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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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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,)
))
DEFENDANT.) DATE: AUGUST 12-13, 2013
) GREENVILLE, SOUTH CAROLINA

TRIAL TRANSCRIPT

B E F O R E:

THE HONORABLE EUGENE C. GRIFFITH, JR.

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

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

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

13 THE COURT: Okay.

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

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

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

13 MS. ROSS: Jenkins?

14 THE COURT: Jenkins.

15 MS. ROSS: State v. Jenkins.

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

17 MS. ROSS: Yes.

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

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

1 State v. Cromer.

2 THE COURT: Is that Cromer?

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

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

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

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

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

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

18 MR. BONDURANT: Sure.

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

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

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

2 MS. ROSS: Right.

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

6 MS. ROSS: Uh-huh.

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

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

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

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

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

24 THE COURT: I think you're right.

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

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

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

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

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

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

18 MS. ROSS: Okay.

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

21 MS. ROSS: Okay.

22 THE COURT: All right.

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

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

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

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

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

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

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

19 MR. BONDURANT: Sure.

20 (Brief break)

21 THE BAILIFF: Your Honor, we're ready.

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

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

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

3 MR. BONDURANT: Yes, ma'am.

4 MS. ROSS: All right.

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

8 THE COURT: Trustworthiness, yes.

9 MR. BONDURANT: Under 17-23-175.

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

11 MR. BONDURANT: Okay.

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

14 MR. BONDURANT: Yes.

15 THE COURT: Does it need to be marked?

16 MR. BONDURANT: Yes, sir.

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

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

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

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

8 Now, this is my first day back in Greenville, I think,
9 in more than eight years. I was here in April and June of
10 '06 for a couple of months when I was first elected. It is
11 normally my practice to bring hard candy to the jury for
12 trials and pass around to the juries and I forgot it this
13 morning. My law clerk over there, Greg Close, it's his
14 first day and so he had no idea to remind me. When I get
15 here tomorrow, I'll have candy to pass it around to y'all
16 because that's something I do for juries and I eat hard
17 candy while I listen, so I'll allow you to do the same.

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

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

22 THE COURT: Mr. Bondurant.

23 MR. BONDURANT: Thank you, Your Honor.

24 OPENING STATEMENT

25 BY MR. BONDURANT:

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

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

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

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

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

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

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

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

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

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

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

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

23 THE COURT: I sustain that.

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

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

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

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

16 THE COURT: Ms. Ross.

17 MS. ROSS: Thank you, Judge.

18 OPENING STATEMENT

19 BY MS. ROSS:

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

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

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

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

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

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

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

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

1 reasonable doubt. Was that proven?

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

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

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

DIRECT EXAMINATION OF Minor

BY MR. BONDURANT 59

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

6 DIRECT EXAMINATION

7 BY MR. BONDURANT:

8 Q Hey, Minor , how are you?

9 A Good.

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

12 A Eleven.

13 Q When is your birthday?

14 A .

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

16 A I am going to League Academy.

17 Q Okay. What grade are you in?

18 A I'm going to sixth grade.

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

21 A Yes, sir.

22 Q Who did you live with now, Minor ?

23 A My mother.

24 Q Okay. And what's her name?

25 A Ivette Lopez.

- 1 Q And where do you live now?
- 2 A I live at .
- 3 Q Okay. And did your mom come here with you today?
- 4 A Yes, sir.
- 5 Q What is your dad's name?
- 6 A Mike Moon.
- 7 Q Do you see him here today?
- 8 A Yes.
- 9 Q Is he the man in the blue shirt and the tie?
- 10 A Yes, sir.
- 11 Q Does anyone else live with you right now?
- 12 A No, sir.
- 13 Q Okay. Minor do you know why you're here today?
- 14 A Yes, sir.
- 15 Q Can you tell us why you're here?
- 16 A Because I have been sexually abused.
- 17 Q Okay. Can you tell us about that? Who sexually
- 18 abused you?
- 19 A My dad.
- 20 Q Can you tell us what your dad did to you?
- 21 A He touched my private parts.
- 22 Q Touched your private parts?
- 23 A Yes, sir.
- 24 Q What did he touch your private parts with?
- 25 A His hand.

DIRECT EXAMINATION OF Minor

BY MR. BONDURANT 61

1 Q Did he touch you with anything else?

2 A If he did, I don't remember.

3 Q Okay. Now, I know you said private parts. Now you
4 just need to be a little more specific for the jury,
5 okay? Can you tell them exactly what private parts
6 your father touched?

7 A My breast, my -- like, my -- what is it -- my vagina
8 and my butt.

9 Q Okay. Did he touch on top of your vagina, inside of
10 your vagina or something else?

11 A On top.

12 Q On top. Can you show us what he did with your hand,
13 with his hand when he touched you?

14 A (Demonstrating)

15 Q Okay. Do you remember how old you were when this
16 happened?

17 A Around six or seven.

18 Q Did this happen once or more than once?

19 A More than once.

20 Q Where did it happen?

21 A Sometimes in the bathroom and sometimes in the
22 bedroom.

23 Q Okay. And where -- was this in the house that you're
24 living in now or a different house?

25 A The house that I'm living in now.

- 1 Q It's the same house?
- 2 A Yes, sir.
- 3 Q Do you live in a trailer or a fixed house?
- 4 A A trailer.
- 5 Q Is the trailer in the same place that it was when this
6 happened?
- 7 A No, sir.
- 8 Q The trailer was in a different place?
- 9 A Yes, sir.
- 10 Q In a different neighborhood?
- 11 A Yes, sir.
- 12 Q Okay. And did anybody live near you that you know of
13 at that point, when you lived in that trailer?
- 14 A Around me?
- 15 Q Yes.
- 16 A My grandmother and my Aunt Sharon and that's pretty
17 much just the family, but I can't remember some of the
18 other peoples' names.
- 19 Q Did your father ever have you touch him?
- 20 A Yes, sir.
- 21 Q Can you describe that to us?
- 22 A He made me touch his penis and he would also put my
23 mouth on it.
- 24 Q Was that once or more than once?
- 25 A More than once.

DIRECT EXAMINATION OF Minor

BY MR. BONDURANT 63

1 Q Did you touch it with your bare hand or did you touch
2 it with anything else?

3 A Sometimes, he let me use a rag.

4 Q Where would you get that rag?

5 A From the place, from the cabinet. I just opened it
6 up.

7 Q Okay. Where was that cabinet?

8 A Before the door. It's in the hallway.

9 Q Okay. When you touched his penis or put his penis
10 your mouth, did anything ever come out of his penis?

11 A Not at those times, but one time he did, but my mouth
12 wasn't on it.

13 Q Okay. What happened on that time?

14 A He just started shaking it.

15 Q Okay. Did anything come out of it?

16 A Yes, sir.

17 Q What came out of it?

18 A Some kind of milky liquid.

19 Q Okay. Would he ever say anything to you when he
20 touched you or when you touched him?

21 A Yes, sir.

22 Q What would he say?

23 A I can't remember the exact words, but I just remember
24 that he said something.

25 Q Okay. Did he ever threaten you to do these things?

- 1 A Yes, sir.
- 2 Q How would he threaten you?
- 3 A He said that he would tell my mom if I didn't do it.
- 4 Q And when y'all finished doing these things, would he
5 say anything to you at that point?
- 6 A If he did, then I don't remember.
- 7 Q When did he stop doing these things?
- 8 A When I said stop.
- 9 Q At some point, you told him to stop?
- 10 A Yes, sir.
- 11 Q Do you remember the first person that you told this
12 to?
- 13 A Yes, sir.
- 14 Q Who was that person?
- 15 A My mom.
- 16 Q Do you remember who you talked to after that?
- 17 A I'm pretty sure the DSS.
- 18 Q DSS?
- 19 A Yes, sir.
- 20 Q Do you remember talking to an investigator at school?
- 21 A Yes, sir.
- 22 Q Was somebody with her, the investigator?
- 23 A I'm pretty sure that there was three people.
- 24 Q Okay. As to the police, after you told -- well, let
25 me start. Did you tell the police what happened to

DIRECT EXAMINATION OF Minor

BY MR. BONDURANT 65

1 you that day at school?

2 A After the day, I'm pretty sure it was after that day,
3 my Aunt Sharon came to pick me up at school and she
4 took me to a building and I had to tell what, the same
5 people that I saw at the school.

6 Q Okay. And you told them what happened to you, what
7 your father had done to you?

8 A I didn't tell -- they didn't ask me that, but...

9 Q Okay. Do you remember talking to Investigator Heather
10 Hubert?

11 A If I did, I don't remember the name.

12 Q Okay. Do you remember going to the -- well, let me
13 ask you this. Who did you live, after -- After Aunt
14 Sharon came and picked you up, who did you go to live
15 with at that point?

16 A My grandmother.

17 Q Your grandmother. Is that your dad's mother?

18 A Yes, sir.

19 Q Okay. Do you remember how long you lived with her?

20 A It was probably around two months.

21 Q Two months. Where was your mother during this time?

22 A She was just at home.

23 Q Did you get to see her at all?

24 A Sometimes.

25 Q Sometimes? Would you visit her or would she visit

1 you? How would that work?

2 A She would visit me.

3 Q Okay. All right. And then after that two months,
4 where did you go to live? Who did you live with?

5 A My mom again.

6 Q You went back with your mom?

7 A Yes, sir.

8 Q Do you remember going to the Julie Valentine Center?

9 A Yes, sir.

10 Q And you spoke with a lady about all of these things
11 there?

12 A Yes, sir.

13 Q Did you tell her ---

14 A Yes, sir.

15 Q --- everything that happened to you that day?
16 Everything that happened to you from your father?

17 A Yes, sir.

18 Q Do you remember coming to see me at my office?

19 A Yes, sir.

20 Q How times did you come to see me? Do you remember?

21 A Probably around three or four.

22 Q Three or four times?

23 A (Nods head)

24 Q Have you had to go to counseling?

25 A Yes, sir.

CROSS EXAMINATION OF Minor

BY MS. ROSS

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1 Q Okay. Are you still going to counseling?

2 A No, sir.

3 Q How long did you go to counseling?

4 A For a year.

5 Q For a year?

6 MR. BONDURANT: No more questions at this time.

7 THE COURT: Ms. Ross.

8 CROSS-EXAMINATION

9 BY MS. ROSS:

10 Q Hi, Minor . I'm Suzanne Ross. I represent Mr. Moon
11 and I've just got a few questions. So, you're going
12 into sixth grade at League?

13 A Yes, ma'am.

14 Q And where you live now is different from where you
15 lived back then?

16 A Yes, ma'am.

17 Q And is that near your grandmother's house?

18 A Ummm.

19 Q Or is that a different place? Is it on your aunt's
20 property?

21 A No, ma'am.

22 Q Okay. So it's in a different place?

23 A Yes, ma'am.

24 Q Now, when you initially talked to your mom, you didn't
25 say many details that you later said at the Julie

1 Valentine Center, did you?

2 A No, ma'am.

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

6 A No, ma'am.

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

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

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

15 A May you repeat the question?

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

20 A You mean like a toilet tissue?

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

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

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

CROSS EXAMINATION OF Minor

BY MS. ROSS

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1 A Yes.

2 Q And you were in school then, right?

3 A Yes, ma'am.

4 Q And you didn't tell anyone from school about this ever
5 happening?

6 A No, ma'am.

7 Q All right. And then only later when you were asked,
8 did you say anything about how it was happening,
9 right?

10 A Can you repeat the question one more time?

11 Q Okay. When finally did you ever say anything had
12 happened?

13 A Maybe about a month later after if it happened.

14 Q Okay. And that was to your mom, right?

15 A Yes, ma'am.

16 Q All right. Now, when you went to the interview at the
17 Julie Valentine Center, you said your aunt took you.
18 Is that correct?

19 A Yes, ma'am.

20 Q And you'd been staying with your grandmother for a
21 couple of months at that point?

22 A Yes, ma'am.

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

24 THE COURT: Any redirect?

25 MR. BONDURANT: No, Your Honor.

1 **IVETTE MOON**, testified as follows:)

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

4 MS. MOON: Ivette Moon.

5 DIRECT EXAMINATION

6 BY MR. BONDURANT:

7 Q Okay. Ivette ---

8 A Uh-huh.

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

11 A Okay.

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

13 A I'm from Mexico.

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

15 A In 1993.

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

18 A A student.

19 Q A student?

20 A Yes.

21 Q Okay. And then what is it now?

22 A I'm a resident.

23 Q You're a legal resident now?

24 A Yes.

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

DIRECT EXAMINATION OF IVETTE MOON BY MR. BONDURANT

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1 Q Now, let's go to March of 2011. Did Minor disclose
2 to you that she'd been sexually abused?

3 A Do you mean did I approach her?

4 Q Okay. I just need you to answer yes or no to
5 questions for now, okay?

6 A Okay. Okay.

7 Q Yes or no. Did she disclose to you ---

8 A Yes.

9 Q --- that she was sexually abused?

10 A Yes.

11 Q Okay. Did she go into detail, yes or no?

12 A No.

13 Q Did she got into detail with you?

14 A No.

15 Q No. Did you probe any further with her about it?

16 A No.

17 Q What was her emotional demeanor when she was telling
18 you?

19 A Crying.

20 Q She was crying? Did you call the police?

21 A I didn't know what to do, so I wouldn't call right
22 away. I mean, no. No.

23 Q Did you tell anybody?

24 A I told his mom.

25 Q Did you ever tell Minor not to tell anyone?

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

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

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

11 MR. BONDURANT: May we approach, Your Honor?

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

13 Q Let me re-phrase the question.

14 A Yes.

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

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

21 Q Were you scared?

22 A I was. Yes, I was scared.

23 Q Why were you scared?

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

DIRECT EXAMINATION OF IVETTE MOON BY MR. BONDURANT

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

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

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

8 Q But you told his mother?

9 A Yes.

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

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

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

14 A Uh-huh.

15 Q Where were you working at the time?

16 A McDonalds.

17 Q McDonalds?

18 A Uh-huh.

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

22 A Like four days.

23 Q Four days?

24 A Uh-huh.

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

- 1 told you?
- 2 A Yes.
- 3 Q Did they ask you why you hadn't called the police
- 4 right away?
- 5 A Yes.
- 6 Q Do you remember what you said?
- 7 A Because I didn't know what to do is what I said.
- 8 Q Okay. And as a result of not calling police, did you
- 9 lose custody of Minor ?
- 10 A Yes.
- 11 Q How long?
- 12 A About, I think about four months.
- 13 Q About a couple months?
- 14 A Four, like four months.
- 15 Q Four months?
- 16 A Uh-huh.
- 17 Q Did you -- A month later on April 25th, who then would
- 18 have had custody of Minor ?
- 19 A His mom.
- 20 Q Okay. And did you eventually get Minor back?
- 21 A Yes.
- 22 Q Okay. She lives with you now?
- 23 A Yes.
- 24 Q Who keeps Minor now when you have to work?
- 25 A Well, at times his mom and some are friends from

DIRECT EXAMINATION OF IVETTE MOON BY MR. BONDURANT

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- 1 Q It was dirty?
- 2 A Yeah. I cannot tell.
- 3 Q Okay. How did this affect Minor ? What was
- 4 Minor 's behavior, demeanor like after she disclosed
- 5 to you?
- 6 A She was, I think more shy. She's been more shy.
- 7 Q Do you remember if she had any nightmares or eating
- 8 habits or problems and that sort of thing?
- 9 A Yeah. She's more scared. Okay. She used to be more
- 10 scared of the dark, but was worse. And she got
- 11 nightmares about monsters for a long time.
- 12 Q For a long time after this happened, after she
- 13 disclosed?
- 14 A Uh-huh.
- 15 Q Is she in counseling now?
- 16 A Yeah. She's already done with her counselor.
- 17 Q Okay. Do y'all ever talk about the case at all?
- 18 A No. She won't tell me, I mean, she won't tell me
- 19 details. She just tell me feelings.
- 20 Q She just tells you her feelings?
- 21 A Uh-huh.
- 22 Q Where does she go to school? Where did she go to
- 23 school at that time when she disclosed in 2011?
- 24 A Grove Elementary.
- 25 Q Grove Elementary?

DIRECT EXAMINATION OF SHARON SCHOENHOLZ BY MR. BONDURANT 95

1 It probably was less.

2 Q Probably was less?

3 A Uh-huh.

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

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

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

12 A No.

13 Q Okay. Thank you.

14 THE COURT: Any redirect?

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

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

17 MS. MOON: Thank you.

18 MR. BONDURANT: May it please the Court?

19 THE COURT: Yes, sir.

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

22 THE COURT: Sharon Schoenholz.

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

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

DIRECT EXAMINATION OF SHARON SCHOENHOLZ BY MR. BONDURANT 96

1 please state your name for the record.

2 MS. SCHOENHOLZ: Sharon Schoenholz.

3 CLERK OF COURT: Thank you.

4 DIRECT EXAMINATION

5 BY MR. BONDURANT:

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

8 A Greenville, South Carolina.

9 Q Are you married?

10 A I'm sorry?

11 Q Are you married?

12 A Yes, I am.

13 Q How long have you been married?

14 A Thirty-one years.

15 Q And what's your husband's name?

16 A Richard.

17 Q Is he here today?

18 A Yes, he is.

19 Q He's out in the hall?

20 A Yes, sir.

21 Q What does he do?

22 A He works for a food broker.

23 Q Food broker?

24 A Uh-huh.

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

DIRECT EXAMINATION OF SHARON SCHOENHOLZ BY MR. BONDURANT 97

- 1 A He works for a food broker.
- 2 Q Do you work outside of the home?
- 3 A No.
- 4 Q Okay. And where do you live now?
- 5 A I live down off of _____ Road.
- 6 Q Okay. How long have you lived there?
- 7 A Well, actually all but six months of my life.
- 8 Q A long time?
- 9 A Yes.
- 10 Q And you and your husband Richard, y'all sort of run
- 11 the neighborhood there, correct? You're the landlord,
- 12 so to speak?
- 13 A Well, we have seven acres, yes.
- 14 Q And there are houses on that property?
- 15 A Our house is on the property, too.
- 16 Q Okay. What about the area where Minor _____ and the
- 17 Defendant ---
- 18 A There's a little bit of rental property there. And,
- 19 yes, they lived, actually, kind of in front of our
- 20 house.
- 21 Q And so that's close by?
- 22 A Yes.
- 23 Q And y'all are the landlords of that little area?
- 24 A Yes.
- 25 Q Okay. And how close is that from you? Walking

DIRECT EXAMINATION OF SHARON SCHOENHOLZ BY MR. BONDURANT 98

1 distance?

2 A Oh, yeah. Yeah.

3 Q And who all lives there -- well, who all lives there
4 now?

5 A On the rental property?

6 Q Yes, ma'am.

7 A There's only two, three, four, five other people,
8 which is four other places and that's all.

9 Q What about your mom, does she still live there?

10 A Well, she doesn't live on our property but she lives
11 just up the road from us, but...

12 Q Just up the road?

13 A Yes.

14 Q What's your mom's name?

15 A Martha.

16 Q How old is your mom?

17 A She's eighty-four.

18 Q Is she here today?

19 A No, sir, she's not.

20 Q Why is she not here?

21 A She didn't really want to come.

22 Q Okay. Your father, he's passed away. Is that
23 correct?

24 A Yes, sir.

25 Q Now, the time this came out, around March 2011, you

DIRECT EXAMINATION OF SHARON SCHOENHOLZ BY MR. BONDURANT 99

1 had an uncle that passed away as well, right?

2 A Uh-huh. Yes.

3 Q And how did he pass away?

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

20 Q Okay. Did anybody see that?

21 A No.

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

23 A He's my brother.

24 Q Is he your older brother or younger brother?

25 A He's older.

DIRECT EXAMINATION OF SHARON SCHOENHOLZ BY MR. BONDURANT¹⁰⁰

1 Q How much older?

2 A I was born in '56 and he was born in '49.

3 Q Seven years?

4 A Seven years.

5 Q When did you first meet Ivette?

6 A When they first came to Greenville. I don't remember
7 what year it was, but it was when they first moved to
8 Greenville and they lived in my parents house for a
9 very short time.

10 Q Okay. When did you first meet Minor ?

11 A When she moved to Greenville, too.

12 Q Okay.

13 A She was just a little thing.

14 Q Do you remember how old she was?

15 A No, I'm not for sure. A couple years? Not even a
16 couple years old.

17 Q Okay. And you just said they came to live there at
18 the mobile home park where you're the landlord.

19 Correct?

20 A Right.

21 Q Do you remember what year that was?

22 A Just a minute.

23 Q Take your time.

24 A When he was arrested in '11, he'd been there four
25 years and five months, during that time.

DIRECT EXAMINATION OF SHARON SCHOENHOLZ BY MR. BONDURANT¹⁰⁵

1 was Big Lots over off of North 291.

2 Q Do you remember what hours he worked?

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

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

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

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

10 A Yes.

11 Q --- and if not, your mother?

12 A Yeah.

13 Q I'm sorry.

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

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

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

21 Q Okay. You can't testify to what other people say.

22 Okay? That's hearsay.

23 A Okay.

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

DIRECT EXAMINATION OF SHARON SCHOENHOLZ BY MR. BONDURANT¹⁰⁶

1 you find out?

2 A Ivette told me.

3 Q Okay. And then what did you do after you found out?

4 A I went to Judge Taylor, a gentleman off 25 and talked
5 to him about it.

6 Q Okay. Without saying what you were told again, what
7 did you, why did you go to Judge Taylor's office?

8 A Because Ivette told me that, about ---

9 Q Okay. Without testifying to hearsay. I know it's
10 difficult at times, because it's a normal part of
11 conversation, but what were your concerns, personally,
12 for you, when you went to the Judge's office? What
13 were you scared that might happen? That's a better
14 way to phrase the question.

15 A That he was going to, they were going to leave with
16 her and it was going to continue to happen.

17 Q After telling him that, were you contacted by the
18 police?

19 A Yes, I was.

20 Q Did you tell them the same thing, essentially?

21 A Yes, I did.

22 Q After that, did you have any more involvement with the
23 case?

24 A Just that one day.

25 Q Just that one day.

DIRECT EXAMINATION OF HEATHER HUBERT BY MR. BONDURANT 109

1 anything?

2 A He usually wasn't off weekends.

3 Q All right. Okay. Thank you.

4 A You're welcome.

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

6 MS. SCHOENHOLZ: Thank you.

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

8 THE COURT: One more?

9 MR. BONDURANT: I can proceed, Your Honor.

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

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

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

14 MR. BONDURANT: I don't think so.

15 THE COURT: Okay.

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

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

20 MS. HUBERT: Heather Edwards Hubert.

21 CLERK OF COURT: Thank you.

22 DIRECT EXAMINATION

23 BY MR. BONDURANT:

24 Q Investigator, good morning. Good afternoon.

25 A Hi.

DIRECT EXAMINATION OF HEATHER HUBERT BY MR. BONDURANT 110

1 Q Can you tell the jury where you work.

2 A Yes, sir. I'm an investigator at the Greenville
3 County Sheriff's Office.

4 Q Okay. And what unit do you work in?

5 A I work in the crimes against children unit.

6 Q How long have you worked for the sheriff's office in
7 general?

8 A Fifteen years.

9 Q Fifteen years? How long as a sex investigator?

10 A About three-and-a-half years.

11 Q Okay. Just tell us kind of what you do, what your
12 role is as a sex investigator?

13 A Sure. Our unit gets any investigations that involve
14 children as victims. The majority of my case load
15 involves allegations of sexual abuse, but I do work
16 some allegations of physical abuse and neglect.

17 Q And did you have to have special training to work as a
18 sex investigator?

19 A I do have specialized training. I had advanced
20 training in forensic interviewing of children. I've
21 had local, state, and national training in sex crimes
22 investigations, child sex abuse investigations, child
23 maltreatment investigations.

24 Q Okay. Now, when you decide to send a child for a
25 forensic interview -- you said you're also trained in

DIRECT EXAMINATION OF HEATHER HUBERT BY MR. BONDURANT 111

1 forensic interviewing, correct?

2 A That's correct.

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

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

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

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

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

16 A No, sir.

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

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

DIRECT EXAMINATION OF HEATHER HUBERT BY MR. BONDURANT 112

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

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

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

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

10 A Yes, sir, I did.

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

13 A That's correct.

14 Q That the Defendant was involved?

15 A That's correct.

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

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

22 Q Okay. Do you remember what school that was?

23 A I believe it was Grove Elementary.

24 Q Anybody go with you?

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

DIRECT EXAMINATION OF HEATHER HUBERT BY MR. BONDURANT 113

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

5 Q How many investigators were on the case?

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

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

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

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

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

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

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

DIRECT EXAMINATION OF HEATHER HUBERT BY MR. BONDURANT 114

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

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

10 A Yes, sir, she did.

11 Q Okay. Did she say where the abuse happened?

12 A Yes, sir, she did.

13 Q Where was that?

14 A At her residence.

15 Q And did she say when it happened?

16 A Yes, sir, she did.

17 Q And when was that?

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

22 Q Okay. How long was that interview?

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

DIRECT EXAMINATION OF HEATHER HUBERT BY MR. BONDURANT 115

1 Q Thirty to forty minutes?

2 A Yes, sir.

3 Q And what was done with Minor after the conclusion
4 of the interview?

5 A That she was -- we turned her back over to school
6 officials. I think she might have gone to lunch or
7 something.

8 Q Okay. And do you know what was decided about her
9 living arrangements?

10 A Well, I made contact with Investigator Robertson and
11 briefed him on what we had learned and then I
12 responded back to our offices with the caseworker from
13 DSS who took care of signing a safety plan about that
14 and ensuring her safety.

15 Q Okay. What, if anything, did you next?

16 A I spoke with Investigator Robertson and briefed him on
17 the information that I had. And then I believe was
18 with him when he spoke with the complainant in the
19 case and also I was present during -- while he was
20 talking with the child's mother, Ivette Moon.

21 Q Okay. Where was that? Do you remember where that
22 was?

23 A Yes, sir, that was in Investigator Robertson's
24 office.

25 Q Okay. And what did you, what was your demeanor

DIRECT EXAMINATION OF HEATHER HUBERT BY MR. BONDURANT 116

1 towards Ivette, the mother?

2 A I was very concerned about why she had not contacted
3 law enforcement.

4 Q Okay. Is it fair to say you grilled her?

5 A I think that's fair to say, yes, sir.

6 Q Were you satisfied with her answer ---

7 A Yes, sir, ultimately ---

8 Q --- of why she reacted the way she did?

9 A --- Ultimately, it appeared that she had had concerns
10 about, kind of not understanding our system and the
11 way that we do things and that the child might be
12 taken away from her and it appeared that she had done
13 some things to try to make sure that the child was
14 safe, but without engaging authorities or a system
15 that she was not quite sure what they were going to
16 do.

17 Q So, did you ultimately charge her with unlawful
18 neglect or anything else?

19 A No, sir, she was not charged.

20 Q Okay. Did you have any more involvement in this case
21 after speaking with Ivette?

22 A No, sir. Just my testimony.

23 Q Okay. No more questions. Thank you.

24 THE COURT: Any cross, Ms. Ross?

25 MS. ROSS: Thank you, Judge.

CROSS-EXAMINATION

1

2 BY MS. ROSS:

3

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

5

A That's correct.

6

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

9

A A caseworker from the Department of Social Services.

10

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

13

A She had not.

14

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

16

A There was ---

17

Q Before the Julie Valentine Center?

18

A I do not.

19

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

21

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

22

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

24

A Yes, ma'am.

25

Q I've got no further questions.

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

4 (Jury out at 5:07 PM)

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

11 MS. ROSS: Thank you, Judge.

12 (Whereupon, court stood at recess.)

13 Morning - August 13, 2013

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

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

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

7 MS. ROSS: Well ---

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

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

20 THE COURT: Well, can we do this?

21 MR. BONDURANT: Yes, sir.

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

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

5 MR. BONDURANT: Sure.

6 MS. ROSS: Right.

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

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

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

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

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

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

4 THE COURT: Uh-huh.

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

7 MS. ROSS: Okay.

8 MR. BONDURANT: Are you okay with that?

9 MS. ROSS: I am.

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

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

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

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

19 MR. BONDURANT: Have you got full screen?

20 THE COURT: Yes.

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

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

24 MS. ROSS: We can change that title.

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

DIRECT EXAMINATION OF MIKE ROBERTSON BY MR. BONDURANT 122

1 rename it?

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

3 THE COURT: All right. Are we good?

4 MR. BONDURANT: I believe so, Your Honor.

5 THE COURT: All right. Go get them.

6 (Jury in at 9:27 AM)

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

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

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

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

18 INVESTIGATOR ROBERTSON: Michael Robertson.

19 DIRECT EXAMINATION

20 BY MR. BONDURANT:

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

23 A The Greenville County Sheriff's Office.

24 Q Okay. What do you do there?

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

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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

DIRECT EXAMINATION OF MIKE ROBERTSON BY MR. BONDURANT 124

- 1 you do next?
- 2 A I got with Investigator Hubert and I went and spoke
3 with the mother of the child and Investigator Hubert
4 went and spoke with the child.
- 5 Q And where was that? Where did you speak with the
6 mother?
- 7 A She was at work at McDonalds on, I believe it's Grove,
8 across from the hospital.
- 9 Q Okay. And did you take a statement from her?
- 10 A I did.
- 11 Q Did you -- How would you sort of describe your
12 conversation with Ivette?
- 13 A Pretty much asked or told her why I was there and
14 asked her if she could tell me what was going on in
15 reference to the circumstances.
- 16 Q Okay. Was anybody with you at that time?
- 17 A No.
- 18 Q Okay. And is it safe to say you grilled her a little
19 bit?
- 20 A Say that one more time?
- 21 Q You grilled her? Did you grill her a little bit?
- 22 A Not at the restaurant, no.
- 23 Q Okay. Did you subsequently -- did you talk to her
24 again after the restaurant?
- 25 A We did.

DIRECT EXAMINATION OF MIKE ROBERTSON BY MR. BONDURANT 125

- 1 Q What were your concerns, specifically, with her, with
2 Ivette?
- 3 A Her knowing the allegations, not notifying law
4 enforcement, and also possibly leaving the scene.
- 5 Q Okay. And when you -- Ultimately, after speaking with
6 her, were you satisfied with her answers?
- 7 A Yes.
- 8 Q Okay. Did you ever decide to charge her with unlawful
9 neglect or anything like that?
- 10 A No, sir.
- 11 Q And did you then seek your warrants?
- 12 A I did.
- 13 Q Okay. And what was that initial warrant that you got?
- 14 A Lewd act on a child.
- 15 Q Was that based on the information that you had at the
16 time?
- 17 A That's correct.
- 18 Q Okay. And did you then schedule a forensic interview
19 for Minor ?
- 20 A I did.
- 21 Q Okay. And did you attend that interview?
- 22 A I did.
- 23 Q Okay. And based on that information, did you get
24 another warrant?
- 25 A I got another warrant, yes, sir.

DIRECT EXAMINATION OF MIKE ROBERTSON BY MR. BONDURANT 126

1 Q Okay. What was that warrant?

2 A Criminal sexual conduct, first degree.

3 Q Okay. Did you -- how many cases have you investigated
4 as a sex investigator? Just if you had to guess.

5 A Well, I know our unit had --there's five investigators
6 in our unit and last year we had over seven hundred
7 cases and that's abuse and neglect and sex cases.

8 Q Based on the information that you had, did you go to
9 the house, the residence, in this case? Did you go to
10 the Defendant's residence or the victim's residence?

11 A We did not go inside the house, no.

12 Q Okay. Based on your experience as an officer, would
13 you have expected to find any sort of physical
14 evidence?

15 A No. Not from what we were being told, no.

16 Q Okay. All right. I have no further questions. Thank
17 you.

18 CROSS-EXAMINATION

19 BY MS. ROSS:

20 Q Investigator Robertson, so Michael Moon's aunt,
21 Sharon Schoenholz, called in the report?

22 A That's correct.

23 Q And after that report -- isn't it true that you were
24 worried that Ivette would leave the State with
25 Minor ?

1 A That's the information we had. That's correct.

2 Q All right. And then you spoke to -- did you ever
3 speak to Minor at that point?

4 A I did not, no.

5 Q Okay. But after the first interview -- and you're
6 saying -- was that the only interview with DSS, that
7 first interview at the school with Minor ?

8 A I do not know if the -- I know the interview that
9 Investigator Hubert had with DSS and Minor , that
10 was the first interview anyone had ever spoken with
11 her about the allegations.

12 Q Okay. And do you know the date of that?

13 A It was -- without looking at my report, it was
14 probably the date of the report.

15 Q All right. Would it surprise -- you got a warrant for
16 lewd act after the interview on March 31st, 2011?

17 A If that's the date of that original interview, yes.

18 Q All right. Now, isn't it true that you also on April
19 5th went and looked through Michael Moon's computer
20 for any kind of evidence of child pornography or
21 anything of that sort?

22 A I know we did. I don't know the date but, yes, we
23 did.

24 Q All right. And were any charges made of that?

25 A No.

CROSS EXAMINATION OF MIKE ROBERTSON BY MS. ROSS

128

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

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

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

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

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

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

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

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

21 Q All right. Thank you.

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

24 THE COURT: All right. You may step down.

25 INVESTIGATOR ROBERTSON: Thank you, Your Honor.

DIRECT EXAMINATION OF STEPHANIE SMITH BY MR. BONDURANT 129

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

3 THE COURT: Okay with me.

4 MS. ROSS: No objection.

5 THE COURT: All right.

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

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

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

12 MS. SMITH: Stephanie Smith.

13 CLERK OF COURT: Thank you.

14 DIRECT EXAMINATION

15 BY MR. BONDURANT:

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

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

23 Q And in 2011, what were you doing?

24 A I was employed with the Julie Valentine Center.

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

DIRECT EXAMINATION OF STEPHANIE SMITH BY MR. BONDURANT 130

1 Center?

2 A I did forensic interviews.

3 Q Forensic interviews?

4 A Uh-huh.

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

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

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

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

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

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

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

25 A I was trained through Finding Words, which is now

1 called Child First.

2 Q Okay. What is that?

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

10 Q Do you know if this protocol is widely used?

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

13 Q Okay. And is there research backing this protocol?

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

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

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

DIRECT EXAMINATION OF STEPHANIE SMITH BY MR. BONDURANT 132

1 Q How many years had you done forensic interviewing at
2 this point?

3 A Two. I had been at Julie Valentine for eleven years,
4 but two of those I had been at the Master's level and
5 conducted interviews.

6 Q And you said on average you did three to five
7 interviews a week?

8 A Uh-huh.

9 Q Would there ever be a time during an interview that
10 you would have to use a leading question?

11 A If there was some confusion about what kind of
12 question I was trying to ask, if we got stuck, but it
13 would always be followed-up with an open-ended
14 question.

15 Q Okay. And do you know Minor ?

16 A Yes.

17 Q Okay. And how did you first come to know Minor ?

18 A She was referred for an interview at the Julie
19 Valentine Center by Mike Robertson of the Sheriff's
20 office.

21 Q Okay. And generally speaking, without going into
22 detail, what was the nature of the allegation?

23 A It was allegations of possible sexual abuse.

24 Q And, just yes or no. Were you given any details as
25 far as what the allegations were at the time?

DIRECT EXAMINATION OF STEPHANIE SMITH BY MR. BONDURANT 133

1 A Yes.

2 Q Okay. How old was Minor at the time?

3 A She was nine.

4 Q Okay. And what methods did you use? Did you use that
5 RATAAC you just talked about?

6 A RATAAC.

7 Q Was there anyone in the room during this interview?

8 A Just myself and Minor .

9 Q Was anyone outside the room watching the interview?

10 A All the interviews are preserved on DVD and it is
11 allowed through closed-captioned TV to be observed by
12 people that are involved in the investigation and for
13 this case, the Sheriff's office, Mike Robertson, was
14 observing the interview.

15 Q Okay. Was Minor cooperative?

16 A Yes.

17 Q Were there any interruptions, outside interruptions,
18 during the ---

19 A. No, the only thing, a part of the protocol is to leave
20 when you're halfway through the interview to, you
21 know, kind of collect your thoughts, make sure there's
22 no further information that needs to be gathered or
23 needs to be explored further and so you do leave the
24 room and generally speak with whoever is observing the
25 interview.

DIRECT EXAMINATION OF STEPHANIE SMITH BY MR. BONDURANT 134

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

3 A Yes.

4 Q All of the interview?

5 A Yes.

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

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

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

17 A Yes.

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

20 A Yes.

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

23 A No.

24 Q That's it from the State.

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

1 video subject to our prior discussion.

2 THE COURT: All right. Ms. Ross?

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

4 THE COURT: Objection having been made on the record.

5 We're good on that. My ruling's still the same.

6 MS. ROSS: Right.

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

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

11 THE COURT: Okay.

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

14 CROSS EXAMINATION

15 BY MS. ROSS:

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

19 A Yes.

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

23 A Correct.

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

CROSS EXAMINATION OF STEPHANIE SMITH BY MS. ROSS

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1 allegation of sexual abuse, correct?

2 A Sure.

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

5 A We do. We know what the information is.

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

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

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

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

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

23 A Correct.

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

DIRECT EXAMINATION OF LINDA HUTTON BY MR. BONDURANT 137

1 A Correct.

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

3 THE COURT: Any redirect?

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

5 THE COURT: All right.

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

8 MS. ROSS: No objection.

9 THE COURT: No objection. You may be excused.

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

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

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

16 MS. HUTTON: Linda Gray Hutton.

17 DIRECT EXAMINATION

18 BY MR. BONDURANT:

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

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

23 Q Okay. And where's that located?

24 A About two blocks from here.

25 Q Okay. What services are offered there?

DIRECT EXAMINATION OF LINDA HUTTON BY MR. BONDURANT 138

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

3 Q Okay. What do you do there?

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

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

9 A Educational, too?

10 Q Yes, please.

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

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

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

DIRECT EXAMINATION OF LINDA HUTTON BY MR. BONDURANT 139

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

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

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

5 Q Okay.

6 A South Carolina Society for Clinical Social Work.

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

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

12 Q Okay. What is that?

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

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

DIRECT EXAMINATION OF LINDA HUTTON BY MR. BONDURANT 140

1 A Yes, I have.

2 Q Okay. Can you just give us a little bit of detail
3 about that?

4 A I -- it's hard to remember. I know we did one
5 regional workshop. It was a multi-state one, that was
6 back in the '80s. I've done training to DSS,
7 Counseling Services, Clinical Society, Sheriff's
8 department and others, too.

9 Q Okay. How many times have you treated or seen
10 children -- and I know it's hard to estimate -- but
11 for sexual abuse? How many times have you ---

12 A I don't keep count. I've been practicing thirty-nine
13 years, so a very conservative estimate would be at
14 least a thousand.

15 Q Have you ever testified in the courts of this State?

16 A I have. Yes, sir.

17 Q How many times, if you could guess?

18 A Family Court, it's just a guess, at least fifty, sixty
19 times. Criminal Court, maybe ten.

20 Q Have you ever been qualified as an expert in those
21 courts to testify?

22 A Yes, sir.

23 Q Okay.

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

1 A Help them heal.

2 Q You treat them as a normal psychologist? They come in
3 and talk to you?

4 A I treat them as a therapist, not a psychologist.

5 Q Right, therapist. And you meet with them on a regular
6 basis?

7 A Yes, sir. Usually with children, I also work with the
8 parents.

9 Q And you help them heal and you observe them?

10 A Yes, sir.

11 Q And after meeting with a thousand children, you feel
12 like you're an expert to give an opinion as to how
13 children of sexual abuse may behave or may not behave?

14 A Yes, sir. I don't give opinions about whether abuse
15 happened or not, because I'm in the treatment part.
16 I'm not in the evaluation part.

17 Q Sure. And you've never treated Minor
18 correct?

19 A Yes, sir.

20 Q And you're not here to testify as to whether Minor
21 was abused or not by the ---

22 A That would be improper. I don't know her. I did not
23 evaluate her. I did not do a forensic with her. I
24 did not investigate.

25 THE COURT: All right. Any voir dire from you, Ms.

IN CAMERA EXAMINATION OF LINDA HUTTON

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1 MR. BONDURANT: Well, sure.

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

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

6 THE COURT: And they can.

7 MR. BONDURANT: Sure.

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

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

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

20 IN CAMERA REDIRECT EXAMINATION

21 BY MR. BONDURANT:

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

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

1 person that the child trusts, rather than a stranger.
2 MR. BONDURANT: That's it. I think that you and I do
3 this a lot and we see this a lot and we know, as you said,
4 what tends to be more common or not. I think that the
5 average layperson doesn't want to believe that a parent
6 could do this to their own child, doesn't want to believe
7 that, you know, somebody could violate that bond, that
8 strong bond or that strong relationship. That's, you know,
9 we just want her to testify as to what her experience is.
10 If that's not her experience then she can say that's not,
11 you know, that it's uncommon. But she's, you know, done
12 this thirty-something years.

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

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

IN CAMERA EXAMINATION OF LINDA HUTTON

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

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

10 MS. ROSS: All right.

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

16 MR. BONDURANT: I'm fine.

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

21 (Brief break)

22 THE COURT: All right. Bring them in.

23 (Jury in at 10:18 AM)

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

CONT. DIRECT EXAMINATION OF LINDA HUTTON BY MR. BONDURANT 157

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

4 MS. HUTTON: Linda Hutton.

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

15 THE COURT: All right.

16 MR. BONDURANT: Thank you.

17 THE COURT: Mr. Bondurant.

18 MR. BONDURANT: Thank you, Your Honor.

19 CONTINUED DIRECT EXAMINATION

20 BY MR. BONDURANT:

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

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

CONT. DIRECT EXAMINATION OF LINDA HUTTON BY MR. BONDURANT 158

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

3 Q Okay. Well ---

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

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

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

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

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

1 little inconsistency in the peripheral information.

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

7 A It could be common. The most significant behavior
8 that would make you concerned about sexual abuse would
9 be if a child shows behavior or knowledge beyond their
10 years about sexual matters. You want to find out
11 where that's coming from and then be sure to rule out
12 sexual abuse. Some kids are asymptomatic. They're
13 not showing behavioral disturbances and other kids
14 will show behavior disturbances, but you can't really
15 say for sure or that it would likely be abuse. It
16 might be sleep disturbance, things like that.
17 Anxiety, not doing well in school. And back in the
18 '80s, there were actually lists published saying,
19 these are indicators of sexual abuse, but they're just
20 indicators of stress.

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

23 A What?

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

CONT. DIRECT EXAMINATION OF LINDA HUTTON BY MR. BONDURANT 160

1 abuse?

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

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

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

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

25 A Very common, usually, with child sexual abuse because

CONT. DIRECT EXAMINATION OF LINDA HUTTON BY MR. BONDURANT 161

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

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

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

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

13 A It's common not to have physical evidence.

14 Q Do you ---

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

16 Q I'm sorry?

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

18 Q What?

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

20 Q Do you know the victim in this case?

21 A No, sir.

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

23 A No, sir.

24 Q Okay.

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

REDIRECT EXAMINATION OF LINDA HUTTON BY MR. BONDURANT 168

1 BY MR. BONDURANT:

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

4 A That that would be what?

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

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

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

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

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

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

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

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

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

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

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

1 testify?

2 MR. MOON: Yes, sir.

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

4 MR. MOON: Yes, sir. I understand.

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

6 (Jury in at 1:10 PM)

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

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

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

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

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

17 MR. MOON: My name?

18 CLERK OF COURT: Yes, please.

19 MR. MOON: Michael E. Moon.

20 DIRECT EXAMINATION

21 BY MS. ROSS:

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

24 A I think I do.

25 Q And are you guilty of those charges?

DIRECT EXAMINATION OF MICHAEL MOON BY MS. ROSS

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1 A I'm not guilty of those charges.

2 Q Now, you've seen a video in court, just now, today?

3 A Yes, I have.

4 Q Are you guilty of touching your daughter's,
5 Minor s, vagina?

6 A Never have I touched it.

7 Q Are you guilty of allowing her to touch your penis?

8 A Never has that happened.

9 Q Now, I want to just go over some background. How old
10 are you?

11 A Sixty-four.

12 Q And when you were arrested, where were you working?

13 A I was at my home, leaving, and I had just left and had
14 gone, about, oh, less than a mile when they, a little
15 blue light came on and stopped me.

16 Q Did you have a job at that point?

17 A Yes. Big Lots. I worked furniture.

18 Q And were you married?

19 A Pardon?

20 Q Were you married?

21 A Yes.

22 Q Who was your wife?

23 A Ivette.

24 Q All right. Now, y'all had a child, correct? Minor ?

25 A Yes.

1 Q Now, I want to just go back to when you met Ivette.
2 Were you here in Greenville at that time?

3 A No. I was in Tucson, Arizona. I'm a traveling
4 engineer with a specialty in film capacitors. It's
5 electronics, military related.

6 Q Okay. So y'all were out-of-state when you met Ivette.
7 And then how old was she?

8 A At the time I met her, she was twenty-eight and I
9 married her at twenty-nine. We dated for about
10 thirteen months.

11 Q Do you recall how old you were at that time?

12 A Yes. I was fifty, fifty-one.

13 Q Now, I want to talk about when you came back to South
14 Carolina. Where did you live then?

15 A At first, we lived in West Pelzer, initially.

16 Q And then did you come to move to Road around
17 your family's place?

18 A Yeah. After a few years, we moved to Road,
19 which is my home place. Road, for about a
20 half a mile there, is nothing but relatives, all the
21 way back to my grandfather plowing the fields. That's
22 how it started.

23 Q Okay. And was your father alive at that time?

24 A Yes.

25 Q And how far did you live from your mother and father?

DIRECT EXAMINATION OF MICHAEL MOON BY MS. ROSS

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1 A About three hundred feet.

2 Q Were there a lot of houses in that area?

3 A Very few. It's not that populated.

4 Q Were there some close trailer homes on the property?

5 A Yes. The land, which is just opposite my mother and
6 dad's house, is about five acres and on that was --
7 from back even when I was a teenager, my dad owned it
8 then and they had one house on it that they rent,
9 along with a few mobile homes. And that's kind of
10 always been pretty much that all the many years.

11 Q And now did it come that you were living in one of
12 those mobile homes?

13 A Yes. My mother said she would appreciate very much,
14 and she helped us, but she'd appreciate it very much
15 during kind of a tougher income time, said, would you
16 please come over and live, you know, right there in
17 the mobile home and my sister owned the property at
18 the time. Dad had sold it to another person, a
19 relative and then my sister bought it, you know, the
20 five acres with the house and a few mobile homes that
21 they would rent on it. And so it was just little
22 small plots of land, you know, like any mobile home,
23 except it's more scattered out. It's not cluttered
24 up. It's more country.

25 Q And what was your understanding that your rent would

1 be?

2 A I'm sorry. What?

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

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

8 Q Did your mother know about that?

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

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

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

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

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

CROSS EXAMINATION OF MICHAEL MOON BY MR. BONDURANT 182

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

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

18 A No.

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

21 A No.

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

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

CROSS EXAMINATION OF MICHAEL MOON BY MR. BONDURANT 183

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

3 Q All right.

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

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

8 A No other criminal records.

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

12 A I am not guilty of those acts.

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

14 CROSS EXAMINATION

15 BY MR. BONDURANT:

16 Q Sharon was charging you more rent?

17 A A hundred and seventy-five a month.

18 Q More than what you originally discussed with your
19 mother?

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

1 MS. ROSS: Okay.

2 (Brief break)

3 THE COURT: All right. Are we ready?

4 MR. BONDURANT: Yes, Your Honor.

5 THE COURT: Bring us the jury.

6 (Jury in at 1:35 PM)

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

9 MR. BONDURANT: Sir?

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

11 MR. BONDURANT: No, sir.

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

16 MS. ROSS: Thank you, Judge.

17 CLOSING ARGUMENT

18 BY MS. ROSS:

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

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

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

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

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

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

1 working very hard to make a case.

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

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

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

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

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

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

21 MR. BONDURANT: Thank you, Your Honor.

22 CLOSING ARGUMENT

23 BY MR. BONDURANT:

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

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

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

1 should consider when hearing a story of this nature.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And you heard the expert talked about mixed feelings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 CHARGE ON THE LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 COURT REPORTER: The DVD.

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

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

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

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

12 Once y'all begin to work if y'all need a break, for
13 whatever reason, stop deliberating. I don't know whether
14 we allow smoke breaks in Greenville County or not, may not.
15 If somebody's a smoker, if they want to step outside and
16 smoke a cigarette, and they can find arrangements for that,
17 y'all -- y'all are on y'all's time now. I'm going to be
18 here until y'all get done. If y'all need a break step
19 outside and get fresh air. Y'all are free to do that, but
20 you can't deliberate without all twelve of you in the room.
21 So, you're on your time. So, you understand that?

22 (Foreperson nods head) All right. With those
23 instructions, step in the jury room. I'll send this form
24 or else I'll call you back out here momentarily.

25 (Jury out at 2:32 PM)

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

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

5 VERDICT

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

8 MR. BONDURANT: Yes, Your Honor.

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

10 (Jury in at 3:20 PM)

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

13 MR. BLUME: We have.

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

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

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

20 CLERK OF COURT: Your Honor, this is case numbers
21 2011-GS-23-4664 and 5600. On the charge of criminal sexual
22 conduct with a minor, we, the jury, find the Defendant,
23 Michael Moon, guilty.

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

1 foreperson, James Blume.

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

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

4 CLERK OF COURT: Thank you.

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

6 MS. ROSS: No, Your Honor.

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

12 (Jury out at 3:22 PM)

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

15 THE COURT: All right.

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

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

19 SENTENCING

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

22 MS. ROSS: Yes, Your Honor.

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

24 MR. BONDURANT: Yes, Your Honor.

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

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

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

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

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

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

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

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

21 THE COURT: Eight hundred sixty-six?

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

23 THE COURT: So he was arrested on the 21st of March of
24 '11?

25 MS. ROSS: Thirty-first.

1 THE COURT: Thirty-first.

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

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

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

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

18 MS. ROSS: Thank you, Judge.

19 THE COURT: All right.

20 MR. BONDURANT: Thank you.

WITNESSES

Michael Robertson

Greenville County Sheriffs Office

4/26/2011

Mr

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.

ARREST WARRANT NUMBER
1433077

MICHAEL E MOON

ACTION OF GRAND JURY
TRUE BILL

Suzanne Tompkins
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:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on **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, ²⁰⁰⁸~~2010~~ 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

(Handwritten initials)

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
1432478

ACTION OF GRAND JURY
TRUE BILL

(Handwritten signature)
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

2468

Indictment for

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

Foreperson of Petit Jury
Date:

RECEIVED

JUN 17 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on
County present upon their oath:

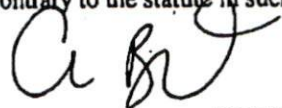
SEP 18 2012

the Grand Jurors of Greenville

2008 SC07

That MICHAEL E MOON did in Greenville County, between the 1st day of January, ~~2010~~ 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.

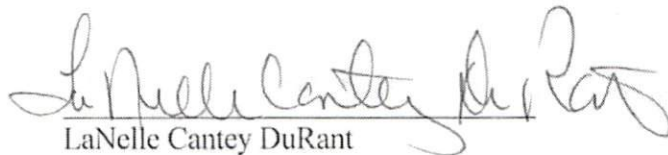


SOLICITOR

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

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

ATTORNEY FOR APPELLANT

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