According to Ms. Rainey, she was a nurse  
19 practitioner at that time.

20 THE COURT: Okay.

21 MR. LEDDY: Your Honor, what they're, what they're  
22 going to put up is that there was a notch in a, in a -- the  
23 hymen and that that is consistent with penetration. And I  
24 would submit to the court that that does not move the ball  
25 forward for the jury very much. In other words, it's not

1 very probative because when you say things like it's  
2 consistent with, that means, well, it could have happened  
3 that way, and maybe it didn't, and that's just not helpful.  
4 It's not conclusory.

5 And without the context of being told this is what  
6 happened, go take a look at it and tell me if the physical  
7 evidence supports that, and they say yeah, the physical  
8 evidence is consistent with that. If you didn't tell them  
9 that beforehand, you just sent them to go do the physical  
10 exam, they came back. They would tell you I -- this could  
11 be somebody who's never engaged in any sex, it could be  
12 somebody who has engaged in sex with multiple partners, it  
13 could be somebody who -- or anywhere in between. And so  
14 it's not probative. Its probative value is nothing.

15 And it's obviously prejudicial for somebody to come  
16 and say I'm a doctor with everything, all the connotations  
17 of trustworthiness that comes along with that to say, you  
18 know, this is consistent with that.

19 And the case on point is *State vs. Shumpert*, 312 S.C.  
20 502 from '93. Do you have a copy of that? I got a copy if  
21 you want to see it; I can hand this up, Your Honor. And it  
22 says that this type of evidence is only admissible where  
23 its probative value outweighs its prejudicial effect.

24 And I would just say that it's just not possible to,  
25 from this type of examination, to determine what it is that

1 they are seeking to prove with it. And so I'd move that  
2 she not be allowed to testify, and then we don't have to  
3 worry about going through all of that. And, Your Honor,  
4 the holding is, is in -- footnotes are in section 6. It's  
5 on page 4.

6 THE COURT: Okay.

7 (A PAUSE.)

8 THE COURT: They're saying in this case it was  
9 admissible, didn't they?

10 MR. LEDDY: Yes, sir. I mean, well, they did in this  
11 particular case because they found that its probative value  
12 exceeded its prejudicial effect. What I'm saying is in  
13 this particular instance, this is physical evidence which  
14 is not, not probative because it's consistent with either  
15 outcome. And, I mean, if we -- she would have to admit  
16 that if she were allowed to testify. And, of course, I  
17 guess you could say, well, it goes to the weight, not the  
18 admissibility, right?

19 However, it's, it is prejudicial because you have a  
20 doctor or a nurse or whatever the qualification is. If  
21 she's allowed to say as an expert that it's consistent with  
22 that, then it's highly prejudicial. And what I'm saying is  
23 that in spite of how prejudicial it is, when you have  
24 somebody say it's consistent with, that's just a fancy way  
25 of saying I don't know, but I'm going to say that it could

1 have been that way. But it's highly prejudicial.  
2 Consistent with doesn't help. If they knew from the  
3 physical report, it'd say it's conclusive of, not  
4 consistent with.

5 THE COURT: Okay. My -- but my understanding, and I'm  
6 assuming in this case, and I don't know what she's going to  
7 testify to. But I have a young victim, unlike if she was a  
8 thirty year-old married woman who have a long sexual  
9 history, then the fact that she's not a virgin is a given.  
10 But if the doctor, the fact that the doctor's going to get  
11 up there and say based on my examination of her, her hymen  
12 is not intact, therefore -- because if her hymen was  
13 intact, the doctor may say even though it may have been  
14 digital penetration, it's not likely that it was full  
15 penile penetration because her -- the place of her hymen  
16 and everything else. So, she, she could not have --  
17 defendant could not have had sexual intercourse with her.

18 MR. LEDDY: Yeah, and that would be a case where the  
19 physical evidence would be conclusive. And then its  
20 probative value would definitely outweigh whatever --  
21 whether it prejudiced the state or defendant.

22 THE COURT: So, you, so, you're saying the doctor's  
23 not going to say that?

24 MR. LEDDY: No. I'm -- well, I don't know how -- what  
25 the doctor's going to say. All I know is that the physical

1 report says it's consistent with. And in consulting with  
2 an expert on it, I can tell -- I know that if doctor or the  
3 nurse is forthright with the court, then they're going to  
4 have to say that it could have happened or not happened  
5 regardless of this particular physical evidence.

6 In other words, it doesn't help under -- it doesn't  
7 help advance, make more or less likely to be true, the  
8 issue before the court whether or not there was a sexual  
9 battery.

10 THE COURT: All right. Well, I mean, I assume -- is  
11 the -- is her hymen intact?

12 MR. DURANT: Judge, the report says there's a cleft at  
13 the 6:00 position of the hymen, which is consistent with  
14 past penetration.

15 THE COURT: So, she's going...

16 MR. LEDDY: Your Honor, the doctor is going to have to  
17 admit that it's also consistent with, with somebody who had  
18 experimented with themselves, somebody who's used a tampon,  
19 somebody who has engaged with sex with other people that  
20 haven't been -- that we can't go into.

21 THE COURT: I understand, but the other issue is I've  
22 heard doctors say it is, based on my examination of this  
23 person, it is not consistent with any penetration, not  
24 other than, you know -- I've had doctors say this person's  
25 a virgin and they could not have had sex. At this point in

1 the game, they have not had sex. I mean, is the doctor's  
2 going to say that ---

3 MR. LEDDY: Well, that would be a case where you an  
4 imperforate where ---

5 THE COURT: Right.

6 MR. LEDDY: You know, and that's exceedingly rare in a  
7 fifteen year-old.

8 THE COURT: I understand that.

9 MR. LEDDY: And that would be phenomenally probative.  
10 That is not what we have here.

11 THE COURT: Well, you know, also the state has a right  
12 to prove that, at least through medical testimony, that  
13 medically it's consistent because the jury wants to know  
14 where is the doctor. When a defense lawyer gets up there  
15 and says you didn't hear from a doctor who could have come  
16 in here and told you whether this young girl had sex or not  
17 -- so, it's one of those scenarios they got to prove  
18 medically it's consistent with her, with the defendant  
19 having some type of sexual intercourse with her, versus the  
20 doctor not having medical testimony saying, you know. They  
21 got to, they have to answer the questions beyond a  
22 reasonable doubt. And they have to prove at least to some  
23 degree that medically the examination of her vagina is  
24 consistent with the story she's telling.

25 MR. LEDDY: Yes, sir. Well, then, you know, I would

1 like to proffer that testimony before we put it in front of  
2 the jury. And my objection is, you know, to allowing in  
3 something that -- that particular language, it is  
4 consistent with. That just is not helpful.

5 THE COURT: I understand.

6 MR. LEDDY: If I have to understand whether or not it  
7 happened and you tell me, well, it's consistent -- if I  
8 answered all my client's questions with, well, it would be  
9 consistent with this, then that wouldn't help him in the  
10 slightest.

11 THE COURT: Well, but it -- she also could say it's  
12 not consistent, that medically it's not consistent with.

13 You know, now, if you have a medical report prior to  
14 the, to this alleged incident where she had gone to a  
15 doctor and the doctor had given her an exam and made these  
16 findings, and that those findings were the same as the  
17 afterwards, then than may be true. And I don't know  
18 whether that's the scenario in this case. But without any  
19 prior medical history, state has the right to prove  
20 medically that her story is consistent with the medical  
21 findings.

22 I mean, I don't think that that on its face, that the  
23 prejudicial value outweighs the probative value on that. I  
24 haven't, I haven't heard the doctor testify, and if we need  
25 to do it *in camera*, I mean, we can. But some, at least

1 some of y'all ought to know what the doctor's going to say.  
2 I assume the state's not going to put the doctor on the  
3 stand if the doctor is not going to at least say something  
4 that helps them. And if the doctor was going to say it's  
5 totally inconsistent, then that's exculpatory and they got  
6 to give that to you. So, I assume it's not going to be  
7 exculpatory and assume it's, you know -- and I don't think,  
8 at least from, at least from what I hear in this case, it's  
9 going to be more prejudicial than probative.

10 MR. LEDDY: Yes, sir. I guess, you know, my point is  
11 that it's just, it's a very convincing way to fudge your  
12 conclusion in terms of you're not committing yourself as --  
13 when you say something is consistent with it, if you were  
14 to give completely opposite testimony or evidence down the  
15 road, you'd say, well, I didn't say it was conclusive of.  
16 I just said it was consistent. And it's just like the kind  
17 of answer you would get out of a customer service  
18 representative when they tell you it will be seven to ten  
19 business days before this is processed. That's an answer I  
20 used to always give, and I had absolutely no idea when I  
21 did that for a living because, you know, it was probably  
22 going to get done in that amount of time. You know, it  
23 would be consistent with that.

24 THE COURT: Understanding -- well, she -- I assume  
25 normally in these cases, based on my exam, it is consistent

1 with some type of penetration. Now, on cross-examination  
2 if she says the hymen is not intact, then many times you  
3 can ask, well, is there a number of ways her hymen could  
4 not be intact? She could have injuries as a child. She  
5 could have fallen off a bicycle. She could have a number,  
6 a number of things, and all that's true. If she says,  
7 well, I don't know how it got torn, but it's consistent  
8 versus -- you know, I've also had them say this child's  
9 vagina or hymen's intact. It is no way you could have had  
10 penetration past 3 centimeters or whatever those numbers  
11 are. And so, you know, based on the testimony, the jury  
12 has to make that call as to whether they think this  
13 particular witness is telling the truth or not.

14 So, I mean, I think the state has the right to prove  
15 that at least medically this could have happened versus  
16 not. So, having said that, we -- she's not going to be  
17 here until 11:15?

18 MR. DURANT: Judge, I'll go get on the phone with her  
19 now and see where she is.

20 THE COURT: Okay, and see if she come any quicker. If  
21 not...

22 MR. DURANT: Okay.

23 THE COURT: I don't know what to do with this jury if  
24 we're going to have to wait an hour.

25 MR. DURANT: Well, if it turns out we'll have to wait

1 an hour, Judge, I may proceed without her. I'll maybe get  
2 on the phone with her now and see.

3 THE COURT: Well, I mean, that's your call and I'm not  
4 trying to ---

5 MR. DURANT: I'm not sure that I want the jury back  
6 there waiting on her for an hour.

7 THE COURT: Well, I can let them go take a break, go  
8 turn them loose for an hour. Let them walk around, go get  
9 a snack, get a cup of coffee. I don't have to keep them  
10 locked up back there.

11 THE COURT: And I anticipated the first testimony  
12 lasting a little bit longer.

13 THE COURT: I understand.

14 MR. DURANT: But I'll get on the phone with her now  
15 and see where she is.

16 THE COURT: All right, go call real quick, see what  
17 she says, and then I'll let the jury know based on what  
18 kind of response we get.

19 MR. LEDDY: Are we at ease, Your Honor?

20 THE COURT: Yes. That's fine.

21 (OFF THE RECORD.)

22 THE COURT: You sure it's 11:15, or should I tell this  
23 jury 11:30?

24 MR. DURANT: I think it's safest to tell them 11:30.

25 THE COURT: Okay.

1 MR. DURANT: That gives them an hour to break.

2 THE COURT: Okay. Bring me a jury.

3 (THE JURY ENTERS AT 10:27 A.M.)

4 THE COURT: Ladies and gentlemen, the next witness, we  
5 have a scheduling problem and they can't be here until  
6 11:30. Instead of leaving you locked up back there in the  
7 jury room for an hour, I'm just going to let you go do  
8 whatever you want to do and ask you to be back in the jury  
9 room at 11:30.

10 I remind you don't talk about this case among  
11 yourselves, allow anyone to talk with you about it. You  
12 can do whatever you want to do between -- you can do  
13 anything but sit in this courtroom because I may have to  
14 take up some legal matters outside your presence. You can  
15 go anywhere you want to except here. And if you want to  
16 stay back there in the jury room, you can do that, too, but  
17 I doubt if any of you want to do that. But I'll see you  
18 back here at 11:30. Thank you.

19 (THE JURY EXITS AT 10:28 P.M.)

20 THE COURT: All right, we'll be at ease until y'all  
21 get the witness here.

22 MR. DURANT: My suggestion would be to proffer her  
23 qualifications at 11:15, and then we'll argue about that.

24 THE COURT: Okay.

25 (OFF THE RECORD.)

K. SAUNDERS - PROFFERED EXAMINATION BY MR. DURANT

172

1 THE COURT: State ready?

2 MR. DURANT: Yes, sir.

3 THE COURT: Defense ready?

4 MR. LEDDY: Yes, Your Honor.

5 THE COURT: All right, bring me the jury.

6 MR. DURANT: Judge.

7 THE COURT: What a minute. Okay.

8 MR. DURANT: It's my understanding that the defense  
9 wanted to proffer her qualifications first.

10 THE COURT: Is that right?

11 MR. LEDDY: Yes, sir.

12 THE COURT: Okay.

13 *IN-CAMERA HEARING*

14 KATHY SAUNDERS, BEING DULY SWORN,

15 TESTIFIES AS FOLLOWS:

16 PROFFERED EXAMINATION BY MR. DURANT:

17 Q. Ms. Saunders, where do you work?

18 A. I am currently employed at the Sumter Family Health  
19 Center.

20 Q. And what is your job title there?

21 A. I am a family nurse practitioner.

22 Q. How long have you been a nurse practitioner?

23 A. Since 1994.

24 Q. What kind of training must you have to -- are you, are  
25 you licensed?

K. SAUNDERS - PROFFERED EXAMINATION BY MR. DURANT

173

1 A. I am.

2 Q. And what kind of training must you have to receive a  
3 license as a nurse practitioner?

4 A. You have to have at least a master's degree in  
5 nursing, and had to be nationally board certified.

6 Q. Do you specialize in any types of patients or  
7 treatment?

8 A. You can if you choose so. I am currently doing family  
9 practice, which is from birth until death, that age group.  
10 Prior to that, I was also -- I'm also certified, nationally  
11 recognized as a pediatric nurse practitioner and perform  
12 child sexual abuse and physical abuse evaluations on  
13 children.

14 Q. How did you -- did you practice as a pediatric nurse  
15 practitioner before?

16 A. I did.

17 Q. And for how long?

18 A. Since 1994 to 2011, which was August the 15th.

19 Q. And prior to coming, beginning work at the Sumter  
20 Family Health Center, where did you work?

21 A. I worked at the Care House of the Pee Dee.

22 Q. What is, what is the Care House?

23 A. The Care House of the Pee Dee is a facility where  
24 children are referred from the Department of Social  
25 Services, law enforcement, or other medical providers for

1 the purpose of evaluating for some type of child  
2 maltreatment.

3 Q. How long did you work there?

4 A. From 2005 until 2011 August 15th.

5 MR. DURANT: Judge, we would offer Ms. Saunders as an  
6 expert in child sexual examinations or trauma.

7 MR. LEDDY: Your Honor, the defense objects. I don't  
8 think that the foundation has been close to laid for that  
9 at this point.

10 THE COURT: Okay.

11 MR. LEDDY: If the state wants to continue to proffer  
12 her credentials.

13 BY MR. DURANT:

14 Q. Ms. Saunders, have you been qualified as an expert in  
15 the courts of South Carolina before?

16 A. I have, and prior to my employment at the Care House  
17 of the Pee Dee in 2005, I practiced from 1996 to 2005 at  
18 another child abuse center in Florence.

19 Q. And what were, what were your job responsibilities  
20 there?

21 A. To evaluate, diagnose, and treat children of sexual  
22 and physical abuse as well.

23 Q. So, you worked in that capacity from '96 to 2011?

24 A. Yes, sir. That is correct.

25 Q. But for fifteen years, you worked as a nurse, a nurse

K. SAUNDERS - PROFFERED EXAMINATION BY MR. DURANT. 175

1 practitioner specializing in child sexual abuse and trauma.

2 Is that right?

3 A. That is correct.

4 MR. DURANT: Judge, I believe the proper foundation  
5 has been laid, and she is ---

6 THE COURT: Do you want to ask any questions?

7 MR. LEDDY: Do I want to? Sure. I was going to  
8 ask her questions after he was done, but I still don't  
9 think ---

10 THE COURT: Okay. Well, I mean ---

11 MR. LEDDY: --- she's qualified.

12 THE COURT: Wait. You want to ask her questions  
13 concerning her qualifications, or do you want -- what is  
14 your position as far as her qualifications?

15 MR. LEDDY: That under the factors laid out in *State*  
16 *vs. Jones*, the foundation hasn't been laid to recognize her  
17 as an expert.

18 THE COURT: Okay.

19 MR. LEDDY: I can give you...

20 THE COURT: All right.

21 (A PAUSE.)

22 MR. LEDDY: Judge, I was looking in section 5, 3, 4,  
23 and 5, Your Honor. Page 6.

24 MR. DURANT: Your Honor, the state would consent to  
25 just qualifying her as an expert in pediatric medicine if

K. SAUNDERS - PROFFERED EXAMINATION BY MR. DURANT

176

1 the defense is more comfortable with -- I think clearly a  
2 foundation...

3 MR. LEDDY: I don't think that's a relevant area of  
4 expertise.

5 THE COURT: Okay.

6 MR. LEDDY: Judge, I'm happy for him to continue to  
7 lay a foundation. I just, I can't say that it's been laid.  
8 It hasn't.

9 THE COURT: Okay. You want to continue asking  
10 questions?

11 MR. DURANT: Sure.

12 BY MR. DURANT:

13 Q. Ms. Saunders, you became board, board certified as a  
14 nurse practitioner in what year?

15 A. In 1994.

16 Q. Since then, have you received any continuing training  
17 or education?

18 A. Yes, sir. I have. Prior to entering in the field of  
19 child maltreatment, I did an intern fellowship in San  
20 Diego, California, with nationally recognized physicians  
21 for the specialty training in child maltreatment. For one  
22 year after that training, I did a mentoring program with  
23 them where they reviewed my exams by Telemedicine, as well  
24 as photo documentation taken of children that were both  
25 sexually and/or physically abused.

K. SAUNDERS - PROFFERED EXAMINATION BY MR. DURANT

177

1           After that point, it was about three years later the  
2 state put into place the South Carolina Child Abuse Medical  
3 Response System which requires all child abuse experts in  
4 the field of medicine to maintain a standard of practice.  
5 And some of the requirements are to maintain a minimum of  
6 150 exams per year, to engage in twenty hours of continuing  
7 education each year, and to do seminars, at least two, both  
8 -- either, excuse me, state, locally, or nationally to be  
9 recognized within our own state system.

10           In addition to that, the national board certifying  
11 body for nurse practitioners requires that we have forty  
12 hours of continuing education ever two years to maintain  
13 our board status, as well as other stipulations by the  
14 State Board of Nursing.

15 Q.   And during your fifteen years specializing in child  
16 maltreatment or sexual abuse, how many, how many cases did  
17 you see?

18 A.   Over 10,000 children.

19 Q.   Did you, did you conduct medical exams for the  
20 purposes of determining whether or not they had been  
21 sexually abused?

22 A.   Sexual or/and physical abuse, yes, sir.

23 Q.   And over, over 10,000 exams?

24 A.   Yes, sir.

25 Q.   And were there cases where you found no abuse?

1 A. That is correct.

2 Q. How many times have you been qualified, or have you  
3 testified as an expert in the courts of South Carolina?

4 A. Over 1,200 times.

5 Q. And what have you been qualified as an expert in South  
6 Carolina courts?

7 A. In the field of child maltreatment for the purpose of  
8 examination, diagnosis, and treatment.

9 MR. DURANT: Judge, again we'd offer ---

10 THE COURT: All right, what says defense?

11 MR. DURANT: --- Ms. Saunders as an expert in  
12 child ---

13 MR. LEDDY: I just maintain my objection, Your Honor.

14 THE COURT: Okay.

15 MR. DURANT: What? I didn't hear.

16 MR. LEDDY: Maintain my objection.

17 THE COURT: Okay.

18 MR. DURANT: Judge, fifteen years specializing in  
19 child maltreatment, 10,000 cases, required to see 150 a  
20 year.

21 THE COURT: And what, and what are you offering her  
22 as? An expert in what? I understand her qualifications.  
23 What is the state's contention that she's an expert in? In  
24 what field?

25 MR. DURANT: Child maltreatment and physical and

1 sexual abuse.

2 THE COURT: Okay. You want to respond to that? You  
3 still ---

4 MR. LEDDY: I mean, I've made my argument.

5 THE COURT: Then I find over defense objection that  
6 she is qualified as an expert in that field.

7 MR. DURANT: Thank you, Your Honor. Judge, I believe  
8 we're ready for the jury at this time.

9 THE COURT: Well, do you want to ask her anything  
10 outside the presence of the jury? Anything?

11 MR. LEDDY: I'd love to ask her some questions outside  
12 the presence of the jury, Your Honor.

13 THE COURT: Well, I don't know. Dealing with her, I  
14 assume you, y'all have talked about some -- is this the  
15 issue that you want to do outside as some proffer?

16 MR. DURANT: My understanding was he was objecting to  
17 her qualifications, and we just needed to proffer that  
18 testimony.

19 THE COURT: I thought he was objecting to her  
20 testimony being more prejudicial than probative.

21 MR. LEDDY: That was, that was what I was arguing  
22 earlier.

23 THE COURT: Okay.

24 MR. LEDDY: And I would like to proffer for that.

25 THE COURT: Okay.

1 MR. LEDDY: As far as...

2 (COUNSELORS CONFER.)

3 MR. DURANT: Judge, may I proceed in asking her some  
4 questions? I just didn't under, understand that really the  
5 objection to the testimony -- and I, I thought we were just  
6 proffering.

7 MR. LEDDY: It's okay with me if he wants to ask her  
8 some more questions.

9 THE COURT: Okay. I was trying -- well, I don't  
10 necessarily want to do this twice. If there's an issue we  
11 need to deal without outside the presence of the jury  
12 versus bringing the jury in and dealing with it in front of  
13 the jury. I don't know whether there was something unique  
14 about this in her findings.

15 MR. LEDDY: Well, based on -- what the state is going  
16 to offer is that she's going to testify that her physical  
17 examination was consistent with prior sexual penetration.  
18 In my -- and I am arguing that that is more prejudicial  
19 than it is probative because -- and I do want to question  
20 her about that, about what exactly does consistent with  
21 mean.

22 THE COURT: Okay, and you can do that in normal  
23 cross-examination, I assume.

24 MR. LEDDY: But, but if after I get done  
25 cross-examining her it would be something that wouldn't

K. SAUNDERS - PROFFERED EXAMINATION BY MR. DURANT 181

1 have been let in, you can't unring the bell for them.

2 THE COURT: Okay.

3 MR. DURANT: This sounds like a weight of the evidence  
4 argument to me, Judge.

5 THE COURT: Well, I'll tell you. Just in an abundance  
6 of caution, we'll do it real quick.

7 As far as her -- instead of going through all the  
8 issues and her meeting, her finding is -- if she would --  
9 ask her about that. Let her testify to that. Then he  
10 cross-examines, examine her briefly on that issue because  
11 he's claiming that it's more prejudicial than probative,  
12 and I need to know what her finding is. So, see real  
13 quick. So, ask her that real quick.

14 PROFFERED EXAMINATION BY MR. DURANT RESUMES:

15 Q. Just briefly, Ms. Saunders, did you have a chance to  
16 conduct a medical exam on Minor

17 A. I did.

18 Q. And when was that?

19 A. It was September the 18th, 2009.

20 Q. As part of that exam, did you conduct a genital exam?

21 A. I did.

22 Q. And what were your finding there?

23 A. On the vaginal exam specifically, it was an annular  
24 estrogenized hymen, which simply means the shape of the  
25 hymen and that she had entered into puberty. There was a

1 small cleft -- and cleft simply means a tear -- in the  
2 hymeneal tissue at the 6:00 position. That was scant  
3 yellow, white discharge noted on the exam, and the findings  
4 were consistent with past penetration.

5 Q. Okay. What's the significance of the yellow, white  
6 discharge?

7 A. Having given that she was into puberty, it could be  
8 normal discharge that's present when you're in menarche, or  
9 of age of having your periods. It could also signify a  
10 sexually-transmitted infection or other infection present.

11 Q. Did you test her for any infections?

12 A. I did.

13 Q. And what were the results of that test?

14 A. I don't have the results because I don't have her  
15 complete medical record.

16 Q. Testified that the, the cleft was consistent with past  
17 penetration. Tell me what you mean there. Is it  
18 consistent with sexual penetration?

19 A. I really can't determine the object that was used to  
20 enter into the vaginal area to tear that hymeneal issue  
21 because it was a healed injury, meaning the shape had  
22 changed from a past injury to the hymeneal issue. So, it  
23 could be of a sexual nature or any object that would go  
24 into the hymeneal issue and cause trauma.

25 Q. Would such a tear be consistent with full penile

K. SAUNDERS - PROFFERED EXAMINATION BY MR. LEDDY

183

1 penetration?

2 A. It could be, yes, sir.

3 Q. And you mentioned that the tear, there was -- the tear  
4 was beginning to heal. Is it possible that that tear that  
5 was beginning to heal on September the 18th of 2009 was  
6 caused as late as August the 26th of 2009?

7 A. Hymeneal injuries can heal, depending on how  
8 significant the tear is, within as little time as 48 to 72  
9 hours. So, for me to determine exactly when the injury  
10 occurred is not possible.

11 Q. And again, penetration could have been by a number of  
12 things, including full penile penetration. Is that your  
13 finding?

14 A. Yes, sir. That's correct.

15 THE COURT: Okay. Yes, sir.

16 PROFFERED EXAMINATION BY MR. LEDDY:

17 Q. So, what you told us is that you didn't -- you did a  
18 test for an STD?

19 A. I tested for three ---

20 Q. And then ---

21 A. --- STDs.

22 Q. Okay, and did you ever have the results of that?

23 A. Yes, sir, I would, but I, I'm no longer employed  
24 there, and I don't have a copy of those results.

25 Q. Okay. So, in other words, a scant, yellow, white

1 discharge is consistent with normality?

2 A. It could be, yes, sir.

3 Q. Okay, and it is consistent with it, right?

4 A. It could be.

5 Q. Okay.

6 A. It could also signify the presence of infections  
7 there. That's why I screened for the sexually transmitted  
8 infections.

9 Q. Okay. So, it is (A) consistent with normality?

10 A. It could be.

11 Q. And it could be consistent an STD?

12 A. That is correct.

13 Q. And so in other words, it's completely useless to us?

14 A. I wouldn't say useless. I would say it's a finding  
15 that's present, and it has to be ruled out.

16 Q. All right. It is also correct that at the age of  
17 fifteen, it is not uncommon for people to have experimented  
18 with themselves, is it? If you want me to use a more crass  
19 way of putting it, I can. I mean, I can be as specific as  
20 you need me to be.

21 A. I think I would like for you to be specific.

22 Q. Okay. It's possible, it's not even uncommon for  
23 people at the age of fifteen to have fingered themselves at  
24 this point, right?

25 A. I think that depends on the individual. I don't think

K. SAUNDERS - PROFFERED EXAMINATION BY MR. LEDDY 185

1 I could use a blanket statement and say that all females at  
2 age fifteen have fingered themselves.

3 Q. And it's not uncommon at all for people at the age of  
4 fifteen to be pregnant, is it?

5 A. I have seen girls at the age of fifteen pregnant, yes,  
6 I have.

7 Q. Is it uncommon or not?

8 A. In my field of practice, it's uncommon.

9 Q. Okay, and your field of practice involve sexual child  
10 abuse?

11 A. It does.

12 Q. All right. If your field of practice were obstetrics  
13 and you were delivering babies, would you be surprised to  
14 know that they have a huge number of patients at fifteen  
15 and younger?

16 A. I understand that that could be possible.

17 Q. Well, do you understand that it is true or not?

18 A. I'm not in that field, so I don't know that I could  
19 give you an educated answer on that.

20 Q. Do you know any obstetricians and gynecologists?

21 A. I do.

22 Q. Do you ever speak to them in professional terms?

23 A. I do.

24 Q. Do you ever talk about the kind of cases that they're  
25 seeing?

1 A. I do not, not unless it's specific to a case that I'm  
2 asking them to assist me with.

3 Q. You never had such a conversation?

4 A. Not that I can recall.

5 Q. Okay, and when you did this physical examination, you  
6 had heard the history prior to that physical examination?

7 A. I had.

8 Q. Okay, and so you did not do a physical examination  
9 without prior knowledge about the allegations?

10 A. As with any patient that I see, whether it's now in my  
11 family practice setting or when I was in the practice of  
12 child abuse, I have to have history of a patient to  
13 understand why they're there. So, it's just part of the  
14 information gathering for the purpose of evaluating that  
15 patient, examining that patient, providing a diagnosis, and  
16 appropriate treatment.

17 Q. Okay. So, if somebody came in to your practice with a  
18 gunshot wound to the head, would you need to know where  
19 they were ten minutes prior to that in order to determine  
20 that he had a gunshot wound to the head?

21 A. No, but I would need some significant history as to  
22 when it occurred, past medical history that would be  
23 available to appropriately treat the patient.

24 Q. All right. So, now this cleft at the 6:00 position,  
25 it would be, it could be consistent with prior

1 masturbation, right?

2 A. It would have to be an object large enough to tear  
3 that tissue.

4 Q. Okay, and ---

5 A. So, it could be.

6 Q. It could be, and it could be consistent with sexual  
7 activity?

8 A. Absolutely.

9 Q. And it could be consistent with sexual activity with  
10 my client?

11 A. It could be.

12 Q. And it could be consistent with sexual activity with  
13 anybody else in the whole world?

14 A. It could be.

15 Q. Okay.

16 MR. LEDDY: Judge, I don't have any other questions.  
17 I just -- this is -- couldn't be more amorphous. And with  
18 all due respect to her with all qualifications and  
19 everything, she can't tell us anything we don't already  
20 know. In other words, it's not probative.

21 And she certainly shouldn't be able to talk about a  
22 yellow and white discharge because that's -- I, I don't  
23 know whether that's normal or not until I get in touch with  
24 somebody who tells me yeah, it could be normal and it could  
25 be a problem. You don't know unless you test it. Did she

1 test it? Yes. Does she know what the results were? No.  
2 It's not helpful to us.

3 The cleft at the 6:00 position, it could heal in  
4 forty-eight hours, could heal in fourteen days. I don't  
5 know. I mean, you have to have some kind of an actual  
6 answer to these things before this becomes probative.

7 How, how is this helpful to me as a fact finder if I'm  
8 sitting on the jury to hear that it could be this and it  
9 could be that, and they're opposites? And if we had  
10 something that -- if we could go back in time and see it  
11 and know and watch the events as they did or didn't unfold,  
12 her answer would be true no matter what we found out the  
13 connection to the case may be.

14 THE COURT: Well, I disagree with that and that her  
15 answer, she's saying that, based on her examination of the  
16 victim, it is consistent with sexual activity. She -- her  
17 answer could be based on my exam, she -- I cannot find that  
18 she ever had any sexual activity. That there was no  
19 trauma, there was no tearing, no anything. And based on my  
20 examination of this young lady, it appears -- I can --  
21 she's never had sex.

22 She's saying her examine is consistent with sexual  
23 activity, which is exactly what we're doing here. She  
24 can't -- clearly she's consistent that she had a tear at  
25 6:00, and that tear was caused by some type of penetration.

1 Now, she can't say whether -- what penetrated her, but  
2 something did.

3 MR. LEDDY: Well, and I would say that -- okay. I  
4 understand what you're saying, Judge.

5 THE COURT: Okay. You know, that's just like a  
6 pathologist saying, you know, I found a gunshot wound. I  
7 can't tell you who pulled the trigger or what bullet did  
8 it. I didn't find the bullet, but it's got a consistency  
9 with a gunshot wound to the left shoulder. She's -- her  
10 testimony, it's consistent with -- the jury is going to  
11 have to use her testimony and give it whatever weight they  
12 deem appropriate based on the facts they deem to be true  
13 because it could very well have said based on my  
14 examination of this young lady, I see no evidence of ever  
15 any sexual activity or ever any sexual trauma. She could  
16 have clearly said that.

17 MR. LEDDY: Yes, sir, and just to make sure my  
18 objection is clear for the Court of Appeals if necessary,  
19 if that were the case, that would make it more probative  
20 than it is. In which case, the balancing test would come  
21 out differently. In this case, I respectfully submit to  
22 the court that the prejudicial effect is clear, and that it  
23 is not outweighed by the probative value of answers that  
24 could be consistent with direct opposites of one another.

25 MR. DURANT: Judge, just for the record, the probative

1 value of an examination shouldn't be based on who it  
2 favors. If it -- if there was, there were no findings of  
3 penetration, then of course he'd be arguing that it's  
4 probative now because it shows -- it's helpful to my  
5 client.

6 The fact that it's not helpful to his client doesn't  
7 affect its probative value. The fact that it -- that test  
8 could or could not show penetration or, or findings that  
9 are consistent or inconsistent with penetration leads to  
10 its probative value, Judge.

11 THE COURT: I understand it. I think the probative  
12 value does outweigh its prejudicial. It's not a scenario  
13 where her testimony -- we have graphic pictures and it's  
14 there to arouse or inflame the jury. I mean, this is  
15 information I think the jury can use and to give it  
16 whatever weight they deem appropriate in making their  
17 finding.

18 MR. LEDDY: Your Honor, I would ask that you do  
19 exclude the discharge, any testimony about the discharge  
20 because it, it just ---

21 MR. DURANT: Judge, I, I would actually ---

22 MR. LEDDY: --- no relevance.

23 MR. DURANT: --- stipulate to that point. I  
24 understand about those findings, that that is prejudicial.

25 THE COURT: Okay. If y'all stipulate, that suits me.

K. SAUNDERS - VOIR DIRE EXAMINATION BY MR. DURANT

191

1 MR. LEDDY: All right. Very good. Thank you.

2 THE COURT: All right, anything before we bring the  
3 jury in?

4 MR. DURANT: No, sir.

5 THE COURT: All right, bring us a jury.

6 (THE JURY ENTERS AT 11:53 A.M.)

7 THE COURT: Thank y'all, ladies and gentlemen. I  
8 appreciate your patience. We're going to finish the  
9 testimony in this case. This witness is already on the  
10 stand and has already been sworn in by the court.

11 Mr. Solicitor, you may proceed.

12 MR. DURANT: Judge, just for the record, the state has  
13 called Kathy Saunders.

14 THE COURT: Okay.

15 VOIR DIRE EXAMINATION BY MR. DURANT:

16 Q. Ms. Saunders, who do you work for?

17 A. I work at the Sumter Family Health Center.

18 Q. What is your job title there?

19 A. I am a family nurse practitioner.

20 Q. Now, what kind of training must you have? Are you  
21 licensed as a nurse practitioner?

22 A. I am.

23 Q. And when were you first licensed?

24 A. In 1994.

25 Q. And since becoming licensed as a nurse practitioner in

1 '94, can you walk us through your training and experience?

2 A. In 1994, I began my practice as a pediatric nurse  
3 practitioner in a primary pediatric office just doing  
4 ambulatory pediatrics, which is well visits, sick visits.  
5 In 1996, I began my practice in child maltreatment, which  
6 is child abuse. Did an intern fellowship in San Diego,  
7 California, training with national experts in the field of  
8 child abuse who mentored my exams for one year after I  
9 completed the internship.

10 So, since 1996 until August 15, 2005, of this year, I  
11 have practiced at two separate locations, but still all in  
12 the field of child abuse.

13 Beginning August the 17th of 2005 -- excuse me, 2011,  
14 I began practice in Sumter Family Health Center as a family  
15 nurse practitioner.

16 Q. Walking through the internship in 1996, this was after  
17 becoming licensed as a nurse practitioner. Is that right?

18 A. That is correct.

19 Q. And where was this?

20 A. In San Diego, California.

21 Q. And what, what type of a facility was it in?

22 A. It's called the Children's Hospital of San Diego,  
23 California, and they have a specialty area of child  
24 maltreatment.

25 Q. And what type of exams were you conducting there?

K. SAUNDERS - VOIR DIRE EXAMINATION BY MR. DURANT

193

1 A. It was primary sexual abuse evaluations, both urgent  
2 evaluations and those of children that had been sexually  
3 abused at some point in the past. We also saw physical  
4 abuse cases as well.

5 Q. And how long were you there?

6 A. I was there -- I did kind of two different stints over  
7 a three-month period where I spent three weeks the first  
8 time, and I came home for three weeks, and then I went back  
9 for two weeks and did practice there.

10 Q. And after leaving that facility in San Diego, you  
11 began working where?

12 A. I started working at the Durant Children's Center in  
13 Florence, and I worked there until 2005. And in 2005, I  
14 opened a child abuse clinic called the Care House of the  
15 Pee Dee from 2005 until 2011.

16 Q. What was your job title at the Durant Children's  
17 Center?

18 A. I was a pediatric nurse practitioner for the purpose  
19 of evaluating children that had either reported or there  
20 was concerns of child abuse.

21 Q. And how many exams did you conduct during that period?

22 A. Just over 7,000 exams.

23 Q. And were there findings that -- of no abuse?

24 A. There were.

25 Q. Did you -- are you required to, to go to any ongoing

1 education or training throughout the year?

2 A. I am. There is a national board certification that as  
3 a nurse practitioner you have to acquire to be able to  
4 practice in the State of South Carolina. And they require  
5 you to have forty hours of continuing education every two  
6 years. There's also a state medical response system for  
7 child abuse that is directed by Dr. Olga Rosa out of  
8 Columbia. That those who practice in the field of child  
9 abuse have to maintain certain criteria, and some of those  
10 criteria are a minimum of 150 examinations a year on  
11 children that have reported or there is concerns they may  
12 have been abused. You have to have twenty hours of  
13 continuing education every year. You have to provide at  
14 least two either local, state, or national workshops or  
15 in-services in the field of child abuse. And then there's  
16 other requirements as well.

17 Q. And those requirements are -- require for you to get  
18 some type of certification?

19 A. Just recognition in the state as a child abuse expert.

20 Q. Okay. How many child abuse exams do you conduct a  
21 year?

22 A. Usually around between 1,000 and 1,200 each year.

23 Q. After leaving the Durant Children's Center, where did  
24 you go to work? The Care House? Is that what you...

25 A. The Care House of the Pee Dee.

K. SAUNDERS - VOIR DIRE EXAMINATION / DIRECT EXAMINATION

195

1 Q. How many exams did you conduct there?

2 A. Well over 4,000. Closer to 5,000 exams.

3 Q. Have you been qualified as an expert in courts of  
4 South Carolina in child maltreatment before?

5 A. I have, in both family and criminal courts.

6 Q. How many times?

7 A. Over a thousand, at least a thousand times, closer to,  
8 more like 1,200.

9 MR. DURANT: Judge, at this time the state would offer  
10 Ms. Saunders as an expert in child maltreatment,  
11 specifically in regard to sexual and physical abuse.

12 MR. LEDDY: Previous objections, Your Honor.

13 THE COURT: Okay. Then the court so finds that she's  
14 an expert in that area.

15 DIRECT EXAMINATION BY MR. DURANT:

16 Q. Ms. Saunders, you mentioned working at the Care House.  
17 Were you working when there back in September of '09?

18 A. I was.

19 Q. Did you have a chance to conduct a medical exam on the  
20 victim in this case, Minor

21 A. I did.

22 Q. When was that?

23 A. It was on September the 18th, 2009.

24 Q. And what was the reason for the referral, or who, who  
25 referred her to you?

1 A. She was actually referred by law enforcement,  
2 Clarendon County Sheriff's Department. And the history  
3 that I obtained prior to seeing her was from her mother.

4 Q. Okay.

5 A. And ---

6 Q. Well, don't tell me what her mother said, but what was  
7 the basis for the referral to you?

8 A. Right. It was for the concerns of possible sexual  
9 abuse.

10 Q. And did you, in fact, conduct an exam on her?

11 A. I did.

12 Q. What were your findings? Or, first of all, tell me  
13 what types of exams you conducted.

14 A. On all children, I do a complete physical evaluation.  
15 Although Minor had presented for concerns of sexual  
16 abuse, I -- it's just standard, nationally recognized  
17 practice to complete a complete evaluation of every child  
18 that comes through. So, I kind of did a head-to-toe  
19 assessment on her, looking at her development, overall  
20 development for her age. Inspected her eyes, ears, nose,  
21 throat, heart and lungs, inspected her abdomen, her  
22 musculoskeletal system, and then went into the skin survey  
23 in the anal-genital exam.

24 Q. I want to get into the genital exam in a minute, but  
25 was there anything abnormal in regards to any of the other

1 exams?

2 A. No, sir.

3 Q. Let's talk about the genital exam. Did you -- first  
4 of all, what were your findings there?

5 A. On the anal exam, there was found to be no tags,  
6 tears, laxity, and it was a normal exam finding.

7 Q. Okay, and in regards to the vaginal exam?

8 A. With a vaginal exam, I think it's important that you  
9 understand it's not just a visual exam. That I used a  
10 piece of equipment called a colposcope -- which is a fancy  
11 word for a binocular and a high-powered light source -- so  
12 that I could magnify the area that I was looking at. And  
13 it can actually be used for any part of the body, but  
14 specifically was used for the genital area, the vaginal  
15 exam, on this child.

16 So, inspecting or examining that area, she was found  
17 to be in Tanner stage 4, which simply means she had  
18 adult-like development to her genital area, and she had  
19 started her periods. The shape of the hymen, which some  
20 people call the cherry or the opening to the vagina or the  
21 virginal ring -- lay people have a lot of different terms  
22 for that -- it was found to be annular, which means it  
23 should have been a complete circle to the opening, not a  
24 different presentation to the opening of her vaginal vault  
25 or the vaginal area.

1           There was a small cleft, which simply means a tear,  
2           that had healed at the 6:00 position. And the way we as  
3           medical providers describe injury or past injury that we  
4           see on the exam is by using it like the face of a clock.  
5           So, if it's a complete circle, at 12:00 is at the top, 6:00  
6           at the bottom, and 3 and 9 to either side. So, the injury,  
7           the healed injury that was present was at the bottom part  
8           of the vaginal opening on her exam. And the findings of  
9           this exam were consistent with past penetration.

10          Q.    Ms. Saunders, you mentioned that the cleft had healed  
11           or was beginning to heal. Can you tell me, based on the  
12           date of the exam --- are you, do you know, do you have any  
13           reason to know when the past penetration might have been?

14          A.    With the presence of a healing or headed injury, you  
15           cannot determine exactly when the injury occurred. What we  
16           do know is that when girls have started their periods and  
17           they have the effects of estrogen, which is a hormone  
18           within their body, that small injuries can heal as quickly  
19           as forty-eight, seventy-two hours. If there are deep tears  
20           through that opening of the vagina down into the muscle of  
21           the vaginal floor, it may take weeks for it to heal. So,  
22           to be specific, not ever having seen Minor in the past, I  
23           would not be able to determine exactly when the injury  
24           occurred, but that there had been an injury.

25           The other thing that's significant about the hymeneal

K. SAUNDERS - DIRECT EXAMINATION / CROSS-EXAMINATION 199

1 tissue, if you will think about that piece of skin that  
2 goes around the vaginal opening is that it's not external  
3 to the body. It's a protected structure of the body. If  
4 you think about your lips and your tongue, and then you  
5 have that thing that hangs down the back of your throat we  
6 call the uvula. You have to go past your lips, past the  
7 tongue to get to the back of your throat, and that's like  
8 that hymeneal tissue.

9 It sits protected behind two folds of skin, in past  
10 the fossa, which is a little structure that's recessed  
11 anywhere from one to three inches in pubertal girls, into  
12 the inside of the body to get to that tissue.

13 Q. And again, the -- your finding you said was consistent  
14 with past penetration?

15 A. Yes, sir.

16 Q. We don't know what that patrician was, do we? Are you  
17 able to determine what caused the penetration?

18 A. Not what caused the penetration, no, sir.

19 Q. Just that it was consistent with past penetration?

20 A. That is correct.

21 MR. DURANT: No further questions.

22 CROSS-EXAMINATION BY MR. LEDDY:

23 Q. Now, you said that you do about 1,200 of these a year?

24 A. Yes, sir.

25 Q. Okay, and on a ballpark estimate, how many of those

1 are unfounded?

2 A. I don't find or unfound cases.

3 Q. How many of those would you say that you can't even  
4 say that it's consistent with penetration?

5 A. Probably ninety-five, ninety-three to ninety-five  
6 percent of the exams that I conduct on children are normal  
7 exams.

8 Q. Ninety-five are normal. What does that, what does  
9 normal mean?

10 A. It means there's no evidence or there's nothing there  
11 that says to me there has been past injury.

12 Q. Okay. So, are you saying those ninety-five percent,  
13 that there was no past penetration?

14 A. No, sir, I'm not.

15 Q. Okay. So, you could have a normal exam, and that  
16 would be consistent with penetration, correct?

17 A. It could be, given the fact that from the time the  
18 incident occurred to when the child presents -- presents  
19 for the medical evaluation, healing can occur and can heal  
20 without scars or without presence of past injury being  
21 there.

22 Q. So, you could have a normal exam, and it could be  
23 consistent with no past penetration, correct?

24 A. That is correct.

25 Q. And you could have a normal exam, and it would be

1 consistent with past penetration, correct?

2 A. That is correct.

3 Q. All right. So, you could have an exam that has a  
4 cleft at 6:00 that would be consistent with past sexual  
5 trauma, correct?

6 A. With past penetrating injury present, that's correct.

7 Q. Okay, and it could be consistent without that, right?

8 A. Not if there's a tear there. That is significant for  
9 injury, past injury.

10 Q. And you're saying it is impossible that that tear  
11 could be self-inflicted through the normal things that  
12 fifteen-year-olds do in experimenting with themselves?

13 A. I don't think I understand your question.

14 Q. Is it impossible to masturbate and cause this problem?

15 A. Is it impossible?

16 Q. Yeah.

17 A. If the object is large enough to stretch that tissue,  
18 and what you have to remember also is that when girls  
19 starts their period, that tissue becomes elastic. So, it  
20 is forgiving to small objects. It will stretch like a  
21 rubber band. If I take a rubber band and put it around my  
22 two fingers, it's going to accommodate very easily most  
23 likely. If I take that same rubber band and try to put it  
24 around my head, it's not going to accommodate the large  
25 object of my head. It's going to pop or cause tearing or

1 fraying of that rubber band at some point.

2 It's the same thing when it females insert an object  
3 into their vagina. If it's a small object, it can go get  
4 in and out of the vagina without causing any injury or any  
5 tears. If it's a larger object that as that tissue  
6 stretches, it causes it to become weak at one point on that  
7 little rim of tissue, it's going to tear it and cause a  
8 penetrating injury. So, depending on the size ---

9 MR. LEDDY: Objection, Your Honor. Can we confine the  
10 witness to answering? I'm asking yes and no questions, and  
11 that's on purpose, and she's answered with essays, and  
12 that's on purpose because this is not responsive to my  
13 questions.

14 THE COURT: She was explaining. Ask your question one  
15 more time. I thought she was explaining the answer to you.  
16 She has the right to explain her answers. She's explaining  
17 what you asked her.

18 MR. LEDDY: I asked her if it was impossible for that  
19 injury to be caused by masturbation. All she has to do is  
20 say no.

21 WITNESS: Well, it's a yes and no answer.

22 THE COURT: She...

23 MR. LEDDY: Okay.

24 THE COURT: I understand it's yes or no, but she has a  
25 right to explain why she answered it the way she did.

K. SAUNDERS CROSS-EXAMINATION BY MR. LEDDY

203

1 Have you completed your answer?

2 WITNESS: Yes, sir. I think I have.

3 THE COURT: Okay. Ask her another question.

4 MR. LEDDY: Thank you.

5 BY MR. LEDDY:

6 Q. Now, when you did this physical examination, you had  
7 heard a prior history of this patient, correct?

8 A. Yes, sir, I had.

9 Q. Okay, and as you explained earlier, that's just  
10 standard protocol, right?

11 A. Yes, sir. I have to collect a history before I  
12 examine the patient.

13 Q. Okay, and now you typed up your notes, right?

14 A. That is correct.

15 Q. Okay, and you could type that this is -- I can  
16 conclude that there has been past penetration, right?

17 A. Yes, sir. That's what I ---

18 Q. If you could ---

19 A. --- put in my note.

20 Q. --- conclude that, that's what you could conclude?  
21 You could have typed that?

22 A. Yes, sir.

23 Q. Okay, but you weren't so certain of that. You wrote  
24 consistent with, right?

25 A. That's what my notes said, yes, sir.

1 Q. Okay.

2 MR. LEDDY: Nothing further, Your Honor.

3 THE COURT: Anything further from the state?

4 MR. DURANT: No, sir, Your Honor.

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

6 (THE WITNESS EXITS THE STAND.)

7 THE COURT: Okay.

8 MR. DURANT: Your Honor, the state rests.

9 THE COURT: All right. If there anything to change  
10 with the scheduling we talked out earlier?

11 MR. LEDDY: No, Your Honor.

12 THE COURT: Okay. Ladies and gentlemen, you've heard  
13 all the evidence from the state that you're going to hear  
14 in this case. And probably it's a good time to stop for  
15 lunch, and I know you haven't back that long. But once we  
16 finish this case and do closing arguments and charge you, I  
17 can't let you go to lunch, or either I have to bring lunch  
18 in here to you, which may take a whole lot longer than I  
19 can send you to eat lunch.

20 So, I'll send you to lunch now and ask you, can you  
21 make it back 1:30? Will that give y'all enough time to  
22 eat?

23 Okay. If you'll go and be back in the jury room by  
24 1:30, then we'll finish this case, and I'll hope to give it  
25 to you for your deliberations this afternoon. So, I'll

1 remind you: don't discuss this case or allow anyone to  
2 discuss it with you, and be back in the jury room at 1:30.  
3 Thank you.

4 (THE JURY EXITS AT 12:12 P.M.)

5 THE COURT: Okay.

6 MR. LEDDY: Your Honor, moves for -- defense moves for  
7 a directed verdict. Light most favorable, the state has  
8 not carried the burden to establish enough evidence for a  
9 reasonable jury to return a verdict of guilty in this case.

10 THE COURT: Okay, and I think there is existence of  
11 evidence in this case that warrants it going to the jury.  
12 I certainly -- the jury will give it whatever weight it  
13 deems appropriate, but I respectfully deny your motion.

14 MR. LEDDY: Thank you, Your Honor.

15 THE COURT: Anything else we need to deal with before  
16 lunch?

17 Mr. Felder, are you going to testify?

18 MR. LEDDY: He is not, Your Honor.

19 THE COURT: Okay. So, when we come back, we'll go  
20 into closing arguments and charge. Is that correct?

21 MR. LEDDY: Yes, sir. The defense will rest.

22 THE COURT: All right. Well, you'll rest in front of  
23 the jury. Mr. DuRant will do his closing argument first,  
24 and then you get last argument.

25 MR. LEDDY: Yes, sir.

1 THE COURT: I'll charge them the law.

2 MR. LEDDY: Yes, sir.

3 THE COURT: Okay?

4 MR. LEDDY: Thank you, Your Honor.

5 THE COURT: All right. We'll see y'all at 1:30. I'll  
6 be back by 1:15 at the latest.

7 (OFF THE RECORD.)

8 THE COURT: State ready?

9 MR. DURANT: Yes, sir, Your Honor.

10 THE COURT: Defense ready?

11 MR. LEDDY: Yes, Your Honor.

12 THE COURT: Y'all looked at the potential verdict form  
13 my clerk did?

14 MR. LEDDY: I think -- yes, sir, we have. I don't  
15 know if I've seen it.

16 THE COURT: And I propose, I guess, to explain, since  
17 it's count one and count two, is just give them a copy of  
18 the indictment along with the verdict form. Any problem  
19 with that?

20 MR. LEDDY: I don't have a problem with it.

21 MR. DURANT: No objection from the state.

22 THE COURT: Okay, and that way, they'll understand at  
23 least. Okay, now, I'll get the jury back out, and you want  
24 to rest in front of the jury?

25 MR. LEDDY: If you prefer me to do that in front of

1 the jury, that's fine.

2 THE COURT: It's up to you. Some lawyers like to and  
3 some don't care.

4 MR. LEDDY: It makes really no difference to me, Your  
5 Honor. I mean, they're going to be, they're going to be  
6 given an instruction on how the defense doesn't have any  
7 burden, and he doesn't have to testify, and they can't use  
8 that, so.

9 THE COURT: So, if you don't want -- you want me just  
10 to bring them back out and tell them you've heard all the  
11 evidence they're going to hear?

12 MR. LEDDY: That'd be great.

13 THE COURT: And y'all do -- can you give me an idea  
14 about how long you're going to take in closing?

15 MR. DURANT: I'll be relatively short. Ten minutes.

16 MR. LEDDY: Yeah, five, ten minutes.

17 THE COURT: I mean, I'm not limiting you. I mean, I  
18 think the rules say you got up to two hours, but I don't  
19 know how you're going to talk that long.

20 Okay, all right, then we'll get them out here and see  
21 what happens.

22 (THE JURY ENTERS AT 1:30 P.M.)

23 THE COURT: Okay, ladies and gentlemen, you have heard  
24 all of the evidence you are going to hear in this case.  
25 Now you're going to hear the closing arguments of the

1 attorneys. Then I'm going to charge you on the law and  
2 give you this case to decide. So, if you'd pay attention  
3 to the attorneys, they will give you their closing  
4 argument.

5 Mr. Solicitor.

6 MR. DURANT: Thank you, Your Honor. Please the court?  
7 Mr. Leddy, Madame Clerk.

8 Ladies and gentlemen of the jury, first of all, let me  
9 thank y'all for your time and your patience and your  
10 attentiveness. I understand we took you away from your  
11 work, took you away from your families and your personal  
12 responsibilities to be here, and I appreciate your time. I  
13 also want to apologize for this morning, but the scheduling  
14 was on me. I'm sorry to take you away and extend the  
15 process.

16 I understand this wasn't a fun case to listen to.  
17 It's not fun facts to talk about. So, I appreciate y'all  
18 being here. Obviously, this is an important case for the  
19 state. This is an important case for the victim and her  
20 family.

21 As I was thinking about this case, thinking about  
22 giving a closing argument, we often talk about giving a  
23 compelling argument in this line of work. And it struck me  
24 as I voiced that that maybe that's not the right way to  
25 think about this case because to compel you to do something

1 seems to carry with it the implication that I'm asking you  
2 to do something that maybe you don't want to do. Maybe  
3 you're not inclined to do. But I believe you all are  
4 inclined to find the truth. That's why we picked you.

5 And make no mistake about it: that is your job. Your  
6 job is to render a verdict. And verdict comes from the  
7 Latin phrase *veredictum*, which means to speak the true.  
8 The judge is going to ask you to render a verdict in the  
9 case, and in doing so, I'm asking you to speak the truth.

10 So, what is the truth in this case? The truth is that  
11 a brave, young girl got on that stand and recounted every  
12 painstaking, embarrassing, explicit detail of her sexual  
13 abuse for you. She vividly described the room, the hotel  
14 room, the furniture, the number of beds, where she was  
15 seated, and the victim -- the defendant's words and sexual  
16 advances towards her. She told you about the letter that  
17 the defendant have written to her. She read it to you, and  
18 how he offered her money. Offered to get her a credit card  
19 or a debit card for a, for a bank account. Asking, if not  
20 begging, for one more, one more shot, one more sexual  
21 encounter with her.

22 You heard the letter. You're going to have it back  
23 there in the jury room with you, and I want you to read it.  
24 I want you to read the last line where he says let's do it  
25 at a hotel again.

1           Obviously, you saw the video. You saw the confession.  
2 He admits to the incident in the van; he admits it. You  
3 guys saw it. He recounted -- there seems to be some  
4 implication of a defense of false confession. You saw.  
5 You heard her describe the details of that encounter in the  
6 van, and you saw the video where he described the details.  
7 Folks, he had no reason to know those details other than  
8 the fact that he was there, other than the fact that that's  
9 how it happened. You heard him describe those details that  
10 he wouldn't know if he hadn't been there.

11           Folks, I submit to you that he wouldn't tell you the  
12 whole truth then. But a child, when you're not sure how  
13 much trouble you're in: Well, maybe if I, if I admit this  
14 -- that's against my interest -- they'll stop asking  
15 questions.

16           You saw the officers. Well, I just kind of touched  
17 her, and then I -- and that was it. That's where it  
18 stopped. Anything else? Well, yeah, yeah. I put my hand  
19 on her, on her leg, and that's where it stopped. Well,  
20 yeah, I put my hand on her clothing, and that's where it  
21 stopped.

22           He wanted to see what would stop the officers from  
23 asking the questions. They didn't, and in doing so, he  
24 have you every detail of that encounter. He didn't give  
25 you the full truth, though, because he didn't tell you

1 about the hotel. But I charge you to remember, remember  
2 the victim's testimony, how she described that room. How  
3 she described the details of that encounter, what time he  
4 picked her up, what he said to her, how she went to the  
5 convenience store, and how he bought her some food before  
6 they went in the room, how she recounted the details of  
7 that conversation. How after they finished having sex, he  
8 told her that don't worry. It won't hurt so bad after  
9 that, after the first couple times. Remember her  
10 testimony. Remember the details of it.

11 And then I charge you to go back and read that letter,  
12 that letter that he claimed on video that he had written,  
13 look at the last line: Again. Let's do it at the hotel  
14 again.

15 Folks, this is a straightforward case. He's confessed  
16 to one. You saw it. You can have that, you can have that  
17 video. That video is in evidence. If you want to watch it  
18 again, that's your right; you can watch it as many times as  
19 you want.

20 That video's in evidence. That letter's in evidence.  
21 You've got everything you need. You've got everything you  
22 need. Your job is to find the truth. That's what we're  
23 asking you to do. For justice, render a verdict that  
24 speaks the truth. Thank you.

25 MR. LEDDY: Thank you, Your Honor.

1 Ladies and gentlemen, I'll be brief. Again, brevity  
2 is not consistent with unimportance, and I want to talk  
3 about what it is that you have to decide this case with  
4 because when I came here and made my opening statement, I  
5 said you wouldn't have to sit through all these things  
6 because they don't exist. There is no physical evidence in  
7 this case, and you did have to sit through it. But that  
8 was highly unexpected because I maintain there is no  
9 physical evidence in this case.

10 And I am just shocked that the state had the audacity  
11 to put a woman up here who would tell you something is  
12 consistent with this happening, and it's also consistent  
13 with it not happening. It is, it is a modern day carnival  
14 charade to say that something is consistent with A,  
15 inconsistent with B, and that it is going to help the fact  
16 finder in the case make any kind of decision beyond we have  
17 a girl saying something happened, we have a guy confessing  
18 to one of two things. And I'll give you an example of why  
19 -- that the language consistent with is used, and how it  
20 reveals that they really don't know anything telling.

21 If I were to get up on my roof with a ball-peen  
22 hammer, smash a bunch of holes in the roof, call my  
23 insurance company and tell them I got hail damage. I need  
24 a new roof. Somebody comes out and says yeah. Sure enough  
25 there's damage, and it's consistent with hail. And then

1 somebody could go back at the time and look at the weather  
2 and know that we haven't even had rain in a month. The  
3 statement that it is consistent with hail damage would  
4 still be correct even though it's wrong.

5 And if something is useful to us as fact finders, then  
6 it either is true or false, and it stays that way. And if  
7 it turns out to be false, then it's got to be something  
8 that in its original statement meant something. It was  
9 somebody sticking their neck out and saying this is what  
10 the findings are. So, I submit to you that that was  
11 something that we shouldn't have all had to go through  
12 because it doesn't help us get to where we need to be.

13 We have two separate incidents in this case. One that  
14 my client goes on for nineteen minutes on the video that  
15 you have, and he talks about it, all right? And the  
16 investigator told you he confesses to this one, but not the  
17 other, and I don't know why. Well, I don't know why  
18 either.

19 It seems mighty strange to me that you would admit to  
20 having sex with an underage person in the back of a van but  
21 a hotel, that's just too outrageous. I don't want to admit  
22 to that. It seems that's very bizarre, and if something's  
23 very bizarre, you might want to come up with a really good  
24 reason as to why it happened that way.

25 And you might think that it's not important whether we

1 find him guilty on one and not guilty on the other because  
2 of the evidence, but it is important. You're going to  
3 speak the verdict and sign your name to a form that says  
4 beyond a reasonable doubt, we may find on both, or we find  
5 on one, or we find on neither. And it's just as important  
6 for each one of those charges that you weigh the evidence  
7 and apply it to the elements, and use the law that the  
8 judge gives you. It's just as important for both as it is  
9 for neither or for one.

10 So, this is all you're going to have heard. And about  
11 false confessions and about cases that are made on nothing  
12 but allegations, I know that there have been times where  
13 people have confessed on the stand and confessed to law  
14 enforcement to riding broomsticks to the moon, and there  
15 were times in our society where that was something that  
16 people would believe. All right, who would falsely confess  
17 to riding a broomstick to the moon? People went to their  
18 death because of that, but it was believed because why  
19 would you confess to something that you didn't do,  
20 something like that, cavorting with the devil and  
21 witchcraft? But that's what happened.

22 So, what you have in this case is an allegation, and a  
23 confession of one of two things, and does that meet beyond  
24 a reasonable doubt? And that's the question that you have  
25 to decide. Thank you.

*JURY CHARGE*

1  
2 THE COURT: Mr. Brown, I'm going to appoint you as  
3 foreperson of this jury. And normally a foreperson sits  
4 right here, but since y'all are all seated, you can stay  
5 right there, and when you come back, you'll sit there.

6 Now that you have heard all the evidence in this case,  
7 as well as the closing arguments of the attorneys, I'm  
8 going now to explain to you the law you are to apply to  
9 this case.

10 Under our constitution and code of laws, only the jury  
11 can make a finding of fact in a case. I am not permitted  
12 to indicate to you how I might feel about the facts. So,  
13 if I have said anything or done anything in this trial that  
14 you think I have an opinion about the facts, you are to  
15 disregard that because you and only you are entitled to  
16 make an opinion about the facts in this case. I am not.

17 And that same constitution and code of laws that makes  
18 you the exclusive judges of the facts makes me the  
19 exclusive judge of the law. So, if you have an idea of  
20 what you think the law ought to be or what the law should  
21 be and it differs from what I now tell you the law is, you  
22 are to disregard your idea and accept the law precisely as  
23 I give it to you and apply it to the facts that you  
24 determine to be true in this case to reach your verdict.

25 Now, the fact that this defendant was arrested,

1 charged, and indicted in this case is not evidence in this  
2 case and cannot be considered by you as evidence of guilt  
3 in this case at all. Nor does it create any presumption or  
4 inference of guilt. An indictment is simply a formal  
5 written instrument which contains the charges against this  
6 defendant, and serves as a formal document which brings  
7 this case to be processed through the court.

8 Now, the defendant has pled not guilty to this  
9 indictment, and that plea places the burden on the State of  
10 South Carolina to prove each and every element beyond a  
11 reasonable doubt. A person charged with a criminal offense  
12 in South Carolina is never required to prove himself or  
13 herself innocent.

14 I instruct you and emphasize to you as well the fact  
15 that the defendants did not testify in this case is not a  
16 factor to be considered by you in any way in your  
17 deliberations or in your consideration of the question of  
18 guilt or innocence of this defendant. It must not be  
19 considered by you in any way whatsoever. The defendant has  
20 a constitutional right to remain silent, and the assertion  
21 of this right must not be considered by you in your  
22 deliberation.

23 I repeat: under your oath, you are to draw no  
24 conclusions whatsoever from the fact the defendant did not  
25 testify in this case. And the fact that he did not, this

1 defendant did not testify should not even be discussed in  
2 the jury room. It is an important rule of law in this  
3 country that a defendant in a criminal trial will always be  
4 presumed innocent of the crime for which he or she is  
5 charged unless and until that guilt has been proven to you  
6 beyond a reasonable doubt.

7 The presumption of innocence is not just a mere legal  
8 theory; it is not just a legal phrase. It is a substantial  
9 constitutional right to which every defendant is entitled.  
10 This presumption of innocence accompanies the defendant  
11 from the time he is charged and throughout the trial, until  
12 you reach a verdict of guilt based upon the evidence that  
13 satisfies you of that guilt beyond a reasonable doubt.

14 Now, reasonable doubt is a doubt which makes an  
15 honest, sincere, conscientious juror in search of the truth  
16 to hesitate to act. Proof beyond a reasonable doubt must,  
17 therefore, be proof of such a convincing character that a  
18 reasonable person would not hesitate to act upon it in the  
19 most important of his or her own affairs. Proof beyond a  
20 reasonable doubt can be described as proof that leaves you  
21 firmly convinced of the defendant's guilt.

22 And there are very few things in this world that we  
23 know with absolute certainty. And in a criminal case, the  
24 law does not require proof that overcomes every possible  
25 doubt. If, based on your consideration of the evidence,

1 you are firmly convinced that the defendant is guilty of  
2 the crime charged, you must find him guilty. If, on the  
3 other hand, you think there's a real possibility that he is  
4 not guilty, then you are to give him the benefit of that  
5 doubt and find him not guilty.

6 In determining what the facts in this case are, you  
7 must necessarily pass upon the credibility, which simply  
8 means the believability, of the witnesses, and the value  
9 and the weight to be given to their testimony. You alone  
10 must decide the force and effect of the truth of that  
11 testimony. In making these decisions, there are many  
12 things that you should take into consideration: the  
13 appearance and manner of the witness on the stand,  
14 sometimes referred to as the demeanor of the witness; was  
15 the witness forthright or hesitant; was the witness's  
16 testimony consistent, or did it contain discrepancies; what  
17 was the ability of the witness to know the facts about  
18 which he or she testified; did the witness have a cause or  
19 reason to be biased or prejudiced in favor of the testimony  
20 he or she gave; was the testimony of a witness corroborated  
21 or made stronger by other testimony or evidence; was it  
22 made weaker or impeached by such other testimony or  
23 evidence.

24 Now, the rules of evidence do not ordinarily permit a  
25 witness to testify to opinions or conclusions. An

1 exception to this rule exists for witnesses we call expert  
2 witnesses. A witness who by a education and experience has  
3 become an expert in some science or art or profession or  
4 calling may state an opinion as to relevant and material  
5 matter in which the witness claims to be an expert, and may  
6 also state a reason for that opinion. You should consider  
7 any expert opinion received in evidence in this case like  
8 any other evidence. Give it the weight you think it  
9 deserves.

10 If you decide the opinion of an expert is not based on  
11 sufficient education and experience, or if you conclude  
12 that the reasons given in support of the opinion are not  
13 sound, or that the opinion is outweighed by other evidence,  
14 you may disregard the opinion in its entirety.

15 An expert witness's testimony is to be given no  
16 greater weight than that of any other witness simply  
17 because the witness is an expert. Further, you are not  
18 required to accept an expert's opinion even though it is  
19 not contradicted.

20 Now as jurors, you have a right to believe a small  
21 portion of a witness's testimony and disregard the larger,  
22 or vice versa. You may believe all of a witness's  
23 testimony or none. You may believe the testimony of a  
24 single witness against that of many witnesses, or the other  
25 way around.

1           Now, criminal intent is a necessary element of each  
2 crime that must be proven by the state beyond a reasonable  
3 doubt. Criminal intent is always a matter that must be  
4 determined by the jury from the circumstances surrounding  
5 the situation. There is no way to prove intent to a  
6 mathematical certainty. There is no way medical science  
7 can dissect a person's brain and determine what he or she  
8 had in mind. So, the law states criminal intent may be  
9 inferred from the circumstances shown to have existed both  
10 before and after the fact.

11           This is how you, the jury, make a determination of  
12 whether or not the elements of criminal intent were  
13 present. Criminal intent is a state of mind that operates  
14 jointly with an act or omission in the commission of a  
15 crime. Criminal intent is a mental state of conscious  
16 wrongdoing. So, it is up to you, the jury, to determine  
17 what the defendant intended to do based on the  
18 circumstances shown to have existed. And I tell you the  
19 state must prove criminal intent beyond a reasonable doubt,  
20 just as they must prove every element beyond a reasonable  
21 doubt.

22           There are two types of evidence which are generally  
23 presented during a trial: direct evidence and  
24 circumstantial. Direct evidence is testimony of a person  
25 who asserts or claims to have actual knowledge of a fact,

1 such as an eyewitness. Circumstantial evidence is proof of  
2 a chain of facts and circumstances indicating the existence  
3 of a fact.

4 Now, you know, if we're sitting in this courtroom and  
5 it's raining outside, and we aren't paying any attention  
6 and we don't see it rain, but we can go out tonight and the  
7 ground's soaking wet, then we can assume some time during  
8 this trial, it rained outside. If we saw it rain, that's  
9 direct evidence. The fact that the ground is soaking wet  
10 when we leave, we can assume that some time it rained while  
11 we were in this building, that's circumstantial evidence.  
12 And the law makes no distinction between circumstantial and  
13 direct evidence as far as the weight you are to give it and  
14 the value to give it.

15 After weighing all the evidence in this case, if you  
16 are not convinced of the defendant's guilt beyond a  
17 reasonable doubt, you must find him not guilty. On the  
18 other hand, if you find, based on weighing all the evidence  
19 in this case, that you are firmly convinced that the  
20 defendant is guilty of these charges, you must find him  
21 guilty.

22 Now, I have admitted into evidence in this case a  
23 statement alleged to have been made by the defendant.  
24 Before you can consider the statement as evidence for any  
25 purpose, you must find the statement was proven beyond a

1 reasonable doubt that the answer is yes to both of the  
2 following questions. One, did the defendant make the  
3 statement? And two, was the statement made voluntarily?

4 The word voluntarily means that he freely chose to  
5 make the statement, and it was not induced by pressure,  
6 force, or intimidation. If the statement was voluntarily  
7 given, it may be used against him. If a statement is not  
8 voluntarily given, it cannot be used against him.

9 In determining whether or not the statement of the  
10 defendant was voluntary, you should consider all the facts  
11 and circumstances surrounding the statement, including the  
12 defendant's age and maturity, his level of education and  
13 intelligence, his physical and mental health, his  
14 background and environment, the nature of any questioning,  
15 and any evidence you believe bears on the voluntariness of  
16 the defendant's statement.

17 If the defendant was in custody at the time the  
18 statement was made, then you should also consider the place  
19 and length of his custody, and whether or not he was given,  
20 and whether or not he understood his constitutional rights,  
21 or what we commonly refer to as his Miranda rights.

22 These rights are that he has the right to remain  
23 silent. That any statement that he does make can and will  
24 be used against him in a court of law. That he has the  
25 right to counsel of a lawyer before and during any

1 questioning. And that if he cannot afford a lawyer, the  
2 court will appoint a lawyer to represent him and without  
3 cost. And that he has the right to exercise these rights  
4 at any time and terminate the questioning or not answer any  
5 question or make any statement. I find that as a matter of  
6 law, the defendant was in custody at the time the statement  
7 was made.

8 Now, the defendant in this case is charged with  
9 criminal sexual conduct with a minor. The state must prove  
10 -- in the second degree. The state must prove beyond a  
11 reasonable doubt that defendant engaged in sexual battery  
12 with the victim. Sexual battery is sexual intercourse,  
13 cunnilingus, fellatio, anal intercourse, or any intrusion,  
14 however slight, in any part of a person's body. Or any  
15 object into the genital or anal openings of another  
16 person's body except when the intrusion is accomplished for  
17 medical, recognized treatment or diagnostic purposes.

18 The state must prove beyond a reasonable doubt that  
19 the victim was less than sixteen years of age at the -- or  
20 but at least fourteen years of age. And that defendant was  
21 either in a position of familial, familial, custodial, or  
22 official authority to coerce the victim to submit; or that  
23 the defendant was older than the victim.

24 Consent and willingness, indifferent -- indifference  
25 or ignorance in the part -- on the part of the minor, if

1 any, as to what was taking place does not in any way affect  
2 the charge of criminal sexual conduct with a minor because  
3 an unmarried woman under the age of fourteen cannot  
4 legally, or under the age of sixteen, cannot legally  
5 consent to sexual intercourse.

6 Now, ladies and gentlemen, you are not partisans for  
7 the State of South Carolina or this defendant. You do not  
8 serve as jurors to reward your friends or punish your  
9 enemies. That system of justice simply would not be  
10 tolerated. You have been selected by both the state and  
11 this defendant as fair and impartial jurors. It is your  
12 duty, then, by your joint deliberation to determine the  
13 truth in this case, giving to this defendant the benefit of  
14 every reasonable doubt on each and every issue. Then to  
15 the facts that you determine to be true, you are take and  
16 apply the law which I have given you and arrive at a  
17 verdict which speaks the truth in this case. And when you  
18 have accomplished these responsibilities, you will have  
19 satisfied your oath as jurors and discharged your duty to  
20 this court.

21 Now, I've had my law clerk type up the possible  
22 verdict form in this case, and this is simply the caption  
23 of the case, which is at the top of the document. And then  
24 it says:

25 We, the jury, unanimously find the defendant,

1 Henry Lee Felder, guilty of count one of criminal  
2 sexual conduct with a minor in the second degree  
3 or not guilty of criminal sexual conduct with a  
4 minor in the second degree.

5 And on count two:

6 We, the jury, unanimously find the defendant,  
7 Henry Lee Felder, guilty of criminal sexual  
8 conduct with a minor in the second degree, or not  
9 guilty of criminal sexual conduct with a minor in  
10 the second degree.

11 The order that he placed these in, you are to draw no  
12 conclusions from whatsoever. We simply had to put them in  
13 some order.

14 Mr. Foreman, when you have reached a verdict on each  
15 of these two counts and it's a unanimous verdict, then and  
16 only then are you authorized to check the appropriate boxes  
17 on this verdict form and sign your name and date the back of  
18 it. And then knock on the door, and we will come out and  
19 receive your verdict.

20 As I instructed you, this must be a unanimous verdict.  
21 It's not just the verdict of the foreman. It is a verdict  
22 of all twelve of you. So, you must all agree on this  
23 verdict before he's authorized to sign the sheet.

24 If some time during your deliberation one of you need  
25 to be excused, you have to go to the restroom or anything,

1 then you've got to stop your deliberation. All twelve of  
2 you must be present in the room the whole time you're  
3 talking about this case. So, if someone goes to the  
4 restroom, stop talking about the case. When they come back  
5 out, continue your deliberation until you've reached a  
6 verdict. And when you have, you'll simply knock on the  
7 door and let us know. We'll bring you back out and receive  
8 the verdict.

9 Now, if you have a question, you have to write that  
10 question down on a piece of paper and give it to the  
11 bailiff. And I can tell you up front I will not be able to  
12 answer questions of fact. I can only answer a question of  
13 law. So, if you have a question of fact or a question of  
14 evidence, you've received all the evidence you're going to  
15 hear in this case, and you got to decide it based on what  
16 you've heard.

17 Now, if you need for me to clarify a legal point, I'll  
18 bring you back out and explain to you a charge some. I can  
19 do that, but I can't answer questions of fact. I can only  
20 clarify any legal issues that you may have based on the  
21 charges I've given you.

22 I'm going to send you to the jury room and ask you not  
23 to start your deliberations yet because I must confer with  
24 these attorneys to be sure I've covered everything. If  
25 I've left something out, I'm going to bring you back out

1 and charge you further.

2 If I've covered everything, then I will send the  
3 verdict form, along with the indictment and the evidence in  
4 this case. When you have received the evidence, that will  
5 be your indication to begin your deliberation. And then  
6 when you've reached a verdict, you will knock on the door.

7 Now, Mr. Alternate, I need you to stay with me because  
8 it looks like everybody is going to make it. The only way  
9 I was going to need you is somebody got sick on me. I  
10 think the original twelve all look healthy; they're going  
11 to get through this afternoon. So, if you'll stay in the  
12 courtroom, the rest of you go to your jury room.

13 Yes, sir?

14 FOREPERSON: Your Honor, can we have some pencil and  
15 paper, please, in the jury room?

16 THE COURT: Certainly. Ms. Beulah will send -- I'll  
17 send a pad in with pencil and paper when I send the  
18 evidence in. So, if you'll go to the jury room, I'll  
19 either send the evidence in and you can start, or I'll  
20 bring you back out and charge you further. Thank you.

21 (THE JURY EXITS AT 1:50 P.M.)

22 THE COURT: Any exceptions or additions by the state?

23 MR. DURANT: None from the state, Judge.

24 THE COURT: By defense?

25 MR. LEDDY: Judge, I just renew my request for a

1 charge that they saw the video, or requirement for *mens rea*  
2 on the age.

3 THE COURT: And your request will be noted for the  
4 record, but I think I covered it. I don't think that's a  
5 requirement. Now, the case you cited dealt with, I think,  
6 disseminating materials, though, my opinion.

7 MR. LEDDY: It dealt with possession of something. It  
8 deals with possession of child pornography, and it's a  
9 federal statute.

10 THE COURT: Right.

11 MR. LEDDY: It didn't -- and the long and short of it  
12 is that the Congress, the most grammatically correct  
13 reading of the statute would not require *mens rea* on one  
14 element of knowing that the participant in the video was  
15 under age. But the court said that that had to be implied  
16 regardless of the grammatical reading because the  
17 constitution required that for property of process, I  
18 believe.

19 THE COURT: And I charged them the state must prove  
20 beyond a reasonable doubt, based on our statute, that she  
21 was, you know, under fourteen and older than -- under  
22 sixteen, older than eleven, and I think that's what the law  
23 is in this state.

24 MR. LEDDY: Yes, sir. I, I just ---

25 THE COURT: And I'll note your objection for the

1 record.

2 MR. LEDDY: I would say that there is a great deal of  
3 debate among attorneys as to what the law requires, and  
4 whether it can be a defense. And because of the ambiguity  
5 of it, I would say that the rule of lenity would also  
6 require that to be charged, and I would add that as part of  
7 my objection.

8 THE COURT: Okay. All right, I will note your  
9 objection, but I think I've covered everything under our  
10 law. Thank you.

11 MR. LEDDY: Thank you, Your Honor.

12 THE COURT: All right, if y'all, y'all will get the  
13 evidence together, be sure and give it to ---

14 MR. DURANT: If they want to see the video, Judge, I  
15 think we should just keep it out here since we had ---

16 THE COURT: Right. The video doesn't go in since it's  
17 been redacted.

18 All right, Mr. Letourneau, you are free to go. You  
19 sat there during the whole trial, and now you don't get to  
20 make a decision, but I would have needed you if someone had  
21 gotten sick, and I appreciate it.

22 (COURT REPORTER REVIEWS THE EVIDENCE WITH THE  
23 ATTORNEYS.)

24 (JURY DELIBERATIONS BEGIN AT 2:02 P.M.)

25 (OFF THE RECORD.)

1 THE COURT: The note says: Could you provide the jury  
2 with the videotape of the officer's interrogation of the  
3 defendant for our viewing?

4 We anticipated this problem, so I guess the only thing  
5 I can do is bring them back out and tell them due to  
6 technical problems, I really don't have a way to provide it  
7 to the jury room. I can bring them back out and let them  
8 listen to it again in court. If y'all hadn't -- that  
9 that's still true, right, that we didn't have the  
10 capabilities of making a copy of what we showed them?

11 MR. DURANT: Yes, sir.

12 THE COURT: How long is it going to take you to set  
13 that up?

14 MR. DURANT: No problem. Just a couple of minutes.

15 THE COURT: Okay. Before I bring them out, I'm going  
16 to let you -- if you'll get it set up and explain to them,  
17 I can show it to them now if they want to sit and watch it  
18 out here.

19 (A PAUSE.)

20 THE COURT: We ready?

21 MR. DURANT: Yes.

22 THE COURT: Bring them in.

23 (JURY QUESTION MARKED INTO EVIDENCE AS COURT'S  
24 EXHIBIT NUMBER 1.)

25 (THE JURY ENTERS AT 2:27 P.M.)

1 THE COURT: Mr. Foreman, it's my understanding you  
2 want to view the videotape.

3 FOREPERSON: Yes, sir. That's correct.

4 THE COURT: We don't have -- due to technical  
5 problems, I don't have the ability to send it back to the  
6 jury room. So, the only option I have is for y'all to  
7 review it here, okay?

8 Mr. Solicitor, if you will turn it on for them.

9 MR. DURANT: Yes, sir.

10 THE COURT: And y'all can review it. If you need us  
11 to stop it or replay it, do whatever, you let us know. And  
12 then after you see it, you can go back in your jury room  
13 and continue deliberations. If you can't hear it or see  
14 it, let me know.

15 (EXCERPT OF STATE'S EXHIBIT NUMBER 1 PLAYED FOR THE  
16 COURT. AUDIO NOT TRANSCRIBED.)

17 THE COURT: If y'all will return to the jury room and  
18 let us know.

19 (THE JURY EXITS AT 2:47 P.M. AND RESUMES  
20 DELIBERATIONS.)

21 THE COURT: All right, we will be in recess until we  
22 hear something back from the jury.

23 (OFF THE RECORD.)

24 THE COURT: I understand we have a verdict.

25 BAILIFF: Yes, sir.

1 THE COURT: All right, bring the jury.

2 (THE JURY ENTERS AT 3:43 P.M.)

3 VERDICT

4 THE COURT: You may publish the verdict.

5 CLERK OF COURT: On indictment number 2009-GS-14-518,  
6 *The State vs. Henry Lee Felder*, on count one we, the jury,  
7 unanimously find the defendant, Henry Lee Felder, guilty of  
8 count one, criminal sexual conduct with a minor, second  
9 degree. As to count two, we, the jury, unanimously find  
10 the defendant, Henry Lee Felder, guilty of count two,  
11 criminal sexual conduct with a minor, second degree.  
12 Signed Foreperson David E. Bradham, October 18, 2011.

13 THE COURT: Anything further from the state?

14 MR. DURANT: No, sir, Your Honor.

15 THE COURT: Anything from the defense?

16 MR. LEDDY: Poll the jury, please, Your Honor.

17 THE COURT: All right, Madame Clerk, if you will poll  
18 the jury.

19 CLERK OF COURT: All right, sir.

20 POLLING OF THE JURY

21 CLERK OF COURT: Ladies and gentlemen of the jury, I'm  
22 going to call your name one by one and ask you each a  
23 question, and I need you to answer. I'm going to start  
24 with the foreperson, David E. Bradham

25 JUROR: Yes.

1 THE COURT: Is this your verdict?  
2 JUROR: Yes, it is.  
3 CLERK OF COURT: Is it still your verdict?  
4 JUROR: Yes, it is.  
5 CLERK OF COURT: Thank you, sir.  
6 Brandy V. Tisdale, is this your verdict?  
7 JUROR: Yes, ma'am.  
8 CLERK OF COURT: Is it still your verdict?  
9 JUROR: Yes, ma'am.  
10 CLERK OF COURT: Thank you.  
11 Sherva B. Parker, is this your verdict?  
12 JUROR: Yes, sir.  
13 CLERK OF COURT: And still your verdict?  
14 JUROR: Yes, ma'am.  
15 CLERK OF COURT: Thank you.  
16 Joyce E. Privitera, is this your verdict?  
17 JUROR: Yes, ma'am.  
18 CLERK OF COURT: And still your verdict?  
19 JUROR: Yes, ma'am.  
20 CLERK OF COURT: Thank you.  
21 Casey L. McElveen, is this your verdict?  
22 JUROR: Yes.  
23 CLERK OF COURT: And still your verdict?  
24 JUROR: Yes.  
25 CLERK OF COURT: Thank you, ma'am.

1 Frizeal O. Edwards, is this your verdict?  
2 JUROR: Yes.  
3 CLERK OF COURT: And still your verdict?  
4 JUROR: Yes, ma'am.  
5 CLERK OF COURT: Thank you, ma'am.  
6 Randy E. Reitan, is this your verdict?  
7 JUROR: Yes, ma'am.  
8 CLERK OF COURT: And still your verdict?  
9 JUROR: Yes, ma'am.  
10 CLERK OF COURT: Thank you.  
11 Aretha L. Brown, is this your verdict?  
12 JUROR: Yes, ma'am.  
13 CLERK OF COURT: And still your verdict?  
14 JUROR: Yes, ma'am.  
15 CLERK OF COURT: Thank you.  
16 Brett A. Coker, is this your verdict?  
17 JUROR: Yes, ma'am.  
18 CLERK OF COURT: Is it still your verdict?  
19 JUROR: Yes, ma'am.  
20 CLERK OF COURT: Thank you.  
21 Joe M. Hilton, is this your verdict?  
22 JUROR: Yes, ma'am.  
23 CLERK OF COURT: And still your verdict?  
24 JUROR: Yes, sir.  
25 CLERK OF COURT: Thank you.

1 Terry L. Welch, is this your verdict?

2 JUROR: Yes, ma'am.

3 CLERK OF COURT: And still your verdict?

4 JUROR: Yes, ma'am.

5 CLERK OF COURT: Thank you.

6 And David W. Duke, III, is this your verdict?

7 JUROR: Yes, ma'am.

8 CLERK OF COURT: And still your verdict?

9 JUROR: Yes, ma'am.

10 CLERK OF COURT: Thank you.

11 Your Honor, the jury has been polled.

12 THE COURT: Thank you, ma'am.

13 Anything else?

14 MR. LEDDY: No, Your Honor.

15 THE COURT: Thank you.

16 Ladies and gentlemen, I want to thank you for your  
17 service. It's my understanding we don't have anything else  
18 to try this week.

19 MR. DURANT: No, sir, Your Honor.

20 THE COURT: So, y'all will not have to do this again  
21 for three years. And I've been telling you all week you  
22 couldn't talk about this case. Now you can talk about  
23 anybody you want to. You don't have to if you don't want  
24 to, but if you choose to, you can. When you go home  
25 tonight, you can tell your family what you did.

1 I really appreciate your service this week, and you're  
2 going to realize what a huge contribution you made to  
3 Clarendon County when you get that check. It ain't going  
4 to carry you far, but we couldn't afford to pay you near  
5 what you're worth. But you paid close attention throughout  
6 this trial, and you did a very good job, and I appreciate  
7 your service. You have a nice week and, like I say, you  
8 don't have to do this again for three years.

9 If you need a statement for your employer, you can go  
10 to the clerk's office for it, and she will provide you one.  
11 And if you don't want to go back to work the rest of the  
12 week, I won't tell your employer where you've been. Thank  
13 you. Y'all are free to go.

14 (THE JURY EXITS AT 3:48 P.M.)

15 THE COURT: There's any reason we can't proceed to  
16 sentencing?

17 MR. DURANT: Judge, just give me a couple minutes to  
18 get the paper together.

19 THE COURT: Okay.

20 MR. DURANT: I'm kind of superstitious.

21 (A PAUSE.)

22 MR. LEDDY: Judge, I don't know if I made the renewal  
23 of all my motions of everything.

24 THE COURT: Okay.

25 MR. LEDDY: It was not my intention to abandon my

1 objections. So, I would renew them now with the leave of  
2 the court.

3 THE COURT: All right, and they are now noted for the  
4 record.

5 MR. LEDDY: Thank you.

6 (A PAUSE.)

7 THE COURT: Anything from the state you'd like to tell  
8 me before I pass sentence?

9 MR. DURANT: Judge, Your Honor, you've heard all the  
10 facts. I don't believe any of the victims ---

11 THE COURT: The victims want to tell me anything?

12 MR. DURANT: --- or her family want to, want to speak.

13 THE COURT: The family of the victim want to address  
14 the court?

15 MS. RAINEY: No, sir. No.

16 MR. DURANT: Judge, Ms. Rainey brought to my  
17 attention, she said that the State Office of Victims'  
18 Assistance has asked to present to Your Honor a restitution  
19 request for counseling. Judge, I understand and we  
20 presented that request, Your Honor.

21 Your Honor has heard all the facts. Fifteen year-old  
22 girl at the time, forty-five year-old man. Has been in  
23 counseling for two years now. A lasting impact on her  
24 life, Judge. It will be for some time.

25 THE COURT: Yes, sir. What do you want to tell me?

1 MR. LEDDY: Well, Your Honor, you saw this whole case,  
2 and I know that my client would like to address the court  
3 in a moment.

4 I would just say that he did have an offer of twelve  
5 years. I would ask the court to take that into  
6 consideration and not -- and ask for a cap not to exceed  
7 that.

8 It has been some time since this occurred, and just  
9 like before this occurred, he has not had any trouble with  
10 the law. And I found that I didn't know until the trial  
11 that it seems that, you know, their pastor wanted to  
12 intervene and sort of keep this within their church. And  
13 I've not heard that, and I find it unusual. But this was,  
14 I guess, a guy that knows Mr. Felder much better than I do  
15 who didn't feel that this reflected on him. Didn't tell  
16 the whole story of the man I guess is a way to put it.

17 And I can tell you from my interactions with him that  
18 he is remorseful for this. I don't think this has been an  
19 easy process for him either. So, Mr. Felder would like to  
20 talk to the court now.

21 THE COURT: Yes, sir.

22 DEFENDANT: Your Honor, I thank God, first of all, and  
23 thank God for you. And to the family, I offer greatly  
24 apologies. You know, a decision has been made that  
25 correctly -- I mean, obvious a bad mistake, and I

1 regretfully, whether they believe it or not, I regretfully  
2 -- sorry that it ever took place.

3 You know, if I can -- if I was a magician and can  
4 change everything, I would. You know, if I could live my  
5 life all over again, recreate, just stop all this, I would.  
6 So, again I say to the family, to each and every one of  
7 them I'm sorry. I'm very, very sorry, sorry deeply from  
8 the heart.

9 And they know me just as well as the pastor do, and  
10 they know that I'm not a villain or that type of person.  
11 You know, right now revenge or anger might be setting in,  
12 but that, that don't change anything. And I honestly know  
13 that I'm not that type of person. And I'm very sure that  
14 they know that I'm not that type of person, and just that  
15 mistake been made. And the whole community that knows me  
16 know that I'm not that type of person. I don't care what  
17 kind of name, title they might try to put on me, but I'm  
18 not that type of person, Your Honor.

19 And I'm very regretfully, regretfully, regretfully,  
20 regretfully sorry. Ain't nothing I can say to change  
21 anything. You know, the past is the past. What happened  
22 is happening. You can send me a lifetime, twenty, forty,  
23 eighty years. It's not going to change the past. Look at  
24 the person for who I am today. And I, I, I respectfully  
25 honor you and everyone else. Asking you, pleading with you

1 to look within me, to look at the -- to who I am today.

2 You know, the past is gone and it was two years now,  
3 two years, and I -- everyone was getting along. No issue  
4 came up. I was trying to do the best I can as, as a human,  
5 as a person in the community trying -- I rededicate my life  
6 and -- to God and ask for forgiveness. I ask you now. I'm  
7 asking the family for forgiveness. So, I'm asking the  
8 court for forgiveness.

9 As, as I say, it's not going to change the past, but  
10 please look at me for who I am today. I'm not no type of  
11 bad person. A mistake been made, and I think we all,  
12 everyone in this courtroom has made some type of mistake  
13 one, at one time or another that they regret and then they  
14 can't change it but just move on, try to do their best.

15 And, Your Honor, if I may? I hope I'm not out of the  
16 way or, or out of order in any way. If you can find within  
17 your heart to -- the word I'm looking for is probation,  
18 probation without time. I don't care if you put a wrist on  
19 me 24-7, have somebody watch me 24-7. Please send me back  
20 home with my wife and children. That's all I'm asking.  
21 Please send me home to my wife and children. I don't care  
22 if you got to have someone on the surveillance 24-7. I'm  
23 not who the things seem -- try to make me out to be.  
24 Please, Your Honor, that's all I'm asking. That's all I'm  
25 asking.

1 THE COURT: I understand.

2 Yes, ma'am, did you want to address me?

3 MS. JOHNSON: Most of all, like I said, I cared, I  
4 cared for this gentleman. I trusted him with my family,  
5 and I love his family. And it's nothing I want done, but  
6 when me and him and the pastor talked, the suggestion for  
7 the counseling came from me.

8 I said well, Rev, can you counsel him because my  
9 emotions got mixed up at that time, and I was about to  
10 cover this thing up for him. See what I'm saying? And I  
11 asked Rev. I said, well, can you counsel him? That's what  
12 happened with the counseling thing.

13 Okay, but when I came -- but even though it didn't  
14 come out in the trial, but it was at a point where my  
15 husband's niece was down visiting -- to tell you it's a  
16 sickness, you know, it's a sickness. And my husband's  
17 niece was down that same summer going to the church. And  
18 it didn't come out in the trial, but he actually asked my  
19 daughter. Say does she be home alone by herself? See what  
20 I'm saying?

21 It's a sickness, and you need time to get yourself  
22 together and get the help you need. I mean, I mean,  
23 because you already homing in on somebody else, you know, I  
24 mean.

25 MR. DURANT: Just for the record, that was the

1 victim's mother, Sabrina Johnson.

2 Judge, if I may just briefly respond? I don't believe  
3 that a plea offer pretrial is appropriate to take into  
4 consideration. It would have been the state's position  
5 that after the victim testified, that offer was off the  
6 table.

7 THE COURT: I understand.

8 DEFENDANT: May I speak again, Your Honor?

9 THE COURT: Yes.

10 DEFENDANT: When the offer was offered to me and I  
11 said that, I told my lawyer that I'm going -- not going to  
12 plead guilty. What I meant was I'm, I don't want to plead  
13 guilty of being someone that I'm not. You know, trying to  
14 make out me out to be someone I'm not, and I explained that  
15 to him.

16 I wasn't playing, saying I'm not guilty to the  
17 situation. I just don't want to be guilty of trying to put  
18 a name tag on me, a molester. I know I'm not.

19 And the last comment that was made, I never said that,  
20 never said that. But still, I plead and I beg, plead and  
21 beg with you. I understand what you're saying, but I am  
22 not sick. I know who I am, and nobody's going to change  
23 that. No one's going to make me think that. I am, I know  
24 who I am. And just like everyone else in here, regardless  
25 what someone try to make you, make you out to be, you know

1 who you are.

2 So, I, I'm begging and I'm pleading again, Your Honor.  
3 You can ask anyone in the community. I don't care if you  
4 put a wrist on me 24-7, Your Honor. I don't care if you  
5 have surveillance on me 24-7, Your Honor, night and day.  
6 Please send me back home with my wife and children, Your  
7 Honor, because I'm not no villain. I'm not. I know what  
8 has...

9 THE COURT: I understand but, you know, you, as far as  
10 the crime you committed, our legislature has got it as a  
11 violent, most serious offense. It's one of the most  
12 serious offenses that we have in this state. And you've  
13 taken something from this young girl you can't give back.

14 You made a decision, and I understand you're now  
15 telling me you're not a bad person, and you made a mistake.  
16 But the mistake you made was substantial and serious. I  
17 mean, to prey on a fifteen year-old girl when you're  
18 forty-five years old -- it'd have been one thing if you  
19 were a sixteen year-old boy, but the law puts the  
20 responsibility on you. You should have known better.

21 Anyway, and I'm -- and the fact that you don't have a  
22 substantial criminal record and you haven't been in  
23 trouble, I'm taking that into consideration. But still,  
24 this is a serious crime that you've been convicted of on  
25 two counts.

1                                    *SENTENCE OF THE COURT*

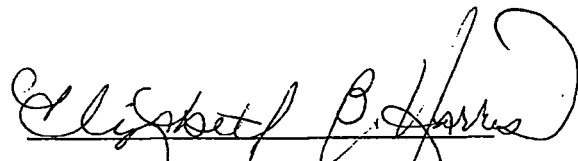
2                    THE COURT:  So, on count one, the sentence of this  
3 court is that you are committed to the State Department of  
4 Corrections for a period of fifteen years.  Count two is  
5 fifteen years to run concurrent with count one.  I'm giving  
6 you credit for whatever time you've served toward that.  
7 Good luck to you.

8                    --- END OF TRANSCRIPT OF RECORD ---

## CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON THE 8TH, 9TH, 10TH, 11TH, 12TH DAYS OF AUGUST, 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

MAY 22ND, 2012

WITNESSES

T. O. Ham - CCSO

DOCKET NO. 2009-GS-14- 0518

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

DECEMBER TERM 2009

THE STATE

vs.

HENRY LEE FELDER

ARREST WARRANT NUMBER

M083420

M083421

ACTION OF GRAND JURY

*True Bill*

*[Signature]*  
Foreperson of Grand Jury  
Date: *12-3-09*

VERDICT

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR  
(2<sup>ND</sup> DEGREE) (TWO COUNTS)

Foreperson of Petit Jury  
Date:

C. Minor JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CLARENDON )

INDICTMENT FOR  
CRIMINAL SEXUAL CONDUCT WITH A MINOR (2<sup>ND</sup>  
DEGREE) (TWO COUNTS)

At a Court of General Sessions, convened on December 3, 2009, the Grand Jurors of CLARENDON COUNTY present upon their oath:

**COUNT ONE – CRIMINAL SEXUAL CONDUCT WITH A MINOR (2<sup>ND</sup> DEGREE)**

That HENRY LEE FELDER did in Clarendon County on or about July 13, 2009, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree by engaging in sexual battery with a minor who was at least fourteen (14) years of age but who was less than sixteen (16) years of age, to-wit: Minor (Date of Birth: ) and the actor was in a position of familial, custodial or official authority to coerce the victim to submit or was older than the victim, in violation of Section 16-3-655(3) of the Code of Laws of South Carolina (1976), as amended.

**COUNT TWO – CRIMINAL SEXUAL CONDUCT WITH A MINOR (2<sup>ND</sup> DEGREE)**

That HENRY LEE FELDER did in Clarendon County on or about August 26, 2009, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree by engaging in sexual battery with a minor who was at least fourteen (14) years of age but who was less than sixteen (16) years of age, to-wit: Minor (Date of Birth: ) and the actor was in a position of familial, custodial or official authority to coerce the victim to submit or was older than the victim, in violation of Section 16-3-655(3) of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the state, and contrary to the statute in such case made and provided.

*C. Kelly Jackson*  
\_\_\_\_\_  
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Clarendon
STATE VS. Henry Lee Felder

INDICTMENT/CASE#: 2009-GS-14-0518
A/W#: M083421
Date of Offense: 8/26/2009
S.C. Code § : 16-03-0655(B)(2)
CDR Code #: 0397

AKA:
Race: 2 Sex: M Age:
DOB: SS#:
Address:
City, State, Zip:
DL#: SID#:

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Criminal sexual conduct with a minor - 2nd degree (0-20 years)

in violation of § 16-3-655(2) of the S.C. Code of Laws, bearing CDR Code # 0397
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Durant, Christopher Ryan SC Bar# 78080 Defendant
Attorney for Defendant SC Bar# 73213

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:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Table with columns for assessment type, amount, and total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge), § 14-1-211(A)(2) (DUI Surcharge), § 56-5-2995 (DUI Assessment), § 56-1-286 (DUI Breath Test), Proviso 47.9 (Public Def/Prob), § 14-1-212 (Law Enforce. Funding), § 14-1-213 (Drug Court Surcharge), § 50-21-114 (BUI Breath Test Fee), § 56-5-2942(J) (Vehicle Assessment), Proviso 90.5 (SCCJA Surcharge), 3% to County (if paid in installments), and TOTAL \$133.90.

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: B. Roberts
Court Reporter: E. Hawn

Presiding Judge: [Signature]
Judge Code: 2144
Sentence Date: 10/18/2011

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF Clarendon  
STATE VS.  
Henry Lee Felder

INDICTMENT/CASE#: 2009-GS-14-0518  
A/W#: M083420  
Date of Offense: 7/13/2009  
S.C. Code § : 16-03-0655(B)(2)  
CDR Code #: 0397

AKA: \_\_\_\_\_  
Race: 2 Sex: M Age: \_\_\_\_\_  
DOB: SS#  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
SID#: \_\_\_\_\_

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
In disposition of the said indictment comes now the Defendant who was  
TO: Criminal sexual conduct with a minor - 2nd degree (0-20 years)

CONVICTED OF or  PLEADS

In violation of § 16-3-655(3) of the S.C. Code of Laws, bearing CDR Code # 0397  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: Ch. Ryan 78080 Henry Lee Felder 75213  
Durant, Christopher Ryan SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 15 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

PTUP \_\_\_\_\_  
\_\_\_\_\_ days/hours Public Service Employment  
Obtain GED   
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol testing   
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

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 Enforc. 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 (SCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/ Deputy Clerk D. Roberts  
Court Reporter: E. Haines  
SCCA217 (11/07/11) P. 4 No. 0234

Presiding Judge [Signature]  
Judge Code: 2149  
Sentence Date: 10/18/2011

## 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."

January 2nd, 2013

A handwritten signature in black ink, appearing to read "David Alexander", is written over a horizontal line.

David Alexander  
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