21289

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Eugene C. Griffith, Jr., Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MICHAEL ERWIN MOON,

APPELLANT

APPELLATE CASE NO. 2013-001793

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT # 1 (VIDEO OF INTERVIEW)

STATE OF SOUTH CAROLINA)	IN THE 13TH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	THE COURT OF GENERAL SESSIONS
)	2011-GS-23-04664,05600
THE STATE OF SOUTH CAROLINA,)	
)	
PLAINTIFF,)	
)	
VERSUS)	
)	
)	
MICHAEL MOON,)	
)	DATE: AUGUST 12-13, 2013
DEFENDANT.)	GREENVILLE, SOUTH CAROLINA

TRIAL TRANSCRIPT

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THE HONORABLE EUGENE C. GRIFFITH, JR.

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comments and we'll get started. Follow Mr. Gordon and we'll see you at 3:15.

(Jury out at 1:44 PM)

THE COURT: All right. See y'all in a hour. All right. We'll see y'all back at 2:45.

(Lunch break)

PRE-TRIAL MOTIONS

THE COURT: All right. Are y'all ready?

MS. ROSS: Yes, Your Honor.

THE COURT: Ms. Ross, you have a few motions, you said?

MS. ROSS: Yeah. I guess first off, I will start with the discovery motion. I think we went through it the last time this was set for trial. During the forensic interview, I don't know if you noticed, but right around minute twelve she talks about -- I'm sorry, about minute fifteen, she says something about, "I told DSS all about it," and then she goes into some facts that were beyond what the initial report had been. At that point, the charge, the additional charge of CSC with a minor was added, from lewd act. I requested discovery of all the DSS files in an attempt to locate an interview. I've reviewed all that and I could not locate any reference to an interview with DSS, whatsoever. So, I would just renew my motion for any and all discovery within the hands of the

State or any that they could get their hands on pursuant to Lyles.

THE COURT: Hang on. Have you located anything else?

MR. BONDURANT: No, Your Honor. I've gone through the same DSS files after this was continued last time. I couldn't -- I still, to this day, don't know what she was referring to. The only guess I have is that the DSS worker went with the investigator, originally, to the school to speak with her and I don't know if, in the child's mind, if she's sort of confused and when she said, "I told DSS that," but I've gone through the same file she has and I've not found any reference to any interviews.

THE COURT: Okay.

MS. ROSS: Okay. And, Judge, that sort of segues into a second motion about the forensic interview. We'd object to that forensic interview. Due process doesn't make an exception for harder to prove cases. I understand, though, that the statutes, that would be 23 and 175, Jessie's law, has some guidelines, but one of those in particular is guarantees of trustworthiness. Here, again, the fact that she's referring to some interview that apparently happened with DSS saying, "I said all this before," and then goes on to allege the CSC aspect of the charges, I would question those guarantees of trustworthiness, because we have no way to know whether protocols were followed in that DSS

interview if it, in fact, exists, and if someone from DSS went and talked to Minor about what she says happened. There are records of DSS interviewing Minor at her school with law enforcement and there's no mention of anything that could be alleged to be a criminal sexual conduct. It is just touching, the lewd -- and that's why, initially, just lewd act was charged. So, we would object to the forensic interview on that basis and also move to quash the CSC with a minor charge, as well, because it lacks those guarantees of trustworthiness.

THE COURT: Isn't that under the new case law, what was it, the Jennings case? I'm trying to think.

MS. ROSS: Jenkins?

THE COURT: Jenkins.

MS. ROSS: State v. Jenkins.

THE COURT: And then Cromer, is that the newest one?

MS. ROSS: Yes.

THE COURT: That just came out in January? Isn't that, or to my understanding, the determination that trustworthiness is a discretionary call? I have watched the video. I understand your motion, but I think, considering the totality of the whole interview, the child's comments and responses to questions that were provided, that I will deny that motion.

MS. ROSS: Thank you, Judge. And I've got that case

State v. Cromer.

THE COURT: Is that Cromer?

MS. ROSS: K-R-O-M-A-H, I guess.

THE COURT: In Newberry it's spelled C-R-O-M-E-R.

MS. ROSS: All right, Judge. At that point, I think this will come along later, but my understanding is the State is not going to refer to any prior allegations nor argue irrelevant information. That is my understanding.

MR. BONDURANT: Yes, Your Honor. If I could just give you a quick background. This case all came about because the Defendant was allegedly exposing himself to a neighbor through a window. When his sister, who runs the neighborhood, essentially runs this little mobile home park, found that out, essentially went to them and said, "You're out of here," and he added something to the effect of, "You might want to ask your daughter if anything's going on." Of course, the mother then, her whole motive for going to him at that point and asking -- I'm sorry -- going to the victim at that point and asking her that was because of that incident. Now, initially we had, we were going to try to get that in the last time it was on. The Judge put up some resistence with it in chambers, so I decided against it. I don't know want this case to come back anymore than anybody else wants the case to come back. It does leave some questions there as to why mother would

just maybe approach her daughter and say, "Hey, are you being touched by your father," but I'm going to risk that as long as at the same time she doesn't go into any sort of improper motive as to why the mother may have asked her that. And, of course, I think if she does that, she opens the door to that or to the sister. I have clearly instructed them not to mention it, but, again -- well, I guess my fear is also that she's standing in her closing, the evidence is closed, the case is closed, no more evidence can be introduced, and she then says, "Well, we don't know why mom, you know, went to her and asked her that," you know. At that point, I've been back-doored, so to speak, because I've kept it in to be proper and appropriate and yet I get hammered on the back-end. That's sort of the background, Judge.

THE COURT: All right. So you agree not to go into the mother's initial motivation for asking questions?

MR. BONDURANT: Sure.

MS. ROSS: Right. I think that's clearly irrelevant and would be prejudicial to come out. However, I do think I should be able to argue some reason this charge could have been brought about, in general, as a general defense. I will not attack why she asked her, specifically, but I think I would ---

THE COURT: Well, the forensic interview didn't go

into that. It says, "You're here today and you come ---

MS. ROSS: Right.

THE COURT: --- and DSS has made me move in with grandmother." That's kind of the background, that's the way the little girl explained it to the interviewer.

MS. ROSS: Uh-huh.

MR. BONDURANT: I'm just afraid that she's going to be misleading the jury. If she gets up there and makes general arguments that she knows why the mother was asking that question and why this whole thing came out, then she gets up there and says, well, who knows if, you know, mother just put her up to this or not, and then again, I've been railroaded, so to speak, at that point.

THE COURT: Ms. Ross, what do you plan on ---

MS. ROSS: Judge, I think at some point ---

THE COURT: I want to understand how you're going to make this comment.

MS. ROSS: Right. At some point, I think I have the right to argue that stories can be fabricated, stories can be influenced by adults, and DSS and, you know, forensic interviewers and stories can change along that process. I don't think that's coming into the initial why she questioned whatsoever. I think ---

THE COURT: I think you're right.

MS. ROSS: -- literally any person can come in ---

THE COURT: With that characterization, I think you're right.

MS. ROSS: Right. And if something comes out, I think there had been some fighting between the parents around that time, I suspect, but I don't intend to say that this, that the mother lied about the story or implanted the story.

THE COURT: All right. Well, the way you characterize it is, stories can change, can be motivated or suggested, and that's something that they need to be aware of. I don't find fault with that as long as we don't get close to, let's examine the mother's motivation for making this initial request of DSS.

MS. ROSS: Okay. I'll stay away from that.

THE COURT: You stay away from that, that type of thing and I think we'll be on safer ground as far as what Mr. Bondurant's worried about.

MS. ROSS: Okay.

THE COURT: I think that's more appropriate considering what y'all told me on the background.

MS. ROSS: Okay.

THE COURT: All right.

MS. ROSS: I will do that. And then, finally, I -- it will come up later and I will move for an evaluation of the child witness' competency to actually testify, whether she

has an independent recollection of these incidents. I think that will be made clear during her testimony, where, I think, the State makes initial questions to that degree. But I just want that motion to be out there and understood that I need that proven. And, lastly, we move to sequester the witnesses.

THE COURT: I don't have any problems sequestering the witnesses. What's good for the goose is good for the gander.

MS. ROSS: All right. That's all I have.

THE COURT: All right. You did say less than thirty minutes. It's rare that I have an attorney be that efficient. I like that. All right. Well, we've got a few minutes.

MS. ROSS: I can go on if you'd like.

THE COURT: Well, I'm very fine with what you've accomplished now. We'll check with the jury and see if they are ready and if you are ready, we'll roll. Okay?

MR. BONDURANT: Sure.

(Brief break)

THE BAILIFF: Your Honor, we're ready.

THE COURT: Excellent. All right. Folks, are y'all ready?

MS. ROSS: One more thing. I was just looking over my notes. My understanding was that the State did redact any

reference to other charges on minute twenty-five and thirty?

MR. BONDURANT: Yes, ma'am.

MS. ROSS: All right.

MR. BONDURANT: And just to be clear for the record, you found, Your Honor, that the CD had or the DVD had guaranteed trustworthiness.

THE COURT: Trustworthiness, yes.

MR. BONDURANT: Under 17-23-175.

THE COURT: Codified, yes. 17-23-125.

MR. BONDURANT: Okay.

THE COURT: Also, and I have the copy that was provided to me. Is that yours?

MR. BONDURANT: Yes.

THE COURT: Does it need to be marked?

MR. BONDURANT: Yes, sir.

THE COURT: All right. I'm going to hand it to Ms. Rice.

(Whereupon, a DVD of the forensic interview is marked for identification as State's Exhibit #1.)

THE COURT: And just so y'all understand some of my -- I forgot to tell y'all this, but some of my little ground rules: If y'all have got an objection, just object and give me one word and if I need more I will take the jury out, but if I can make a ruling with one word, I'll direct

detail about the argument on the law and we'd like to explain our point a little more further. And so I've got to excuse y'all then. That's a good time to take a break, too. So if you hear, I've got to take up a matter of law, it's code for, y'all have to leave. And every break I'll say, all right, remember, don't discuss the case. So, that's how I work.

Now, this is my first day back in Greenville, I think, in more than eight years. I was here in April and June of '06 for a couple of months when I was first elected. It is normally my practice to bring hard candy to the jury for trials and pass around to the juries and I forgot it this morning. My law clerk over there, Greg Close, it's his first day and so he had no idea to remind me. When I get here tomorrow, I'll have candy to pass it around to y'all because that's something I do for juries and I eat hard candy while I listen, so I'll allow you to do the same.

All right. With that explanation and brief pre-trial comments, y'all stand as a group and Ms. Lanpear will place you under oath.

(Whereupon, the oath is administered by the Clerk of Court)

THE COURT: Mr. Bondurant.

MR. BONDURANT: Thank you, Your Honor.

OPENING STATEMENT

BY MR. BONDURANT:

This case is about a girl who, from the age of six to seven, was molested by her biological father, the Defendant, who was nearly sixty years old at the time. The Defendant, Michael Moon, molested his own little girl for his own sexual desires. In 2012 -- let's start with the victim. The victim is Minor . You'll hear from her today. Minor is a normal, sweet, normal little girl who likes Sponge Bob and likes to sculpt little animals and she lived with her biological mother and her biological father during this time. In March of 2011, she reluctantly disclosed to her mother that her father had been touching her. You'll hear also from her mother, Ivette Moon, who was the Defendant's wife at that time and what you'll hear about Ivette is that she was scared and she was confused and she was shaking and she didn't know what to do. Ivette is a legal resident here from Mexico. And so she kind of froze. She didn't know what to do. And she did everything to protect Minor for a couple of days, but she did tell the Defendant's mother what Minor had disclosed to her. And the Defendant's own sister, Sharon, you'll hear from Sharon today, Sharon also got word of it. She feared for this girl's safety and so she goes immediately to the police, since Ivette didn't, to get them involved.

And what you'll hear is that the police got involved immediately. This is probably two or three days after

Minor disclosed. And they got involved immediately. One investigator goes straight to her school and one investigator goes straight to where Ivette was working and said, "What in the world's going on," and Ivette admitted to the officers that she was scared. She didn't know what to do. She thought she would lose her child because it happened on her watch, under her nose. She thought she'd lose her child.

Now, the ironic thing is, she did lose her child for a couple of months because she didn't report immediately. So she lost her child, immediately. They took Minor away from her.

Now, the other investigator, as I told you, is at Minor 's school. And Minor , as you can imagine, is reluctant to begin with. She didn't want to say it. Who would? But then she told the investigators. It was Investigator Heather Hubert from the sex assault team. You'll hear from her and the DSS worker who was with her at the time. And she started -- started, the key word -- started to disclose what her father had been doing to her from the age of six to the age of seven, the age of eight, somewhere along that time frame.

So, because of Minor 's age, of course, she was nine at the time she disclosed, a forensic interview was done, was scheduled. A forensic interview is where they go,

where children are sent to the Julie Valentine Center. Generally, they have to be younger than twelve and they're sent there to speak with a professional forensic interviewer. You'll hear from that forensic interviewer and the interview is recorded and you'll see the interview. Now, when Minor went to the forensic interview for the first time, she was -- this was a month, about a month after she disclosed. It's important to remember that she was no longer living with the Defendant and she was no longer in the house with her mother.

As I said, she'd been taken out of the house and she was living with her grandmother who was the Defendant's own biological mother. There, she starts to disclose more and open up. Now she was in a safe environment and she told how the father would touch her vagina and rub it. She imitated that on the forensic interview, how her father would touch her. He would tell her to come here, while they were home alone. She would come home from school at age six and she would be alone with her father while her mother worked and she told how she had to masturbate him. And she would ask him if she could use a cloth because it was icky, she said, and you will see that in the interview. That's the basis for the lewd act.

Lewd act -- as you heard, there are two charges. Lewd act is molesting, groping, things of that nature. Minor

then goes on to disclose that she had her father's penis in her mouth on multiple occasions and she would ask her father, her own flesh and blood, if she could put a paper towel over it, so she wouldn't have to taste it.

This case is based solely on witness testimony. There's no physical evidence in these cases. One, you wouldn't expect there to be physical evidence in the case of groping and masturbation and oral sex unless you caught the person there in the act or immediately after. But, Minor didn't tell right away and you'll hear the reasons why. You'll hear expert testimony. An expert witness will testify as to why children, young children, don't disclose immediately. And honestly, I'm going to bring an expert in here to tell you that stuff, but you don't need an expert. You don't need an expert to know why a young child might not disclose right away. So, there'll be no physical evidence. It'll be witness testimony, but what testimony can be more powerful than a little girl testifying against her own biological father? Deep down in your heart somewhere you may, you may ask yourself ---

MS. ROSS: Judge, I would object to appealing to the emotions of the jury.

THE COURT: I sustain that.

Deep down you may have questions, you know, did somebody make this up. Could, you know, is this possibly

not true? Is it possibly not true? And we'll go through that in my closing statement and we'll consider all the red flags that you should look for in those kind of cases.

And so, you'll hear from Minor and Ivette, her mother. You'll hear from the two officers involved. You'll hear from Sharon, the Defendant's biological sister. You'll hear from the forensic interviewer and you'll hear how what a lengthy and difficult process this has been for this young child for two years now and that there is no reason at all for her to make this up and go through this mess.

And so I'll come to you at the end of this case and we'll talk more about it, we'll talk about those things and I'll ask you to hold him accountable for satisfying his sick sexual behaviors on his own biological daughter.

THE COURT: Ms. Ross.

MS. ROSS: Thank you, Judge.

OPENING STATEMENT

BY MS. ROSS:

Ladies and gentlemen of the jury, I'll tell you, there's nothing harder than this kind of charge. However, there is often physical evidence in abuse allegations. That exists. You all know that. So the statement saying there's never any evidence in these kinds of cases is simply untrue. There is evidence and suspicions.

I don't know. I have a seven and a ten-year-old at home. You talk about private touches. In school, it's common, the questioning, starting from kindergarten.

Now, the State just did a very compelling opening argument where they told their story, the State's story as they're presenting it to you. However, that is not evidence and I ask you to watch for the evidence in this case or lack thereof.

Now, in America, people are not incarcerated, put in jail -- and I tell you this charge is as serious as manslaughter or murder. This is a super serious charge. And in this country there has to be proof beyond a reasonable doubt. Proof beyond a reasonable doubt, no question, before anyone can be convicted of a crime, especially one like this.

Now, I'll tell you something that you're going to hear about, as well. Michael and Ivette Moon were married. They had a daughter, nine years old. They were living in a trailer home on Michael Moon's sister's property. That property used to belong to Michael Moon's father and his sister wanted him off that property. Now, one thing leads to another and stories are told and we end up here today.

Now, Michael Moon has pled not guilty in this case. He has told you he is not guilty of these charges and there is no corroboration of these charges aside from Minor

's statement, which is hugely compelling. Hugely compelling, this little girl on this video, and you're going to see a little girl sitting in court, but I'll tell you now I believe she's eleven years old sitting in this courtroom. She was nine years old on this video and she's talking about things that she said happened years ago. She's going back, way back saying, this happened a long time ago and it started as touching and then as the story went on and she talked to DSS, law enforcement, the aunt of Michael Moon who wanted him out of the trailer, wanted him out of the picture, mother, grandmother, suddenly this story changed over time. And this is a recollection, at that point, of a nine-year-old recalling back to maybe when she was six or so.

And you'll see on the indictment it was even changed about the date. It started out 2010 this happened, changed to 2008, because the State didn't even know when did this happen or what was going on when it was indicted. And they don't know now when it happened or really whether it happened. They just have the testimony of Minor , this small child, who is so compelling. I'll tell you, I've got children. It's hard to watch. But I would ask you to set your emotions aside. That is your duty as a juror. Set those emotions aside and think about the cold hard facts of whether that case was proven beyond a

reasonable doubt. Was that proven?

Would you expect, if terrible, you know, a child sucking on a father's hands, child touching, if that was all going on, wouldn't you expect someone to find out something when it happened? That someone would just suspect something when it happened? That was not here. There's no physical evidence, no corroborating evidence. You're not going to hear that. That's not what this case is about. This case is about proof, proof beyond a reasonable doubt. Was this child's story implanted by someone? Manipulated by someone like police, law enforcement? Was it manipulated or is it all the God's honest truth? That's your decision. And I submit to you that you're going to question it, certainly, the full extent of it, and that question is reasonable doubt and I'd ask you to look for that, because Michael Moon is charged with an incredibly serious crime and while what he's charged with is despicable, that's a despicable charge, there's no question it's just as despicable to convict an innocent person. So, I'd ask you to set aside your emotions and look at the evidence. Thank you.

THE COURT: Thank you, Ms. Ross. All right. Mr. Bondurant.

MR. BONDURANT: The State would call Minor to the stand.

the courtroom all here together. They'll be called individually so they don't get to hear one another's testimony. Just so you know. It's a common thing, easier to manage the witnesses in that fashion. All right. Mr. Bondurant, your witness.

DIRECT EXAMINATION

BY MR. BONDURANT:

Q Hey, Minor , how are you?

A Good.

Q Good. Minor , can you, again, tell us how old you are?

A Eleven.

Q When is your birthday?

A .

Q Okay. And where do you go to school now?

A I am going to League Academy.

Q Okay. What grade are you in?

A I'm going to sixth grade.

Q Going to sixth grade, okay. Does school start back soon?

A Yes, sir.

Q Who did you live with now, Minor ?

A My mother.

Q Okay. And what's her name?

A Ivette Lopez.

Q And where do you live now?
A I live at .
Q Okay. And did your mom come here with you today?
A Yes, sir.
Q What is your dad's name?
A Mike Moon.
Q Do you see him here today?
A Yes.
Q Is he the man in the blue shirt and the tie?
A Yes, sir.
Q Does anyone else live with you right now?
A No, sir.
Q Okay. Minor do you know why you're here today?
A Yes, sir.
Q Can you tell us why you're here?
A Because I have been sexually abused.
Q Okay. Can you tell us about that? Who sexually abused you?
A My dad.
Q Can you tell us what your dad did to you?
A He touched my private parts.
Q Touched your private parts?
A Yes, sir.
Q What did he touch your private parts with?
A His hand.

Q Did he touch you with anything else?
A If he did, I don't remember.
Q Okay. Now, I know you said private parts. Now you just need to be a little more specific for the jury, okay? Can you tell them exactly what private parts your father touched?
A My breast, my -- like, my -- what is it -- my vagina and my butt.
Q Okay. Did he touch on top of your vagina, inside of your vagina or something else?
A On top.
Q On top. Can you show us what he did with your hand, with his hand when he touched you?
A (Demonstrating)
Q Okay. Do you remember how old you were when this happened?
A Around six or seven.
Q Did this happen once or more than once?
A More than once.
Q Where did it happen?
A Sometimes in the bathroom and sometimes in the bedroom.
Q Okay. And where -- was this in the house that you're living in now or a different house?
A The house that I'm living in now.

Q It's the same house?
A Yes, sir.
Q Do you live in a trailer or a fixed house?
A A trailer.
Q Is the trailer in the same place that it was when this happened?
A No, sir.
Q The trailer was in a different place?
A Yes, sir.
Q In a different neighborhood?
A Yes, sir.
Q Okay. And did anybody live near you that you know of at that point, when you lived in that trailer?
A Around me?
Q Yes.
A My grandmother and my Aunt Sharon and that's pretty much just the family, but I can't remember some of the other peoples' names.
Q Did your father ever have you touch him?
A Yes, sir.
Q Can you describe that to us?
A He made me touch his penis and he would also put my mouth on it.
Q Was that once or more than once?
A More than once.

Q Did you touch it with your bare hand or did you touch it with anything else?
A Sometimes, he let me use a rag.
Q Where would you get that rag?
A From the place, from the cabinet. I just opened it up.
Q Okay. Where was that cabinet?
A Before the door. It's in the hallway.
Q Okay. When you touched his penis or put his penis your mouth, did anything ever come out of his penis?
A Not at those times, but one time he did, but my mouth wasn't on it.
Q Okay. What happened on that time?
A He just started shaking it.
Q Okay. Did anything come out of it?
A Yes, sir.
Q What came out of it?
A Some kind of milky liquid.
Q Okay. Would he ever say anything to you when he touched you or when you touched him?
A Yes, sir.
Q What would he say?
A I can't remember the exact words, but I just remember that he said something.
Q Okay. Did he ever threaten you to do these things?

A Yes, sir.
Q How would he threaten you?
A He said that he would tell my mom if I didn't do it.
Q And when y'all finished doing these things, would he say anything to you at that point?
A If he did, then I don't remember.
Q When did he stop doing these things?
A When I said stop.
Q At some point, you told him to stop?
A Yes, sir.
Q Do you remember the first person that you told this to?
A Yes, sir.
Q Who was that person?
A My mom.
Q Do you remember who you talked to after that?
A I'm pretty sure the DSS.
Q DSS?
A Yes, sir.
Q Do you remember talking to an investigator at school?
A Yes, sir.
Q Was somebody with her, the investigator?
A I'm pretty sure that there was three people.
Q Okay. As to the police, after you told -- well, let me start. Did you tell the police what happened to

you that day at school?
A After the day, I'm pretty sure it was after that day, my Aunt Sharon came to pick me up at school and she took me to a building and I had to tell what, the same people that I saw at the school.
Q Okay. And you told them what happened to you, what your father had done to you?
A I didn't tell -- they didn't ask me that, but...
Q Okay. Do you remember talking to Investigator Heather Hubert?
A If I did, I don't remember the name.
Q Okay. Do you remember going to the -- well, let me ask you this. Who did you live, after -- After Aunt Sharon came and picked you up, who did you go to live with at that point?
A My grandmother.
Q Your grandmother. Is that your dad's mother?
A Yes, sir.
Q Okay. Do you remember how long you lived with her?
A It was probably around two months.
Q Two months. Where was your mother during this time?
A She was just at home.
Q Did you get to see her at all?
A Sometimes.
Q Sometimes? Would you visit her or would she visit

you? How would that work?
A She would visit me.
Q Okay. All right. And then after that two months, where did you go to live? Who did you live with?
A My mom again.
Q You went back with your mom?
A Yes, sir.
Q Do you remember going to the Julie Valentine Center?
A Yes, sir.
Q And you spoke with a lady about all of these things there?
A Yes, sir.
Q Did you tell her ---
A Yes, sir.
Q --- everything that happened to you that day? Everything that happened to you from your father?
A Yes, sir.
Q Do you remember coming to see me at my office?
A Yes, sir.
Q How times did you come to see me? Do you remember?
A Probably around three or four.
Q Three or four times?
A (Nods head)
Q Have you had to go to counseling?
A Yes, sir.

Q Okay. Are you still going to counseling?
A No, sir.
Q How long did you go to counseling?
A For a year.
Q For a year?
MR. BONDURANT: No more questions at this time.
THE COURT: Ms. Ross.

CROSS-EXAMINATION

BY MS. ROSS:

Q Hi, Minor . I'm Suzanne Ross. I represent Mr. Moon and I've just got a few questions. So, you're going into sixth grade at League?
A Yes, ma'am.
Q And where you live now is different from where you lived back then?
A Yes, ma'am.
Q And is that near your grandmother's house?
A Ummm.
Q Or is that a different place? Is it on your aunt's property?
A No, ma'am.
Q Okay. So it's in a different place?
A Yes, ma'am.
Q Now, when you initially talked to your mom, you didn't say many details that you later said at the Julie

Valentine Center, did you?

A No, ma'am.

Q And when you initially talked to DSS at the school, when you talked to them, you didn't say the details that you said at the Julie Valentine Center, did you?

A No, ma'am.

Q And did you talk to DSS again at some time before going to the Julie Valentine Center?

A If I did, then I don't remember.

Q All right. Now, the statements that your father put his mouth on your penis -- on his penis, excuse me -- made you put your mouth on his penis, that statement. What did he have you use or what did you say he had you use? What happened?

A May you repeat the question?

Q Well, you said something in your forensic interview about how you used a paper towel. Do you recall where you got the paper towel or where he got the paper towel?

A You mean like a toilet tissue?

Q Was it a toilet -- I don't know. Was it a toilet tissue?

A I remember one time he helped me put a toilet tissue over it when I put my mouth on his penis.

Q All right. Now, this was when you were six or seven?

A Yes.
Q And you were in school then, right?
A Yes, ma'am.
Q And you didn't tell anyone from school about this ever happening?
A No, ma'am.
Q All right. And then only later when you were asked, did you say anything about how it was happening, right?
A Can you repeat the question one more time?
Q Okay. When finally did you ever say anything had happened?
A Maybe about a month later after if it happened.
Q Okay. And that was to your mom, right?
A Yes, ma'am.
Q All right. Now, when you went to the interview at the Julie Valentine Center, you said your aunt took you. Is that correct?
A Yes, ma'am.
Q And you'd been staying with your grandmother for a couple of months at that point?
A Yes, ma'am.

MS. ROSS: I've got no further questions.

THE COURT: Any redirect?

MR. BONDURANT: No, Your Honor.

IVETTE MOON, testified as follows:)

CLERK OF COURT: Thank you. Be seated. Could you please state your name for the record.

MS. MOON: Ivette Moon.

DIRECT EXAMINATION

BY MR. BONDURANT:

Q Okay. Ivette ---

A Uh-huh.

Q --- I know you're soft spoken so you need to speak up loudly so that they can hear you, okay?

A Okay.

Q Can you tell us where you are from, originally?

A I'm from Mexico.

Q Okay. And when did you come to the United States?

A In 1993.

Q And what was your legal status when you first came here?

A A student.

Q A student?

A Yes.

Q Okay. And then what is it now?

A I'm a resident.

Q You're a legal resident now?

A Yes.

Q And where did you first go when you came to the United

Q Now, let's go to March of 2011. Did Minor disclose to you that she'd been sexually abused?
A Do you mean did I approach her?
Q Okay. I just need you to answer yes or no to questions for now, okay?
A Okay. Okay.
Q Yes or no. Did she disclose to you ---
A Yes.
Q --- that she was sexually abused?
A Yes.
Q Okay. Did she go into detail, yes or no?
A No.
Q Did she got into detail with you?
A No.
Q No. Did you probe any further with her about it?
A No.
Q What was her emotional demeanor when she was telling you?
A Crying.
Q She was crying? Did you call the police?
A I didn't know what to do, so I wouldn't call right away. I mean, no. No.
Q Did you tell anybody?
A I told his mom.
Q Did you ever tell Minor not to tell anyone?

A No. I told her -- I didn't, I mean, I never told her not tell anyone but I didn't want to tell everybody. So I said, well, if the police come and ask you, I mean, you have to say that, because, I mean, by that time we was, his sister came to us and say things that we talk to the department ---

Q Okay. Well, hold on just a second. Let me stop you there, okay?

MS. ROSS: Objection. She can explain her answers, Judge.

MR. BONDURANT: May we approach, Your Honor?

(Whereupon, a bench conference was held off the record.)

Q Let me re-phrase the question.

A Yes.

Q What was going through your mind about what you should do next after Minor disclosed to you?

A I should tell someone, so I told his mom. Because, I, I mean, I don't know what to do. I didn't know what, I mean, I was just this very emotional. I didn't know what to do.

Q Were you scared?

A I was. Yes, I was scared.

Q Why were you scared?

A Because I didn't know how Mike was going to react if he knows that I know. I was scared of his family

because I didn't know if I can trust them.

Q Were you ever scared that you were going to lose Minor ?

A Yeah. Yeah, because I mean, I mean, I was scared about you know what I mean. But it wasn't, I mean, I didn't know what to do. That was the thing. I just...

Q But you told his mother?

A Yes.

Q Okay. And do you remember talking to the police?

A Yeah, they, I mean, somebody make a report and then they came to my job and they asked me.

Q Okay. They came to your job and talked to you?

A Uh-huh.

Q Where were you working at the time?

A McDonalds.

Q McDonalds?

A Uh-huh.

Q And did you -- do you remember how long after that, how long after Minor told you was it when the police came to your work?

A Like four days.

Q Four days?

A Uh-huh.

Q Did you tell them, yes or no question, what Minor

told you?
A Yes.
Q Did they ask you why you hadn't called the police right away?
A Yes.
Q Do you remember what you said?
A Because I didn't know what to do is what I said.
Q Okay. And as a result of not calling police, did you lose custody of Minor ?
A Yes.
Q How long?
A About, I think about four months.
Q About a couple months?
A Four, like four months.
Q Four months?
A Uh-huh.
Q Did you -- A month later on April 25th, who then would have had custody of Minor ?
A His mom.
Q Okay. And did you eventually get Minor back?
A Yes.
Q Okay. She lives with you now?
A Yes.
Q Who keeps Minor now when you have to work?
A Well, at times his mom and some are friends from

Q It was dirty?
A Yeah. I cannot tell.
Q Okay. How did this affect Minor ? What was Minor e's behavior, demeanor like after she disclosed to you?
A She was, I think more shy. She's been more shy.
Q Do you remember if she had any nightmares or eating habits or problems and that sort of thing?
A Yeah. She's more scared. Okay. She used to be more scared of the dark, but was worse. And she got nightmares about monsters for a long time.
Q For a long time after this happened, after she disclosed?
A Uh-huh.
Q Is she in counseling now?
A Yeah. She's already done with her counselor.
Q Okay. Do y'all ever talk about the case at all?
A No. She won't tell me, I mean, she won't tell me details. She just tell me feelings.
Q She just tells you her feelings?
A Uh-huh.
Q Where does she go to school? Where did she go to school at that time when she disclosed in 2011?
A Grove Elementary.
Q Grove Elementary?

It probably was less.

Q Probably was less?

A Uh-huh.

Q And I'll just ask you, did Minor , when you were married to Michael, she never asked not to be alone with him, did she? Did she ever ask you not to leave them alone?

A No, she never. But she want to be with me, but I went to work.

Q But she never said, don't leave me. My father's doing something?

A No.

Q Okay. Thank you.

THE COURT: Any redirect?

MR. BONDURANT: No, Your Honor. Thank you.

THE COURT: Thank you, Ms. Lopez. You may step down.

MS. MOON: Thank you.

MR. BONDURANT: May it please the Court?

THE COURT: Yes, sir.

MR. BONDURANT: Your Honor, the State calls Sharon Schoenholz to the stand.

THE COURT: Sharon Schoenholz.

(After being first duly sworn by the Clerk of Court, **SHARON SCHOENHOLZ**, testified as follows:)

CLERK OF COURT: Thank you. Be seated. Would you

please state your name for the record.

MS. SCHOENHOLZ: Sharon Schoenholz.

CLERK OF COURT: Thank you.

DIRECT EXAMINATION

BY MR. BONDURANT:

Q Good afternoon, ma'am. Let's start with a little bit about yourself. Where are you from?

A Greenville, South Carolina.

Q Are you married?

A I'm sorry?

Q Are you married?

A Yes, I am.

Q How long have you been married?

A Thirty-one years.

Q And what's your husband's name?

A Richard.

Q Is he here today?

A Yes, he is.

Q He's out in the hall?

A Yes, sir.

Q What does he do?

A He works for a food broker.

Q Food broker?

A Uh-huh.

Q Make sure you speak up so they can hear you, okay?

A He works for a food broker.
Q Do you work outside of the home?
A No.
Q Okay. And where do you live now?
A I live down off of Road.
Q Okay. How long have you lived there?
A Well, actually all but six months of my life.
Q A long time?
A Yes.
Q And you and your husband Richard, y'all sort of run the neighborhood there, correct? You're the landlord, so to speak?
A Well, we have seven acres, yes.
Q And there are houses on that property?
A Our house is on the property, too.
Q Okay. What about the area where Minor and the Defendant ---
A There's a little bit of rental property there. And, yes, they lived, actually, kind of in front of our house.
Q And so that's close by?
A Yes.
Q And y'all are the landlords of that little area?
A Yes.
Q Okay. And how close is that from you? Walking

distance?
A Oh, yeah. Yeah.
Q And who all lives there -- well, who all lives there now?
A On the rental property?
Q Yes, ma'am.
A There's only two, three, four, five other people, which is four other places and that's all.
Q What about your mom, does she still live there?
A Well, she doesn't live on our property but she lives just up the road from us, but...
Q Just up the road?
A Yes.
Q What's your mom's name?
A Martha.
Q How old is your mom?
A She's eighty-four.
Q Is she here today?
A No, sir, she's not.
Q Why is she not here?
A She didn't really want to come.
Q Okay. Your father, he's passed away. Is that correct?
A Yes, sir.
Q Now, the time this came out, around March 2011, you

had an uncle that passed away as well, right?

A Uh-huh. Yes.

Q And how did he pass away?

A He had Alzheimer's and it was a very fast coming on Alzheimer's and he did heating and air and he'd been trying to, you know, continue to do, but he just got where he couldn't and he just really lost it just all of a sudden and he didn't know where he was too much or anything like that and he kind of started blaming everybody for everything and his wife was out running around and believe you me, that's not at all so. But he just -- and he didn't know who he was. He didn't know a lot of people and then he wouldn't know who he was. And then he just, one day said he just couldn't handle it anymore and he went outside, and she just thought that he was going out to dig where he'd been digging and she didn't even know that he had a gun and he had one under the seat of his truck and he shot hisself in the head.

Q Okay. Did anybody see that?

A No.

Q Nobody saw it? How do you know the Defendant?

A He's my brother.

Q Is he your older brother or younger brother?

A He's older.

Q How much older?
A I was born in '56 and he was born in '49.
Q Seven years?
A Seven years.
Q When did you first meet Ivette?
A When they first came to Greenville. I don't remember what year it was, but it was when they first moved to Greenville and they lived in my parents house for a very short time.
Q Okay. When did you first meet Minor ?
A When she moved to Greenville, too.
Q Okay.
A She was just a little thing.
Q Do you remember how old she was?
A No, I'm not for sure. A couple years? Not even a couple years old.
Q Okay. And you just said they came to live there at the mobile home park where you're the landlord. Correct?
A Right.
Q Do you remember what year that was?
A Just a minute.
Q Take your time.
A When he was arrested in '11, he'd been there four years and five months, during that time.

was Big Lots over off of North 291.

Q Do you remember what hours he worked?

A He usually went in at, I think it was about three and worked until they closed.

Q And when Ivette was working, who would Minor stay with?

A Well, if he was at home, she stayed with him. But if not, then my mother. She stayed with my mother.

Q If he was home, she would stay with him ---

A Yes.

Q --- and if not, your mother?

A Yeah.

Q I'm sorry.

A Although, she was at my mom's a lot of times even though, if he was at home too, so.

Q Okay. When did you first find out that Minor had said she'd been abused, sexually abused?

A Well, Ivette had talked to my mom one night and she said that she had asked Minor if she been abused or if ---

Q Okay. You can't testify to what other people say. Okay? That's hearsay.

A Okay.

Q I just need you to answer the question, you personally, of your own knowledge. Okay? When did

you find out?
A Ivette told me.
Q Okay. And then what did you do after you found out?
A I went to Judge Taylor, a gentleman off 25 and talked to him about it.
Q Okay. Without saying what you were told again, what did you, why did you go to Judge Taylor's office?
A Because Ivette told me that, about ---
Q Okay. Without testifying to hearsay. I know it's difficult at times, because it's a normal part of conversation, but what were your concerns, personally, for you, when you went to the Judge's office? What were you scared that might happen? That's a better way to phrase the question.
A That he was going to, they were going to leave with her and it was going to continue to happen.
Q After telling him that, were you contacted by the police?
A Yes, I was.
Q Did you tell them the same thing, essentially?
A Yes, I did.
Q After that, did you have any more involvement with the case?
A Just that one day.
Q Just that one day.

anything?

A He usually wasn't off weekends.

Q All right. Okay. Thank you.

A You're welcome.

THE COURT: Ma'am, you may step down.

MS. SCHOENHOLZ: Thank you.

(Whereupon, a bench conference was held off the record.)

THE COURT: One more?

MR. BONDURANT: I can proceed, Your Honor.

THE COURT: All right. I think it's doable.

MR. BONDURANT: Okay. The State calls investigator Heather Hubert.

THE COURT: Let me ask you, will she be long?

MR. BONDURANT: I don't think so.

THE COURT: Okay.

(After being first duly sworn by the Clerk of Court, **HEATHER HUBERT**, testified as follows:)

CLERK OF COURT: Thank you. Have a seat. Would you please state your name for the record.

MS. HUBERT: Heather Edwards Hubert.

CLERK OF COURT: Thank you.

DIRECT EXAMINATION

BY MR. BONDURANT:

Q Investigator, good morning. Good afternoon.

A Hi.

Q Can you tell the jury where you work.
A Yes, sir. I'm an investigator at the Greenville County Sheriff's Office.
Q Okay. And what unit do you work in?
A I work in the crimes against children unit.
Q How long have you worked for the sheriff's office in general?
A Fifteen years.
Q Fifteen years? How long as a sex investigator?
A About three-and-a-half years.
Q Okay. Just tell us kind of what you do, what your role is as a sex investigator?
A Sure. Our unit gets any investigations that involve children as victims. The majority of my case load involves allegations of sexual abuse, but I do work some allegations of physical abuse and neglect.
Q And did you have to have special training to work as a sex investigator?
A I do have specialized training. I had advanced training in forensic interviewing of children. I've had local, state, and national training in sex crimes investigations, child sex abuse investigations, child maltreatment investigations.
Q Okay. Now, when you decide to send a child for a forensic interview -- you said you're also trained in

forensic interviewing, correct?

A That's correct.

Q Well, what age child do you generally send to get a forensic interview?

A Typically, it would be a child under twelve. That can change if the child has some developmental delays that would cause them to be functioning on a level under twelve.

Q Okay. And in Greenville County, where do you send them?

A We send them to the local children's advocacy center, which is called the Julie Valentine Center.

Q Okay. Even though you were trained as a forensic interviewer, would you consider yourself a professional forensic interviewer?

A No, sir.

Q Why would an officer who works as a sex investigator need to be trained in forensic interviewing?

A Oftentimes, when you get initial allegations, there is a concern, a safety concern, and an initial interview with the child needs to be done and although we would then refer that child to have a forensic interview, there are times when you need to do an initial interview with the child to, basically, make decisions about taking actions to ensure their safety. And so

for that reason, because you at times would be interviewing children, it is good to be trained in forensic interviewing and advanced forensic interviewing.

Q Okay. So it's a tool to assist you in the ---

A Correct. So, that you understand proper techniques for interviewing a child. What to do, what not to do.

Q Okay. In March of 2011, did you help in the investigation of this case?

A Yes, sir, I did.

Q And you were advised that there were allegations of abuse?

A That's correct.

Q That the Defendant was involved?

A That's correct.

Q And as part of your investigation, who first did you go and speak with?

A After I was contacted by the lead investigator, Investigator Robertson, it was determined that I would go to the school where the child was and interview the child at school.

Q Okay. Do you remember what school that was?

A I believe it was Grove Elementary.

Q Anybody go with you?

A Yes, sir. I made contact with the Department of

Social Services, a supervisor there, who I briefed on the information I had. She assigned a worker who was able to respond with me to the school and was present during the interview and her name is Pat Aguedello.

Q How many investigators were on the case?

A The lead investigator was Michael Robertson. I was requested to assist.

Q And is it fair to say you were not the lead investigator in this case?

A Yes, sir, that's correct. I was not the primary.

Q Can you describe Minor 's demeanor as you first started speaking with her at school?

A Yes, sir. Initially, you know, I just explained to her that we were just there to talk to her and make sure that she was safe and okay and, initially, she was not very hesitant at all about talking with us. She smiled and laughed and, you know, we did some rapport building, just talking about, you know, her day, her school, things like that and it was not until later in our conversation that her demeanor changed.

Q Okay. What kind of change was there in her demeanor?

A At one point in our conversation she, when she made disclosure, actually right before she made disclosure, she got very apprehensive and very hesitant. She seemed very guarded. Her voice began to shake. She

was very guarded in being concerned about if it was okay to talk with us about certain things, what we might do with information she gave us, what we might do to a person who she gave information to us about. At one point she cried with concerns about what we might do to a person who she gave us information about.

Q Okay. When her demeanor changed, did she ultimately disclose abuse to you?

A Yes, sir, she did.

Q Okay. Did she say where the abuse happened?

A Yes, sir, she did.

Q Where was that?

A At her residence.

Q And did she say when it happened?

A Yes, sir, she did.

Q And when was that?

A She said it was from about, approximately two years prior to our conversation, which was in March of 2011, until about halfway through the year before our conversation.

Q Okay. How long was that interview?

A I would approximate that from the time we began talking to her about, you know, anything, it was probably thirty to forty minutes.

Q Thirty to forty minutes?
A Yes, sir.
Q And what was done with Minor after the conclusion of the interview?
A That she was -- we turned her back over to school officials. I think she might have gone to lunch or something.
Q Okay. And do you know what was decided about her living arrangements?
A Well, I made contact with Investigator Robertson and briefed him on what we had learned and then I responded back to our offices with the caseworker from DSS who took care of signing a safety plan about that and ensuring her safety.
Q Okay. What, if anything, did you next?
A I spoke with Investigator Robertson and briefed him on the information that I had. And then I believe was with him when he spoke with the complainant in the case and also I was present during -- while he was talking with the child's mother, Ivette Moon.
Q Okay. Where was that? Do you remember where that was?
A Yes, sir, that was in Investigator Robertson's office.
Q Okay. And what did you, what was your demeanor

towards Ivette, the mother?
A I was very concerned about why she had not contacted law enforcement.
Q Okay. Is it fair to say you grilled her?
A I think that's fair to say, yes, sir.
Q Were you satisfied with her answer ---
A Yes, sir, ultimately ---
Q --- of why she reacted the way she did?
A --- Ultimately, it appeared that she had had concerns about, kind of not understanding our system and the way that we do things and that the child might be taken away from her and it appeared that she had done some things to try to make sure that the child was safe, but without engaging authorities or a system that she was not quite sure what they were going to do.
Q So, did you ultimately charge her with unlawful neglect or anything else?
A No, sir, she was not charged.
Q Okay. Did you have any more involvement in this case after speaking with Ivette?
A No, sir. Just my testimony.
Q Okay. No more questions. Thank you.
THE COURT: Any cross, Ms. Ross?
MS. ROSS: Thank you, Judge.

CROSS-EXAMINATION

BY MS. ROSS:

Q So this interview was March 31st, 2011. Is that right?

A That's correct.

Q And that was at the school. And at that point, you had a talk with Minor and another investigator was there?

A A caseworker from the Department of Social Services.

Q Okay. And do you know whether Minor had talked to DSS workers prior to that or been interviewed by DSS workers prior to that interview?

A She had not.

Q So there had been no prior interview. Do you know whether there was one after that?

A There was ---

Q Before the Julie Valentine Center?

A I do not.

Q And based on what you heard during that interview, a charge was made, correct?

A Investigator Robertson made a charge, yes, ma'am.

Q All right. And that charge was lewd act on a minor, correct?

A Yes, ma'am.

Q I've got no further questions.

want to offer something we didn't have. Anyway, do not begin to discuss the case. We'll see you in the morning. Thank you much.

(Jury out at 5:07 PM)

THE COURT: All right. I'm going to leave Newberry at eight o'clock, maybe a few minutes after, and if I get here at nine and they get here at nine-twenty, we'll start at nine-twenty, but no earlier than nine-fifteen, okay? I want to keep moving and get this thing promptly to them, all right? Thank y'all.

MS. ROSS: Thank you, Judge.

(Whereupon, court stood at recess.)

Morning - August 13, 2013

THE COURT: Good morning everybody. All right. Y'all be seated. All right. Ladies and gentlemen, have we got anything we can deal with before we bring the jury in?

MR. BONDURANT: I just have one matter, Your Honor, just so we don't hold up the jury any more than we have to. Because the tape has been redacted to a small degree, that one part has been redacted out, of course, it makes it, it makes it sort of odd when you're introducing it into evidence. And, you know, generally you would just ask the forensic interviewer, "Is this the CD that you provided for us, is that their initials," and all that sort of thing. Obviously, with the redacting and it's put on a different

CD, it's different and so I just want to make sure, so that it doesn't come back later on appeal, that Ms. Ross is okay with the redaction, has watched the CD. And so, again, I don't want to foresee any opinion coming down saying, "Oh, well, the defense attorney maybe never approved or we never watched the videos," and so forth.

MS. ROSS: Well ---

THE COURT: I think she can stipulate to it right now if she likes.

MS. ROSS: Well, no, I'm going to renew my prior objection to the video from yesterday based on the reference to a DSS interview made by the child in the video and so I would renew that prior objection. I have not watched the redacted video. I will tell you my notes reflect that the redacted area was about 25:40 and that was what my notes reflected and I believe the Solicitor when he says he redacted it. Clearly, if we play it and that part is in there, I'll object, but I trust him when he says it's not.

THE COURT: Well, can we do this?

MR. BONDURANT: Yes, sir.

THE COURT: The video will be admitted subject to her objection to the one comment about, "I told all of this to DSS, then I'm telling you." It's kind of the conversation with her and the interviewer as I remember it. Subject to

her objection, it will be admitted and the redaction won't be mentioned. This is the interview. She doesn't have to explain the redaction. That's been a legal matter that the lawyers have dealt with.

MR. BONDURANT: Sure.

MS. ROSS: Right.

THE COURT: And we just don't address it in front of the jury. It's been addressed now. Ms. Ross is taking you on your word the redaction was proper pursuant to y'all's agreement, that that comment come out. I've watched the video. I didn't hear the comment, but now I didn't know what I was listening for either. But I was listening about that twenty-five minute for something and it appeared that that comment was not made. If for some reason the redaction was not proper and the comment's made, then I'll consider motions at that time. But right now, we think we've got it right.

MR. BONDURANT: Sure. And we can put it on the twenty-five minute mark. It'll take a minute if she wants to watch it here right now and approve of it. That way, I mean, God forbid this thing come back. I don't think anybody wants to retry this case. So ---

THE COURT: You want to do that, Ms. Ross?

MS. ROSS: That's fine if you've got it right there. I have it down, it's 25:40.

(Whereupon, a DVD was reviewed by counsel and the Court)

MR. BONDURANT: Your Honor, as you can see right there at 25:30, :35 mark, there's a little skip.

THE COURT: Uh-huh.

MR. BONDURANT: Right there, you can see a little skip. And I think that's where it was.

MS. ROSS: Okay.

MR. BONDURANT: Are you okay with that?

MS. ROSS: I am.

MR. BONDURANT: Now, the only problem I see is -- you said we won't mention it, but the title of the CD is "redacted".

THE COURT: I saw that too. It changes from the name, Sherwin or something, and then it says redacted.

(Whereupon, DVD was further reviewed by counsel and the Court.)

THE COURT: On my computer on the top left it was showing the name and then "redacted" and the name.

MR. BONDURANT: Have you got full screen?

THE COURT: Yes.

MR. BONDURANT: Let's start at the beginning and let's make sure that redacted doesn't come up anywhere.

(Whereupon, DVD further reviewed by counsel and the Court.)

MS. ROSS: We can change that title.

MR. BONDURANT: Can we change the title on it and just

rename it?

(The DVD is adjusted so that "redacted" does not appear)

THE COURT: All right. Are we good?

MR. BONDURANT: I believe so, Your Honor.

THE COURT: All right. Go get them.

(Jury in at 9:27 AM)

THE COURT: All right. Folks, we're ready to continue and we're going to see a video momentarily. We had to make certain all the equipment was working and cuing it up and getting it ready. We've done that, so we're ready to go. All right. Mr. Bondurant.

MR. BONDURANT: Thank you, Your Honor. The State calls Investigator Mike Robertson to the stand.

(After being first duly sworn by the Clerk of Court, **MIKE ROBERTSON**, testified as follows:)

CLERK OF COURT: Thank you. Have a seat. Would you please state your name for the record.

INVESTIGATOR ROBERTSON: Michael Robertson.

DIRECT EXAMINATION

BY MR. BONDURANT:

Q Investigator Robertson, can you tell us where you work.

A The Greenville County Sheriff's Office.

Q Okay. What do you do there?

A I'm an investigator in the Crimes Against Children's

Unit.

Q How long have you worked at the Sheriff's office?

A Twenty-four years.

Q Twenty-four years. How long have you been a sex investigator?

A About three years.

Q Three years? Please tell the jury what you do as an investigator in that unit.

A We investigate abuse and neglect cases with children and also sex abuses cases with children and also adults.

Q Okay. Do you have to have special training in that field to do that?

A I have had some training.

Q Okay. What kind of training have you done?

A I've been to advanced sexual assault training. I've been to Child First Training learning how to speak with children, that kind of thing.

Q Okay. And in March 2011, did you assist with the investigation in this case?

A I did.

Q Okay. And who did you first find out the allegations from?

A From Sharon, I believe her last name's Schoenholz.

Q Okay. And as a result of that conversation, what did

you do next?

A I got with Investigator Hubert and I went and spoke with the mother of the child and Investigator Hubert went and spoke with the child.

Q And where was that? Where did you speak with the mother?

A She was at work at McDonalds on, I believe it's Grove, across from the hospital.

Q Okay. And did you take a statement from her?

A I did.

Q Did you -- How would you sort of describe your conversation with Ivette?

A Pretty much asked or told her why I was there and asked her if she could tell me what was going on in reference to the circumstances.

Q Okay. Was anybody with you at that time?

A No.

Q Okay. And is it safe to say you grilled her a little bit?

A Say that one more time?

Q You grilled her? Did you grill her a little bit?

A Not at the restaurant, no.

Q Okay. Did you subsequently -- did you talk to her again after the restaurant?

A We did.

Q What were your concerns, specifically, with her, with Ivette?
A Her knowing the allegations, not notifying law enforcement, and also possibly leaving the scene.
Q Okay. And when you -- Ultimately, after speaking with her, were you satisfied with her answers?
A Yes.
Q Okay. Did you ever decide to charge her with unlawful neglect or anything like that?
A No, sir.
Q And did you then seek your warrants?
A I did.
Q Okay. And what was that initial warrant that you got?
A Lewd act on a child.
Q Was that based on the information that you had at the time?
A That's correct.
Q Okay. And did you then schedule a forensic interview for Minor ?
A I did.
Q Okay. And did you attend that interview?
A I did.
Q Okay. And based on that information, did you get another warrant?
A I got another warrant, yes, sir.

Q Okay. What was that warrant?
A Criminal sexual conduct, first degree.
Q Okay. Did you -- how many cases have you investigated as a sex investigator? Just if you had to guess.
A Well, I know our unit had --there's five investigators in our unit and last year we had over seven hundred cases and that's abuse and neglect and sex cases.
Q Based on the information that you had, did you go to the house, the residence, in this case? Did you go to the Defendant's residence or the victim's residence?
A We did not go inside the house, no.
Q Okay. Based on your experience as an officer, would you have expected to find any sort of physical evidence?
A No. Not from what we were being told, no.
Q Okay. All right. I have no further questions. Thank you.

CROSS-EXAMINATION

BY MS. ROSS:

Q Investigator Robertson, so Michael Moon's aunt, Sharon Schoenholz, called in the report?
A That's correct.
Q And after that report -- isn't it true that you were worried that Ivette would leave the State with Minor ?

A That's the information we had. That's correct.
Q All right. And then you spoke to -- did you ever speak to Minor at that point?
A I did not, no.
Q Okay. But after the first interview -- and you're saying -- was that the only interview with DSS, that first interview at the school with Minor ?
A I do not know if the -- I know the interview that Investigator Hubert had with DSS and Minor , that was the first interview anyone had ever spoken with her about the allegations.
Q Okay. And do you know the date of that?
A It was -- without looking at my report, it was probably the date of the report.
Q All right. Would it surprise -- you got a warrant for lewd act after the interview on March 31st, 2011?
A If that's the date of that original interview, yes.
Q All right. Now, isn't it true that you also on April 5th went and looked through Michael Moon's computer for any kind of evidence of child pornography or anything of that sort?
A I know we did. I don't know the date but, yes, we did.
Q All right. And were any charges made of that?
A No.

Q And then on April 25th, you then watched the interview or that was the interview with the Julie Valentine Center. Is that correct?

A Okay. I'm not sure of the date without looking back.

Q Okay. Now, isn't it true that the CSC warrant was signed nearly a month after the lewd act warrant?

A The CSC warrant was obtained after the forensic interview was done. Yes.

Q All right. And you can't say who spoke to Minor or who was around Minor between the time of the lewd act warrant and the CSC warrant, can you?

A No. I know she was -- I believe she was in the custody of her grandmother. I believe.

Q All right. So you can't say whether she was interviewed by other people or influenced by other people or whether any kind of protocol was followed during that intervening time period?

A I know law enforcement didn't interview her and I don't know if DSS had another interview with her or not.

Q All right. Thank you.

MR. BONDURANT: Nothing further, Your Honor. Thank you.

THE COURT: All right. You may step down.

INVESTIGATOR ROBERTSON: Thank you, Your Honor.

MR. BONDURANT: We ask if he could be excused, Your Honor.

THE COURT: Okay with me.

MS. ROSS: No objection.

THE COURT: All right.

MR. BONDURANT: The State would then call Stephanie Smith to the stand.

(After being first duly sworn by the Clerk of Court, **STEPHANIE SMITH**, testified as follows:)

CLERK OF COURT: Thank you. You may be seated. Would you please state your name for the record.

MS. SMITH: Stephanie Smith.

CLERK OF COURT: Thank you.

DIRECT EXAMINATION

BY MR. BONDURANT:

Q Ms. Smith, good morning. Could you please tell the jury what you do, ma'am?

A Currently, I am employed with Specialized Alternatives for Families and Youth and I am the Empowering Families supervisor. We work with contracted cases from DSS and go out and do preventative measures to try to keep them from becoming a part of the system.

Q And in 2011, what were you doing?

A I was employed with the Julie Valentine Center.

Q Okay. And what did you do at the Julie Valentine

Center?

A I did forensic interviews.

Q Forensic interviews?

A Uh-huh.

Q Could you give, for the jury, your educational background and training.

A I have an Associates in Human Services from Greenville Tech, a Bachelor's in Criminal Justice from the University of South Carolina, and a Master's in Social Work from the University of South Carolina.

Q Okay. And what were your duties as a forensic interviewer?

A I conducted interviews with three to five children a week. Sometimes there were second followup interviews that needed to be done. I conducted that, completed reports, participated in multi-disciplinary team staffings.

Q Okay. And how old were the children, generally speaking?

A I think the youngest one I ever saw was three and the oldest would have been seventeen.

Q Okay. And have you had to attended any courses or seminars or special trainings in forensic interviewing, yourself?

A I was trained through Finding Words, which is now

called Child First.

Q Okay. What is that?

A It's -- they do the protocols known as RATAC and RATAC is Rapport, Anatomy identification, Touch inquiry, Abuse scenario, and Closure. And what it is, it's a semi-structured evidence-based interview technique that allows the child to tell information without using leading questions or any kind of information that would put words into their mouth.

Q Do you know if this protocol is widely used?

A Yeah. At the time, it was used in over nineteen states and two other countries besides the US.

Q Okay. And is there research backing this protocol?

A Yes. It's definitely researched-based by CornerHouse out of Minnesota. There's a lot of peer review that's done through the protocol.

Q Okay. Have you read some of the peer review articles? Are you required to keep up with that?

A It's not a requirement but it is, it's good practice. Every month the National Child Protection Center sends out a newsletter and they always have a good article, and then they reference other articles that you can go to and find out other information to see if there's any trends or any changes or any updates in the protocol.

Q How many years had you done forensic interviewing at this point?
A Two. I had been at Julie Valentine for eleven years, but two of those I had been at the Master's level and conducted interviews.
Q And you said on average you did three to five interviews a week?
A Uh-huh.
Q Would there ever be a time during an interview that you would have to use a leading question?
A If there was some confusion about what kind of question I was trying to ask, if we got stuck, but it would always be followed-up with an open-ended question.
Q Okay. And do you know Minor ?
A Yes.
Q Okay. And how did you first come to know Minor ?
A She was referred for an interview at the Julie Valentine Center by Mike Robertson of the Sheriff's office.
Q Okay. And generally speaking, without going into detail, what was the nature of the allegation?
A It was allegations of possible sexual abuse.
Q And, just yes or no. Were you given any details as far as what the allegations were at the time?

A Yes.
Q Okay. How old was Minor at the time?
A She was nine.
Q Okay. And what methods did you use? Did you use that RATAC you just talked about?
A RATAC.
Q Was there anyone in the room during this interview?
A Just myself and Minor .
Q Was anyone outside the room watching the interview?
A All the interviews are preserved on DVD and it is allowed through closed-captioned TV to be observed by people that are involved in the investigation and for this case, the Sheriff's office, Mike Robertson, was observing the interview.
Q Okay. Was Minor cooperative?
A Yes.
Q Were there any interruptions, outside interruptions, during the ---
A. No, the only thing, a part of the protocol is to leave when you're halfway through the interview to, you know, kind of collect your thoughts, make sure there's no further information that needs to be gathered or needs to be explored further and so you do leave the room and generally speak with whoever is observing the interview.

Q Okay. And you said this was all recorded on a DVD, correct?

A Yes.

Q All of the interview?

A Yes.

Q And when the Solicitor's office requests a copy of an interview, how does the Julie Valentine Center go about giving the Solicitor's office a DVD?

A Well, at the time, I was in charge of that. We would receive the formal request, and then I would go get the original DVD, make a copy, sign the copy and then we would, someone from the Solicitor's office or we would bring it over here, and we would have them sign a form.

Q Okay. And since that time, have you watched the video?

A Yes.

Q Does it fairly and accurately portray the interview that you had with Minor in April of 2011?

A Yes.

Q Okay. Have you done anything to change it or alter the video or anything at all?

A No.

Q That's it from the State.

MR. BONDURANT: Your Honor, we would seek to admit the

video subject to our prior discussion.

THE COURT: All right. Ms. Ross?

MS. ROSS: And I'd renew my prior objection on that.

THE COURT: Objection having been made on the record. We're good on that. My ruling's still the same.

MS. ROSS: Right.

THE COURT: And so we will play the video at the present time.

MR. BONDURANT: If you don't mind, Your Honor, I'd like to play it after the expert testifies.

THE COURT: Okay.

(Whereupon, a DVD is entered into evidence as State's Exhibit #1, over objection.)

CROSS EXAMINATION

BY MS. ROSS:

Q Ms. Smith, you said that RATAC was used at the time, nationally. Is it still, at this point, used nationally?

A Yes.

Q Now, when you were certified -- and at the Julie Valentine Center, you're part of a multi-disciplinary team, aren't you?

A Correct.

Q And that team involves police, solicitors, people interested in prosecuting or following-up on an

allegation of sexual abuse, correct?

A Sure.

Q And when you go into that interview, you know what the allegations are?

A We do. We know what the information is.

Q Wouldn't you agree, to preserve the purity of process, that you would go in without any preconceived notions about what the allegations are?

A Sure. We have information. We don't go in saying it happened. We don't go in saying it didn't happen. That's why the protocol is semi-structured and it allows for the natural flow of conversation with ---

Q Well, isn't the idea to preserve the purity of process?

A It is to follow the protocol. However, not every case has a disclosure. Some cases have more disclosure other than others.

Q All right. Now, going to this particular interview, when you spoke to Minor , she referred to everything she said and told DSS, and said that she told DSS everything before. Isn't that correct or do you recall?

A Correct.

Q And in that she says, I was interviewed by DSS and told, already told them everything that happened.

A Correct.

Q All right. I've got no further questions.

THE COURT: Any redirect?

MR. BONDURANT: Nothing, Your Honor. Thank you.

THE COURT: All right.

MR. BONDURANT: Your Honor, we'd ask that the witness be excused.

MS. ROSS: No objection.

THE COURT: No objection. You may be excused.

MR. BONDURANT: The State calls Linda Hutton to the stand.

(After being first duly sworn by the Clerk of Court, **LINDA HUTTON**, testified as follows:)

CLERK OF COURT: Thank you. You may be seated. Would you please state your name for the record.

MS. HUTTON: Linda Gray Hutton.

DIRECT EXAMINATION

BY MR. BONDURANT:

Q Good morning, Ms. Hutton. Can you tell us where you're currently employed?

A Bay Laurel Center for Psychiatry and Psychotherapy here in Greenville.

Q Okay. And where's that located?

A About two blocks from here.

Q Okay. What services are offered there?

A We have a psychiatrist and then five clinicians who provide psychotherapy.

Q Okay. What do you do there?

A I'm a clinical social worker. I provide psychotherapy, mostly to families and kids, but also some to adults.

Q Can you tell the jury what your work experience and training is in that field?

A Educational, too?

Q Yes, please.

A Okay. A Bachelor of Arts with Honors from the University of Florida in 1972, majored in psychology. A Master of Social Work from Florida State University in 1974. As a part of that training, I completed two internships in the Department of Child Psychiatry at Shands Teaching Hospital at the University of Florida. For about fifteen years, I worked for the Department of Mental Health here in Greenville with the Greenville Mental Health Center on the Child and Adolescent Unit and since then, I have been in private practice.

Q Okay. Do you have any particular licenses, other than the degrees you've mentioned? Any other licenses?

A Board certified diplomate in Clinical Social Work and I'm licensed in the State of South Carolina as a

Licensed Independent Social Worker in clinical practice, License Number is 96.

Q And are you a member of any boards now or in the past?

A In the past, yes. Greenville Rape Crisis Council.

Q Okay.

A South Carolina Society for Clinical Social Work.

Q Now, it sounds like you have a lot of special training in the area of -- well, let me ask you that. In the area of child sexual assault, do you have any special training?

A Yes, sir, I do in child sexual abuse.

Q Okay. What is that?

A I have to see if I can remember. Child sexual abuse started to be looked at in the '80s when there was really no training. The federal government did a week-long training for clinicians in Knoxville so I attended that around 1981, and then a lot in between. Most recently, I completed training, it was a year-long project through the Medical University of South Carolina, National Crime Victims' Center with cognitive -- trauma focused cognitive behavior therapy with children who have been traumatized, usually by sexual abuse.

Q Have you ever participated in giving training to other people?

A Yes, I have.
Q Okay. Can you just give us a little bit of detail about that?
A I -- it's hard to remember. I know we did one regional workshop. It was a multi-state one, that was back in the '80s. I've done training to DSS, Counseling Services, Clinical Society, Sheriff's department and others, too.
Q Okay. How many times have you treated or seen children -- and I know it's hard to estimate -- but for sexual abuse? How many times have you ---
A I don't keep count. I've been practicing thirty-nine years, so a very conservative estimate would be at least a thousand.
Q Have you ever testified in the courts of this State?
A I have. Yes, sir.
Q How many times, if you could guess?
A Family Court, it's just a guess, at least fifty, sixty times. Criminal Court, maybe ten.
Q Have you ever been qualified as an expert in those courts to testify?
A Yes, sir.
Q Okay.

MR. BONDURANT: Your Honor, we'd move to qualify her as an expert in child sexual assault.

A Help them heal.
Q You treat them as a normal psychologist? They come in and talk to you?
A I treat them as a therapist, not a psychologist.
Q Right, therapist. And you meet with them on a regular basis?
A Yes, sir. Usually with children, I also work with the parents.
Q And you help them heal and you observe them?
A Yes, sir.
Q And after meeting with a thousand children, you feel like you're an expert to give an opinion as to how children of sexual abuse may behave or may not behave?
A Yes, sir. I don't give opinions about whether abuse happened or not, because I'm in the treatment part. I'm not in the evaluation part.
Q Sure. And you've never treated Minor , correct?
A Yes, sir.
Q And you're not here to testify as to whether Minor was abused or not by the ---
A That would be improper. I don't know her. I did not evaluate her. I did not do a forensic with her. I did not investigate.
THE COURT: All right. Any voir dire from you, Ms.

MR. BONDURANT: Well, sure.

THE COURT: You're not going to call an expert that's antagonistic to your facts.

MR. BONDURANT: Well, sure. But they may call an expert to say that.

THE COURT: And they can.

MR. BONDURANT: Sure.

THE COURT: Well, ask her a question about if it's common or uncommon about children and relationships. I can't imagine it would be anything but someone who is a non-stranger, because a stranger wouldn't be in a position to commit abuse to a child because they're not going to be close. I don't see how -- it's not going to be a stranger, unless they're kidnapped and that's totally different.

MR. BONDURANT: I think it's more of a family member or somebody of authority. I think -- and you and I, we do this all the time.

THE COURT: Well, ask her the question. I'm not arguing with you now. Ask her the question.

IN CAMERA REDIRECT EXAMINATION

BY MR. BONDURANT:

Q Is it common or uncommon for a family member or a person in position of authority to commit abuse, commit the abuse?

A It's very common. It's a person known to the child, a

person that the child trusts, rather than a stranger.

MR. BONDURANT: That's it. I think that you and I do this a lot and we see this a lot and we know, as you said, what tends to be more common or not. I think that the average layperson doesn't want to believe that a parent could do this to their own child, doesn't want to believe that, you know, somebody could violate that bond, that strong bond or that strong relationship. That's, you know, we just want her to testify as to what her experience is. If that's not her experience then she can say that's not, you know, that it's uncommon. But she's, you know, done this thirty-something years.

THE COURT: All right. Thirty-nine. Ms. Ross?

MS. ROSS: On that one, again, I would object. I do want to put on the record, as well, I'm hearing about Ms. Hutton's experience in her life. This is all based on her experience and I'm concerned about the empirical data. The whether she's an expert based on -- of course, when you treat victims of abuse, you're believing, in fact, that they were victims of abuse, but as we all know, you know, DNA has exonerated people who were convicted of abuse, who didn't do it. These cases are even more difficult for me because there's no, yes/no. There's no, you know, there's none of that that I can prove innocence. So, I would just put that on the record as well. I think in South Carolina

still there's some deficit of having some kind of scientific data or books that you can turn to, to support an expert's finding, other than my experience being a clinical social worker.

THE COURT: I mean, I think you just -- that's part of your cross examination. You get that latitude to address that. She answers the question however she does and if you want to delve into the sources of her opinion, you're more than welcome to.

MS. ROSS: All right.

THE COURT: All right. We've been going not quite an hour. Do y'all want a short break now? We've got the jury out. I'd rather take a few minutes now and then come right back in rather than fifteen minutes and put the jury right back out. Does that suit y'all?

MR. BONDURANT: I'm fine.

THE COURT: All right. I want to take a short break myself. So let me tell you this. I'm going to take a short break and then we're going to bring the jury back in. How about that?

(Brief break)

THE COURT: All right. Bring them in.

(Jury in at 10:18 AM)

THE COURT: All right. Mr. Blume, ladies and gentlemen of the jury, when we took a break we were dealing

with an issue of the witness as being an expert. And so now for your understanding -- and ma'am, I know your name, but I've forgotten it now.

MS. HUTTON: Linda Hutton.

THE COURT: Ms. Hutton. She has been called as a witness and because of her experience and training in the field of treatment of child sexual abuse, she's going to be qualified as an expert in the treatment of sexual abuse and she cannot only -- as a regular lay witness, or a regular witness, they can offer testimony as to what they heard, they smelled, that kind of thing. She's able to offer opinions because of her expertise in that field and that was the issue we were dealing with when we took the break, and she is now qualified as an expert in that field.

THE COURT: All right.

MR. BONDURANT: Thank you.

THE COURT: Mr. Bondurant.

MR. BONDURANT: Thank you, Your Honor.

CONTINUED DIRECT EXAMINATION

BY MR. BONDURANT:

Q Ms. Hutton, could you tell us in your experience, is it common or uncommon for a kid to delay in reporting sexual abuse?

A It's common. There's been a good shift over the last few decades. In the 80s, a lot of times we were

seeing kids delaying ten years, fifteen years, five years, just a long, long time.

Q Okay. Well ---

A Due to all the education now, they're telling sooner. Usually, in my experience, it can be, you know, like a year or a few months, and sometimes right away.

Q Okay. Why is it that the child may delay disclosure?

A Depending on the age of the child, a lot of times with younger children they think anything that happens is their fault and they're afraid they're going to get in trouble. That's probably the most common thing I hear from kids. Another scenario which can happen is that the perpetrator tells the child to keep it a secret. And often there is a threat associated with that, such as you'll get in trouble or I'll hurt your family members or things like that and so a child is afraid to tell.

Q Okay. Let's move to the memory of children. Is it common or uncommon for a child not to remember specific dates or times of abuse?

A That's common when there's been, when the abuse has happened a number of times over a period of time. Kids can get dates mixed up or maybe where it happened at, but what I find is that the core report about what happened, there's consistency there. There may be a

little inconsistency in the peripheral information.

Q What about, let's talk about significant behavioral changes while the abuse is going on. For example, if someone were to see the child during that time period and they didn't see significant child abuses, would that be something that was common or uncommon?

A It could be common. The most significant behavior that would make you concerned about sexual abuse would be if a child shows behavior or knowledge beyond their years about sexual matters. You want to find out where that's coming from and then be sure to rule out sexual abuse. Some kids are asymptomatic. They're not showing behavioral disturbances and other kids will show behavior disturbances, but you can't really say for sure or that it would likely be abuse. It might be sleep disturbance, things like that. Anxiety, not doing well in school. And back in the '80s, there were actually lists published saying, these are indicators of sexual abuse, but they're just indicators of stress.

Q Okay. Is it fair to say that could be maybe possibly one indicator?

A What?

Q If you saw a significant behavioral change, it would just be one indicator as to the possibility of sexual

abuse?

A It may be associated with sexual abuse. It may be associated with something else, like parents getting divorced or separated or some stressful environmental thing.

Q Sure. And what about if the child -- to the opposite extreme, what if a child was seen playing with that, with the same offender during that time period? Would that be uncommon?

A No, it would not be. It would be common. A lot of times people think that a youngster will hate their perpetrator and then youngsters pretend to hate them because they want to please everyone, but children have mixed feelings toward the perpetrator, typically. There's a part of the relationship that's very appropriate; going to movies, having popcorn, going to Frankie's, hanging out. And then there's part of that relationship which is abusive. And so when it's over here in the normal sorts of activities, kids will show enjoyment. I mean, that's the part of the relationship they like, you know.

Q Is it common or uncommon for a child to be abused by a family member or somebody with a position of authority over them?

A Very common, usually, with child sexual abuse because

force is not involved. Like with rape, it's physical force. With child sexual abuse, it's brainwashing, it's psychological coercion. And I forgot your question.

Q I said, is it a fact that it's usually a family member or a person of authority?

A Typically, it's by someone the child knows and trusts. And typically what kids are looking for is nurturing and what happens when sexual abuse occurs is that relationship becomes sexualized.

Q Okay. Would it be common or uncommon not to have physical evidence in a case of sexual abuse?

A It's common not to have physical evidence.

Q Do you ---

A It's one of the hallmarks of child sexual abuse.

Q I'm sorry?

A That's one of the big things about child sexual abuse.

Q What?

A That a lot of times there's no physical evidence.

Q Do you know the victim in this case?

A No, sir.

Q Have you ever met with the victim in this case?

A No, sir.

Q Okay.

MR. BONDURANT: Nothing more, Your Honor, thank you.

BY MR. BONDURANT:

Q And like reluctance to sleep alone, would that be, as well?

A That that would be what?

Q Would that also be common, they would be reluctant to sleep alone in their own bedroom?

A That's common in a lot of kids depending on the age.

MR. BONDURANT: That's all, Judge. Thank you.

THE COURT: All right. Ms. Hutton, you may step down.

MR. BONDURANT: We'd ask that the witness be excused, Your Honor.

THE COURT: All right. Very well. She'll have her long drive back two blocks.

MS. HUTTON: I might even walk, you know.

MR. BONDURANT: Your Honor, the State would like to publish the forensic interview at this point.

THE COURT: All right. Mr. Blume, and ladies and gentlemen of the jury, what we're going to do now, we're going to play the video. It will last approximately fifty minutes. So, we'll watch it and then we'll be twenty-five after eleven. So, anyway, get you a piece of candy and just listen.

(Whereupon, State's Exhibit #1, a DVD of the forensic interview, is published to the jury.)

THE COURT: All right. Mr. Bondurant. Is that ---

testify?

MR. MOON: Yes, sir.

THE COURT: And no one's making you do this?

MR. MOON: Yes, sir. I understand.

THE COURT: Very well. Okay. Let's go.

(Jury in at 1:10 PM)

THE COURT: All right. We're ready to continue. Ms. Ross.

MS. ROSS: Yes, Your Honor. I would call Michael Moon.

THE COURT: All right. Mr. Moon, come forward and be sworn.

(After being first duly sworn, **MICHAEL MOON**, testified as follows:)

CLERK OF COURT: Thank you. Have a seat. Please state your name for the record.

MR. MOON: My name?

CLERK OF COURT: Yes, please.

MR. MOON: Michael E. Moon.

DIRECT EXAMINATION

BY MS. ROSS:

Q All right. Mr. Moon, do you understand the charges that you're facing here today?

A I think I do.

Q And are you guilty of those charges?

A I'm not guilty of those charges.
Q Now, you've seen a video in court, just now, today?
A Yes, I have.
Q Are you guilty of touching your daughter's, Minor s, vagina?
A Never have I touched it.
Q Are you guilty of allowing her to touch your penis?
A Never has that happened.
Q Now, I want to just go over some background. How old are you?
A Sixty-four.
Q And when you were arrested, where were you working?
A I was at my home, leaving, and I had just left and had gone, about, oh, less than a mile when they, a little blue light came on and stopped me.
Q Did you have a job at that point?
A Yes. Big Lots. I worked furniture.
Q And were you married?
A Pardon?
Q Were you married?
A Yes.
Q Who was your wife?
A Ivette.
Q All right. Now, y'all had a child, correct? Minor ?
A Yes.

Q Now, I want to just go back to when you met Ivette. Were you here in Greenville at that time?
A No. I was in Tucson, Arizona. I'm a traveling engineer with a specialty in film capacitors. It's electronics, military related.
Q Okay. So y'all were out-of-state when you met Ivette. And then how old was she?
A At the time I met her, she was twenty-eight and I married her at twenty-nine. We dated for about thirteen months.
Q Do you recall how old you were at that time?
A Yes. I was fifty, fifty-one.
Q Now, I want to talk about when you came back to South Carolina. Where did you live then?
A At first, we lived in West Pelzer, initially.
Q And then did you come to move to Road around your family's place?
A Yeah. After a few years, we moved to Road, which is my home place. Road, for about a half a mile there, is nothing but relatives, all the way back to my grandfather plowing the fields. That's how it started.
Q Okay. And was your father alive at that time?
A Yes.
Q And how far did you live from your mother and father?

A About three hundred feet.
Q Were there a lot of houses in that area?
A Very few. It's not that populated.
Q Were there some close trailer homes on the property?
A Yes. The land, which is just opposite my mother and dad's house, is about five acres and on that was -- from back even when I was a teenager, my dad owned it then and they had one house on it that they rent, along with a few mobile homes. And that's kind of always been pretty much that all the many years.
Q And now did it come that you were living in one of those mobile homes?
A Yes. My mother said she would appreciate very much, and she helped us, but she'd appreciate it very much during kind of a tougher income time, said, would you please come over and live, you know, right there in the mobile home and my sister owned the property at the time. Dad had sold it to another person, a relative and then my sister bought it, you know, the five acres with the house and a few mobile homes that they would rent on it. And so it was just little small plots of land, you know, like any mobile home, except it's more scattered out. It's not cluttered up. It's more country.
Q And what was your understanding that your rent would

be?

A I'm sorry. What?

Q Well, did you mother have a certain rent that you would pay or what was the understanding?

A It was -- yes. Most of the smaller spots there, they get somewhere around maybe $45.00 a month for the rent and my sister was charging me $175.00.

Q Did your mother know about that?

A No, she didn't. And I didn't tell her because I thought it would start a little war because mother wanted me to live there.

Q Well, why do you think your sister raised the rent?

A That would be an opinion. She didn't want me living there.

Q Now, with these charges, do you think -- why do you think your daughter said these things, to first Ivette and then to DSS?

A I do not know. It was a surprise to me, a total surprise to me when I learned of it, okay? Actually, I learned of it as I'm being arrested, okay? I know that the only thing that I venture to understand why it could have occurred, is that for the previous one, one-and-a-half years prior to being arrested, there were times -- We have only one bathroom in the mobile home. It's a small mobile home. We only had one

bathroom and so Ivette and I would never lock the door, okay? Because if somebody need to come in and use the bathroom, pee or something real quick while somebody's showering, you can't just lock the door, you know, that's what you have to do. So, I would be in showering sometimes and once in a while Minor would be wanting say, to talk to me, say something, you know, and then she got into a habit if she came in to pee, instead of just talking to me and saying, asking a question she might have asked or something, she kind of pushed the shower curtain open and talked to me. And I said, "Don't do that," you know. "Let's just talk this way," you know, like that, but she's seven or eight years old, kind of that age, about that age doing that.

Q And it never went beyond that, with her touching you or you touching her?

A No.

Q And so there were no rags or paper towels or anything like that ---

A No.

Q --- that could be found or anything at all? Now, do you have any other children?

A I had two previous marriages and I would like to form a, give everyone an opinion of that. The only reason

I marry is to stay married and when I get divorced, it's because my wife is out with other men.

Q All right.

A Okay. And I have three daughters and two sons with those two women.

Q All right. And do you have any other criminal record? Do you have any criminal record, whatsoever?

A No other criminal records.

Q All right. And just going back, you're telling this jury, testifying to this jury, did what we saw on that video, occur? Are you guilty of those acts?

A I am not guilty of those acts.

Q All right. I've got no further questions.

CROSS EXAMINATION

BY MR. BONDURANT:

Q Sharon was charging you more rent?

A A hundred and seventy-five a month.

Q More than what you originally discussed with your mother?

A I never discussed it with mother. I didn't tell mother several things that went on between me and Sharon. My mother came down one time, which was, I don't know, six months or a year prior to me being arrested, and I told mother, I said, at the time I said, "I can't -- I don't always agree with Sharon." You know, that was

MS. ROSS: Okay.

(Brief break)

THE COURT: All right. Are we ready?

MR. BONDURANT: Yes, Your Honor.

THE COURT: Bring us the jury.

(Jury in at 1:35 PM)

THE COURT: All right. Are you going on the law? I didn't ask that.

MR. BONDURANT: Sir?

THE COURT: Are you going to open on the law or not?

MR. BONDURANT: No, sir.

THE COURT: Okay. Very well. All right. Ladies and gentlemen, what will happen now, the Defense and the State both get an opportunity to summarize. So, now is that opportunity. Ms. Ross.

MS. ROSS: Thank you, Judge.

CLOSING ARGUMENT

BY MS. ROSS:

Ladies and gentlemen of the jury, in my closing I'm going to simply go over some of the things you've heard today. Nothing I said is evidence. You heard the evidence right there. (Indicating) So I don't want to suggest that, and I certainly don't want to mis-state anything. Believe the evidence you heard, not me, but I'm going to try to recreate, really, what I heard.

These charges, as I said in the beginning, are incredibly difficult. Incredibly difficult to know what's true and what's not. In this case, you have a child saying that this happened years ago at some point. She's testifying years later. You have an adult saying, this did not happen. Michael Moon didn't get up there and say, I know why she lied. I think my child's a liar. He did not say any of those things. He just said, I have no idea, but I did not sexually molest my daughter.

Now, the State bears the burden of proof beyond a reasonable doubt and the question is whether the case is proven or unproven. That's the question for you, ladies and gentlemen. It's a very hard question because these are very serious charges and the State has not given you any corroborating testimony. They've not given you any other evidence and the State will say that's not important, because we don't have to. Well, it is important and I would suggest to you that if a man was sexually molesting his daughter over a long period of time, someone would have seen something, someone would have noticed something.

Now, Minor Moon was not isolated by herself, living, you know, off somewhere away from friends and family. She was with her mother. She was within walking distance of her grandmother, who she stayed with quite often. She saw her aunts, uncles, family members. There

were other trailers in view of where she lived in her home. Yet no one else saw or said anything. She was in school and never told anyone anything. I suggest to you that that is unrealistic that there would be no other evidence and that is something that should cause you to hesitate to act, to think, wow, this is strange that there is no other, any kind of corroborating evidence, any kind of statements. Especially, I can see, and this is just me, I could see how a child might have been touched inappropriately and two years later might realize that was inappropriate. I simply cannot see that a child would put a paper towel over her father's penis and put it in her mouth and not think that was weird, that was inappropriate, and say something at the time. And, frankly, that scenario sounds strange and this is where I'm going back to proof beyond a reasonable doubt and I'll tell you why I'm settling on that as well.

When DSS gets involved with cases -- I was talking a little bit about the move that, through the Julie Valentine Center -- I don't know if y'all saw the paper yesterday, but there is a very big move in South Carolina, and in Greenville specifically, to bring more sexual abuse cases out for you to hear, to convict, to make convictions, and there's a group designed to do that, starting with the Julie Valentine Center, law enforcement, solicitors,

working very hard to make a case.

Now, they don't necessarily make only good cases, they make every case they hear and in making those cases, a lot of times, as I said before, a touching or an improper touching, which is the criminal charge of lewd act, can be mistaken and a lot of times that's not as compelling for a jury. Whereas, when you have more serious sexual abuse like oral sex, like, gosh, a child being forced to put her father's penis in her mouth, which is so, so serious, that becomes something that stands up and gets your attention, as I'm sure it did. But note, she did not say that with the initial interview. She kept on saying, in this video, there was an initial interview and she told everything there. She did not say that in the initial interview. Only later, after contact with other people was that ever an allegation and that's so important because it makes the whole case much, much stronger, and frankly, easier to prosecute, which is important when, with these cases is that South Carolina, the Supreme Court, Jean Toal has said, criminal sexual conduct is different. She said that. They're working very hard to support, believe in conviction of criminal sexual conduct. That's something that's going on, but that does not mean that the burden of proof should not be just as high and here, I would submit that reasonable doubt is the difference in not reporting

something and then reporting it or saying something happened, and then after dealing with DSS for a while, suddenly something more happened. Those changes are things that you need to look very closely at because often children can have implanted memories that they come to believe and I can only give examples of stories. My child, somehow he hurt his thumb the day of photographs and we believed that the bunny in his photograph bit his thumb. That was the family belief, but he was very young when it happened. Well, now it's his memory that that's what happened, though at the time he couldn't tell us whether the bunny bit his thumb or not. But over time, us talking about that, that became his actual recollection and that's something that can happen with children.

Now, I tell you, I've made -- it's not a big deal with Michael Moon, he is this child's father, so he's around her quite a bit. That's natural. So, this accusation coming out that it happened at some point, and that point was changed, the dates were changed on the indictment of when and it's so broad that it'd be impossible, you wouldn't expect an alibi. It'd be impossible for any father to make an alibi with this child. However, he was working at Big Lots and he was working afternoons, and certainly, for what it's worth, if he's trying to create a situation where he's alone with his daughter, he might try to work mornings or

create a situation where he was alone with his daughter, which he was not doing and his sister, you heard her testimony, his sister had a key to where they lived, could come in anytime. So, these are some things I would just ask you to consider and tell you that there is reasonable doubt here, that that is reasonable doubt and with reasonable doubt, you don't have the tools to convict.

The State's going to get up and we're going to hear it's difficult with a child victim and the State is going to get up and talk about Minor and talk about her and talk about her. But Michael's on trial here and the question for you, as difficult as that is, I would just ask you to separate your emotions and think of this as another type of charge, just a whole 'nother type of charge, and think whether the State has proven Michael Moon guilty beyond a reasonable doubt. Have they produced the evidence that you need to be convinced beyond a reasonable doubt that he put his penis in his daughter's mouth? And they did not present that. Thank you.

THE COURT: Thank you, Ms. Ross. Mr. Bondurant.

MR. BONDURANT: Thank you, Your Honor.

CLOSING ARGUMENT

BY MR. BONDURANT:

I'll just start by covering what she covered and that she talked about there and I think I can cover it

as I have it, and I'll try to address these few other points, but make no mistake about it, the evidence in this case shows beyond any reasonable doubt that the Defendant did this. And yesterday and today, you heard a little girl come out against her own biological father and tell probably the most shameful thing that's ever happened to her and the most shameful thing that will ever happen to her. And this is her father. This is her biological father. That's very important to keep in mind. This is not a coach, this is not a teacher, this is not a pastor, this is not a priest, this is not a, you know, this is a biological father and nobody in this room needs to explain what it means to have a relationship with a father because we all have a relationship with a father and you all know what comes with that. Even any of us that have had absent fathers know that, the hole that can be left in your heart from that and so that is extremely important.

And I'm just going to make a few notes up here because I know I can be ADD sometimes and this may help you some. (Writes on board) Biological dad. So, that may be enough for some of you. Some of you may say, well, it's hard to overcome that, it's just hard to understand why any child would come out and say that against her own father. But for those of you that it's not enough, let me suggest four factors that everyone, not just you, me, and everyone else,

should consider when hearing a story of this nature.

And there are four factors I want you to consider. Consistency, okay? And pardon my handwriting. Detail. The next one I'm going to call likelihood, plausibility is another word you can use for that and motive. Four factors I think you should consider when hearing a story of this nature.

And then I want to go through four other things that may raise red flags in your mind that probably shouldn't based on the evidence and based on what you heard yesterday and today. Consistency. When looking at consistency, of course, you want to see, are there major inconsistencies in the story and are there minor inconsistencies in the story. If there's a major inconsistency, you should hesitate. We all should hesitate. If she were to say, Minor would have said, you know, this happened a couple of times when I was five years old and then, you know, she went in the Julie Valentine Center and she said, no, it didn't. You know, it happened another time when I was, last week. That would be a major inconsistency there. Minor inconsistencies, though, are what all of us expect in normal storytelling. If anybody here, for example, saw a car wreck today and it wasn't your car, you were just outside. You saw a car wreck and then two years later you had to tell somebody about it and you had to tell multiple

people five, six, seven, eight times two years later, you would expect minor inconsistencies in the story from the person you're listening to. That's human nature. That's normal. What you don't expect is for the story to be perfect. If somebody came in and said, "Oh, yeah, I know the exact details of what happened two years ago and I'm sure of the day and I'm sure of the month and I'll be sure in a year from now," you would say, that seems too planned. That seems manipulated. That's not normal. That's not a normal way of human beings remembering things. Not only that, you're talking about a nine-year-old who's recalling something that, I can assure you, she doesn't want to recall. The last thing she wants to think about is that her dad touched her, and her dad put his penis in her mouth. That's the last thing she wants to think about. So minor inconsistencies make a story more true, not less true.

But let's talk about what are her inconsistencies in her story. Are they major or are they minor? She talked about, initially, she told Heather Hubert, Investigator Heather Hubert, you heard her say it happened, I think her words were, it happened in, she told them in 2011, so she said, 2009, 2008 up until the middle of last year. So that would have been six to eight years old because she was born in 2002. So she would have been six to eight years old.

Those were her words, happened this date, sort of around this time. Then when she went to the Julie Valentine Center she said, "I think I was six or seven." It's important to note she didn't also, she didn't talk about the time periods in the sense that she didn't say, years. She named her age at that point. Anyway, is that a major inconsistency in her story? Is that a major inconsistency for a child, again, trying to remember something, this terrible thing to remember, and it's a nine-year-old child? I mean, you saw her in the video. She was talking about Sponge Bob. I mean, she would transition from, he was touching me to, hey, I was riding, you know, a thing around the playground or something like that. You know, it's a nine-year-old. So is that a major inconsistency? No.

In fact, the expert got up there and said just what I'm telling you. The expert said you would expect some sort of inconsistencies. What you look for, is the core right. Is the core right? And the core is right. The time frame has always been the same. You know, it's not as if she was taking notes. It's not like her father molested her and she said, you know what, it happened on, let's see, April 15. There was no diary. She wasn't journaling. It's not as if she's an adult.

Think about how you remember things. Think about how anybody remembers things. You think, okay, you know, I

started school. I started college in 2011. I remember the car wreck happened right before then. So, May 2010, maybe somewhere around there, you know. That's how you remember. Children don't remember things like that. Anybody with a child can tell you that. They don't remember things like that. It's called source monitoring. They don't remember, you know, certain dates and then they attach memories to certain dates. It's a nine-year-old.

So the Defense talked about the fact that the oral sex part didn't come about until later. I'm going to ask you, they may classify that as an inconsistency. Is that an inconsistency? Think about how that happens. Heather Hubert, Investigator Heather Hubert goes to her school and talks to her about -- the first time, it's the first time other than her mother that she's ever talked to somebody about this. Heather Hubert got up there and testified she is not a forensic interviewer, that the only reason she's trained in forensic interviewing is so she doesn't go in there and screw up the case, so she doesn't go up there and talk to a child in an inappropriate way and lead them to certain questions and provide them information. That's why they're trained in that. But they're not forensic interviewers, or else there's no reason to send them on to the Julie Valentine Center and to have a forensic interview.

So imagine, put yourself there. Heather Hubert shows up, you're called out of class. This nine-year-old is called out of class in school, probably the most terrifying place you can think of to disclose it for the first time to a police officer that your dad's been abusing you. You think she's going to skip to the office and be all happy about that? Would you expect that? No. She had the exact reaction that any of us would expect from a nine-year-old who's in school thinking about that. She's reluctant, scared, and then she just let it out. Investigator Hubert, and remember, it was Investigator Hubert and a DSS worker. Okay? So in that setting, Investigator Hubert gets the initial details and then, you know, talks to Investigator Robertson and then a warrant's made, and then they send her for a forensic interview.

Now, she's in her forensic interview where she's talking to somebody who's trained in this, who's trained to talk to her like this. She's also -- think about this. When she's sitting in that school room, that cold school room, and that investigator comes in there for the first time and she does disclose that her dad's been abusing her, not only has she told the police officer, not only has she told another complete stranger, the DSS worker, Pat Aguedello, she is now -- she doesn't know if she's got to go back to that man. She has no idea. She's a nine-year-

old. She doesn't know what the result of the investigation is. All she knows is when she left home that day, he was there. So now she's in that room and she's thinking, I've got to -- I have to go back. What do I say?

At the forensic interview, however, if you remember, she'd been with her grandmother for a month. She was out of danger. She was out of danger. She wasn't with -- her mother wasn't there, father was not there in the picture there anymore. She'd be free to disclose more, to tell more, and that's what she did. It's a development. Children disclose over time. And so there is nothing inconsistent about, other than minor inconsistencies, there's no major inconsistencies there. If there were, you should hesitate. So, here, (writes on board) this suggests that the story is credible.

Detail. If Minor had given real scant details, if she had said something like, you know, "It kind of happened ten years ago. I don't remember where we were. I kind of don't remember what I was doing, but I remember he sort of copped a feel and that was it," Hesitate. You should hesitate at that point. We all should hesitate. That's not what happened. You saw in the interview and you saw in the testimony, what did she say? She gave very specific details; bedroom, bathroom, six to seven, six to eight years old, multiple times. She described how he rubbed her

vagina. She talked about the cloth used to masturbate him. She drew the cloth. She described where the cloth was. She talked about what she did with the cloth, where she put it, what he said, what he said beforehand, what he said afterwards. The fact that it was milk that came out of it, milk for married people. Clothes were off. She gives numerous details about what happened.

Now, it's funny, and I don't know if y'all picked up on this, I've seen this video so many times. She talks about the naked movies at the end which she interprets as naked movies. I don't know if you picked this up, but it just shows there that Minor , if she wanted to get up there and lie about something like this, she was completely incapable of doing it. She talked about the movies and she said, "Well, it is kind of naked people fooling around and she talked about children playing in the water and adults in the water playing around, nobody touching each other," is what she said. And so that just shows you right there that even if she wanted to make this up, she was completely incapable of it. In fact, that's what Linda Hutton got up there and testified to, the expert. She said if it's something where the child might be mistaken, like daddy's washing her and she gets mistaken, then what you do is you keep fleshing it out, you keep trying to figure out what it is she's talking about. And when Stephanie Smith fleshed

it out, you could see that there was not -- it was not a "pornographic" movie. It was just some sort of normal movie with people running around on the beach. And so she's incapable of that, which only leads to the reasonable conclusion. And when she talks about putting a paper towel over had dad's penis and putting it in her mouth, you can be dang sure that's what she saw and what happened to her. So if there was a lack of detail, you should hesitate, but there was so much detail here, (writing on board) so it's credible for that reason.

Likelihood. What this means is, if Minor said something like, you know, my dad raped me in the living room and my mom was in the next room cooking and setting the table, you're going to ask yourself, how in the world could that happen? That's not likely. Or if Minor would have said I'm not saying it didn't happen, but you might say, it's not likely. If Minor said, you know, when my dad touched me three times, we were by the ocean and ten witnesses came in here and every witness I put up on the stand I said, "Hey, did you ever go to the ocean?" And they said, "We've never been to the ocean," then that's not likely. But what Minor told you was very likely in the sense that the Defendant had plenty of opportunity to carry out what she said. He was home alone with her on multiple occasions. You know, there's nothing embellished

about the story. She didn't say there was digital penetration. She didn't say there was penile penetration. She didn't embellish the story in any way. So there's nothing here not to tell us -- nothing in the evidence to think that this was unlikely. So that's credible. (Writes on board)

Now, motive. You know, I don't know how much I have to say about motive. He got up there and testified and told you for me. He said nobody has any motive here to make a child do something that drastic against her own biological father. Nobody. He admitted it out of his own mouth. Sharon was a nitpick. His wife got along, didn't cheat on him. I think she testified to you that, you know, she didn't really get along with Sharon either and she kind of wanted to move out of the neighborhood, but would that be something to tell your daughter then, to make it up? No. That's absurd and he's even knows it's absurd and he said it. And you saw Minor . Have you ever seen a sweeter girl on the planet than her? It's not, there is no custody battle going on, there was no -- Minor wasn't, you know, this rambunctious teenager that wanted to go live with her older boyfriend and dad wouldn't let her go. There's none of that here. She's a sweet girl that likes to watch Sponge Bob and sculpt little dinosaurs. I think that's what she said. In fact, Heather Hubert,

Investigator Heather Hubert testified that she was reluctant to begin with because she didn't want anybody to get in trouble. So there's absolutely no motive on Minor 's part, other than the fact that this happened.

Ivette has no family here. No family, no one close by. She said she wanted to move out of the neighborhood, but then when you heard what her testimony was, where they live now, she lived like a block down the street from her grandmother. So it's like if she wanted to get out that bad, she really didn't go that far. She had to pay a lot of money for her divorce. She didn't disclose right away, she didn't tell. I mean, if she was setting him up, even though he admits there's no motive for her to do that, if she was setting him up, wouldn't she have gone to the police? Wouldn't it seem a little more obvious if she did? No. She lost her child. The thing she was most scared of. She lost her child for two months because she didn't know what in the world to do. She was scared. She was confused. So based on the evidence, (Writes on board) there's no motive other than the truth.

Lastly, four things that may cause, might cause some red flags, but shouldn't. You heard us talk about delayed disclosure. (Writes on board) That's a fancy way of saying, kids don't tell right away. The expert testified delayed disclosure is normal. The expert says it's

changing some, but still very normal. So it's a non-factor in that sense. I told you at the beginning that it shouldn't be any surprise to anybody and do we really need an expert to tell us that? Do we really need an expert to tell us that a probably sixty pound girl in a house with a biological father that's abusing her, that's four times her size, might be scared to tell somebody? You know, what if she told and she wasn't believed. Do you know what the expert said? The expert said they don't tell sometimes because they're scared they might not be believed. Well, what if she told and was not believed? Can you imagine? And she has to go back in that house to the man that's been doing that to her and now he's got twenty-four hour access to her? Who wouldn't be scared. You know, I think it's more survival than anything, the not telling. It's more survival. At least you know and you learn to adapt to your situation. In fact, it stopped. It stopped around the age of seven, around the age of eight, just what Minor had hoped. And when it stopped, you definitely have no reason to tell then. Why stir up the hornet's nest at that point? Just hope everything goes well and it has stopped for good until one day she just can't hold it in anymore. One day, she just can't hold it in anymore and she has to tell somebody.

And you heard the expert talked about mixed feelings.

This is her father, again. There's feelings of love and the fact she's been violated. At the same time they're competing in her heart. That's what the expert told you. And we can only imagine. So delayed disclosure is completely explainable.

No significant behavioral changes. (Writes on board) Yeah, the expert testified that that might be an indicator, it might not. It might be one thing you see, it might not. I think she even said, the expert even testified that sometimes you have sleeplessness, sometimes you have anxiety, but it's impossible to know. It's impossible to know. Is that part of somebody being sexually abused, which nobody wants to believe, believe me. I don't think any parent, any mother wants to believe that's happening to her child. If you see your child's having sleep issues, you see your child maybe has a little more anxiety, you see your child might be being a little quieter, which I think is what she testified to. No parent wants to believe that their child's being sexually abused.

So, you know, Ms. Ross says that somebody would have seen something. Well, one of the experts said, no, that's not true. The only time you might see something, a big red flag, is if somebody's engaged in sexual behavior and it's above their age limit, so to speak. Like, if it's something that the nine-year-old shouldn't know or

shouldn't be doing. But other than that, she said there's nothing there, other than minor things that you might see. And, in fact, Ms. Ross says, "I can't believe nobody would see that." Just turn on the news for goodness sakes. How many children are coming out five years, ten years, fifteen years later? Are you telling me that also everybody in their families should have seen something? Everybody in their families should have noticed significant behavioral changes? No, and they're coming out in droves and so that just shows that that's a non-factor, too. Also, kids are resilient and we know that. We know that from our experiences everyday. How many times have you seen a child with a serious illness, cancer or something like that and how often do you hear people say, oh, that child has, gosh, that child's got quite an attitude for something that serious. We pity the child more than the child pities himself, because they're resilient. Children learn to live and adapt with their situations. (Writes on board) So that's a non-factor.

Lack of physical evidence. Expert got up there and testified that that's the hallmark, the hallmark of sex abuse cases is that there's no physical evidence. Mike Robertson said, I didn't go to the house because he knows it's the hallmark. He didn't expect, just like common sense tell us, to go to the house a year later after a

child alleges fondling and oral sex, to find some sort of magical piece of evidence. It's not going to be there. Common sense tells us it's not going to be there. Susannah Ross in her opening said, "You know that, you know that there's physical evidence." The expert doesn't know that. That's fair to Mike Robertson, been with the sheriff's office, twenty-something years, thirty years, and investigator for three years, doesn't know that.

And it's a crime of secrecy. It's a crime behind closed doors. You know, Ms. Ross talked about how there's no corroborating evidence, which is not true, of corroborated opportunity and no motive and all those other things that we've talked about corroborated. But did you know, and the Judge will charge you this, it's the only crime that I know of that in the statute, in the law book, that there's a law that says, witness testimony in this case need not be corroborated? The only crime in the State of South Carolina where I know that's said. That's true for every other crime. It need not be corroborated. The legislators thought it was that important to put it in the law book because they know and we know and everybody knows that it's a crime of secrecy. It's a crime behind closed doors and people are not going to know and people are not going to see and there's going to be no physical evidence. And nobody ever knows, most of the time, until the child

opens his or her mouth and tells somebody. So lack of physical evidence, (Writes on board) non-factor.

The Defense attorney's right, the State has the burden of beyond a reasonable doubt. No one should take that lightly, no one. Not you, not me. And in discussing the case, throwing it around back there in the room, figuring out everybody's opinion and working through them, that's not reasonable doubt. That's working through the case. That's like journaling. If anybody's every journaled, if anybody ever writes, you clarify your thoughts. You clarify your positions on things by writing, by going through it, by working through it. So if you're back there and you're tossing it around, that's good. That's normal. That's what you should do. You owe it to the Defendant and you owe it to the State. The State deserves a fair trial too, just as much as he does.

And so the law, (Writes on board) and I'm finishing up here, the law in this case is quite simple. He's been charged with lewd act and he's been charged with CSC with a minor first degree. It's real easy. Lewd act simply says that anyone below the age of fourteen -- it's kind of weird, it's been changed now actually. But essentially, somebody touching a minor child inappropriately is lewd act. That's the gist of it. And that comes from the original, her original disclosure in the school to

Investigator Hubert that she was touched inappropriately and she had to touch him inappropriately.

Then CSC with a minor first degree is anyone, any adult that touches -- I'm sorry -- that commits a sexual battery on somebody under the age of eleven. We established that she was six, somewhere between six to seven, six to eight when this happened and a sexual battery includes oral sex. State law, case law is very clear about that. It includes oral sex. (Writes on board) And so there is no doubt. There's no reasonable doubt and that's important. The Judge will also charge you that there's no such thing as no doubt. It's not beyond all doubt. There are very few things in life that are beyond all doubt. Very few things, other than that we're all going to die one day, beyond any reasonable doubt and there's no reasonable doubt here.

Ms. Ross talked about implanted memories. She compared a girl saying her dad put his penis in her mouth to a bunny biting her child's finger when an expert got up there and told you that it's almost impossible to get a child to say these things and make them up. It's almost impossible. And it's almost impossible to do it and have consistency and details and no motive and all the other things that I told you to look for in this case.

And lastly, she, (Writes on board) and this goes to,

this comes back to motive. Minor had to tell her mom. She had to look at her mom in the eyes and tell her what her dad was doing to her, what mom's husband was doing to her. She had to tell multiple police officers. She had to tell DSS that came with the police officer. She had to tell them at school, at school where, generally, you're worried about the brand of jeans that you're wearing and if they're cool enough, she had to tell in a cold room what her father was doing to her. She had to go to the Julie Valentine Center and she had to tell her story again. She had to come to my office three or four times and tell it, the most shameful thing that ever happened to her, again. And she had to come in a courtroom and sit in that cold brown box all by herself and tell a room full of strangers the most shameful thing that ever happened to her. And worst of all, she had to sit in that box, in front of those same eyes that looked at her when he touched her vagina, the same eyes that looked at her when she had touch his penis, the same eyes that looked at her as she had to put his penis in her mouth. She had to do that and she did it, right there in front of him.

So whatever happens to her, whatever happens here today, whatever decision you make, she has lost. That's clear. She has lost. You may be able to give her justice in one day. In the future she may understand that. But

make no mistake about it, she's lost. And all I ask is that you hold him accountable for what he's done to her. Thank you for your time.

CHARGE ON THE LAW

All right. Mr. Blume and ladies and gentlemen of the jury, I'm going to give you my instructions on how to begin your deliberations and some of the particulars on the aspects of the law regarding this case.

And I instruct you first that the Defendant, Michael Moon, has been charged with the crime, two crimes; first degree criminal sexual conduct with a minor and lewd act upon a minor, and you will bear in mind the Defendant has pled not guilty and by that plea, he has denied all the charges and all the allegations in the indictments. As I told you earlier, in my earlier instructions before the trial began, he comes into court clothed in the presumption of innocence and this presumption of innocence continues throughout the entire case and entitles him to a verdict of not guilty unless and until it is dispelled by the evidence satisfying you, the jury, beyond a reasonable doubt, that he is guilty of the offenses charged and you must be aware the State has to prove each and every element of the crimes beyond a reasonable doubt.

Now, the same Constitution and law that makes you, the jury, the finders of the facts and evidence as I discussed

with you earlier, it also makes me, as the Judge, the sole and only instructor of the law. You must accept as true and correct the law as I am instructing it to you, apply it to the evidence which you have heard in this case and reach a verdict. Now, if I should make an error in the law as I'm instructing it to you, there are other places, another time and another place where that error can be corrected or considered and corrected if necessary, but for the purpose of the case here today, you must accept the law as I'm instructing it. And in that regard, I tell you that neither you nor I should be concerned about what we believe the law is, what we think it might should be, but we should only concern ourselves as what the law, as I instruct it to you at this time, to be.

Now, in all criminal prosecutions in the State of South Carolina, the State has the burden of proof. The defense has no burden, whatsoever, as the Defendant is presumed innocent. In this State and according to our Constitution, the prosecution must prove each of their cases to the standard of proof called, beyond a reasonable doubt, before a finding of guilt may occur. If the State fails to meet this burden, then the Defendant would be entitled to a verdict of not guilty.

Now, I told you before, you're the sole fact finders in this case and I'm not allowed to suggest in any way what

I think about the guilt or innocence of the Defendant in this case. As the sole fact finders, you should have listened closely to the evidence presented. Weighing the evidence is entirely a mental process. You must weigh the evidence using your good judgment and your common sense.

Also, as fact finders in this case, necessarily, you are the judges of the credibility and the believability of the witnesses who have testified in this case. In passing upon the credibility, you may take into consideration many things. Some of those things are: what was the manner and the appearance of any of the witnesses who testified, were the witnesses straightforward or were they hesitant in answering, how did the witness come to know the facts that he or she testified to or what was his or her ability to know these facts, which they testified about, is there some reason a witness would want to give testimony which would help or hurt one side or the other. In other words, was the witness who testified biased or prejudiced in any way, was the testimony of a witness strengthened or weakened by other testimony or other evidence. You, the jury, may believe as much or as little of each witnesses' testimony as you deem appropriate and proper. You may believe the testimony of a single witness against that of many or just the opposite, you may believe part of a witnesses' testimony and disbelieve the rest. The fact the testimony

is not controverted does not mean you must accept it as true and undisputed. You must still gauge the credibility of each of the witnesses who have testified to determine their believability or the truth and facts offered through their testimony.

Now, the rules of evidence normally do not permit any witnesses to testify as to opinions or conclusions. There is an exception, which I explained to you during the trial, that allows witnesses we call expert witnesses to provide opinion testimony. So a witness, who by education and experience, has become an expert in some art, science or profession, may give an opinion as to the subject for which the witness claims to be an expert in, and may also give reasons for this opinion. One witness testified in this trial was qualified as an expert. She was Ms. Linda Hutton, qualified as an expert in the field of the treatment of sexual abuse in children. Now, you should consider any expert opinion given by any witness like the other evidence you've heard in this case. Now, if you decide that an expert witness' opinion is not based upon sufficient education or experience or if you decide that reasons given in support of the opinion are not sound or if the opinion is outweighed by other evidence, you may disregard the opinion entirely. An expert witness' opinion is to be given no greater weight than any other

witness simply because the witness is an expert and you do not have to accept an expert's opinion, even though it is uncontradicted.

Now, in most trials, there are two types of evidence which are generally presented; there's direct evidence and there's circumstantial evidence. Direct evidence is testimony of a person who asserts a claim or to have actual knowledge of certain facts, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of yet another fact. Our law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than that of direct evidence. You should just weigh all the evidence presented in this case and after weighing all the evidence, if you're not convinced of the guilt of the Defendant beyond a reasonable doubt, you must find him not guilty. And I tell you again, you must weigh this evidence using your good judgment and common sense.

Now, throughout this trial, I've told you that the burden of proof on the State is beyond a reasonable doubt. What is a reasonable doubt? A reasonable doubt is the kind of doubt which would cause a reasonable person to hesitate to act. Reasonable doubt may arise from evidence which is

in this case or from lack or absence of evidence in this case. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. It is a doubt to which one can assign a reason if the assignment can be done reasonably, firmly and convincingly. I charge you that the Defendant is entitled to every reasonable doubt that may arise in this case and what this means is, if any of you had a doubt about anything during the trial, you'd be required to resolve that doubt in favor of the Defendant. The very fact that you, as a jury, engage in a full and free discussion of the guilt or non-guilt in this case does not automatically mean that a reasonable doubt exists in this case. You, the jury, must make a determination of whether or not reasonable doubt exists as to the guilt of the Defendant and if you find the Defendant [verbatim] has not met this burden of proof beyond a reasonable doubt, then he would be entitled to a verdict of not guilty.

Now, the Defendant in this case is charged with two crimes. I'll instruct you on those separately as to the specifics which the South Carolina Code of Laws requires. In order to sustain a conviction for first degree criminal sexual conduct with a minor, the State must prove, beyond a reasonable doubt, that the Defendant engaged in sexual battery with the victim. A sexual battery is sexual

intercourse, fellatio, anal intercourse or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when the intrusion is accomplished for a medically recognized treatment or diagnostic process. Now, the State must prove beyond a reasonable doubt that the victim was less than eleven years of age at the time of the sexual battery.

Now, consent, willingness, indifference, or ignorance on the part of the minor, if any, as to what was taking place does not in any way effect the charge of criminal sexual conduct with a minor, because an unmarried woman under the age of fourteen cannot legally consent to any sexual intercourse. I also instruct you that a specific time and date is not an essential element of the offense of first degree criminal sexual conduct with a minor.

Now, in order to sustain a conviction for the offense of lewd act upon a minor, the State must prove beyond a reasonable doubt that the Defendant was over the age of fourteen. Next the State must prove that the person, the victim, was under the age of sixteen. Next, the State must prove that the Defendant willfully, lewdly committed or attempted a lewd or lascivious act on or with the body or its parts of a child under the age of sixteen with the intent to arouse, appeal to or gratify the lust, passion or

sexual desires of the Defendant or the child. Willfully, means voluntarily and intentionally means with a specific intent to do something the law forbids. Lewd means obscene, lustful, indecent or lecherous. Lascivious means tending to incite lust, lewd, indecent, obscene or tending to deprave the morals in respect to sexual relations. Additionally, I instruct you that under Code §16-3-657 that the testimony of a victim need not be corroborated in criminal prosecutions under these two charges.

Now, Mr. Blume and members of the jury, as you retire and begin your deliberations, I wish to express the hope that each of you will be mindful of the importance of your responsibility in this trial as you're not called upon to serve as jurors very often. You and I are acting for this community and this State and that is why we must see to it that this trial has been conducted fairly and you must see to it that the verdict is just. It is my responsibility as a Judge in this case to see that every person here tried receives fair and impartial justice. I'm not trying to tell you how to decide this case. I've already told you under the laws and our Constitution, I'm not allowed to have an opinion in that regard. It is you, the jury, that are the sole judges of all questions of fact. It would be improper me to try to influence you in the performance of your duty, but I am vitally convinced that whatever verdict

you find will be the result of you going in the jury room and confining your consideration of this case to the evidence which has been presented in this courtroom, the law as I have instructed it to you, weighing the evidence fairly and impartially, and reaching a unanimous verdict and I'm confident you will do just that.

Now, I'm going to show you the verdict form and I've got a couple more comments. (Judge Griffith approached the jury box) The verdict form is kind of simple. You've got the name of the case and indictment numbers, each charge, guilty or not guilty. Your verdict need not be the same on both. He can be guilty on both, not guilty on both, or not guilty, guilty. (Hands indictments to jury foreperson) It's totally y'all's decision. You've heard the evidence. You must make a decision and your verdicts must be unanimous. Now, as you go -- and I want those back. I just wanted you to see them. After you reach a unanimous verdict, I want you to sign it and knock on the door. Now, we didn't have any exhibits, did we?

COURT REPORTER: The DVD.

THE COURT: The DVD. That's what I thought. All right. I was checking because, normally, my signal to you to begin your deliberations is I deliver the evidence to you. I'm going to deliver the verdict form to you and that will be your sign that you can then begin discussing the

case, reaching your decision, deciding, you know, evaluating the evidence as I've instructed you to do so. But what I need to do before you begin is to ask the lawyers who heard my instructions, I want to make certain that they're -- those instructions were lengthy. We went over them ahead of time and the lawyers are offered an opportunity to say, Judge, you didn't describe what reasonable doubt is, specifically. Will you give that instruction again? And I get to consider that and, if necessary, I'll bring y'all back in and re-instruct you on that. That may or may not be necessary. Now, if it is, I'll bring you back in. If not, I'm just going to send the verdict form. That means get to work. Now, if you need to hear testimony replayed, write it down. We'd like to hear the testimony of. We'd like to see the DVD again. But if you tell me the testimony, the name of the witness, then Ms. Rice can find it on her recording device and cue it up so that when we bring you in, we can start listening. Now, if you have a question on the instructions I've given you like, Judge, you really went fast over the law of, can we hear more on that, I'll bring you back in and instruct you on that, if need be. So, understanding that whatever question you may have, that may arise that you can't resolve, write it down, give it to the bailiff. Mr. Daughtry will bring it to me and the lawyers and I will

discuss it, do we either respond back in writing or bring you in here and respond orally. But a common question I get from jurors is, we'd like to hear from some other witness that didn't get called. What you heard in the courtroom is what you get. Whether a witness was called or why a witness was called is not an issue for you to resolve. The issue for you to resolve is to answer the question of fact presented on the verdict form.

Now, once I get the verdict form, I'll retrieve you out and once I get the verdict form delivered, you are free to go this afternoon.

Once y'all begin to work if y'all need a break, for whatever reason, stop deliberating. I don't know whether we allow smoke breaks in Greenville County or not, may not. If somebody's a smoker, if they want to step outside and smoke a cigarette, and they can find arrangements for that, y'all -- y'all are on y'all's time now. I'm going to be here until y'all get done. If y'all need a break step outside and get fresh air. Y'all are free to do that, but you can't deliberate without all twelve of you in the room. So, you're on your time. So, you understand that? (Foreperson nods head) All right. With those instructions, step in the jury room. I'll send this form or else I'll call you back out here momentarily.

(Jury out at 2:32 PM)

THE COURT: All right. What time have we got, Jo? 2:38. There you go. (Judge Griffith gives indictment to the bailiff) Bring me the alternate.

(Whereupon, the alternate was dismissed off the record.)

VERDICT

THE COURT: All right. Are we ready to receive the verdict?

MR. BONDURANT: Yes, Your Honor.

THE COURT: All right. Bring them in, please.

(Jury in at 3:20 PM)

THE COURT: All right. Mr. Blume, have y'all reached a verdict?

MR. BLUME: We have.

THE COURT: All right. Would you hand it to my bailiff, please?

THE BAILIFF: Your Honor. (Hands verdict form to Judge Griffith)

THE COURT: Yes, sir. (Judge Griffith looks at verdict form, then hands it to the Clerk of Court) Madam Clerk.

CLERK OF COURT: Your Honor, this is case numbers 2011-GS-23-4664 and 5600. On the charge of criminal sexual conduct with a minor, we, the jury, find the Defendant, Michael Moon, guilty.

On the charge of lewd act on a minor, we, the jury, find the Defendant, Michael Moon, guilty. Signed, the

foreperson, James Blume.

If this is your verdict, please raise your right hand.

(Whereupon, all jurors' right hands were raised.)

CLERK OF COURT: Thank you.

THE COURT: Any request for the jury, Ms. Ross?

MS. ROSS: No, Your Honor.

THE COURT: Very well. All right. We'll come back in, but I want y'all to step in the jury room a moment. I'm going to come back there and speak to y'all momentarily since the case is now over. I want to step back there and talk to you. All right.

(Jury out at 3:22 PM)

(Brief break as Judge Griffith leaves the courtroom to speak to the jury and then returns to the courtroom)

THE COURT: All right.

THE BAILIFF: Your Honor, are you ready for the jury?

THE COURT: Yeah. Bring them on in here. They want to stay for sentencing.

SENTENCING

THE COURT: All right. Ms. Ross, are y'all ready to proceed with sentencing?

MS. ROSS: Yes, Your Honor.

THE COURT: All right. And likewise, Mr. Bondurant?

MR. BONDURANT: Yes, Your Honor.

THE COURT: All right. Mr. Bondurant, I understand

the State's position. The case has gone to trial and I've heard the facts. I'd just as soon hear from Ms. Ross. I want to hear mitigation from her.

MS. ROSS: Thank you, Your Honor. May it please the Court. Mike Moon, as you've heard, has no prior record. From the beginning, his story's been the same. I know the verdict has spoken. I would ask for concurrent time given the fact that the mandatory sentence for this charge is twenty-five years. I don't think a consecutive sentence would serve any purpose given Mr. Moon's age. So we would ask for concurrent time.

THE COURT: All right. And that's a common request and generally complied. Anything you want to say, Mr. Moon?

MR. MOON: Wouldn't be any advantage at this point.

THE COURT: How many days? Have y'all calculated up the days he's served to date?

MS. ROSS: I don't have it calculated. He was arrested March 31, 2011.

MR. BONDURANT: Eight hundred and sixty-six days.

THE COURT: Eight hundred sixty-six?

MR. BONDURANT: That's correct, Your Honor.

THE COURT: So he was arrested on the 21st of March of '11?

MS. ROSS: Thirty-first.

THE COURT: Thirty-first.

MR. MOON: I think, eventually, I will note, that I will convince the State or maybe my daughter, as she gets older, will convince the State that they made a major mistake today. There was no evidence to support guilt.

THE COURT: It's my observation and I don't want to comment and invade the jury's province, but when twelve people reach a consensus, that consensus is generally a fair consensus considering the evidence presented to them and the instructions given by the Court.

All right. On Indictment 4664-2011, lewd act, the sentence is ten years, credit for the eight hundred and sixty-six days he's done.

On the CSC first, the sentence of the Court is twenty-five years. That runs concurrent with 4664, give him credit on both for eight hundred sixty-six days and they run concurrently.

MS. ROSS: Thank you, Judge.

THE COURT: All right.

MR. BONDURANT: Thank you.

WITNESSES

Michael Robertson

Greenville County Sheriffs Office

4/26/2011

DOCKET NO. 2011-GS-23-CAB 005600

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September TERM 2011 2012

THE STATE

vs.

MICHAEL E MOON

ARREST WARRANT NUMBER
I433077

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655

RECEIVED
JUL 28 2011
Clerk of Court
Greenville County

Foreperson of Petit Jury
Date:

136

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF GREENVILLE) CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on SEP 18 2012 the Grand Jurors of Greenville County present upon their oath:

That MICHAEL E MOON did in Greenville County, between the 1st day of January, ~~2010~~ 2008 and the 31st day of December, 2010, commit a sexual battery on M.B.M., who was less than eleven years of age. This is in violation of §16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

CBD

SOLICITOR

WITNESSES

Michael Robertson

Greenville County Sheriffs Office

3/31/2011

DOCKET NO. 2011-GS-23- CAB 004664

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September TERM ~~2011~~ 2012

THE STATE

VS.

MICHAEL E MOON

ARREST WARRANT NUMBER
I432478

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

Foreperson of Petit Jury
Date:

RECEIVED
JUN 17 2011
Clerk of Court
Greenville County

138

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on SEP 18 2012 the Grand Jurors of Greenville County present upon their oath:

That MICHAEL E MOON did in Greenville County, between the 1st day of January, ~~2010~~ 2008 and the 31st day of December, 2010, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of M.B.M., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

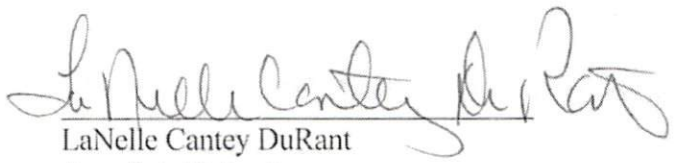
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 7th, 2014



LaNelle Cantey DuRant
Appellate Defender

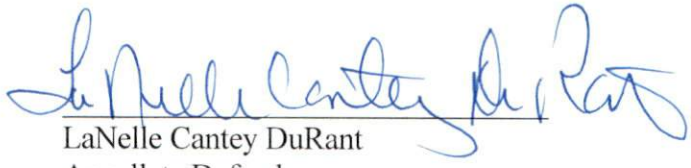
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Division of Appellate Defense
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Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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