

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERNEST RAY BAILEY,

APPELLANT

APPELLATE CASE NO 2017-001290

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General
Attorney General Office
P. O. Box 11549
Columbia, SC 29211

ISAAC MCDUFFIE STONE
Solicitor, Fourteenth Judicial Circuit
Post Office Box 1880
Bluffton, South Carolina 29910
(843) 255-5880

ATTORNEYS FOR RESPONDENT

RECEIVED

MAY 14 2018

SC Court of Appeals

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MAY 22, 2017	1
MOTION TO SUPPRESS	2
RULING BY THE COURT	12
OPENING STATEMENT BY MR. EVANS	15
OPENING STATEMENT BY MR. MATHEWS	17
TESTIMONY	
MINOR 1	
Direct Examination by Mr. Evans	20
Cross-Examination by Mr. Mathews	33
Re-Direct Examination by Mr. Evans	35
MINOR 2	
Direct Examination by Mr. Evans	37
Cross-Examination by Mr. Mathews	48
Re-Direct Examination by Mr. Evans	51
Re-Cross Examination by Mr. Mathews	52
TIFFANY FARGNOLI	
Direct Examination by Mr. Evans	53
Cross-Examination by Mr. Mathews	67
STIPULATION CONCERNING STATE'S EXHIBIT #1	77
TESTIMONY	
JACOB O'QUINN	
Direct Examination by Mr. Evans	79
Cross-Examination by Mr. Mathews	83
Redirect Examination by Mr. Evans	86
STATE RESTS	87
MOTION FOR DIRECTED VERDICT	89
RULING BY THE COURT	90

TESTIMONY

MICHAEL SMITH	
Direct Examination by Mr. Mathews.....	92
Cross-Examination by Mr. Evans	99
Redirect Examination by Mr. Mathews	101
RENEWAL OF MOTION FOR DIRECTED VERDICT	102
RULING BY THE COURT.....	102
CLOSING ARGUMENT BY MR. EVANS	106
CLOSING ARGUMENT BY MR. MATHEWS.....	110
CLOSING ARGUMENT IN REPLY BY MR. EVANS.....	114
CHARGE ON THE LAW	115
DEFENSE OBJECTIONS TO THE CHARGE ON THE LAW	132
RULING BY THE COURT.....	132
VERDICT	134
SENTENCING	139
MOTION TO SUPPRESS, AND MEMO IN SUPPORT OF MOTION TO SUPPRESS.....	141
COURT’S EXHIBIT #2 (REDACTION MINUTES).....	144
INDICTMENT.....	145
SENTENCE SHEET.....	147
CERTIFICATE OF COUNSEL	148

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**STATE’S EXHIBIT #1 (VIDEO); STATE’S EXHIBITS #3-4 (PHOTOGRAPHS);
STATE’S EXHIBITS #6-9 (PHOTOGRAPHS); STATE’S EXHIBIT #12
(PHOTOGRAPH); STATE’S EXHIBIT #16 (VIDEO)**

1 STATE OF SOUTH CAROLINA

2 GENERAL SESSIONS

3 COUNTY OF COLLETON

4 -----x

5 STATE OF SOUTH CAROLINA,)

6 Plaintiff,)

7 vs.)

Transcript of Record
2016-GS-15-00549

8 ERNEST RAY BAILEY,)

9 Defendant.)

10 -----x

11 May 22, 2017

12 TRIAL - VOLUME 1 OF 3

13 B E F O R E:

14 The Honorable Perry M. Buckner, Judge

15
16 A P P E A R A N C E S:

17 Reed Evans, Esq.
Attorney for the State

18
19 David Mathews, Esq.
Attorney for the Defendant

20
21
22
23
24
25 Rebecca H. Hill
Official Court Reporter

1 show you how to get in and out of the courtroom, if you don't
2 know, where you can go straight to your jury room without
3 coming into the courtroom in the morning. When you come here
4 in the morning, report to your jury room and not the
5 courtroom.

6 Thank you for your service. Thank you for your patience
7 today during roll call, jury qualification, and jury
8 selection. You are now excused for the balance of today, and
9 you may leave the courtroom.

10 Everyone else, remain seated while the jury is leaving.

11 (The jury exited the courtroom at 4:50 p.m.)

12 MOTION TO SUPPRESS

13 THE COURT: All right, Probation. Y'all are excused at
14 10 minutes to 5 because I'm not going to need y'all until
15 tomorrow at the earliest. Court starts back at 9:30. This
16 trial has probably seven witnesses, and I intend to put them
17 all up tomorrow. So I may need you tomorrow, so do not
18 disappear. Thank you very much.

19 Let the record reflect that there are no jurors in the
20 courtroom, and all the jury that has been selected for the
21 trial of this case have now left the courtroom. Mr. Mathews
22 filed what he termed a motion to suppress and memo in support
23 of a motion to suppress, which I have read.

24 Mr. Mathews, you didn't date your motion as usual, nor
25 did you sign it, at least not the copy I received, however, I

1 have reviewed it. I'm happy to hear from you at this time.

2 MR. MATHEWS: Thank you, Your Honor.

3 Your Honor, I did sign my copy, and if I could -- and
4 dated it today.

5 THE COURT: Well, your copy, of course, is not what needs
6 to be signed.

7 MR. MATHEWS: No, sir. I just want to make this a
8 Court's exhibit. I don't know --

9 THE COURT: Did you file it with the clerk?

10 MR. MATHEWS: I don't think I did. I don't think I did,
11 Your Honor.

12 THE COURT: Have you served it on the Solicitor?

13 MR. MATHEWS: I did.

14 THE COURT: Well, at least you got that much done.

15 Pat, take his motion. We'll file a signed copy.

16 Let me hear from you, Mr. Mathews.

17 MR. MATHEWS: Your Honor, just briefly. The child
18 neglect statute as written specifically refers to 63-7-20 --

19 THE COURT: Which is the definition section.

20 MR. MATHEWS: Yes, sir.

21 And there are a lot of things referenced within the
22 incident report, DSS reports, and the DSS reports that refer
23 to things that don't look great but they would not be defined
24 under that section, under the definition provided in 63-7-20.
25 They wouldn't be under the ambit of abuse or neglect.

1 THE COURT: And Mr. Mathews, that's in your opinion.

2 MR. MATHEWS: Well, yes, sir.

3 THE COURT: You're saying that as if it's a fact, but
4 you're arguing a matter of law.

5 MR. MATHEWS: That's true. Yes, sir, I am arguing that.
6 This is a -- there's a reason for the definition to be in
7 there.

8 THE COURT: What definitions are you referring to?

9 MR. MATHEWS: There are a number of them.

10 THE COURT: Let's start with the first one, Mr. Mathews.
11 You're being vague. Give me the number and their definitions.

12 MR. MATHEWS: Your Honor, I guess I need my --

13 THE COURT: You need a copy of your own motion now, don't
14 you?

15 MR. MATHEWS: I do, yes, sir.

16 THE COURT: Pat, even though he tried to file it, he now
17 wants you to give it back to him.

18 MR. MATHEWS: All right. Your Honor, the things that I
19 want to be suppressed are the children being locked in their
20 room, children's closets being locked, the refrigerator and
21 freezer being locked, and buckets for the children for them to
22 use in the bathroom and low weight. I actually care less
23 about low weight because I have got a doctor to testify that's
24 their normal weight. But in any event --

25 THE COURT: Well, Mr. Mathews, since you don't have to

1 put up any evidence in the case, I don't believe that's your
2 burden, is it?

3 MR. MATHEWS: That's right, Your Honor. I appreciate
4 that.

5 THE COURT: Thank you so much.

6 MR. MATHEWS: Your Honor, this is -- all of those
7 things -- none of those factors, when you look at the
8 definitions contained with the 63 -- let me have a look at
9 it -- 63-7-20 defines child abuse, "Child abuse or neglect or
10 harm occurs when a parent, guardian, or other person
11 responsible for the child's welfare," and it has several
12 different things, "inflicts or allows to be inflicted on the
13 child physical" --

14 THE COURT: I can read the statute, Mr. Mathews. It's
15 6-A, B, C, D, E, and F.

16 MR. MATHEWS: Yes, sir. And there are none of those
17 things. And then it also defines physical injury. Physical
18 injury means -- and since, Your Honor can read it, I'll
19 just -- and since we have already discussed it in some degree,
20 mostly just -- the only thing I'm saying is that none of the
21 things -- the things they allege in there, those five things,
22 they look bad, they sound bad, but they don't meet the
23 definitions provided in 63-7-20 and the definitions within
24 that statute. For that reason, if they don't amount to
25 that --

1 **THE COURT:** What you're arguing in your motion,
2 Mr. Mathews, is that the behavior referenced that you seek
3 this Court to exclude -- of course I don't consider this a
4 pre-trial motion because I have to hear evidence in order to
5 make a determination. But you asked me to suppress this
6 conduct, like children being locked in their room or the
7 weight of the children, on the grounds that the behavior is
8 not relevant to any material issue or the prejudice to the
9 defendant from the admission of such evidence outweighs the
10 probative value. Isn't that correct?

11 **MR. MATHEWS:** Yes, sir.

12 **THE COURT:** Thank you. Be seated.

13 All right, Solicitor. Let me hear from you. And give
14 the clerk what you should have already filed.

15 **MR. EVANS:** Thank you, Your Honor.

16 I take issue with Mr. Mathews' motion. I don't believe
17 that, except for the definition of the term "who is
18 responsible for the welfare of a child" --

19 **THE COURT:** Ho, ho, ho, now, let's start --

20 **MR. EVANS:** Yes, sir.

21 **THE COURT:** The defendant is charged under 63-5-70 --

22 **MR. EVANS:** Yes, sir.

23 **THE COURT:** -- which is entitled "Unlawful conduct toward
24 a child." That statute says it is unlawful for a person who
25 has charge or custody of a child or who is the parent or

1 guardian of a child or who is responsible for the welfare of a
2 child as defined in 63-7-20, to place the child at an
3 unreasonable risk of harm affecting the child's life, physical
4 or mental health or safety or due or cause to be done
5 unlawfully or maliciously any bodily harm to the child so that
6 the life or health of a child is in danger or likely to be in
7 danger, or willfully abandons a child.

8 Do you agree that's what he's charged under?

9 MR. EVANS: Yes, sir.

10 THE COURT: All right. Now, Mr. Mathews argues several
11 things, and one of the things he argues is whether or not I
12 should, pre-trial, suppress children being locked in their
13 room, children's closets being locked, refrigerator and
14 freezer being locked, buckets in the children's room for using
15 the bathroom, and the low weight of the children. There are
16 five enumerated things in his motion which has now been filed
17 with the clerk of court.

18 As a grounds for his motion, he alleges that the
19 behavior -- this behavior of the five things is not relevant
20 to any material issue or that the prejudice to the defendant
21 from the admission of such evidence outweighs the probative
22 value.

23 Now, when he goes into a discussion, he completely
24 ignores what he just said and goes and argues some other
25 ground. However, I'm going to start with that. What is your

1 position on relevance and prejudice outweighing probative
2 value?

3 MR. EVANS: Your Honor, this is essentially the basis of
4 the entire case. There's -- you know, DSS is alerted to the
5 situation and finds this -- these youngsters being locked in
6 their room everyday with the use of buckets for the bathroom.
7 That is what brought us here today. So that is -- I think
8 it's incredibly relevant. I don't see how there can be an
9 argument otherwise. It's certainly prejudicial because that's
10 what we're putting up to convict the defendant. But I don't
11 think --

12 THE COURT: Now, let me tell you -- I need to understand
13 a little bit, because I want to hear the evidence. It's hard
14 for me to rule on a motion like this without hearing the
15 evidence. My understanding from you and Mr. Mathews, when we
16 took this matter up preliminarily in chambers, is that the
17 defendant, Mr. Bailey, was the boyfriend or friend of the
18 grandmother of the children who had custody of the children,
19 and he was living in the home with her and the children. Is
20 that correct?

21 MR. EVANS: Yes, sir.

22 THE COURT: All right. So it is your allegation in the
23 indictment that you're relying on the section of 63-5-70 of a
24 person who is responsible for the welfare of a child as
25 defined in 63-7-20 because you concede that the defendant does

1 not have custody of the child and he is not a parent or a
2 guardian of a child; is that correct?

3 MR. EVANS: Yes, it is.

4 THE COURT: All right. Now, what is your position on
5 relevance and on prejudice versus probative value?

6 MR. EVANS: I believe that it is relevant to the statute
7 at issue, Judge. By placing them -- the allegation -- the
8 evidence will be that while Ms. Jones, who was the defendant's
9 paramour -- is the term that family court uses but we'll just
10 say a live-in girlfriend, she was the -- is the grandmother of
11 the two victims.

12 THE COURT: How old were the victims?

13 MR. EVANS: 11 and 13, I believe.

14 MR. MATHEWS: 12 and 13.

15 MR. EVANS: 12 and 13. Mr. Mathews, I'm sure, has it
16 accurate. 12 and 13 years of age. They were in her custody
17 because DSS had taken them out of their mother's custody, and
18 their practice is to put them in a family member's custody if
19 the family can agree on that.

20 So while Ms. Jones, who was a co-defendant of Mr. Bailey,
21 and this case has been adjudicated, as Your Honor knows, when
22 she was --

23 THE COURT: She was convicted under this statute?

24 MR. EVANS: Yes, sir. She pled guilty. She was
25 represented by Ms. Hudson-Scott and is now on probation.

1 **THE COURT:** All right.

2 **MR. EVANS:** When she would go away for her job or for
3 errands or for any purpose, she would leave them with
4 Mr. Bailey, and therefore, transfer responsibility temporarily
5 to him.

6 **THE COURT:** Where in 62 -- I mean, excuse me, you said
7 62 -- 63-7-20 is the person responsible for the welfare of the
8 child defined, Solicitor?

9 **MR. EVANS:** In 63-7-20, I believe it's subsection 18.

10 **THE COURT:** Subsection what?

11 **MR. EVANS:** 18.

12 **THE COURT:** All right. Actually, I think that would
13 be -- there's no letter?

14 **MR. EVANS:** No, sir.

15 **THE COURT:** No. You're right.

16 All right. 63-7-20, subsection 18: "Person responsible
17 for a child's welfare includes the child's parent, guardian,
18 foster parent, an operator, employee, or caregiver as defined
19 by 63-13-20 of a public or private residential home,
20 institution, agency, or child care facility, or an adult who
21 has assumed a role or responsibility of a parent or guardian
22 for the child but does not necessarily have legal custody of
23 the child. A person whose only role is as a caregiver and
24 whose contact is only incidental with a child, such as a
25 babysitter or a person who has only incidental contact may not

1 be a caretaker, has not assumed the role of responsibility of
2 a parent or guardian," and the rest of that dealing with an
3 investigation having to be initiated when the information
4 contained in the report is otherwise sufficient and does not
5 establish whether the person has assumed the role or
6 responsibility of a parent or guardian.

7 So you believe the evidence will show that the defendant
8 is responsible for the welfare of a child as defined in this
9 code section; is that correct?

10 MR. EVANS: Yes, sir.

11 THE COURT: All right. Do you believe that -- is it your
12 intention to seek evidence that the children were locked in
13 their room?

14 MR. EVANS: Yes, sir.

15 THE COURT: Is it your intention to seek evidence that
16 the children's closets were locked?

17 MR. EVANS: No, sir, not to seek it.

18 THE COURT: And that's moot, then, Mr. Mathews, since the
19 State does not intend to present evidence concerning the
20 closet.

21 Is it your intention to present evidence concerning the
22 refrigerator and freezer being locked?

23 MR. EVANS: Yes, sir.

24 THE COURT: And how about buckets in the children's
25 room --

1 MR. EVANS: Yes, sir.

2 THE COURT: -- for using the bathroom?

3 MR. EVANS: Yes, sir.

4 THE COURT: And how about the low weight of the children?

5 MR. EVANS: No, sir. I had not intended to bring that --

6 THE COURT: All right. So there are two things moot in
7 Mr. Mathews' motion, No. 2 and No. 5, because the State does
8 not intend to present evidence.

9 All right. Now, is there anything else you would like to
10 tell me in response to Mr. Mathews' motion?

11 MR. EVANS: Your Honor, as far as whether the prejudicial
12 effects substantially outweighs the probative value, I'd just
13 put on the record that I don't believe it does. These are the
14 allegations, essentially. I mean....

15 THE COURT: Well, I think -- all right. Thank you.
16 Please be seated.

17 Mr. Mathews, I think the question of whether or not --
18 you argued in your motion -- you called it legal duty. But
19 Mr. Mathews, the question of whether or not your client fits
20 within the definitional section in subsection 18, person
21 responsible for a child's welfare, could be an issue of fact.
22 It may be a mixed question of law in fact, and therefore, the
23 motion is not appropriate as a pre-trial motion. However, I
24 would expect you to make a contemporaneous motion at the time
25 this may be raised.

1 Now, because you have made the motion, you know that the
2 State is not going to seek two of the five things that you
3 sought to suppress, only three of which are going to be
4 presented according to counsel for the State of South
5 Carolina. But because I can't make a determination as to
6 whether or not your client fits the definitional section of
7 Section 63-7-20, subsection 18, until I have heard the
8 evidence, your motion is premature.

9 MR. MATHEWS: Thank you, Your Honor.

10 THE COURT: Therefore, I'll take it up as the case may be
11 tomorrow.

12 We will start at 9:30 a.m. I intend to start on time.
13 We will stop at 1:00 for lunch. I hope to be back -- I have,
14 as you both know, an 8 a.m. dental appointment, and they
15 assured me they're going to -- I'm first and they're going to
16 get me out at 9:15. So I'm planning on being here at 9:30 to
17 start. I expect both of you to be here and your client,
18 Mr. Mathews, so we can start at 9:30.

19 Is there anything else on the record outside the presence
20 of the jury that needs to be discussed before we adjourn for
21 the evening? From the State?

22 MR. EVANS: Yes, sir, I do have a matter.

23 THE COURT: Sit down, Mr. Mathews.

24 Yes.

25 MR. EVANS: We addressed in chambers and Your Honor

1 informed me it was not part of Mr. Mathews' motion but
2 essentially that the State will be barred from introducing any
3 evidence of any assault upon the two youngsters, and I just
4 wanted to put that on the record.

5 THE COURT: Well --

6 MR. EVANS: We know it with respect to any but to just
7 clean it up.

8 THE COURT: The indictment uses general terms.

9 MR. EVANS: Yes, sir.

10 THE COURT: And although you certainly -- and the reason
11 I know you're going to put up evidence of being locked in
12 their room and the refrigerator and freezer being locked and
13 the bucket in the children's room for using the bathroom is
14 because you have told me so and because Mr. Mathews filed a
15 motion to suppress; otherwise, I wouldn't know what evidence
16 you intend to introduce because I haven't heard the
17 evidence --

18 MR. EVANS: Yes, sir.

19 THE COURT: -- in this case.

20 Now, Mr. Mathews is also objecting to that, but he'll
21 have to make a contemporaneous objection, because I'm not
22 ruling on that pre-trial. And although we did discuss it in
23 my chambers, because I haven't heard the evidence yet,
24 Solicitor, it's premature.

25 MR. EVANS: Yes, sir.

1 THE COURT: From the defendant?

2 MR. MATHEWS: No, Your Honor.

3 THE COURT: Ladies and gentlemen, we will now begin the
4 trial in the case. Please give the lawyers your careful
5 attention.

6 Mr. Evans?

7 MR. EVANS: Thank you, Your Honor. May it please the
8 Court.

9 THE COURT: Proceed.

10 OPENING STATEMENT ON BEHALF OF THE STATE

11 MR. EVANS: Mr. Mathews, ladies and gentlemen of the
12 jury, good morning. Thank you all for being here today.

13 A few months ago, my wife and I adopted our first dog, a
14 golden retriever mix named Palmer. I think I got a little
15 Palmer on my sleeve today, so I apologize for that. Now, we
16 have had dogs with our families, growing up, but we have never
17 had them ourselves, and we're learning on the fly, remembering
18 all the things we have to do to take care of a dog. We have
19 to feed him. We have to take him out. You have got to look
20 after them. Sometimes you have to put them up in their crate
21 so they don't get into trouble. And we love dogs or cats or
22 whatever. And sometimes that's how we have to treat them.

23 But that's not how we treat people. We're here today
24 because that man (indicating), Ray Bailey -- Ernest Ray
25 Bailey, but he goes by Ray -- treated two young men that he

1 was responsible for, Minor 1 and Minor 2 like animals.
2 On June 21st of last year, so the very beginning of summer,
3 the Walterboro Police Department was alerted to a situation at
4 [REDACTED] here in the City of Walterboro. That's
5 where Minor 1 and Minor 2, 12 and 13 at the time -- little bit
6 older now, obviously; it's 11 months later -- they were living
7 there with their grandmother, Loma Jones, and Mr. Bailey, the
8 defendant in this case.

9 Mr. Bailey was in a relationship with Ms. Jones, and even
10 though she was in charge of them, when she left, as she would
11 to work or run errands or what have you, she left, on many
12 occasions, the responsibility of the children was with him.
13 She put it on him, and he acknowledged it.

14 You're going to hear evidence today that these two boys
15 were, in late June, made to stay in their rooms with no
16 air-conditioning, no fan, given very little water, that there
17 were locks on the food which was available in the home, and
18 that to use the bathroom, they were given buckets, like an
19 animal.

20 We believe that that's what the evidence is going to
21 show. We believe the facts are not going to be in much
22 dispute, and it will be your job to apply those facts to the
23 law as the judge instructs you on what it is. At the end of
24 this trial, after you have heard all the evidence, we're going
25 to come back and ask you for a verdict of guilty.

1 This is a very important day. Mr. Mathews is probably
2 going to tell you that it's important to his client,
3 Mr. Bailey, and he deserves a fair trial. And we may not --
4 Mr. Mathews and I may not agree on much in this trial, but to
5 start with, we agree on that 100 percent. You owe Ernest Ray
6 Bailey your full attention and a fair trial. But the State of
7 South Carolina is entitled to a fair trial as well. Please
8 give all the witnesses your attention as the judge asked you
9 to already. Don't make your decision until you have heard all
10 the evidence, but we believe that when you have, you'll know
11 what he did was wrong, that it was illegal, and that he is
12 guilty. Thank you.

13 **THE COURT:** Mr. Mathews.

14 **MR. MATHEWS:** Thank you, Your Honor.

15 **OPENING STATEMENT ON BEHALF OF THE DEFENDANT**

16 **MR. MATHEWS:** Mr. Evans, madame foreman, ladies and
17 gentlemen of the jury, I have the honor of representing
18 Mr. Bailey, Ray Bailey. Your decision here and what you're
19 supposed to be looking for and what I think the evidence is
20 going to show on this is that although we don't necessarily
21 all agree with how people raise their children, that doesn't
22 mean that it's a crime.

23 Sit back here, looking at the power of the State and
24 seeing all these law enforcement officers here telling us how
25 to raise the children, we need to consider first of all -- and

1 the judge will tell you the particular law on this -- but at a
2 minimum; the activity that is being complained of here by the
3 State has to affect a child's -- harm the child's life, affect
4 the child's life, physical or mental health, or safety. If it
5 doesn't match that, the fact that you don't like it doesn't
6 mean anything.

7 The State is making a big deal over the fact that
8 these -- there were locks on the doors or latches on the door.
9 Here's the picture that I think the State will even show you.

10 THE COURT: Counsel?

11 MR. MATHEWS: It's, I think, what the evidence will show,
12 Your Honor.

13 THE COURT: Any objection?

14 MR. EVANS: No objection.

15 THE COURT: Proceed.

16 MR. MATHEWS: Like these little hook things here. It's a
17 little bit bigger than that, but just like these little eye
18 hook things, I think when you look at the pictures, you see
19 they're not doorknobs on some of these internal things, so if
20 you want to keep the door shut, you have got to latch them.

21 Not wild about the buckets as far as that goes, but
22 you'll find -- you'll hear and I believe the evidence will
23 show that these were not good children. Dogs don't lie to
24 you. Dogs don't steal from you. Foster kids sometimes do.
25 Teenage children sometimes do. And we -- God help us if we

1 don't get to discipline them, if we don't get to send a child
2 to their room for acting bad. I think the evidence is going
3 to show that, when they acted bad, they were sent to their
4 room and the latch was latched because it didn't have a
5 doorknob, no other way to keep the thing shut.

6 I think the evidence will show that these children were
7 well-nourished, well-hydrated. I believe that Dr. Smith from
8 Walterboro Family Practice will tell you that. And that they
9 were on ADHD medicine because they were -- they were tough.
10 They were all over the place. They lied. They stole --
11 stole. So you lock the food so there will be food. And God
12 help us if the State tells us what we have got to feed our
13 children, as long as they're well-nourished and well-hydrated.

14 Like I said, not wild about the buckets. Beyond that,
15 though, I don't believe there's going to be any evidence that
16 anything affected the child's life, physical or mental health
17 or safety. And that's what it's all about, not the State's
18 preference.

19 Listen carefully to all the evidence, and when you do,
20 I'm confident you will find that the State did not meet its
21 burden of proof.

22 Thank you, Your Honor.

23 **THE COURT:** Call your first witness.

24 **MR. EVANS:** The State calls ^{Minor 1}

25 **THE CLERK:** Please come forward and be sworn.

Minor 1

the witness, after having been duly sworn, was examined and testified to as follows:

THE CLERK: Have a seat on the witness stand and state your full name for the record.

THE COURT: Step up there and have a seat. Make sure you pull that chair up to the microphone. And adjust that microphone to your height.

THE WITNESS: Yeah, it's on.

THE COURT: And I want you to speak up for me so everybody on my jury, including this nice lady right here on the end of the row, I want everybody to be able to hear you. Okay? And you have got to speak up, now. Talk into the microphone. Okay?

Are you nervous?

All right. State your full name and spell your last name for the court reporter.

THE WITNESS: My name is Minor 1 My last name is

THE COURT: All right. Now, speak up for me.

Your witness, Counsel. Direct examination.

MR. EVANS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. EVANS:

Q Good morning, Minor 1

1 A Good morning.

2 Q Do you remember last week when we talked about all this?

3 A Yes, sir.

4 Q Do you remember how I asked you to always give an answer
5 out loud and don't nod or shake your head or yes and no?

6 A Yes, sir.

7 Q Do you promise to do that for me today?

8 A Yes, sir.

9 Q Do you understand the oath you just took?

10 A Yes, sir.

11 Q What does it mean?

12 A Don't lie.

13 Q Yeah.

14 A Just tell the truth.

15 Q Do you promise to tell the truth to us today?

16 A Yes, sir.

17 Q Okay. Minor 1 do you know Ray Bailey?

18 A Yes, sir.

19 Q How do you know him?

20 A He's the one that stays with Loma when he was there, me
21 and my brother.

22 Q Who is Loma?

23 A My grandma.

24 Q How did you end up at Loma's house?

25 A We got took away from my ma in 2005.

1 Q In 2005?

2 A (Witness nodding.)

3 Q Okay. And were you staying with Loma last year, in June
4 2016?

5 A Yes, sir.

6 THE COURT: Hold on a second.

7 MR. EVANS: Yes, sir.

8 THE COURT: Let them sirens get by.

9 BY MR. EVANS:

10 Q Let me ask you this, ^{Minor 1} : Is Ray in the courtroom
11 today?

12 A Yes, sir.

13 Q Do you see him?

14 A (Witness nodding.)

15 Q Can you point him out for the jury and tell us something
16 he's wearing for the court reporter.

17 A (Complying.) A gray shirt.

18 Q Okay. Sitting next to the gentleman in the tan suit?

19 A Yes, sir.

20 Q What was his relationship with Loma, your grandmother; do
21 you know?

22 A No. No, sir.

23 Q But he was living there while y'all were living there?

24 A Yes, sir.

25 Q Who was in charge of y'all?

1 A Loma or him.

2 Q When would he be in charge?

3 A If Loma's at work or she went to a store.

4 Q And how often would that happen?

5 A Like a day.

6 Q Just about every day? Is that what you mean?

7 A Yes, sir.

8 Q So all the time?

9 A Yes, sir.

10 Q Where is Loma's house that y'all were living at?

11 A In Walterboro, across from the bus shop.

12 Q Do you remember the address?

13 A [REDACTED]

14 Q In the City of Walterboro?

15 A Yes, sir.

16 Q This might sound like a silly question: Is Walterboro in
17 Colleton County?

18 A Yes, sir.

19 Q Okay. Tell us about, when Ray was in charge, what y'all
20 would do?

21 A We would be in our room.

22 Q In your room in the house?

23 A Yes, sir.

24 Q Was there air-conditioning in the house?

25 A Yes, sir. That would be in the living room.

- 1 Q How about in your room?
- 2 A When we had the windows.
- 3 Q When you had the windows open?
- 4 A (Witness nodding.)
- 5 Q Were the windows open all the time?
- 6 A No. No, sir.
- 7 Q Would they be closed or open more of the time?
- 8 A Closed.
- 9 Q How would they be kept closed?
- 10 A With a nail.
- 11 Q They were nailed shut?
- 12 A Yes, sir.
- 13 Q Do you remember when that happened?
- 14 A No.
- 15 Q Were they nailed shut on the day that DSS came last
- 16 summer?
- 17 A Yes, sir.
- 18 Q Did you have a fan or anything in your room?
- 19 A Sometimes.
- 20 Q Sometimes. Tell me about that.
- 21 A Sometimes we have the fan in the room, if it gets really
- 22 hot.
- 23 Q If it got really hot, he would let you have the fan?
- 24 A Yes, sir.
- 25 Q Would Ray ever tell you that you couldn't use the fan?

1 A No, sir.

2 Q No. Okay.

3 How long would you stay in the room for?

4 A We stayed in the room for a while, before breakfast.

5 We'd come out until breakfast time. Then we'd go back in the
6 room.

7 Q You couldn't go outside and play or anything?

8 A No, sir.

9 Q Why was that?

10 A Because we would be locked up in the room. We had locks.

11 Q Tell me about the locks. How would they lock you out?
12 How would you be locked in?

13 A Well, not with a padlock, but one of them regular locks.

14 Q Not a padlock?

15 A Not a padlock.

16 Q So can you describe it for us.

17 A It's like a latch.

18 Q A latch. Okay.

19 Could you get out if the latch was done?

20 A Yes.

21 Q How could you do that?

22 A By using a book.

23 Q What kind of book?

24 A A regular book. Like one of them flexible books.

25 Q Paperback book?

- 1 **A** Yes, sir.
- 2 **Q** Can you tell me how you would do that?
- 3 **A** By sliding -- by sliding a book through the door.
- 4 **Q** You'd put it in the door and slide up and that would pop
- 5 the latch?
- 6 **A** Yes, sir.
- 7 **Q** Did you do that a lot?
- 8 **A** Yes, sir.
- 9 **Q** Why is that?
- 10 **A** Sometimes to get out.
- 11 **Q** Why did you want to get out?
- 12 **A** To get something to eat or something to drink.
- 13 **Q** You were hungry?
- 14 **A** Yes, sir.
- 15 **Q** And thirsty?
- 16 **A** Yes, sir.
- 17 **Q** What if you just asked for food or for water?
- 18 **A** Sometimes he won't give it to us.
- 19 **Q** Sometimes Ray wouldn't give it to you?
- 20 **A** Yes, sir.
- 21 **Q** Okay. What about Loma?
- 22 **A** She would, if he -- she would if he wasn't around.
- 23 **Q** But if Ray was in charge?
- 24 **A** Sometimes he would. Sometimes he won't.
- 25 **Q** How would you use the bathroom, ^{Minor 1}

1 A Well, I use buckets.

2 Q Tell me about that.

3 A When he was around, we had to use buckets in our room.

4 We had to -- he put the buckets in -- you know, he put the
5 buckets in our room where we couldn't use the bathroom.

6 Q Did he tell you why?

7 A No, sir.

8 Q He just told you that you had to use the buckets?

9 A Yes, sir.

10 Q How did that make you feel?

11 A Mad.

12 Q Yeah. Anything else?

13 A No, sir.

14 Q How did it smell?

15 A Nasty.

16 Q Did you have to do it for number one and number two?

17 A Yes, sir.

18 Q How long would it sit in there?

19 A Like for five minutes.

20 Q Yeah? And then when would it get taken out?

21 A When Loma gets home.

22 Q So for just five minutes or until Loma got home?

23 A If it takes -- sometimes it takes five minutes. If Loma
24 ain't there, Ray will unlatch the door where he can do it.

25 Q Okay. What if --

1 MR. EVANS: Well, withdrawn, Your Honor.

2 BY MR. EVANS:

3 Q Can you tell us about the day that DSS came?

4 A The day DSS came, Ray wouldn't let her in.

5 Q How did you know it was DSS?

6 A Because I -- I could tell by the van.

7 Q Oh, you could see out the house?

8 A Yes, sir.

9 Q You could see the van that the person was in?

10 A Yes, sir.

11 Q But she didn't come inside?

12 A No, because she -- he wouldn't let her in.

13 Q Did you see that or did you hear that?

14 A I seen it. I have two windows.

15 Q Okay. You could see it through the window.

16 Were you in your room that day?

17 A Yes, sir.

18 Q With the latch done?

19 A Yes, sir.

20 Q Why didn't you come out with the book?

21 A I couldn't.

22 Q Why is that?

23 A Because when I unlatch the door, he would take the books
24 away. He took the books away.

25 Q Was that what happened every time you tried to get out?

1 A Yes, sir.

2 Q Were you afraid of Ray?

3 A No.

4 Q No? But he'd put you back in the room?

5 A Yes, sir.

6 Q Every time you asked to get out?

7 A Yes, sir.

8 Q What else happened the day that DSS came? After he
9 wouldn't let her in, what happened next?

10 A She went to the police department and asked for them to
11 get a police officer.

12 Q Well, how do you know that?

13 A Because I seen the police officer came with her.

14 Q Oh, so they came back?

15 A Yes, sir.

16 Q About how much later? Do you remember?

17 A No, sir.

18 Q A little while? Long time, like several hours?

19 A It was like a little while.

20 Q A little while later. The same day?

21 A Yes, sir.

22 Q Okay. And what happened when she came back?

23 A He -- he opened the door so he can let her in.

24 Q Who is "he"?

25 A Ray.

1 Q Ray opened the door and let her in that time?

2 A Yes, sir.

3 Q Had anything happened in between? Did Ray do anything in
4 between the first time she came and the second time?

5 A He took the locks off the door and took the buckets out.

6 Q I see.

7 So he took the locks that were on y'all's door, the
8 latches --

9 A Yes, sir.

10 Q -- and pulled them off the door?

11 A Yes, sir.

12 Q And y'all had buckets in your rooms?

13 A Yes, sir.

14 Q For the bathroom?

15 A Yes, sir.

16 Q And he took those out, too?

17 A Yes, sir.

18 Q What did he do with them once he took them out?

19 A He threw them on the back porch.

20 Q Was there stuff in them?

21 A No, sir.

22 Q Not yet? Hadn't used them yet?

23 A No, sir.

24 Q Just remember -- I saw you shake your head a second ago.

25 Remember to give me an answer with words. Okay?

1 A Yes, sir.

2 Q You're doing real good.

3 Did y'all show the DSS lady your house?

4 A No, sir.

5 Q What did you show her?

6 A The locks that was on the door and the buckets. And she
7 walked about the house. She saw the locks on the refrigerator
8 and freezer.

9 Q Oh, there were locks on those, too?

10 A Yes, sir.

11 Q Why were there locks on those?

12 A Where we couldn't get no food out.

13 Q Why do you think you couldn't get any food out?

14 A I don't know.

15 Q Would y'all take food if you weren't allowed?

16 A Yes, sir.

17 Q You'd do that?

18 A (Witness nodding.)

19 Q About how often?

20 A Not really often.

21 Q Not often? But sometimes?

22 A Yes, sir.

23 Q Would you steal anything from Loma or from Ray?

24 A No, sir.

25 Q No? Are you sure?

1 A Yes, sir.

2 Q Okay. How about from anybody else? Take anything else
3 from other people that didn't belong to you?

4 A No, sir.

5 Q All right. What happened when y'all would get hungry?

6 A We'd unlock the door to get food.

7 Q How would you get food if there was locks on the
8 refrigerator or the freezer?

9 A That would be food in the cabinets.

10 Q So you got food out of the cabinets but not out of the
11 fridge?

12 A Yes, sir.

13 Q What happened after you showed the woman from DSS all the
14 things that were in the house?

15 A She took us away. We had to pack our stuff and we left.

16 Q Have you seen Ray since then, before today?

17 A No, sir.

18 MR. EVANS: Beg the Court's indulgence.

19 (Pause in the proceedings.)

20 MR. EVANS: Those are all the questions I have at this
21 time.

22 Minor 1 you did real good. Now Mr. Mathews has a chance
23 to ask you some questions. I want you answer them truthfully.
24 Okay?

25 THE WITNESS: Yes, sir.

1 MR. EVANS: All right. Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. MATHEWS:

4 Q Minor 1 where are you living these days?

5 A In Eutawville.

6 Q Eutawville? Okay.

7 Do you live there with your brother?

8 A No, sir.

9 Q Were you living with your brother at some point right
10 before you lived in Eutawville?

11 A Yes, sir.

12 Q All right. You were staying at your cousin's house?

13 A Yes, sir.

14 Q But your cousin put you out; right?

15 A Yes, sir.

16 Q For lying and stealing; right?

17 A Yes, sir.

18 Q So when you just told the jury that you didn't ever steal
19 anything, that wasn't true; right?

20 A Yes, sir.

21 Q Okay. And your door didn't have a doorknob, did it, to
22 your room?

23 A No, sir.

24 Q And the only way you can keep that door shut was with
25 that latch; right?

1 **A** Yes, sir.

2 **Q** But you could get out with a book anyway; right?

3 **A** Yes, sir.

4 **Q** All right. And, in fact, you were sent to your room when
5 you were bad; right?

6 **A** Yes, sir.

7 **Q** Did y'all have a basketball hoop at your house?

8 **A** Yes, sir.

9 **Q** Do you like playing basketball?

10 **A** No, sir.

11 **Q** Not really? Okay. All right.

12 I think you -- you said you played baseball for the
13 Angels?

14 **A** Yes, sir.

15 **Q** That was in Colleton County?

16 **A** Yes, sir.

17 **Q** For your school?

18 **A** Yes, sir.

19 **Q** At Colleton County Middle School?

20 **A** Yes, sir.

21 **Q** The Colleton County Middle School Angels?

22 **A** Yes, sir.

23 **Q** Okay.

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

25 **THE COURT:** Redirect?

1 MR. EVANS: Very briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. EVANS:

4 Q Minor 1 Mr. Mathews asked you whether you were telling the
5 truth about lying and stealing from people in the past. Do
6 you remember when he just asked you that?

7 A Yes, sir.

8 Q And you told him that you were not true a second ago when
9 you were talking to me?

10 A Yes, sir.

11 Q Is there anything else that you weren't true about or was
12 the rest of what you said true, about the buckets and the
13 latches and things?

14 A The rest of the stuff was true.

15 Q Okay.

16 MR. EVANS: That's all I have.

17 THE COURT: Recross limited to redirect?

18 MR. MATHEWS: Nothing, Your Honor.

19 THE COURT: As to this witness, Mr. Evans --

20 MR. EVANS: I ask that he be allowed to step down but
21 remain in the courtroom with us, if he chooses.

22 THE COURT: Any objection?

23 MR. MATHEWS: No, sir.

24 THE COURT: All right. Watch your step for me now,

25 Minor 1 Step down those stairs. You can go have a seat out in

1 the courtroom.

2 Call your next witness.

3 MR. EVANS: The State calls Minor 2

4 THE CLERK: Please come forward and be sworn. Raise your
5 right hand.

6 Minor 2

7 the witness, after having been duly sworn, was examined and
8 testified to as follows:

9 THE CLERK: Have a seat on the witness stand and state
10 your full name.

11 THE COURT: Now, Minor 2, watch those stairs for me and
12 step up for me. Have a seat right there in that chair. And
13 let's pull that chair to adjust it for your comfort. That
14 microphone is going make to your voice louder. Okay?

15 THE WITNESS: Okay.

16 THE COURT: And you have got to speak up so everybody can
17 hear you. Do you understand?

18 THE WITNESS: Yes, sir.

19 THE COURT: And just talk into the microphone. There's a
20 tendency when I'm talking to you, looking at you, to turn away
21 from it, but I want you to use it so it will amplify your
22 voice so everybody can hear. Okay?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. I want you to begin by stating
25 your full name and spelling your last name for my court

1 reporter down here below you.

2 THE WITNESS: My name is Minor 2

3 THE COURT: Can everybody hear all right?

4 Your witness, Counsel. Direct examination.

5 MR. EVANS: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. EVANS:

8 Q Good morning, Minor 2

9 A Good morning.

10 Q How are you today?

11 A Good.

12 Q Are you nervous?

13 A A little.

14 Q A little bit? That's okay.

15 Do you remember what I told you last week?

16 A Yes, sir.

17 Q How do we want to answer questions?

18 A Truthfully and I think it was -- let's see.

19 Q How about out loud?

20 A Yes.

21 Q Using words for answers instead of shaking or nodding
22 your head?

23 A Yes, sir.

24 Q Can you do that for me?

25 A Yes, sir.

1 Q You're doing really good so far.

2 Now, Minor 2, do you know Ray Bailey?

3 A Yes, sir.

4 Q How do you know him?

5 A He locked us in our room and we had to use buckets to go
6 to the bathroom.

7 Q Well, let's -- we'll talk about that later. Okay.

8 You're getting a little bit ahead of me. Okay?

9 Did you live with Ray?

10 A Yes, sir.

11 Q Where?

12 A In the house with my grandma.

13 Q Who is your grandma?

14 A Loma Jones.

15 Q Okay. And who was Ray to her; do you know?

16 A Her boyfriend.

17 Q He was her boyfriend?

18 A (Witness nodding.)

19 Q And he lived in the house?

20 A Yes, sir.

21 Q Do you remember the address of that house?

22 A Yes, sir.

23 Q What was that address?

24 A [REDACTED].

25 Q In what town?

1 A Walterboro.

2 Q In Walterboro, Colleton County?

3 A Yes, sir.

4 Q Okay. I don't know any other Walterboros. Do you?

5 A No, sir.

6 Q All right. How long did you live at [REDACTED] with
7 Loma and Ray?

8 A I lived there since I was, like, three years old, all the
9 way up until 12.

10 Q Why did you end up in that house?

11 A I got taken away from my mom when I was, like, two years
12 old.

13 Q Do you know why?

14 A No, sir.

15 Q Was that by the DSS people?

16 A Yes, sir.

17 Q Okay. But you don't really understand why?

18 A Yeah.

19 Q And Loma is your grandmother?

20 A Yes, sir.

21 Q On which side: Your mom's side or your dad's side?

22 A My mom.

23 Q She's your mom's mother?

24 A Yes, sir.

25 Q And Ray is her boyfriend?

1 A Yes, sir.

2 Q Who was in charge of y'all at this house?

3 A My grandma and Ray.

4 Q At different times?

5 A Some, because my grandma went to work and then Ray was in
6 charge.

7 Q So if Grandma Loma -- if your grandma was at home, she
8 was in charge, but if she left, she put Ray in charge?

9 A Yes, sir.

10 Q Okay. And did y'all listen to Ray and do what he said?

11 A Mostly.

12 Q Mostly. Okay.

13 Tell me about when you didn't.

14 A He made me mad one day and I kind of cursed him out.

15 Q Okay. So you disobeyed him sometimes?

16 A Yes, sir.

17 Q Did you get in trouble for that?

18 A Yes, sir.

19 Q What would happen when you got in trouble?

20 A He would lock us in our room and take our toys or things
21 from us.

22 Q How did that make you feel?

23 A Horrible.

24 Q How would he lock you in your room?

25 A He'd put us in our room and take everything and then

1 latch the door so we couldn't get out.

2 Q Could you close the door without the latch?

3 A Yes, sir.

4 Q Do you think you could? How could you close it without
5 the latch?

6 A When it was, like, not latched on the hook.

7 Q Was there a way to close it from the inside?

8 A No, sir.

9 Q No? Okay. So only from the outside?

10 A (Witness nodding.)

11 Q Could you get out?

12 A I had to slip a piece of paper through the little cracks
13 to unlock it.

14 Q You could unlock it with a piece of paper? When would
15 you do that?

16 A When he's not around or not looking.

17 Q Why when he wasn't around or not looking? Why only then?

18 A So that he doesn't know I'm out and go in my brother's
19 room or getting food or drink.

20 Q Because you didn't want him to know?

21 A Yes, sir.

22 Q Why not?

23 A Because he'd hit us and didn't care where he hit us.

24 Q Were you afraid of him?

25 A Yes, sir.

1 Q How did it make you feel when you were locked in the
2 room?

3 A That I had no freedom.

4 Q Was it hot?

5 A Yes, sir.

6 Q Why?

7 A Because there's no curtains and the blind was -- I had
8 blind open and you couldn't open the window.

9 Q You couldn't open the window?

10 A No, sir.

11 Q Did you have air-conditioning in there?

12 A No, sir.

13 Q Was there air-conditioning in other parts of the house?

14 A Yes, sir.

15 Q What other parts?

16 A In the living room and kitchen.

17 Q Okay.

18 A And in my grandma's room, too.

19 Q Was that Ray's room, too?

20 A Yes, sir.

21 Q So they had it in their bedroom but you didn't have it in
22 yours?

23 A Yes, sir.

24 Q And it was in the main room?

25 A Yes, sir.

1 Q Okay. What else did Ray have in y'all's rooms? You told
2 us about it earlier right when you started. Do you remember?

3 A The buckets.

4 Q Yeah. Can you tell me about those?

5 A They were in the room so we could use the bathroom
6 because we couldn't get out to use the bathroom across from my
7 bedroom.

8 Q It was right across from your bedroom?

9 A Yes, sir.

10 Q And you weren't allowed to use that?

11 A Yes, sir.

12 Q Why is that?

13 A He didn't want us out of the room.

14 Q But you could get out with a piece of paper; right?

15 A Yes, sir.

16 Q But you didn't do that to go to the bathroom?

17 A I didn't want to -- like, he -- I didn't want him to
18 catch me or do anything bad.

19 Q Because you thought you'd get in trouble with him?

20 A Yes, sir.

21 Q Okay. So when would you use the bathroom in the bucket?

22 A When he's, like, in the living room or in the kitchen,
23 somewhere nearby.

24 Q And when you had to be in your room?

25 A Yes, sir.

1 Q How did that make you feel?

2 A It's -- the bucket stunk and we had -- we had to wait
3 until five days to dump it out.

4 Q Five days?

5 A Yes, sir.

6 Q That long? Really?

7 A Yes, sir.

8 Q Are you sure?

9 A Yes, sir.

10 Q What would happen when your grandma got home?

11 A She'd let us out to sometimes dump it or sometimes just
12 gives us snacks to eat until, like, a meal.

13 Q Okay. Did she ever dump out the buckets?

14 A Sometimes.

15 Q Sometimes.

16 So sometimes it might have been not five days but
17 sometimes it was?

18 A Yes, sir.

19 Q Minor 2 do you remember what you told me on Thursday?

20 A No, sir.

21 THE COURT: Ask a question, Counsel.

22 MR. EVANS: Yes, sir.

23 BY MR. EVANS:

24 Q Minor 2 do you remember talking to me about the scratch
25 on your stomach on Thursday?

1 A Oh, yes, sir.

2 Q What did you tell me about it?

3 A That me and my brother were playing pirates outside.

4 Q That wasn't what you always said about this scratch,
5 though; right?

6 A Yes. It was -- I kind of didn't want my brother to get
7 in trouble, so I kind of blamed it on Ray.

8 Q You lied about Ray that time?

9 A Yes, sir. That's the only time.

10 Q Well, I shouldn't say time, because you told a lot of
11 people about it; right?

12 A Yes, sir.

13 Q That's the only thing you lied about --

14 A Yes, sir.

15 Q -- what Ray did?

16 A Yes, sir.

17 Q Okay. Do you understand why that was wrong?

18 A Yes, sir.

19 Q Are you telling us the truth about things you're talking
20 about today, though?

21 A Yes, sir.

22 Q Okay. Minor 2, do you remember when DSS came last
23 summer?

24 A Not really because it was a couple -- it was in the
25 summertime.

1 Q Okay. Did they take y'all away?

2 A Yes, sir.

3 Q Do you remember what happened before that, what you
4 showed them?

5 A Yes, sir.

6 Q What did you show DSS?

7 A I showed them what -- what happened about when we were
8 locked in the room and what we had to use for our bathroom and
9 where the latch was on the door.

10 Q Did you tell them the truth, other than about your
11 stomach?

12 A Yes, sir.

13 Q Okay.

14 MR. EVANS: Beg the Court's indulgence.

15 (Pause in the proceedings.)

16 BY MR. EVANS:

17 Q Were the locks on the door when DSS came?

18 A No, sir.

19 Q Why?

20 A Ray took them off.

21 Q When did he take them off?

22 A When the DSS woman left.

23 Q So she came twice?

24 A Yes, sir.

25 Q So you remember a little bit; right?

1 A Yes, sir.

2 Q Okay. What happened when she came the first time; do you
3 remember that?

4 A Ray wouldn't let her in.

5 Q And she left?

6 A Yes, sir.

7 Q What happened after that?

8 A She came back with the police officer.

9 Q Do you remember what Ray did in between the two times?

10 A He had to take the buckets out and take the latches off
11 the door.

12 Q Okay. And did you show her when she came back what he
13 did?

14 A Yes, sir.

15 Q Is that when you guys were taken out?

16 A Yes, sir.

17 Q Have you seen Ray again before today?

18 A No, sir.

19 Q Is Ray in the courtroom today?

20 A I don't know.

21 Q Can you look around and tell us? You can stand up if you
22 need to see everybody.

23 A I don't see him.

24 Q You don't see him? How about the gentleman next to
25 the -- at that table over there?

1 A Now I do.

2 Q Now you do?

3 A Mm-hmm.

4 Q What's Ray wearing?

5 A A gray shirt.

6 Q Okay.

7 MR. EVANS: Beg the Court's indulgence.

8 (Pause in the proceedings.)

9 MR. EVANS: Those are all the questions I have for
10 Minor 2 at this time, Your Honor.

11 minor 2 , Mr. Mathews has a chance to ask you some
12 questions now. I want you to tell him the truth. Okay?

13 THE WITNESS: Yes, sir.

14 MR. EVANS: Even if it's hard. All right?

15 Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. MATHEWS:

18 Q All right. Minor 2 , you remember talking to Ms. Gunn in
19 Charleston, kind of a big lady with blonde hair?

20 A No, sir.

21 Q You don't remember that?

22 A I don't remember.

23 Q Okay. When you got in trouble -- when Minor 1 got in
24 trouble, he got sent to his room; right?

25 A Yes, sir.

1 Q And when you got in trouble, you got sent to your room;
2 isn't that right?

3 A Yes, sir.

4 Q All right.

5 MR. MATHEWS: May I approach, Your Honor?

6 THE COURT: You may.

7 (Defendant's Exhibit Nos. 1 and 2 were marked for
8 identification.)

9 BY MR. MATHEWS:

10 Q All right. ^{Minor 2}, I'm handing you two pictures marked
11 Defendant's Exhibit 1 and 2, a couple of pictures. Take
12 those.

13 Tell me what those pictures are. Tell me what No. 1 is.
14 Do you recognize that as the couch where -- one is the couch
15 you sat on and one is the couch that Ray slept on?

16 MR. EVANS: I'm going to object.

17 MR. MATHEWS: To leading?

18 THE COURT: Counsel, it's cross-examination. Is that the
19 basis of your objection?

20 MR. EVANS: Yes. I'd like to have --

21 THE COURT: He's got to ask a question. Mr. Mathews, you
22 can't just make a statement. But I'll allow you to lead, just
23 as I have allowed the Solicitor to lead in direct because of
24 the age of the witness.

25 MR. MATHEWS: Thank you, Your Honor.

1 BY MR. MATHEWS:

2 Q Minor 2 take a look at the -- hold up the one that says
3 No. 1 on it. All right. Point so I can see it. All right.
4 What is that?

5 A The couch that Ray sleeps on.

6 Q Okay. And then hold up the other picture.

7 A (Witness complies.)

8 Q Okay. What is that?

9 A That's the couch me and my brother sits on.

10 Q Okay. When you're watching TV and stuff?

11 A Yes, sir.

12 Q All right. And you have told the people at DSS that Ray
13 picked that couch up over his head and threw it outside and
14 broke it, didn't you?

15 A No, sir.

16 Q You didn't say that? Okay.

17 When you were living with your grandmama, you were going
18 to Colleton County Middle School at one point; is that right?

19 A Yes, sir.

20 Q All right. You got suspended from there for trying to
21 steal your teacher's laptop, didn't you?

22 A Yes, sir.

23 Q Okay. And, in fact, you still, with your foster mom that
24 you're living with right now, you lie to her sometimes, don't
25 you?

1 A Yes, sir.

2 Q And you steal from her, don't you?

3 A Yes, sir.

4 Q Okay.

5 MR. MATHEWS: Nothing further.

6 THE COURT: Mr. Mathews, as to the photographs?

7 MR. MATHEWS: I'll let the Solicitor decide whether to
8 introduce those. They're there and I have got more if he
9 wants them.

10 THE COURT: So you do not intend to introduce them at
11 this time?

12 MR. MATHEWS: No, sir.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MR. EVANS:

16 Q Minor 2, when you lie to other people, do you take an
17 oath?

18 A Yes, sir.

19 Q You put your hand on the Bible every day --

20 A Oh, no.

21 Q -- and promise to tell the truth, the whole truth, and
22 nothing but the truth so help you God?

23 A My bad. No, sir.

24 Q Is today more serious than most days?

25 A Yes, sir.

1 Q So you understand why it's important to tell the truth
2 today more than every day?

3 A Yes, sir.

4 MR. EVANS: That's all, Your Honor.

5 MR. MATHEWS: One recross, Your Honor, limited.

6 THE COURT: Limited to redirect.

7 RECROSS-EXAMINATION

8 BY MR. MATHEWS:

9 Q Can you think of anything more serious than telling
10 somebody that somebody stabbed you? That's serious too,
11 right?

12 A Yes, sir.

13 Q And you said that Ray stabbed you with a knife, and that
14 was not true; isn't that right?

15 A Yes, sir.

16 Q And you were saying that and saying that, and finally,
17 you told the truth, like the other day, that it didn't happen;
18 right?

19 A Yes, sir.

20 Q That your brother did that when y'all were playing
21 outside; right?

22 A Yes, sir.

23 Q So you got to play outside and you got hurt outside and
24 you --

25 THE COURT: Counsel, you're on recross, limited to

1 redirect.

2 MR. MATHEWS: I don't have anything further, Your Honor.

3 THE COURT: As to this witness --

4 MR. EVANS: I ask that he be allowed to step down, remain
5 with us if he wishes.

6 THE COURT: You may step down, ^{Minor 2} Watch the
7 stairs, now. Step down my stairs for me. You can have a seat
8 out in the courtroom by your brother.

9 THE WITNESS: Thank you, sir.

10 THE COURT: Call your next witness.

11 MR. EVANS: The State calls Tiffany Fargnoli.

12 THE CLERK: Please come forward and be sworn.

13 THE COURT: Come around to be sworn by my clerk, please.

14 TIFFANY FARGNOLI,

15 the witness, after having been duly sworn, was examined and
16 testified to as follows:

17 THE CLERK: Have a seat in the witness stand and state
18 your full name for the record.

19 THE COURT: Watch your step on my stairs. Have a seat.
20 Pull that chair up, make it comfortable for you, and adjust
21 that microphone, which is going to amplify your voice. You
22 can come up to it.

23 And I want you to speak up so everybody on my jury can
24 hear you. Would you begin by stating your full name and
25 spelling your last name for the court reporter.

1 THE WITNESS: It's Tiffany Fargnoli.

2 THE COURT: No, you have got to get that microphone --

3 THE WITNESS: Tiffany Fargnoli. F as in "Frank,"
4 a-r-g-n-o-l-i.

5 THE COURT: And speak up for me, please, Ms. Fargnoli,
6 okay?

7 THE WITNESS: Yes, sir.

8 THE COURT: Your witness, Counsel. Direct examination.

9 MR. EVANS: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. EVANS:

12 Q So it is "Farg-no-li"? The "G" is not silent?

13 A Correct.

14 Q Okay. I was worried about that.

15 Where do you work?

16 A Colleton Medical Center.

17 Q And for how long have you been there?

18 A For about three months.

19 Q What's your position there?

20 A I'm a social worker.

21 Q And is that what you have done for a while now?

22 A Just for three months.

23 Q Okay. What did you do before that?

24 A I worked at the Colleton County Sheriff's Office.

25 Q And before that?

1 A Colleton County Department of Social Services.

2 Q All right. Were you working at DSS on June 21st of last
3 year?

4 A I was.

5 Q Did you meet a gentleman by the name of Ray Bailey that
6 day?

7 A I did.

8 Q Is he in the courtroom today?

9 A Yes, Your Honor -- I mean, yes, sir. I'm sorry.

10 Q No, please don't call me that.

11 He is in the courtroom?

12 A Yes.

13 Q Okay. And can you tell us something he's wearing?

14 A He is wearing a gray shirt.

15 Q All right. How did you meet him?

16 A I met him when I knocked on his front door.

17 Q And why were you there?

18 A DSS received a report of alleged abuse and neglect, and
19 so I was there as the DSS investigator.

20 Q What are your duties or were your duties as an
21 investigator for DSS when you worked there?

22 A To investigate child abuse and neglect and adult abuse
23 and neglect.

24 Q How long did you work for them?

25 A I worked for Colleton County since 2014, and I worked in

1 Orangeburg DSS prior.

2 Q For how long with Orangeburg?

3 A For a year.

4 Q So --

5 A Since 2013, I have --

6 Q 2013 to --

7 A -- was involved with DSS.

8 Q -- to late last year?

9 A Yes.

10 Q All right. And how would you investigate these things?
11 Tell us about what you would look for and how you'd go about
12 that.

13 A I would usually talk to the children prior to talking to
14 anybody else, and I would go to the home, view the home, then
15 talk with the parents as well.

16 Q Okay. And based on what you found -- not talking about
17 this case, just about your -- well, what would you do
18 depending on what you found?

19 A It would depend on the circumstances. You look for the
20 risk of harm to the child to determine if it's safe for the
21 child to continue to stay in its environment or not. You look
22 to make sure the child is not being injured, neglected. And
23 then, if so, then I would contact law enforcement.

24 Q I see.

25 What happened when you met Mr. Bailey?

1 **A** At first, I went to the home, knocked on the door, and he
2 came outside. And I explained to him who I was, told him the
3 allegations of what was reported to DSS. He told me to come
4 back later. He told me that the children were inside and then
5 he shut the door on my face.

6 **Q** Just like that?

7 **A** That is correct.

8 **Q** Okay. What did you do then?

9 **A** Then I got back into my vehicle and rode down the street
10 and I called my supervisor and law enforcement.

11 **Q** And why did you call law enforcement?

12 **A** Because if the child -- if the children are presently
13 home or you have reason to believe they are home, by law, we
14 have the right to be there and to investigate at that point.
15 And usually, if law enforcement comes with us, it usually
16 forces the parents to cooperate with DSS.

17 **Q** Is it your understanding that Mr. Bailey was their
18 parent?

19 **A** No. He was the grandmother
20 who-had-custody-of-the-children's paramour.

21 **Q** Okay. And what is a paramour?

22 **A** A paramour is a boyfriend/girlfriend, significant other.

23 **Q** Okay. So that's just the term they all use in --

24 **A** Correct.

25 **Q** -- paperwork and stuff. So he was her boyfriend. And

1 you knew that before you got there?

2 A I knew that there was a relationship, and I confirmed it
3 once I did talk to the children and to the defendant.

4 Q So when did you have a chance to talk to the children?

5 A So law enforcement then came and met me on the side of
6 the road and we went to the house together. And at that time,
7 Ernest came back outside, and he agreed to allow me to go
8 inside and speak with the children.

9 Q That time, he agreed?

10 A Yes.

11 Q And did you talk to the children?

12 A I did.

13 Q Are the children in the courtroom today?

14 A They are.

15 Q Okay. So what did you find when you met with the two
16 boys?

17 A Going into the home, I found the children were in their
18 rooms. The children explained to me what was going on. I saw
19 holes in the door frames and in the door where there was locks
20 on their doors.

21 Q And how did you know there were locks?

22 A The children told me that -- between the 15 minutes
23 between when I first knocked on the door and when I came back
24 with law enforcement, that he had taken the locks off.

25 Q Did you see any doors that did have locks?

1 A I did.

2 Q Okay. And what did that look like?

3 A It was a -- one of the hook locks that you're able to
4 open by lifting it up.

5 Q I see. What else did you observe?

6 A I observed there to be locks on the refrigerators,
7 freezers, cabinets. I observed buckets outside that had fresh
8 water in them. I observed there to be an AC unit in the
9 living room and in the parents' bedroom. I observed soft
10 spots in the floors.

11 Q What do you mean by "soft spots in the floors"?

12 A You'll walk and it sinks in a little bit, the floors do.
13 Usually from, like, damage to the floors.

14 Q Was this a house, a trailer, or what?

15 A It was a house from -- yeah.

16 Q It's a full, permanent installed house?

17 A From my understanding, yes.

18 Q But you could feel yourself sink on the soft spots?

19 A Yeah. And you would -- I mean, usually if I feel that,
20 because I'll step a little bit before, and then I'll walk
21 around it just for my safety.

22 Q Was that a concern to you?

23 A Yeah, because it was right in the door of the -- one of
24 the children's bedrooms.

25 Q Why was it a concern? I mean, I understand where it was.

1 A If -- if the house has -- if you can see underneath the
2 house, you could fall through if it's not a slab house.

3 Q And this was not?

4 A No.

5 Q This was elevated up above?

6 A Correct, from my understanding.

7 Q And you were concerned that somebody could fall through
8 there?

9 A Correct.

10 Q What did you learn about the buckets, if anything, with
11 the fresh water in them?

12 A I learned that the children were urinating and defecating
13 in the buckets because the buckets were placed in their
14 bedrooms. And due to the children being locked into their
15 bedrooms, they weren't able to get to a restroom, and the
16 buckets were their restroom.

17 Q Was that a concern to you?

18 A Absolutely.

19 Q Tell us why.

20 A A child -- not only were they defecating and urinating in
21 buckets, but they couldn't even get toilet paper to wipe or
22 clean themselves. To me, that's very concerning because of
23 the -- the -- just the illnesses you can get from that, the
24 uncleanliness, the risk of infection, the risk of getting E.
25 coli and things of that nature.

1 Q I see.

2 Any other concerns that were brought to your attention
3 that day?

4 A Yeah, the children weren't bathing. They were having to
5 use a rag to bathe with. They had not taken a bath for over a
6 month, since -- they explained to me, since school has been
7 out, we have not taken baths. And you could smell the odor
8 from that -- from them not being able to bathe.

9 Q You smelled that yourself?

10 A I did.

11 Q Any other odors?

12 A Just -- just odor of -- when a house is hot, where
13 there's not circulation, you smell musk and you smell just
14 odor. Even when I left with the children, you could still
15 smell the odor on them because it was their body odor.

16 Q And so they got clean, I guess?

17 A Correct.

18 Q Tell us some more about the lack of circulation.

19 A So they were being locked into their bedrooms. The only
20 kind of AC that they had in the house was in the living room,
21 through a window unit, and in the parents' bedrooms. The
22 children couldn't open their windows. So we're talking about
23 June. It's pretty hot in June.

24 Q Do you remember -- obviously we all know --

25 A When I was in there --

1 Q -- that particular day?

2 A When I was in there, I was sweating because it was so
3 hot.

4 Q How long were you in there for?

5 A For about an hour or give or take more.

6 Q And could you feel that lack of circulation yourself?

7 A Yes.

8 Q Through the whole house?

9 A Mainly in the children's bedrooms, because once you
10 walked out, you got the -- the air from the living room and
11 then the kitchen was being circulated through the air from the
12 living room.

13 MR. EVANS: Beg the Court's indulgence.

14 (Pause in the proceedings.)

15 MR. EVANS: May I approach the witness, Your Honor?

16 THE COURT: You may.

17 BY MR. EVANS:

18 Q Ms. Fagnoli, I'm going to hand you --

19 THE COURT: Have they been premarked?

20 MR. EVANS: They have, Your Honor. I'll call them out.

21 THE COURT: Proceed.

22 (State's Exhibit Nos. 2, 3, 4, 6, 7, 8, 9, and 12 were
23 premarked for identification.)

24 BY MR. EVANS:

25 Q I'm going to hand you a series of pieces of paper marked

1 State's Exhibits 2, 3, 4, 6, 7, 8, and 9, and I would ask you
2 to tell us what those are. And refer to each one of them
3 individually for the court reporter, if you please.

4 A Exhibit 2 is a picture of the parents' bedroom, and it
5 shows the AC window unit.

6 Q And did you take that picture?

7 A I did.

8 Q Did you take all these pictures that are in your hands
9 right now?

10 A I did.

11 Q Do they fairly and accurately depict the things that you
12 observed in the home on June 21st last year?

13 A That is correct.

14 Q All right. Please keep going in identifying them.

15 A Okay. The third exhibit is a picture of one of the
16 children's bedrooms. It shows a bed, a pair of shoes, and the
17 fan. The child explained to me that this fan is in his room;
18 however, if he turns the fan on, he was threatened by --

19 MR. MATHEWS: Your Honor, I'm going to object to the
20 hearsay.

21 THE COURT: Sustained. Don't refer to what someone else
22 said, just what you observed with your own senses.

23 THE WITNESS: Okay.

24 THE COURT: Proceed, Counsel.

25 BY MR. EVANS:

1 Q And keep going, if you would.

2 A The fourth picture is a picture of the holes in the door.
3 It also shows a crack at the top of the door where the
4 children were being fed through the crack of the door.

5 Q I see.

6 A The sixth picture is a picture of the refrigerator with a
7 lock on it, which is unlocked, actually, but it shows the lock
8 with the padlock on it.

9 Q All right.

10 A The seventh picture is a picture of the refrigerator
11 opened with plenty of food.

12 The eighth picture is a picture of a door lock that is
13 still attached to the door.

14 Q And what door was that, if you recall?

15 A That is a restroom door. And --

16 Q So that was --

17 A I'm sorry.

18 Q Was it your understanding that was the same sort of lock?

19 A Yes. The identical lock to exactly what would be locked
20 on the children's bedrooms.

21 Q Okay. I'm sorry. I interrupted you.

22 A And the last picture, which is the ninth picture, is a
23 picture of a freezer with a lock on it, still locked.

24 MR. EVANS: Your Honor, the State would move these
25 exhibits into evidence at this time.

1 THE COURT: Mr. Mathews, as to State's Exhibits 2, 3, 4,
2 6, 7, 8, and 9?

3 MR. MATHEWS: No objection.

4 THE COURT: Ladies and gentlemen of the jury, State's
5 Exhibits 2, 3, 4, 6, 7, 8, and 9 will be admitted into
6 evidence in the trial of this case without objection.

7 You may now publish to the jury.

8 MR. EVANS: Thank you, Your Honor.

9 (State's Exhibit Nos. 2, 3, 4, 6, 7, 8, and 9 was
10 received into evidence.)

11 THE COURT: All right, Counsel.

12 BY MR. EVANS:

13 Q Ms. Fagnoli, you testified a minute ago about a window
14 being secure. Can you tell us a little bit more about that,
15 what you saw?

16 A The windows are not --

17 THE COURT: Speak into the microphone.

18 A The windows are not able to open. They were shut. One
19 of the windows had plywood.

20 MR. EVANS: May I approach, Your Honor?

21 THE COURT: You may.

22 BY MR. EVANS:

23 Q Ms. Fagnoli, I've got one more document to show you.
24 Please, if you could, tell us what that is.

25 A This is pictures of a picture of the buckets that the

1 children were defecating and urinating in.

2 Q Did you take that picture?

3 A I was present when this picture was taken.

4 Q By law enforcement?

5 A Correct.

6 Q Does it fairly and accurately depict the way the buckets
7 looked when you were there?

8 A That is correct.

9 MR. EVANS: Your Honor, the State would move --

10 THE COURT: What exhibit number?

11 THE WITNESS: 12.

12 MR. EVANS: 12, Your Honor.

13 THE COURT: As to State's 12, Mr. Mathews?

14 MR. MATHEWS: No objection.

15 THE COURT: Ladies and gentlemen of the jury, State's
16 Exhibit No. 12 will be admitted into evidence in the trial of
17 this case without objection.

18 You may publish to the jury.

19 MR. EVANS: Thank you, Your Honor.

20 (State's Exhibit No. 12 was received into evidence.)

21 BY MR. EVANS:

22 Q Ms. Fagnoli, after you had spoken to the children at the
23 house and observed what you were there to see and taken
24 pictures and things, what did you do?

25 A I -- at that time, law enforcement took the children into

1 protective custody, and then I left with the children and took
2 them straight to a doctor.

3 Q Any further information after June 21st with the children
4 or on this case?

5 A At that time, I would have just had done court
6 proceedings after.

7 Q Okay.

8 A And a foster care worker would have handled with the
9 children after that.

10 MR. EVANS: Those are all the questions I have for
11 Ms. Fargnoli, Your Honor.

12 Please answer any questions Mr. Mathews may have.

13 THE COURT: Just put the photographs on the railing.
14 They'll go back to the Court. You'll have them in the jury
15 room. They're in evidence.

16 Cross-examination?

17 MR. MATHEWS: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. MATHEWS:

20 Q Ms. Fargnoli, you said that you had to take the police
21 with you, right --

22 A That is correct.

23 Q -- to work your way in.

24 Wow, that must have been something. You saw the children
25 defecate in the bucket?

1 A I'm sorry?

2 Q You said that the buckets -- that these were the buckets
3 that the children urinated and defecating in; right?

4 A Correct.

5 Q So you saw them do that?

6 A I did not see them do that.

7 Q Okay. That's what they told you?

8 A Correct.

9 Q All right.

10 Did anybody else tell you that they were defecating in
11 buckets?

12 A The defendant did, as well as the --

13 Q Okay.

14 A -- grandmother, who had custody.

15 Q The grandmother said that?

16 A As well, yes.

17 Q Okay. And tell me what your inventory of the
18 refrigerator was.

19 A I didn't take inventory. I took a picture of the food
20 that was in the refrigerator.

21 Q All right. Did you take a picture of the food that was
22 in the cabinets?

23 A I -- not that I recall.

24 Q Did you take an inventory of anything -- obviously, there
25 was plenty of food. You said that; right?

1 A Correct.

2 Q Right. And you said you talked to the doctor after you
3 took the children into custody; right?

4 A Right, because you can't --

5 Q I didn't ask why?

6 THE COURT: Hold on. Just let her answer the question
7 and then you ask. Don't interrupt.

8 Finish your answer.

9 THE WITNESS: I wouldn't be able to take children to a
10 doctor without them being in custody.

11 BY MR. MATHEWS:

12 Q Okay. Would you be able to check their records?

13 A Not without them being into custody.

14 Q You couldn't get consent from the mother and the
15 grandmother to look at the medical records?

16 A Not at that time, unless the children were in imminent
17 danger.

18 Q Imminent danger of -- was there, like, guns and stuff in
19 there?

20 A Severe neglect.

21 Q Severe neglect?

22 A That is correct.

23 Q Okay. Malnourished?

24 A I'm not a doctor.

25 Q You're not.

1 Not hydrated?

2 A The children haven't had any drink that morning.

3 Q That's what they told you?

4 A Correct.

5 Q But you don't know that. You only know what they told
6 you?

7 A Right, because I was not there 24/7.

8 Q Now, you said that the picture that you said of the door
9 hinge, the latch on there, that was on the bathroom; right?

10 A Correct.

11 Q It's your contention that they shouldn't have a latch on
12 the bathroom?

13 A It's choice of the homeowners.

14 Q The choice of the homeowner. Okay.

15 So you don't think that it's a bad thing to lock the
16 bathroom?

17 A If everybody can get access to a bathroom, I don't -- I
18 mean, it's preference.

19 Q Was the latch on the outside of the bathroom or the
20 inside of the bathroom?

21 A It would be on the outside.

22 Q The outside of the bathroom?

23 A Mm-hmm.

24 Q So that you can lock somebody in the bathroom?

25 A Correct.

1 Q Okay. I have heard nothing about anybody being locked in
2 a bathroom. And if they were, they would have access to a
3 bathroom. But your contention is that they were locked in the
4 bathroom even though nobody has ever told you this?

5 A Never said they were locked in the bathroom.

6 Q Okay. But you're up here saying that the latch was on
7 the outside?

8 A Correct.

9 Q Okay. Is that because there weren't any handles to keep
10 the door shut?

11 A I know there was a door. There was a doorknob.

12 Q Okay. Were there doorknobs on the children's bedrooms?

13 A There was.

14 THE COURT: Premarked.

15 MR. MATHEWS: May I approach?

16 (Defendant's Exhibit Nos. 3 and 4 was premarked for
17 identification.)

18 BY MR. MATHEWS:

19 Q Ms. Fargnoli, I'm handing you what have been marked as
20 Defendant's Exhibits 3 and 4 and ask if you are able to
21 identify those.

22 A Okay. Yeah, it's pictures of doors in the home.

23 Q Right. The door to the left, as you look -- show me
24 which one you're looking at, and tell me the number.

25 A I'm looking at both of them.

1 Q All right.

2 THE COURT: Refer to the exhibit number on the back.

3 THE WITNESS: Three.

4 BY MR. MATHEWS:

5 Q Okay. And that shows one door or two?

6 A Three shows two doors.

7 Q Okay. One door has a latch -- a knob on it; right?

8 A Mm-hmm.

9 Q That would be the front --

10 THE COURT: You can't say "uh-huh." You have got to give
11 a yes or no for the court reporter.

12 THE WITNESS: I'm sorry. Yes, yes.

13 BY MR. MATHEWS:

14 Q That would be the front door; right?

15 A Yes, uh-huh.

16 Q The door next to that, that's ^{Minor 1's} --

17 THE COURT: No "uh-huhs." Yes and no.

18 THE WITNESS: I'm sorry.

19 BY MR. MATHEWS:

20 Q The door next to that, that's ^{Minor 1's} door; right?

21 A It's one of the boys' bedrooms.

22 Q Does it have a doorknob?

23 A Not that I know.

24 Q Okay. So would you like to amend your answer?

25 A Apparently there was not doorknobs.

1 Q Okay. You didn't take pictures of that, though; right?

2 A Not that I have in front of me.

3 Q Okay. And the picture -- and you didn't take pictures of
4 food in the cabinets; right?

5 A Not that I have in front of me. I mean, I don't have a
6 case record to refer to anymore. I no longer work at DSS.

7 Q Okay. And none has been supplied? If you want to take a
8 moment and ask Mr. Evans if there's some other photos, I'm
9 happy to take a break.

10 A I'm not privileged to that, as far as I know.

11 Q Okay. But you don't remember taking any of those
12 pictures; right?

13 A These pictures?

14 Q No, those -- Officer Blake took those?

15 THE COURT: Counsel.

16 BY MR. MATHEWS:

17 Q But --

18 THE COURT: Counsel, don't engage in a conversation. Ask
19 a question. Cross-examination. Ask questions. Don't make
20 statements.

21 MR. MATHEWS: Okay.

22 BY MR. MATHEWS:

23 Q Ms. Fargnoli, the children's doors did not have
24 doorknobs; correct?

25 A Looking at these pictures, it appears that they did not.

1 Q Okay. Did -- when you met -- saw the children, did they
2 appear upset to you?

3 A Yes.

4 Q They did?

5 MR. MATHEWS: May I approach, Your Honor?

6 THE COURT: Mark it.

7 (Defendant's Exhibit No. 5 was marked for
8 identification.)

9 BY MR. MATHEWS:

10 Q Handing you what's been marked as Defendant's Exhibit No.
11 5 and ask if you can identify that.

12 A Okay. Yeah, it's a picture --

13 Q Of you and the boys; right?

14 A Correct.

15 MR. MATHEWS: All right. I would seek to introduce those
16 three pictures into evidence at this time.

17 THE COURT: 3, 4, and 5?

18 MR. MATHEWS: Yes, sir.

19 THE COURT: As to Defendant's Nos. 3, 4, and 5?

20 MR. EVANS: No objection.

21 THE COURT: Ladies and gentlemen of the jury, Defense
22 Exhibits 3, 4, and 5 will be admitted into evidence in the
23 trial of this case without objection.

24 You may publish 3, 4, and 5 to the jury.

25 MR. MATHEWS: And, Your Honor, while we're at it, may I

1 also go ahead and publish 1 and 2?

2 THE COURT: As to Defendant's 1 and 2 -- show them to
3 counsel.

4 MR. EVANS: No objection, Your Honor.

5 THE COURT: Ladies and gentlemen of the jury, Defendant's
6 1, 2, 3, 4, and 5 will be admitted into evidence in the trial
7 of this case without objection.

8 You may publish to the jury.

9 (Defendant's Exhibit Nos. 1, 2, 3, 4, and 5 were received
10 into evidence.)

11 MR. MATHEWS: Giving them a chance to look at it, Your
12 Honor. I don't want to step on that.

13 BY MR. MATHEWS:

14 Q Ms. Fagnoli, they also had a cat, didn't they?

15 A I don't remember.

16 Q Okay. That wasn't an important thing?

17 A I -- I don't remember if they did or not.

18 Q Okay. But in any event, there was no indication that you
19 noticed any cat feces or anything like that in the place?

20 A I don't remember.

21 Q You would have noted it if there was; right?

22 A If I was there for an abuse or neglect of an animal.

23 Q Well, I mean, have you ever had a finding that if there
24 were -- if cats or dogs were pooping all over the place, you'd
25 make a note of that, wouldn't you?

1 A Correct, if it was significant.

2 Q All right. Okay. But you don't recall whether there was
3 a cat, and there was no evidence that there was any problem;
4 right?

5 A I don't remember if there was an animal or not.

6 Q Okay. All right.

7 What doctor did you take them to?

8 A Their -- from my understanding, which would have been
9 their primary care, Michael Smith.

10 Q Okay. All right. At Walterboro Family Practice?

11 A That is correct.

12 MR. MATHEWS: Nothing further, Your Honor.

13 THE COURT: Redirect?

14 MR. EVANS: No redirect, Your Honor.

15 THE COURT: As to the witness?

16 MR. EVANS: Ask that she be excused.

17 THE COURT: Any objection?

18 MR. MATHEWS: No, sir.

19 THE COURT: Ms. Fagnoli, you may step down. You're
20 excused from the trial in this case and you may leave the
21 courtroom.

22 Call your next witness.

23 MR. EVANS: May we approach, Your Honor? May we
24 approach?

25 THE COURT: Counsel approach. Sidebar.

1 THE COURT: Bring us the jury, Marcus.

2 MR. EVANS: Judge, I have some Wite-out if you'd prefer.

3 THE COURT: Pardon?

4 MR. EVANS: I have some Wite-out if you'd prefer for that
5 last section.

6 THE COURT: I'm not going to give them this. I'm going
7 to publish it in the court.

8 MR. EVANS: Thank you, Your Honor.

9 THE COURT: I'm going to strike out the last "subject to
10 retraction." Whose idea was it to write this?

11 MR. EVANS: That would be --

12 THE COURT: That would be you, Mr. Evans.

13 MR. EVANS: Yes, sir.

14 (The jury entered the courtroom at 11:52 a.m.)

15 THE COURT: Ladies and gentlemen, during our break, the
16 parties have entered into a stipulation, that would be an
17 agreement, an understanding between the parties that a fact is
18 true and, therefore, not necessary to be prove. In this case,
19 ladies and gentlemen, the State of South Carolina and the
20 defendant make the following stipulation: State's Exhibit No.
21 1, which is the body camera video of Officer Blake with the
22 Walterboro Police Department is authentic and admissible in
23 evidence in the trial of this case. I ask you to accept the
24 stipulation as having been proven as a fact in the trial of
25 this case.

1 You may proceed, Solicitor. Call your next witness.

2 MR. EVANS: Thank you, Your Honor. The State would
3 actually move State's Exhibit 1 into evidence at this time.

4 THE COURT: Mr. Mathews, as to State's 1?

5 MR. MATHEWS: No objection.

6 THE COURT: Ladies and gentlemen, State's Exhibit No. 1
7 will be admitted into evidence in the trial of this case
8 subject to the stipulation I have published. And you may now
9 publish for the jury.

10 MR. EVANS: Thank you, Your Honor.

11 THE COURT: Trisha, let's see, once he gets it up, if we
12 need to dim the lights or cut it up.

13 Is this both audio and video?

14 MR. EVANS: Yes, sir.

15 THE COURT: All right. Ladies and gentlemen, let me know
16 if you cannot see or hear by raising your hand so that I can
17 make adjustments so the jury can see and hear the exhibit.

18 (Video/State's Exhibit No. 1 was played for the jury.)

19 MR. EVANS: May I hand this --

20 THE COURT: To the reporter?

21 Without objection?

22 State's 1 is in evidence by stipulation, without
23 objection.

24 MR. EVANS: Thank you.

25 (State's Exhibit No. 1 was marked for identification and

1 received into evidence.)

2 MR. EVANS: We're ready for our next witness, Your Honor.

3 That will be Jacob O'Quinn.

4 THE COURT: Call your next witness.

5 MR. EVANS: The State calls Jacob O'Quinn.

6 JACOB O'QUINN,

7 the witness, after having been duly sworn, was examined and
8 testified to as follows:

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

11 THE COURT: Have a seat and make yourself comfortable.
12 Adjust the chair and your equipment.

13 THE WITNESS: They don't make them big enough, Judge.

14 THE COURT: State your full name and spell your last name
15 for the court reporter.

16 THE WITNESS: It could be Jacob Mark O'Quinn. Last name
17 O-'-Q-u-i-n-n.

18 THE COURT: Your witness, Counsel. Direct examination.
19 And speak up for me, please.

20 THE WITNESS: Yes, sir.

21 MR. EVANS: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. EVANS:

24 Q Mr. O'Quinn, where do you work?

25 A I work for the Walterboro Police Department.

1 Q And what is your rank there?

2 A I am a corporal.

3 Q Corporal, were you the investigator on this case last
4 summer, June of 2016?

5 A Yes, sir, I was.

6 Q How did you become involved in this case?

7 A This case was passed on through my sergeant in
8 investigations, which is Sergeant Grant, as a follow-up due to
9 the circumstances that was on-scene that day.

10 Q And how did you conduct an investigation?

11 A Initial investigation, we interviewed Loma Jones, the
12 grandmother, and then we interviewed the defendant, Ernest Ray
13 Bailey.

14 Q When did you make an arrest of Mr. Bailey?

15 A Mr. Bailey was arrested on the 24th of June.

16 Q Three days after --

17 A That is correct.

18 Q -- the police were first alerted?

19 A Yes, sir.

20 Q And what led you to that decision to arrest him?

21 A The facts based from the original report and also Officer
22 Blake, as well as the facts from Ms. Jones's interview.

23 Q I see. And did you learn anything from DSS?

24 A I did. They provided photographs. They spoke to us
25 about the allegations as well.

1 Q Did you charge Ms. Jones?

2 A She was charged.

3 Q I see. When you interviewed Mr. Bailey, tell us about
4 that.

5 A When I interviewed Mr. Bailey, of course he was read his
6 Miranda rights and he understood them and waived them to speak
7 to me. Initially, when he spoke to me, he was trying to put
8 the blame on Ms. Jones, saying that she told him to do it
9 because he had nowhere to go.

10 THE COURT: Just a moment. Counsel approach.

11 BENCH CONFERENCE

12 (A bench conference was held outside of the hearing of the
13 jury and witness.)

14 BY MR. EVANS:

15 Q Please continue.

16 A He initially put the blame on Ms. Jones, saying that he
17 had nowhere to go so he was doing as she wished. As heard
18 earlier in the video, that was not the case. He told Officer
19 Blake he had other places to go, which was determined later.

20 He did admit to me that he did allow the children to pee
21 and poop in buckets as well as he would feed them when they
22 got home and would only let them out certain amounts of time.

23 Q Was that a concern to you?

24 A It was. It was a concern to me because these children,
25 it's damaging to their mental state.

1 Q Did you expect that -- I mean, he was already under
2 arrest; is that right?

3 A That's correct.

4 Q Okay. So you expected that?

5 A For the most part, yes, I did expect him to maybe try to
6 get off.

7 Q Did you record this in any way?

8 A This was recorded, audio and video.

9 MR. EVANS: May I approach the witness, Your Honor?

10 THE COURT: You may.

11 BY MR. EVANS:

12 Q Corporal, right?

13 A Yes, sir.

14 Q I get confused.

15 Corporal, I'm handing you what's been previously marked
16 State's Exhibit No. 16. I would ask you to identify that if
17 you can.

18 A That is the interview between myself and Ernest Bailey.

19 Q And how do you know that?

20 A I initialled it and signed it.

21 MR. EVANS: All right. Your Honor, the State would move
22 Exhibit 16.

23 THE COURT: As to State's 16? Is that right?

24 MR. EVANS: Yes, sir, that's right.

25 THE COURT: As to State's 16, Mr. Mathews?

1 MR. MATHEWS: No objection, Your Honor.

2 THE COURT: Ladies and gentlemen of the jury, State's
3 Exhibit 16 will be admitted into evidence in the trial of this
4 case without objection.

5 You may publish it.

6 MR. EVANS: Thank you, Your Honor.

7 (State's Exhibit No. 16 was premarked for identification
8 and received into evidence.)

9 (Video/State's Exhibit No. 16 was played for the jury.)

10 MR. EVANS: Thank you, Your Honor. Those are all the
11 questions I have for the Corporal at this time.

12 Please answer any questions Mr. Mathews --

13 THE COURT: Hold on a second.

14 Give me the lights, please, Pat.

15 Do you need to use the exhibit for your
16 cross-examination?

17 MR. MATHEWS: No, sir.

18 THE COURT: Exhibit to the court reporter.

19 MR. EVANS: Yes, that was my next question. Thank you.

20 THE COURT: Cross-examination?

21 MR. MATHEWS: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. MATHEWS:

24 Q Good afternoon, Corporal. How are you today?

25 A Good, sir.

1 Q You have got -- obviously, you interviewed Ms. Jones as
2 well; correct?

3 A That's correct.

4 Q Obviously, it was her house?

5 A Yes, sir.

6 Q She's the only one that had a job, too; right?

7 A Yes, sir.

8 Q And she would leave and Ray would be in charge only when
9 she wasn't there?

10 A That's correct.

11 Q Babysitter?

12 A So to speak, yes.

13 Q Would Ray have been able to consent to marriage?

14 A That was under common law. They were living together.

15 Q If it was common law, if they were, but he was sleeping
16 on the couch; correct?

17 A That's -- according to Ms. Jones, yes.

18 Q Okay. All right. And you saw the slip locks -- and you
19 have been here for the testimony; right?

20 A Of course.

21 Q So you know that the kids pretty well got out when they
22 wanted to, right, by using the -- yes?

23 A Yes, sir.

24 Q All right. When you were interviewing Ms. Jones, at one
25 point, you talked to her about the locks on the refrigerator;

1 right?

2 A I did.

3 Q And you told her that you had a child that was about
4 five; right?

5 A I did.

6 Q A daughter?

7 A I did.

8 Q Just short of five at the time, and that you let her get
9 food whenever she wants; right?

10 A That is correct.

11 Q All right. And it was your belief that that ought to be
12 true for everybody?

13 A I did state that.

14 Q Okay. She could pour drinks, she could get her own food
15 and all that; right?

16 A Yes, sir.

17 Q Does she steal from you?

18 A No.

19 Q Does she lie to you?

20 A Well, she's been known to lie, yes, for a 6-year-old.

21 Q Consistently? Has she gotten in trouble at school for?

22 A Not consistently.

23 THE COURT: Woah. Let him answer before you ask another
24 question?

25 A Not consistently.

1 BY MR. MATHEWS:

2 Q No. So support -- kids lie; right?

3 A Well, she's a 6-year-old, yes, sir.

4 Q So -- but some kids lie more than others; right?

5 A From time to time.

6 Q Okay. Would you say that lying about being stabbed would
7 be a big deal?

8 A I would say that would be a big deal.

9 Q Okay. All right.

10 MR. MATHEWS: I don't have any further, Your Honor.

11 THE COURT: Redirect?

12 MR. EVANS: Briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. EVANS:

15 Q Corporal, were you aware of any monetary compensation
16 that Mr. Bailey received for looking after these children?

17 A No, I was not.

18 MR. EVANS: That's all, Your Honor.

19 THE COURT: Recross limited to redirect?

20 MR. MATHEWS: No, sir.

21 THE COURT: As to this witness, Solicitor?

22 MR. EVANS: I ask that he be excused.

23 THE COURT: Any objection, Mr. Mathews?

24 MR. MATHEWS: No.

25 THE COURT: You may step down, Mr. O'Quinn.

1 THE WITNESS: Thank you, Judge.

2 THE COURT: You are excused from the trial of this case.
3 Call your next witness.

4 MR. EVANS: The State rests, Your Honor.

5 THE COURT: Very well.

6 Are there any matters of law that I need to take up at
7 this time?

8 MR. MATHEWS: Yes, sir.

9 THE COURT: Very well.

10 Madame foreperson, ladies and gentlemen of the jury, I'm
11 going to ask you, if you would, to please step to your jury
12 room. I need to take up a matter of law. Please do not
13 discuss this case. I'll be back with you.

14 Your lunch is going to arrive shortly, so I might let you
15 go ahead and have lunch and then we'd start back, depending on
16 when your food arrives. But do not discuss the case.

17 If I have got any smokers, they have to go outside to
18 smoke. They'll take you outside but do not discuss the case.

19 Thank you. You may retire to the jury room.

20 (The jury exited the courtroom at 12:28 p.m.)

21 THE COURT: All right. First of all, let the record
22 reflect the jury is outside the presence of the courtroom.

23 The State and the defendant stipulated to the admission
24 of first State's 1, which is now into evidence. But what is
25 in evidence is a redacted portion of State's 1. It was not

1 published to the jury in its entirety. Actually, the
2 Solicitor controlled the amount of information by agreement
3 that was published to the jury in State's 1.

4 We now get to State's 16, which was offered to the
5 testimony of Officer O'Quinn with Walterboro Police
6 Department. On direct examination, the Solicitor sought to
7 introduce a statement of the defendant. I stopped the
8 Solicitor, called counsel to a sidebar conference and asked
9 counsel for the defendant whether or not he requested that the
10 Court hold an in camera hearing as to the voluntariness and
11 ultimately the admissibility of the statement. Mr. Mathews
12 informed the Court in the sidebar conference, which was not on
13 the record, that he did not desire or need a Jackson-Denno
14 hearing, that the statement was going to come into evidence.
15 He felt it was admissible and he had no objection to its
16 admissibility, and therefore, the Court did not hold an in
17 camera hearing.

18 State's Exhibit 16, which was introduced into evidence,
19 was also redacted between the parties. Both Mr. Mathews and
20 the Solicitor had discussed the portions of State's No. 16
21 which would be published to the jury, and the Solicitor, once
22 again, controlled the equipment to only publish certain
23 portions of State's Exhibit No. 16.

24 You will have to, for the record, Solicitor, provide the
25 court reporter with the numbers on both State's Exhibit 1 and

1 State's Exhibit 16 so the record will accurately show what was
2 actually published to the jury. Do you understand, Solicitor?

3 MR. EVANS: Yes, sir, Your Honor.

4 THE COURT: Mr. Mathews, have I accurately stated what
5 occurred in our sidebar conference?

6 MR. MATHEWS: You have, Your Honor.

7 THE COURT: Very well.

8 Mr. Mathews, you advised me that you had a matter of law.
9 Be happy to hear from you.

10 MOTION FOR DIRECTED VERDICT

11 MR. MATHEWS: Your Honor, the State has talked about
12 buckets and latches, but they haven't talked about anything
13 that is a risk of harm affecting a child's life, physical or
14 mental health or safety, at least there's no evidence of it.
15 There's no medical evidence of it as far as mental health. I
16 think it was maybe called a slip-up from Detective O'Quinn; he
17 had some opinion on that, I think. But there's no medical
18 opinion, and I don't think the statute -- and this is a matter
19 that we'll take up, further, Your Honor, at the time -- I
20 suppose at the time for the request to charge on what the law
21 is specifically, but I would contend that even taking the
22 language of the statute, place the child in a reasonable risk
23 of harm, affecting the child's life, physical or mental health
24 or safety, or do or cause to be done unlawfully, maliciously,
25 any bodily harm to the child, to the life or the health or the

1 child's endangered -- life would be endangered or willfully
2 abandon the child, that none of those things have been proven
3 by the State, taking the evidence in the light most favorable
4 to the State.

5 THE COURT: Solicitor?

6 MR. EVANS: Your Honor, I think that, given the statute
7 looks at risk of harm. I think that the definition is here.
8 The jury can come to their own lay opinions about what the
9 risk of harm is, what kind of harm we're looking at. And
10 furthermore, I think Ms. Fargnoli's testimony provides ample
11 evidence of the risk of harm.

12 THE COURT: Well, that was a conclusion but it was
13 unobjected to. She did testify to severe neglect. It wasn't
14 just Officer O'Quinn. Ms. Fargnoli also opined her opinion
15 without objection.

16 In subsection -- in 63 -- well, first, let me get to
17 Mr. Mathews. I understand your motions. Defendant's charge
18 under 63-5-70, which includes a -- with unlawful conduct
19 towards the child -- it includes the person who is responsible
20 for the welfare of the child. Once again, unobjected to,
21 Mr. Mathews tried to elicit and did elicit from Officer
22 O'Quinn that, because the statute excludes babysitters,
23 Mr. Mathews asked a leading question on cross-examination as
24 to whether or not the defendant was a babysitter.

25 But the evidence suggests at this stage, taken in the

1 light most favorable to -- I have to also consider whether or
2 not the person was, within a statute, a person who was
3 responsible for the welfare of the child as defined in
4 63-7-20, because that is the language of 63-5-70. 63-7-20 has
5 a lengthy definition of child abuse or neglect or harm, and it
6 includes not only involving parents or guardians but any
7 person that is responsible for a child's welfare. And the
8 definition says inflicts or allows to be inflicted upon the
9 child physical or mental injury or engages in actual
10 omissions, which present a substantial risk of physical or
11 mental injury to the child, including injury sustained as a
12 result of excessive corporal punishment but excluding corporal
13 punishment of physical discipline, which is -- and then there
14 are exceptions -- administered by a parent, perpetrated for
15 the sole purpose of restraining and correcting the child,
16 reasonable in manner and moderate in degree, has not brought
17 about permanent or lasting damage to the child, and is not
18 reckless or grossly negligent behavior by the parents.

19 Because of the language in the statute, which says --
20 which presents a substantial risk of physical or mental injury
21 to the child, your motion for directed verdict at this stage
22 is respectfully denied.

23 Mr. Mathews, I would ask for you and your client to
24 please come forward to the clerk's bench. Madame clerk, I'm
25 going to ask you to swear the defendant.

1 THE COURT: Dr. Smith, would you come around and be sworn
2 by the clerk of court, Pat Grant.

3 DR. MICHAEL SMITH

4 the witness, after having been duly sworn, was examined and
5 testified to as follows:

6 THE CLERK: Please have a seat on the witness stand and
7 state your name for the record.

8 THE COURT: Watch my stairs right there, Doc. Have a
9 seat and make yourself comfortable. Adjust the chair to your
10 comfort and the microphone to your height. State your full
11 name and spell your last name for the court reporter.

12 THE WITNESS: Michael Ralph Smith. S-m-i-t-h.

13 THE COURT: All right. Speak up for me so everybody can
14 hear you.

15 Mr. Mathews, your witness, direct examination.

16 MR. MATHEWS: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. MATHEWS:

19 Q Dr. Smith, would you please explain to the jury your
20 education and experience, what do you do for a living.

21 A I am a board-certified family physician at Walterboro
22 Family Practice.

23 Q Do you practice with Dr. Flowers and company at
24 Walterboro Family Practice?

25 A Yes, sir.

1 Q And how long have you been there?

2 A Fourteen years.

3 Q Would you please tell the jury about what you had to do
4 to get to be a doctor?

5 A I went to undergraduate. I have an undergraduate of
6 bachelors of science in neurophysiology and master's work in
7 neurobehaviorism. Completed four years at the Medical College
8 of Georgia in Augusta for my medical school. I did a
9 three-year residency in family medicine.

10 Q And have you been qualified as an expert in court before?

11 A Yes, sir.

12 MR. MATHEWS: I would tender Dr. Smith as an expert in
13 the field of medicine.

14 THE COURT: Any objection?

15 MR. EVANS: No, sir.

16 THE COURT: Ladies and gentlemen, you're about to hear
17 the testimony of a witness who claims to have special
18 knowledge, skill, experience, training, or education in the
19 field of family medicine. Normally, ladies and gentlemen, the
20 law does not permit a witness to get on the witness stand and
21 testify to opinions or conclusions. An exception to this rule
22 is for those witnesses whom we call expert witnesses who, if
23 qualified by the Court, are permitted to give an opinion as to
24 matters in which they claim to be so skilled. In determining
25 the weight to be given such opinion, you should consider the

1 qualifications and credibility or believability of the expert
2 and the reasons given for his opinion. You are not bound by
3 such expert opinion. You give it the weight, if any, to which
4 you deem it should be entitled.

5 The witness is qualified without objection. You may
6 proceed, Mr. Mathews.

7 MR. MATHEWS: Thank you, Your Honor.

8 BY MR. MATHEWS:

9 Q Dr. Smith, have, over the course of the years, ^{Minor 1}
10 and ^{Minor 2} been your clients?

11 A Yes.

12 Q Or patients.

13 And when did you first start seeing them?

14 A Roughly about 2007.

15 Q Okay. And about how frequently have you seen them over
16 the course of the last eight years or nine years?

17 A A couple of times a month maybe. A couple of times a
18 year. It depends on what they were coming in for.

19 Q Okay. Among the things that -- and when is the time you
20 most recently saw them?

21 A I believe my last visit with them was around June of
22 2016.

23 Q Around maybe June 23rd?

24 A Yes.

25 Q Okay. And at that time, how did you come to see them?

1 A They were brought in, I believe, by DSS for evaluation.

2 Q Okay. And did they claim to be an emergency?

3 A Yes, I guess.

4 Q Well, it's -- what -- what were they presented as? What
5 was the rationale?

6 A DSS had had some concerns. They had had some questions
7 about some possible physical abuse, questions about the
8 medications that they took on a regular basis, and some issues
9 related to nutritional status and so forth.

10 Q And did you examine them for their nutritional status?

11 A Yes, sir.

12 Q And what did you find?

13 A What I normally find. They're well-nourished. They're
14 thin children. They took some medications that cause them to
15 be a little bit thin, but they're -- but they stay within
16 their growth chart.

17 Q Okay. I mean, they have just always been small?

18 A Yes, sir.

19 Q And that was true, both ^{Minor 2} and ^{Minor 1}

20 A Yes, sir.

21 Q Did you find them to be well-hydrated?

22 A Yes, sir.

23 Q Had you -- what -- had a history been presented to you by
24 ^{Minor 1} of being stabbed -- or ^{Minor 2} of being stabbed with a
25 knife?

1 A minor 2 being, yes, cut across the abdomen with a knife,
2 and Minor 1 being stabbed in the leg.

3 Q And did you -- did you find, from your examination, any
4 evidence of physical abuse?

5 A I found that there was a scar across Minor 2 abdomen.
6 It was well-healed. And then there was a small open wound on
7 the tibia of Minor 1

8 Q All right. You say that you had seen them also for ADHD?

9 A Yes.

10 Q And when did you diagnose them with that?

11 A I believe minor 2 was around 2011 and then Minor 1 was
12 around 2013, give or take.

13 Q What did you -- what documents or what did you rely on in
14 order to come to that conclusion?

15 A Initially, they had been referred by their teachers for
16 disruptive behavior, as well as some lack of focus. So we did
17 something that's called Vanderbilt scoring, which is a score
18 sheet that you send home. The teachers and teachers' aides
19 fill out -- it's a questionnaire. And the caregivers also
20 fill it out, and then you make some comparisons between the
21 two and make a determination if they suffer from what appears
22 to be ADHD.

23 Q Okay. What were some of the symptoms that you found
24 relevant?

25 A It asked very specific questions about sitting in their

1 seats, focusing, paying attention, wandering, daydreaming,
2 those kinds of issues.

3 Q Do you have those Vanderbilt --

4 A I do.

5 Q All right. What is the standard at No. 25 in that list?

6 A 25 -- now, are you talking about the teacher inquiry or
7 the --

8 Q The teacher inquiry. You're looking at Mr. Evans.

9 A Yep. No. 25: Lies to obtain goods for favors or to
10 avoid obligations.

11 Q And cons others?

12 A Sure.

13 Q Okay. And how many forms did you get on -- this is ^{Minor 1}
14 or ^{Minor 2} you're talking about?

15 A I'm looking at ^{Minor 2} currently.

16 Q All right. How many evaluations were done at the school?

17 A I believe I have two from the school and then one from
18 his caregiver.

19 Q Okay. All right.

20 And how about for ^{Minor 1}

21 A For ^{Minor 1} I have -- I believe three from the school and
22 one from the caregiver.

23 Q Okay. And what is Item No. 27?

24 A Item No. 27 is "has stolen items of nontrivial value."

25 Q Okay. And was it found to be a significant factor, 25

1 and 27, for Minor 1

2 A Significant in what regard?

3 Q In other words, there are a range of, I guess, never,
4 occasionally, often, and very often for those; is that
5 correct?

6 A Correct. I see your point. Yes, they had rated them as
7 higher on the scale, I think two and three.

8 Q All right. So for example, for No. 25 for Ms. Evans,
9 what evidence was presented to you?

10 A For Ms. Evans on the -- No. 15, she ranked it a two, and
11 on 27, a three.

12 Q Okay. And what is that -- 25 again is "lies to obtain
13 goods or favors or to avoid obligations; in other words, cons
14 others," and that was an "often" response?

15 A That was often, correct.

16 Q And for "has stolen items of nontrivial value," what was
17 the rank between --

18 A That was three.

19 Q And that would be very often?

20 A Very often.

21 Q Okay. All right. And those are some of the factors that
22 you used in concluding that he needs to be on medication?

23 A Yes.

24 Q Okay. All right. During the, I guess, ten years or so
25 or nine and a half years that you saw them, did their -- they

1 might lose a pound or gain a pound but they basically stayed
2 on track?

3 A Correct. They were in the 5th to 10th percentile for
4 weight, but they kind of tracked on that their whole time.

5 Q Okay. And the last time you saw them, June 23rd of 2016,
6 it was about -- would you say it was radically different or
7 about the same or how --

8 A Yeah, about the same.

9 Q About the -- okay. All right.

10 MR. MATHEWS: I don't have anything further.

11 THE COURT: Cross-examination?

12 MR. EVANS: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. EVANS:

15 Q Dr. Smith, you saw ^{Minor 1} and ^{minor 2} on June the 23rd
16 last year?

17 A 23st -- 21st. I think it was the 23rd.

18 Q Okay. What you just testified to, Mr. Mathews asked, was
19 the 25th, that's why I asked.

20 A Sure.

21 Q And you said they were hydrated on that day?

22 A Correct.

23 Q You can't testify to their hydration two days earlier?

24 A No, correct.

25 Q You did not observe them two days prior to that?

1 A Correct.

2 Q You don't make house visits, do you?

3 A Yes.

4 Q Did you make a house visit to them?

5 A No.

6 Q You saw them at your office?

7 A Yes.

8 Q You did not observe their living conditions with your own
9 eyes?

10 A Correct.

11 Q You saw a small open wound on ^{Minor 1}

12 A Yes.

13 Q Was there any problem with that wound?

14 A No.

15 Q Okay. You're a family physician?

16 A Yes.

17 Q Not a pediatrician but you see a lot of child patients?

18 A We are -- yeah, we are board-certified to treat pediatric
19 patients.

20 Q And so you give advice on counsel to families about
21 hygiene and things like that?

22 A Yes.

23 Q Young boys should bathe regularly, shouldn't they?

24 A Yes.

25 Q Everybody should clean themselves after using the

1 bathroom, shouldn't they?

2 A Yes.

3 MR. EVANS: Those are all the questions I have.

4 MR. MATHEWS: One recross, Your Honor.

5 THE COURT: Redirect.

6 MR. MATHEWS: Redirect.

7 REDIRECT EXAMINATION

8 BY MR. MATHEWS:

9 Q Dr. Smith, did anybody ask you to do any psychological
10 evaluation on the children, on their mental state?

11 A Only the ADHD evaluations.

12 Q Okay. And what would you have recommended if somebody
13 had sought that?

14 A They would be referred to a pediatric psychiatrist.

15 MR. MATHEWS: Nothing further.

16 A Or psychologist.

17 THE COURT: Recross, limited to redirect.

18 MR. EVANS: None, Your Honor.

19 THE COURT: As to this witness? As to -- I'm going to
20 ask you both, Mr. Evans: Do you have any objection?

21 MR. EVANS: No objection.

22 THE COURT: As to this witness, Mr. Mathews, may he be
23 excused?

24 MR. MATHEWS: Absolutely, Your Honor.

25 THE COURT: Dr. Smith, you may step down. Take your file

1 that I have to deal with. And I want to thank you for your
2 patience in serving on the jury.

3 We will finish this trial first thing in the morning.
4 Please be in your jury room prior to 10 a.m. Report to your
5 jury room. And please do not discuss the case overnight.
6 Thank you very much. You're now excused for the day. You may
7 leave the courtroom at this time.

8 Everyone else remain seated while the jury is leaving.

9 (The jury exited the courtroom at 2:25 p.m.)

10 THE COURT: All right. I'm going to need to see the
11 lawyers in chambers in a charge conference, since you have
12 now, for the first time since I have been on the bench,
13 actually submitted requests to charge numbered and give them
14 to each other. Anything on the record outside the presence of
15 the jury from the State before we adjourn?

16 MR. EVANS: Nothing from the State, Your Honor.

17 THE COURT: From the defendant?

18 RENEWAL OF DIRECT VERDICT MOTION

19 MR. MATHEWS: Yes, sir, Your Honor. I would renew my
20 motion for a directed verdict.

21 THE COURT: And Mr. Mathews, for the reasons I have
22 stated at the close of the State's case, I believe that the
23 evidence produces a question for the jury. Your motion for
24 directed verdict is respectfully denied.

25 However, I am going to deal with the question that you

1 have raised on your motion in the manner in which I charge the
2 jury in this case, which we will discuss in my charge
3 conference.

4 This Court stands adjourned until 10 a.m. tomorrow
5 morning.

6 (At 2:30 p.m., the above proceeding was adjourned until
7 May 24, 2017, at 10:00 a.m.)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(Whereupon, the following proceedings commenced at 10:05.)

THE COURT: Counsel, I say we go forward. Being a bit ahead of 10:30, that means we have wasted 25 minutes and we have got no air-conditioning and y'all agreed to go with whatever number necessary to complete the trial of the case. Isn't that correct, Solicitor?

MR. EVANS: Yes, sir, it is.

THE COURT: Isn't that correct, Mr. Mathews?

MR. MATHEWS: Yes, sir.

THE COURT: Bring in the jury.

(The jury entered the courtroom at 10:05 a.m.)

THE COURT: Good morning.

Good morning, ladies and gentlemen of the jury. As you know, I'm trying to start on time. Apparently we have a juror that thought that we were starting court a half hour later. Did any of you understand me to be here at 10:30?

THE JUROR: No. 10:00.

THE COURT: Everyone knew 10:00 because I was getting --

THE JUROR: 10:00.

THE COURT: Well, let me tell you a problem we have had this morning. The air-conditioning has gone out. And we have got fans on, and you can hear it. And they're working on it, but I don't know -- Pat and I can only get help for that, and

1 if anybody gets too uncomfortable, we'll try to make
2 arrangements. But right now, the temperature is survivable.
3 Believe me, I know because I'm wearing a black robe, and I can
4 assure you that that's not always the thing that you want to
5 be cool.

6 You have heard the testimony in this case. We're going
7 forward with this trial, but I told you we were going to try
8 to finish it, and I have a lot of other work to do that
9 doesn't involve you.

10 You have heard the testimony in this case. You're now
11 going to hear the closing arguments of the attorneys followed
12 by my charge on the law that applies in this case. I want you
13 to listen carefully to the attorneys in this case. We have an
14 order for them. Mr. Mathews -- excuse me, Mr. Evans is going
15 to argue first, then Mr. Mathews is going to argue. And then
16 Mr. Evans gets, because he has the burden of proof, a reply
17 argument. He cannot introduce any new matter. He can only
18 reply to what was said by counsel for the defendant.

19 Now, ladies and gentlemen, that's our rule on closing
20 arguments. And as I told you, we follow the rules in the
21 courtroom. If you need a break after the closing arguments,
22 before I start my charge -- my charge is not long, but if you
23 need a break to use the restroom, I'll be happy to give you
24 one. If it gets uncomfortable in here, I recognize that we're
25 trying to solve that problem. Please give the attorneys your

1 careful attention.

2 Solicitor?

3 MR. EVANS: Thank you, Your Honor. May it please the
4 Court?

5 THE COURT: Proceed.

6 CLOSING ARGUMENT ON BEHALF OF THE STATE

7 MR. EVANS: Mr. Mathews, ladies and gentlemen of the
8 jury. Thanks for being back here again for this day, bearing
9 through the conditions. I told you yesterday that this was an
10 important matter not just for Mr. Bailey, that you already
11 knew, but for the State of South Carolina. I asked you to
12 give the witnesses your full attention, and you did that.
13 Now, the real work begins.

14 As far as Mr. Mathews and I are done talking to you, and
15 the judge has told you what the law is, you're going to be
16 asked to go back in that jury room and tell us what the facts
17 are because the judge is the judge of the law in this case.
18 You are the judges of the facts. You are going to tell us
19 what the truth is, what happened on June 21st of last year
20 between Ray Bailey and Minor 1 and Minor 2. You're going
21 to deliver a verdict. "Verdict" is a word that comes from the
22 Latin and it means to speak the truth, literally.

23 So you're going to go back in there. You're going to
24 talk about what you have heard, what the evidence is, and
25 you're going to tell us what is the truth. We believe that

1 you're going to say that Ray Bailey is guilty.

2 The judge is going to tell you what the law is. If I
3 make a mistake, please pay attention to him more than me.
4 He's a judge for a reason. But what I believe what he's going
5 to tell you is that, in this particular charge, unlawful
6 conduct towards a child, the question that you are being asked
7 to decide today is did Ray Bailey, in Colleton County on June
8 21st, 2016 -- first, was he responsible for the children? If
9 you find that he was not responsible, in a position where he
10 was supposed to take care of them, then you don't even need to
11 move on to the second question. If you find that, you should
12 find him not guilty. But I think you're going to find that he
13 was responsible. Why do I think that? Because he said so.

14 What did he say in that body camera video? My job is to
15 look after them, or something along those lines. My job. The
16 boys said, Loma is our grandmother, she's got us, but when
17 she's gone, this man, who lives in our home, who is not
18 receiving money for his services, then he's in charge, when
19 she's at work or on an errand. He's not a babysitter. That's
20 important because a babysitter, under the law, doesn't come
21 under this statute. But he was the babysitter. He wasn't
22 being compensated. He lived in the home. He had more than
23 incidental contact with these boys.

24 So was he responsible? If you find he was, you move on
25 to the next question. The heart of the matter. Did

1 Mr. Bailey, the defendant, put those two boys at an
2 unreasonable risk of harm? That's the question. Mr. Mathews
3 wants you to focus on the fact that the boys are okay. And
4 they are. Their doctor told you that they were healthy,
5 hydrated. They may be bad kids, but healthwise, they're okay.
6 But that's not the question in this charge. The question is,
7 "Were they put at unreasonable risk of harm?", harm which
8 could have affected their life, physical or mental health or
9 safety.

10 Folks, this is why we bring y'all in, to decide this
11 case, because you have common sense. And you're not supposed
12 to check that at the door. You know that it is not reasonable
13 in Colleton County in late June to be stuck in a room with no
14 circulation, the windows nailed shut. There's a fan that was
15 on sometimes, but most of the time, you heard ^{Minor 2} say they
16 were threatened not to turn it on. No air-conditioning.

17 Meanwhile, in the other room, we saw on the body camera
18 video, what did Ray have in the room he was sitting in, the
19 living room? In that video, you can see two fans running and
20 an air conditioner.

21 You know that it is not reasonable to have to use the
22 bathroom in a bucket. On that same body camera video, you saw
23 Ray pick up a cat and talk to the officer who was there. Got
24 cats and rabbits and all kinds of animals. Mr. Mathews asked
25 Ms. Fargnoli, Did you find any cat waste? No. Cats are not

1 children. Cats use the bathroom in a box because they're
2 animals. Children are not animals in that sense.

3 You heard Ms. Fagnoli say weren't given anything to wipe
4 with after; that they weren't allowed to take a bath. She
5 could smell them the moment she walked in the house, and it
6 stuck with her when she left when she was with those boys.
7 That is an unreasonable risk of harm. They're okay, thank
8 God. That's not what you have to decide.

9 What else do we know? We know that Ray knew he did
10 wrong. He said so to Corporal O'Quinn in his interview. "I
11 know I did wrong. I should have -- as soon as I saw what was
12 happening," he said, "I should have told y'all," meaning law
13 enforcement. "I should have told you what was happening."
14 But he didn't.

15 So maybe you want to find that it was Ms. Jones's fault.
16 This is not her day in court. This is Mr. Bailey's day. If
17 he saw something that was wrong and didn't do anything about
18 it, that is wrong.

19 You are all from here. You know what it's like in the
20 summer in this county, in this town. We have got a fan on for
21 y'all here today because it's not safe. You know those boys
22 were put at risk. They're okay now. That's not the question.
23 Is that risk of harm unreasonable? That's what you have to
24 tell us today. And I'm asking you to say that it was and find
25 Ray Bailey guilty of unlawful conduct towards a child. Thank

1 you.

2 THE COURT: Mr. Mathews?

3 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

4 MR. MATHEWS: Thank you, Your Honor, Mr. Evans.

5 How are y'all doing today? You don't have
6 air-conditioning. It's not too bad in here.

7 I have the honor to represent Mr. Bailey. First, I want
8 to comment on a couple of things that Mr. Evans said. He
9 pointed out quite correctly that this is not Ms. Loma Jones's
10 day in court, and what Mr. Bailey did apologize for is what
11 she did. And we don't know about that, because it's not her
12 day. She had them since 2005. She had them for years. He
13 was around for a couple of years. He had them when they
14 weren't -- when they weren't at school and when Loma was at
15 work or running to the store, like a babysitter. Mr. Evans
16 says he's not a babysitter because he wasn't paid, but he was
17 allowed to live there and he slept on the couch. That's what
18 that he was paid, in a sense. He was paid to watch the kids
19 when Loma wasn't there.

20 Air-conditioning, no air-conditioning, let me tell you:
21 We all make our own decisions on how we raise our children.
22 When I was coming up, Mr. Evans told you about his cat. Let
23 me tell you about when I was growing up in Tampa, Florida. My
24 dad grew up in Wyoming, and they don't have air-conditioning
25 in Wyoming. They don't need it. He took that same mentality

1 to Tampa, Florida, and we didn't have air-conditioning either
2 until about the middle of June. And I got to tell you, it's
3 hot. And we had flies in the house and all that and so did
4 our neighbors. That's what people did. And you know what?
5 When I raised my three boys and my girl, I put the
6 air-conditioning on, but that was my choice. I got to decide
7 that because I'm in charge.

8 Dad paid the electric bill, and he said, if there's no
9 air-conditioning, there's no air-conditioning. He paid the
10 bills. His decision to make.

11 I'm not concerned and I don't think you ought to be
12 concerned -- I don't know that Ray's in charge of anything as
13 far as that goes, but if you find he is, there's no harm. And
14 there's no risk of reasonable harm. When you talk about the
15 latch and all that stuff -- first of all, for however long
16 they were back there, you really can't believe anything the
17 kids tell you. You can believe what you saw, but I mean,
18 they -- they lie and they steal and, you know, kids do lie.
19 As Detective O'Quinn told you, his daughter lies. Kids lie.
20 That's what they do. But they don't steal, necessarily, and
21 they don't take the food that you're going to eat for dinner
22 and don't eat all the hot dogs and do all those other things
23 that you don't got -- so you don't have anything to eat.

24 The kids were healthy. They were well-nourished, they
25 were well-hydrated. I called the doctor. The State didn't

1 call the doctor. And in terms of the risk from the bucket, in
2 terms of the risk, the only evidence that you got that there
3 was any danger was from the DSS lady. Okay? And she told you
4 she's not a doctor, but the doctor was right here, and
5 Mr. Evans didn't ask anything about that. State's got to
6 prove this. When the Government gets into your business, the
7 State's got to prove all of these elements beyond a reasonable
8 doubt. Every one. And you want to talk about is it
9 unreasonable? If he had asked the doctor -- one moment.

10 Y'all ever see one of these? Bedpan. Every hospital in
11 the country's got one. I got this yesterday at Rite Aid. It
12 cost me 16 bucks. That's peeing into a bucket. That's what
13 that is. It might be unsavory, it might not suit you, but
14 they wouldn't do it in hospitals and nursing homes and
15 everywhere else if it was unsafe. It might not suit you, but
16 that doesn't mean that it's an unreasonable risk of harm.
17 There's no evidence that any of these things were at
18 unreasonable risk of harm. Harm from what?

19 There are guidelines. Harm to safety. It's not like
20 you're leaving land mines around there or anything like that.
21 There's no evidence of that. Health, life? There's no
22 evidence of that. The kids were fine. And there isn't any
23 evidence that any of these things for however long they
24 were -- whether it was for ten minutes -- I think, at one
25 point, ^{minor 2} said it was five days they left it out there,

1 which is ridiculous, because ^{Minor 1} said it was five minutes.

2 But whenever Loma got home, if there were any from it, it
3 presumably would have been taken care of. But she's not on
4 trial. She had custody of them. She's not on trial. There's
5 no evidence to support that there was any risk of physical
6 harm, no evidence of mental harm, no evidence of safety or
7 life. None of that. Just "we don't like it." "We don't like
8 the way you're raising your kids."

9 Take a look at it, and you have got the evidence there,
10 and you can take a look at it. What were the kids' reaction
11 when DSS got there? "Come follow me." These weren't kids
12 that were abused or hurt or anything like that. They were
13 kids -- and let me tell you something. It burned me up when I
14 heard one of the reasons they got sent to the room, not that
15 they stayed in their room -- and you might have heard
16 testimony to that -- but one of the things that ^{Minor 2} says
17 is "I got sent to my room for cussing Ray out." I got to tell
18 you, I'da got a whole lot worse than that when I was coming up
19 if you cuss my dad. He got sent to his room, and he's just
20 eager to bust him out even for that.

21 "Come take a look. Here are these buckets." You see,
22 these kids are smiling, they're happy. They're walking
23 around. You saw the video. You can take a look at it if
24 you'd like. I mean, consider all the evidence. Take as long
25 or as short of time as you need. But there is no evidence of

1 harm to these children or the threat of it.

2 Look at all of it. I'm sure that the judge will let you
3 take a look at it if you ask. I don't know that you need to,
4 but if you need to, you can. Take as long as you need or as
5 short as you need. But at the end of the day, the State has
6 not proven that these kids were at risk of any harm.

7 Thank you, Your Honor.

8 THE COURT: Solicitor?

9 MR. EVANS: Thank you, Your Honor.

10 FINAL CLOSING ARGUMENT ON BEHALF OF THE STATE

11 MR. EVANS: Kids lie, kids steal, kids need discipline.
12 How do you steal food that's in your household if you're a 12-
13 or 13-year-old boy? Mr. Mathews and I were once 12- and
14 13-year-old boys. They eat. They eat more than adults can
15 comprehend. Fine, if you want to punish them, discipline
16 them. Are they so undisciplinable this is what they had to
17 do?

18 Hospitals use bedpans for people who can't get out of
19 bed. Mr. Bailey admitted that the bucket allegation is true.
20 He said it was because they steal things at night. We know
21 they can get out of the room. And they admit that. So if
22 night thievery was so rampant, the bucket didn't have anything
23 to do with it. They weren't told to use the buckets because
24 they can't use the regular bathroom.

25 Y'all know Ray knows what went on, so find him guilty.

JURY CHARGE

1
2 THE COURT: Everybody okay? Ready to go forward or do
3 y'all need a break?

4 All right. Madame foreperson, ladies and gentlemen of
5 the jury, it's now my duty to charge on the law of this case.
6 The State has charged the defendant, Ernest Bailey, with the
7 offense of unlawful conduct toward a child. It's in this
8 indictment. I read it to you at the beginning of our
9 selecting the jury. It's Indictment No. -- we number all our
10 indictments. This one -- you'll see it on your verdict
11 form -- Indictment 2016-GS -- means general sessions, or
12 criminal court -- 15 means Colleton County; each county has a
13 number -- and then it has numbers 00549.

14 I remind you, first of all, that the fact that the
15 defendant was indicted, the fact that the defendant was
16 arrested, the fact that the defendant was charged in this case
17 is not evidence in this case nor does it create a presumption
18 of guilt. The indictment, ladies and gentlemen, is simply the
19 formal written instrument by which the case is brought into
20 this court.

21 Now, to the indictment, the defendant has pled not
22 guilty, and that plea of not guilty puts the burden on the
23 State of South Carolina to prove the defendant guilty beyond a
24 reasonable doubt. A person charged with committing a criminal
25 offense in South Carolina is never required to prove himself

1 or herself innocent. I charge you, ladies and gentlemen, that
2 it is an important rule of law that the defendant, in a
3 criminal trial such as this case, will always be presumed to
4 be innocent of the crime for which this indictment was issued
5 unless guilt has been proven by evidence satisfying you of
6 that guilt beyond a reasonable doubt. This presumption of
7 innocence is not in when you begin your deliberations, but it
8 accompanies the defendant throughout the trial until you,
9 ladies and gentlemen of the jury, reach a verdict of guilt
10 based on evidence satisfying you of that guilt beyond a
11 reasonable doubt.

12 The presumption of innocence, ladies and gentlemen, is
13 not just a legal theory. It is not just a legal phrase. It
14 is a substantial right to which every defendant is entitled
15 unless you, the jury, are satisfied from the evidence of the
16 defendant's guilt beyond a reasonable doubt.

17 What is a reasonable doubt in the law? A reasonable
18 doubt, ladies and gentlemen of the jury, is the kind of doubt
19 that would cause a reasonable person to hesitate to act. The
20 State has the burden of proving the defendant guilty beyond a
21 reasonable doubt. Some of you may have served on a civil
22 jury, like a contracts case or a wreck case, where you were
23 told that it was only necessary to prove that a fact is more
24 likely true than not true. We call that burden of proof in a
25 civil case, like a wreck case or a contract case, by the

1 greater weight or preponderance of the evidence.

2 In a criminal case such as the case here, the State's
3 proof must be more than that. It must be beyond a reasonable
4 doubt. Proof beyond a reasonable doubt, ladies and gentlemen
5 of the jury, is proof that leaves you firmly convinced of the
6 defendant's guilt. Now, there are very few things in this
7 world that any of us know with absolute certainty, and in
8 criminal cases, ladies and gentlemen of the jury, I charge
9 you, the law does not require the State to have proof that
10 overcomes every possible doubt. If, based on your
11 consideration of the evidence, you, as a jury, are firmly
12 convinced that the defendant is guilty of the crime charged,
13 you must find the defendant guilty. On the other hand, if you
14 feel as a jury there's a real possibility that the defendant
15 is not guilty, you must give the defendant the benefit of the
16 doubt and find the defendant not guilty.

17 I remind you, ladies and gentlemen of the jury, that
18 during that trial, you and I have had certain duties to
19 perform. As the trial judge, it has been my responsibility to
20 preside over the trial of the case, and I also had the duty to
21 rule on the admissibility of the evidence that's been offered
22 during the trial. You are to consider only the competent
23 evidence offered during the trial. If there was any evidence
24 ordered stricken from the record in this case during this
25 trial, you must disregard that testimony. You are to consider

1 only the sworn testimony from the witness stand, any exhibits
2 which have been introduced into evidence, and any stipulations
3 of counsel that may have occurred during the trial of the
4 case.

5 As a presiding judge, I also have the additional duty to
6 charge you the law that applies to this case. I'm the sole
7 judge of the law in this case, and it is your duty as jurors
8 to accept and to apply the law as I now state it to you. If
9 any of you on this jury already have any preconceived ideas
10 about what you think the law is or what you feel the law ought
11 to be and it does not agree with what I now tell you the law
12 is, you must put aside any of your preconceived ideas or
13 opinions because each of you took an oath, and in that oath,
14 you promised that you would accept and apply the law exactly
15 as I now state it to you.

16 In every case tried in this courtroom before a jury, as I
17 told you before we started, the jury becomes the sole judge of
18 the facts in the case. A trial judge such as myself cannot
19 make any comment to you about the facts in the case or make
20 any statement to a trial jury about the facts in the case.
21 Since you, ladies and gentlemen of the jury, are the sole
22 judges of the facts in this case, you are not to infer from
23 anything that I have said during the progress of this trial,
24 in ruling upon the admissibility of evidence or anything else
25 that I might have said during the course of this instruction

1 to you, that I have any opinion whatsoever about the facts in
2 this case. The law does not allow me to have an opinion about
3 the facts in a case. This is a matter solely for you, the
4 jury, based upon evidence introduced during the trial of the
5 case. Therefore, as jurors, it becomes your duty to determine
6 the effect, the value, the weight, and the truth, ultimately,
7 of the evidence presented during the trial of the case.

8 Now, ladies and gentlemen, there are two types of
9 evidence that are generally presented in a trial, and like
10 many things in the law, we have names for those two types of
11 evidence. We call the two types of evidence direct evidence
12 and circumstantial evidence.

13 Direct evidence is the testimony of a person who claims
14 to have actual knowledge of a fact such as an eyewitness to an
15 event. Direct evidence is evidence which immediately
16 establishes the main facts to be proved.

17 Circumstantial evidence, as contrasted with direct
18 evidence, is proof of a chain of facts and circumstances
19 indicating the existence of a fact. Circumstantial evidence
20 is an evidence which immediately establishes collateral facts
21 from which the main fact may or may not be inferred.
22 Circumstantial evidence is based on inference and not on
23 personal knowledge or personal observation.

24 Crimes may be proven by circumstantial evidence, ladies
25 and gentlemen. The law makes absolutely no distinction

1 between the weight or the value to be given to even direct
2 evidence or circumstantial evidence. You should weigh and
3 consider all the evidence in this case, both direct and
4 circumstantial. After weighing and considering all the
5 evidence in this case, with the understanding that the State
6 has a burden of proof beyond a reasonable doubt, if you are
7 convinced of the guilt of the defendant beyond a reasonable
8 doubt, you must find the defendant guilty. After weighing all
9 the evidence in this case, both direct and circumstantial, if
10 you are not convinced of the guilt of the defendant beyond a
11 reasonable doubt, you must find the defendant not guilty. The
12 State has the burden of proving the defendant guilty beyond a
13 reasonable doubt. The burden rests with the State regardless
14 of whether the State relies on direct evidence, circumstantial
15 evidence, or some combination of the two.

16 Necessarily, ladies and gentlemen, your job is going to
17 be to determine the credibility of the witnesses who have
18 testified in this case. Credibility simply means
19 believability. It becomes your duty as jurors to analyze and
20 to evaluate the evidence and determine which evidence
21 convinces you, as a jury, of its truth.

22 Now, in determining the believability of the witnesses,
23 as I told you at the outset of the trial, you may believe one
24 witness over several witnesses or several witnesses over one
25 witness. You may believe a part of the testimony of a witness

1 and reject the remaining part of the testimony of that same
2 witness. You may believe the testimony of a witness in its
3 entirety or you may reject the testimony of a witness in its
4 entirety. You may consider whether any witness has exhibited
5 to you, from the evidence, any interest, any bias, any
6 prejudice or other motive in this case. And as I told you,
7 you may even consider in deciding about the believability of
8 witnesses, the appearance, the manner of the witness. We call
9 it the demeanor of the witness, while the witness is on the
10 witness stand.

11 Anything that is in evidence, ladies and gentlemen, you,
12 as a jury, have the right to consider in weighing, evaluating,
13 and considering the credibility or the believability of the
14 witnesses who have testified during the trial of this case.

15 Now, as I told you, during the trial, ordinarily, a
16 witness cannot take the oath and walk up to this witness
17 stand, sit down, state your name, and look at you and say, My
18 opinion is so and so. The rules of evidence ordinarily do not
19 permit witnesses to testify to an opinion or a conclusion. An
20 exception to this rule exists for those witnesses who we call
21 expert witnesses, a witness who, as I told you, by education,
22 training, experience, claims to have become an expert in some
23 art, science, or profession, and, if qualified by the Court,
24 may state an opinion as to matters in which the witness claims
25 to be an expert and may also state the reasons for their

1 opinion.

2 You should consider any expert opinion received in
3 evidence in this case and just like any other evidence, you,
4 as a jury, give it the weight you think it deserves. If you
5 decide that the opinion of the expert witness is not based on
6 sufficient education and experience or if you conclude that
7 the reasons given in support of the opinion are not sound or
8 it's outweighed by other evidence in the case, you may
9 disregard the expert opinion entirely.

10 An expert witness's opinion is to be given no greater
11 weight than that of other witnesses simply because the witness
12 is an expert. Further, you are not required to accept an
13 expert's opinion even though it is not contradicted.

14 Now, during this trial, ladies and gentlemen, you have
15 heard testimony from child witnesses or a witness. Where a
16 child is a witness, you must determine, as with any witness,
17 whether that testimony is believable or credible. In deciding
18 believability, you may consider not only matters which I have
19 already discussed with you, but you may also consider the age
20 of the child, the child's ability to observe and remember
21 facts, the child's ability to understand or answer questions.
22 Because young children may not fully understand what is
23 happening here, it is up to you, the jury, to decide whether
24 the child understood the seriousness of appearing as a witness
25 in a criminal trial, whether the child understood the

1 questions that were asked, whether the child has a good
2 memory, whether the child understands the difference between
3 lying and telling the truth.

4 In addition, young children may be influenced by the way
5 the questions are asked. It is up to you, ladies and
6 gentlemen of the jury, to decide whether the child or children
7 witnesses understood the questions asked.

8 And I charge you, ladies and gentlemen, that, during this
9 trial, a statement alleged to have been made by the defendant
10 has been admitted into evidence in this case without
11 objection. While the Court has determined that the statement
12 is admissible, I instruct you that you make the ultimate
13 decision of whether or not the defendant made the statement.
14 If you determine the defendant did make the statement, you
15 must determine whether or not the statement was voluntarily
16 made and of the defendant's own free will. This means that
17 the statement was not coerced by pressure, force, fear,
18 threats, coercion, or intimidation or any hope or promise of
19 leniency or reward of any kind.

20 In determining whether the statement was voluntary, you
21 should consider the characteristics of the defendant and the
22 details of the questioning. Some of the factors you may
23 consider, if introduced into evidence, would be the age of the
24 defendant, the defendant's education or lack thereof, the
25 defendant's mental ability or capacity, the defendant's

1 intelligence, the defendant's background and environment, the
2 place and length of the questioning, the nature of the
3 questioning, the advice or lack thereof of the defendant's
4 constitutional rights, including, but not limited to, the
5 right to remain silent, that any statement could be used
6 against him in a court of law, the right to have a lawyer
7 present, that if he could not afford a lawyer, a lawyer would
8 be appointed to represent him without any cost and that he
9 could stop making his statement at any time.

10 You must carefully consider all the surrounding
11 circumstances before you give any weight to an alleged
12 statement. The State has the burden of proving beyond a
13 reasonable doubt that the alleged statement was voluntary. If
14 you determine, as a jury, that it was voluntary, you may give
15 the statement any further consideration that you deem proper.

16 You must decide, ladies and gentlemen, as a jury, what
17 weight, if any, should be given to the alleged statement. If
18 you determine the alleged statement was not the free and
19 voluntary statement of the defendant, you should not consider
20 the statement at all.

21 I instruct you, ladies and gentlemen of the jury, that
22 the fact that the defendant did not testify in this case is
23 not a factor to be considered by you in any way in your
24 deliberations and in your consideration of the question of the
25 guilt or innocence of the defendant. It must not be

1 considered by you in any manner whatsoever. A defendant has
2 the constitutional right to remain silent and the assertion of
3 this right must not be considered by you, the jury, in your
4 deliberations. I repeat: Under your oath that each of you
5 took, you are not to draw any conclusion whatsoever from the
6 fact that the defendant in this case did not testify. In
7 fact, the fact that the defendant did not testify should not
8 even be discussed by any of you in your jury room.

9 The burden of proof as I have stated to you is on the
10 State of South Carolina. The defendant is not required to
11 prove himself innocent. The burden of proof remains on the
12 State to prove guilt beyond a reasonable doubt.

13 Now, I charge you, ladies and gentlemen, that you have
14 heard me use the term in this trial "stipulation." A
15 stipulation is an agreement. It's an admission. It's a
16 concession made in open statement or in a judicial proceeding
17 where the parties, either by themselves or through their
18 attorneys, stipulate. Stipulations are binding upon the
19 parties who make stipulations. A stipulation is an
20 understanding. The Court and the jury must accept
21 stipulations and binding upon the parties. If counsel for the
22 parties have stipulated to any fact during this trial or any
23 fact that's been admitted by the parties by way of
24 stipulation, you will regard that fact as being conclusively
25 proved as to the party or parties making the stipulation or

1 admission.

2 Now, in order to prove criminal liability or to prove
3 criminal responsibility, criminal intent is required. For
4 example -- let me give you some examples of criminal intent.
5 It may be for any particular crime, not necessarily this one.
6 Examples of criminal intent would be -- well, in some cases,
7 intent, knowledge, recklessness, criminal negligence. Those
8 are examples of criminal intent.

9 Criminal intent must be proven by the State beyond a
10 reasonable doubt. Criminal intent is always a matter that
11 will be determined by the jury from the circumstances
12 surrounding the situation based on evidence introduced during
13 the trial of the case.

14 Now, ladies and gentlemen, we understand there is no way
15 to prove intent to a mathematical certainty. There is no way
16 that medical science can dissect a person's brain and
17 determine what that person had in mind. So, ladies and
18 gentlemen, the law says, ladies and gentlemen, that criminal
19 intent may be inferred from the circumstances shown to have
20 existed based on evidence introduced during the trial of the
21 case. This, ladies and gentlemen of the jury, is how you, as
22 a jury, make a determination of whether or not any element in
23 any crime requiring any form of criminal intent was present.
24 It is not necessary to establish intent by direct or positive
25 evidence, but intent may be established by inference in the

1 same way as any other fact, by taking into consideration the
2 acts of the parties and all the facts and circumstances of the
3 case based on evidence introduced during the trial of the
4 case.

5 Criminal intent is a mental state. It is a conscious
6 wrongdoing. It is up to you, ladies and gentlemen of the
7 jury, from the evidence to determine what the defendant
8 intended to do based on the circumstances shown to have
9 existed from the evidence. Criminal intent can arise of an
10 action or a faded act. It may arise from negligence,
11 recklessness, or an inference to duty or consequences that the
12 law would consider to be the equivalent to have criminal
13 intent.

14 I will now, ladies and gentlemen, define for you the
15 offense. The defendant in this case is charged with the
16 criminal offense of unlawful conduct towards a child. For
17 this offense, ladies and gentlemen, the State must prove
18 beyond a reasonable doubt that the defendant had charge or
19 custody of the child or was the parent or guardian of the
20 child or was responsible for the care and support of the
21 child.

22 A person responsible for a child's welfare would include
23 the child's parent, the child's guardian, or foster parent, an
24 operator, employee, or caregiver of a public or private
25 residential home or institution or agency, or a child day care

1 facility, or an adult who has assumed the role or
2 responsibility of a parent or guardian for the child but does
3 not necessarily have legal custody of the child. This does
4 not include a person whose only role is as a caregiver and
5 whose contact is only incidental with the child, such as a
6 babysitter.

7 The State must also prove beyond a reasonable doubt that
8 the defendant placed the child at an unreasonable risk of harm
9 affecting the child's life or safety. This may be
10 accomplished through an action or the failure to perform some
11 action. You need not find, ladies and gentlemen, that harm
12 occurred, though you may, based on the evidence presented
13 during the trial of the case. The law requires only that the
14 child experienced, from the evidence, an unreasonable risk of
15 harm if proven by the State of South Carolina beyond a
16 reasonable doubt.

17 Now, madame foreperson, I told you I would prepare a
18 verdict form for you, and I have done that. Whatever you
19 write on here, Skyler is going to want you to write on the
20 indictment. He'll bring that to you after we're finished, so
21 don't believe without seeing Skyler Hutto, my law clerk. Pay
22 no attention to the order in which I wrote the forms of
23 verdict. We obviously had to write one before the other, and
24 the order has no significance whatsoever.

25 I have placed the title of the case, State of South

1 Carolina, County of Colleton, in the Court of General
2 Sessions, Indictment No. 2016 at 00549, the State versus
3 Ernest Ray Bailey, defendant, and I wrote the words "verdict."
4 That's all in the caption on your verdict form.

5 Underneath, there's only one question in this case. The
6 question is: We, the jury, by unanimous consent, find the
7 defendant, Ernest Ray Bailey, in Indictment No.
8 2016-GS-15-00549, in the first form of verdict, madame
9 foreperson, under that question is, guilty of unlawful conduct
10 toward a child. If that be your form of verdict, ladies and
11 gentlemen of the jury, madame foreperson, you would check on
12 the line beside that form of verdict.

13 The second form of verdict under "We, the jury, by
14 unanimous consent, find the defendant, Ernest Ray Bailey, in
15 Indictment No. 2016-GS-15-00549, is not guilty of unlawful
16 contact toward a child." If that be your form of verdict,
17 ladies and gentlemen of the jury, madame foreperson, you would
18 place a check mark on the line beside that form of verdict.

19 You must find one form of verdict or the other. You
20 cannot find both. You would then, once you have made the
21 appropriate mark on the verdict form for the entire jury,
22 madame foreperson, you would sign your name where it says
23 "foreperson." I have already put in today's date.

24 When you have reached your verdict and have indicated it
25 by checking in the appropriate line and certifying it by your

1 signature, then you will knock on your jury room door and
2 inform the bailiff that you have reached a verdict, and we'll
3 bring you back out in the courtroom to publish your verdict.

4 Now, ladies and gentlemen, your verdict must be
5 unanimous. It must be the verdict of each and every one of
6 you. All 11 of you must agree on a verdict.

7 Now, madame foreperson and ladies and gentlemen of the
8 jury, I have now charged you on the law in order to help guide
9 you toward a result in this case. You are the judges of the
10 facts based on the evidence and based on your determination of
11 the facts in this case and the law. As I have explained to
12 you, you're soon going to begin your deliberations in the jury
13 room. And I want to remind you that each of you are selected
14 as fair and impartial jurors. You took an oath to fairly and
15 impartially try and determine the facts of this case, and when
16 you comply with that oath, no one can criticize your verdict.
17 But you are to decide this case solely and only on the
18 testimony that has been offered from that witness stand, any
19 exhibits which have been introduced into evidence, and any
20 stipulations that were entered into during the trial of the
21 case and nothing else.

22 You must decide the issues in this proceeding without any
23 bias or prejudice towards either party. You cannot allow
24 yourself to be governed by any public opinion. You can't
25 allow yourself to be governed by emotion or any other

1 arbitrary factor that is not in evidence in a trial of this
2 case.

3 Both the defendant and the State of South Carolina have
4 the absolute right to expect that each of you on this jury
5 will carefully and impartially consider all of the evidence in
6 this case and that you will follow the law as I have
7 instructed it to you to be in reaching your verdict in this
8 case.

9 All right. Madame foreperson and ladies and gentlemen of
10 the jury, I'm going to ask you at this time to go to your jury
11 room. Do not begin your deliberations. I may have to bring
12 you back out into the courtroom for some additional
13 instruction. I may not.

14 When it's time for you to begin your deliberations, I
15 will send your verdict form, along with all the exhibits which
16 have been introduced into evidence, into the jury room and
17 have the bailiff inform you that you may then commence your
18 deliberations.

19 Please retire to your jury room at this time.

20 (The jury exited the courtroom at 11:00 a.m.)

21 **THE COURT:** Come on up here, right here. The court
22 started this morning and everybody was here at 9:45. I told
23 you 10:00. I asked everybody on that jury and everybody said
24 10:00. You weren't here, and you told people I said 10:30 or
25 you thought I said 10:30. I didn't say 10:30 and I have got a

1 from the State of South Carolina?

2 MR. EVANS: No, sir, not from the State.

3 THE COURT: From the defendant?

4 MR. MATHEWS: Just the ones that we talked about at
5 pre-trial.

6 THE COURT: Nope, that ain't doing any good. What are
7 your exceptions? You have to state them on the record,
8 Mr. Mathews.

9 MR. MATHEWS: I gave up my copy of it, but the ones --

10 THE COURT: No, no, don't do that either. Tell me what
11 your objections are so I can recall on it, Mr. Mathews.

12 MR. MATHEWS: Thank you, Your Honor.

13 THE COURT: Not "I gave you a copy." Tell me what you're
14 objecting to that you feel I didn't charge or that you're
15 asking me to charge, and don't make it in generalities.

16 MR. MATHEWS: Yes, sir. The particular elements of
17 physical harm contained within --

18 THE COURT: The State told me that they did not argue
19 that there was any physical harm in this case, so declined to
20 charge physical harm. The same being true for mental harm.
21 In fact, I charged the jury the only thing the State
22 contended, as you know, which is why I tailored my charge to
23 your argument. So your request for me to charge the
24 definition in the statute of physical and mental harm is
25 respectfully denied.

1 MR. MATHEWS: Thank you, Your Honor.

2 THE COURT: All right. I'd ask that counsel come
3 forward, certify you're satisfied that the Court has -- court
4 reporter has all the exhibits and that you have no objection
5 to the bailiff taking the verdict form and all the exhibits
6 into the jury room and the bailiff informing the jury they may
7 now commence their deliberations.

8 Now, you have got some for ID down there. Or maybe you
9 went back and admitted all your -- so there are five from the
10 defendant and how many from the State?

11 COURT REPORTER: Nine.

12 THE COURT: Nine.

13 Now, Exhibit Nos. 1 and 16 require the equipment in the
14 courtroom. Are you both -- and it has been redacted by the
15 Solicitor, who owes my court reporter --

16 MR. EVANS: I've got it --

17 THE COURT: You have got it? You bet I have it. They
18 know they can't -- that's why Mr. Mathews is saying I asked
19 you to -- please charge what I discussed with you in chambers
20 in pre-trial.

21 Was Becky in chambers? No.

22 MR. MATHEWS: No, sir.

23 (Court's Exhibit No. 2 was marked and received into
24 evidence.)

25 THE COURT: All right. Now, as to 1 and 16, Solicitor,

1 MR. MATHEWS: No, Your Honor.

2 THE COURT: Bring us the jury, please.

3 (The jury entered the courtroom at 11:35 a.m.)

4 THE CLERK: Madame Forelady, have y'all reached a
5 verdict?

6 MADAM FOREPERSON: Yes, ma'am.

7 THE COURT: You may publish the verdict.

8 Defendant and counsel will please rise.

9 VERDICT

10 THE CLERK: The State of South Carolina versus Ernest Ray
11 Bailey, Indictment No. 2016-GS-15-549. We, the jury, by
12 unanimous consent, find the defendant, Ernest Ray Bailey, in
13 Indictment No. 2016-GS-15-549, guilty of unlawful conduct
14 toward a child. This is signed by the foreperson, Peggy Lane.

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

16 (All jurors' hands raised.)

17 THE CLERK: Thank you.

18 THE COURT: Let the record reflect 11 hands were raised.

19 Anything further, Mr. Mathews, from the jury?

20 MR. MATHEWS: Not from the jury, Your Honor.

21 THE COURT: Madame foreperson, ladies and gentlemen of
22 the jury, all the judge -- please be seated, Mr. Mathews, you
23 and your client -- all the judge can ask of a jury is that you
24 listen. And I watched each of you during this trial, and
25 that's exactly what you did. I told you I was going to get

1 defendant placed the child in an unreasonable risk of harm,
2 affecting the child's life or safety. I believe there was
3 sufficient evidence in this case for you to reach that
4 verdict, or I would not have submitted that to you.

5 What you also are going to hear is, which -- although it
6 wasn't objected to in closing argument -- the first person
7 that was charged in this case was a grandmother who has
8 custody. She got a probationary sentence. So she did not
9 receive any jail time.

10 Did she, Solicitor?

11 MR. EVANS: No, sir.

12 THE COURT: And this gentleman, obviously, was the second
13 person charged. I also believe it was clearly evident that
14 you could have found that a person was responsible for a
15 child's welfare because it includes not only a parent or a
16 foster parent, but it also includes an adult who has assumed
17 the role of responsibility of a parent or guardian of a child
18 but doesn't necessarily have legal custody of the child.

19 And Mr. Mathews argued to you that this gentleman was a
20 babysitter. He strongly believes that that was his role,
21 because our statute -- because the legislature wrote it that
22 way, and we're talking about matters of you. And that's why
23 you heard me charge you that if you are just a person who is a
24 caregiver and whose conduct or contact is only incidental with
25 a child, such as a babysitter, you can't be charged under our

1 statute.

2 So I wanted you to understand what went on as a matter of
3 law. When I took breaks -- and the lawyers did a good job,
4 both sides. I want you to know that, because you were not
5 aware of that.

6 Now, we come to sentencing. Sentencing is my province,
7 not yours. I'm going to hear all about, now, this matter and
8 things that weren't necessarily in evidence, so you'll get a
9 chance to hear them with me.

10 Solicitor?

11 MR. EVANS: Thank you, Your Honor. As far as the facts,
12 I know that Your Honor paid as close attention as the jury
13 did.

14 THE COURT: I'm very aware of the facts in this case,
15 having listened to all the evidence, as has the jury.

16 MR. EVANS: Yes, sir. So I'll just limit my comments to
17 his record, if that's all right with the Court.

18 1979: Public disorderly conduct.

19 1979: Assault and battery of a high and aggravated
20 nature and disturbing schools.

21 1980: House-breaking and larceny.

22 1983: House-breaking and grand larceny. Three counts
23 of that, I believe. Three counts of the grand larceny.

24 1988: Burglary first and grand larceny.

25 And in 2012: Unlawful use of the telephone.

1 **MR. MATHEWS:** And he tried this because this could result
2 in a life sentence for him on what was time served on 30 days.
3 And that's why -- Your Honor, I'd just ask the Court to give
4 him the sentence of time served. He's been in 11 months.

5 **THE COURT:** All right. Mr. Bailey, I'm now willing to
6 hear anything from you that you'd like to tell me. You're
7 talking to me now and not the jury.

8 **THE DEFENDANT:** Yes, sir. Well, I'd like to say that as
9 far as about what happened to the boys, I never meant any harm
10 for them boys. And I'm sorry for that. And I'm sorry that we
11 had to be here today to start with. I'll appreciate it if
12 you'll do what you could to help me.

13 **THE COURT:** Mr. Bailey, I recognize a couple of things.

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** The reason I told the jury about things that
16 weren't in evidence in this case because we weren't trying the
17 person who was the actual guardian of the children. However,
18 she left you as the person who assumed the role of
19 responsibility for the children when she was gone. I realize
20 that puts you in a position of care for the children. I take
21 into consideration, number one, that she got a probationary
22 sentence, and you have served almost a year in jail, where the
23 person who was actually the guardian of the children did not
24 serve time in jail.

25 But I also have to take into consideration that you have

1 a record and a pretty bad record, although you have not had
2 any convictions since 1988. However, you were in custody for
3 a period of time between your last conviction and when you got
4 out for grand larceny -- what else was it, Solicitor?

5 MR. EVANS: In 1988, a burglary first.

6 THE COURT: -- and burglary.

7 Now, I believe that when you fashion a sentence, you have
8 to look at all facets of a sentence. I have to look at how
9 the person that was responsible for the children was treated
10 and I have to make sure justice is done to you. I completely
11 agree with the jury's verdict. In fact, I told your lawyer --
12 the jury doesn't know this -- because we had a very lengthy
13 discussion about how I was going to charge the jury. It
14 lasted for over an hour. And I have told your lawyer, who
15 opined to me there were all kinds of things that put children
16 in unreasonable risk. And the reason I think legislature
17 wrote the statute the way it did is, even though you weren't
18 convicted of this, if a person pulled a gun on a child and
19 held a gun to a child's head and never pulled the trigger,
20 just because no physical harm occurred -- and maybe there
21 would not have been any proof of mental harm, although some
22 could have resulted -- I believe that's why we have the
23 wording in the statute that we do and why I charge you that
24 the act could be accomplished through an action or through the
25 failure to perform an action and that you did not have to find

1 that harm occurred, though you may, based on the evidence, the
2 law requires only that the child experience an unreasonable
3 risk of harm.

4 I completely agree with the jury's verdict in this case,
5 but I also believe that justice is not necessarily served by
6 your further incarceration; however, I want the jury to know
7 that you could very likely be going to jail because the parole
8 board is going to take up the issue of your conviction,
9 whether it had been by plea or by trial by jury and they very
10 well could decide that this violates your parole and that you
11 could be subjected to further incarceration.

SENTENCING

12
13 **THE COURT:** On Indictment 2016-GS-15-00549, the State
14 versus Ernest Ray Bailey, the sentence of the Court is
15 defendant is committed to the State Department of Corrections
16 for a term of seven years provided, upon time served, the
17 balance is suspended and you be placed on probation for a
18 period of two years. Special condition of probation: You are
19 to have no contact with these boys. None. Direct or
20 indirect. You can't contact them and you can't ask anybody
21 else to contact them.

22 The defendant is to be given credit for the time to be
23 served in jail, almost a year, pursuant to Code Section
24 24-13-40. This is to be calculated and applied by the State
25 Department of Corrections.

1 Because you have the public defender, it requires \$500 to
2 be paid to the Clerk of Court of Colleton County during your
3 probationary period and shall be collected before any other
4 fee.

5 Good luck to you, sir.

6 **THE WITNESS:** Thank you, Judge.

7 **THE COURT:** Hold on a second. Come up here so I can hear
8 you. I need the indictment, once you finish with it.

9 **THE CLERK:** Just that probation begins -- the disposition
10 of the parole violation.

11 **THE COURT:** David, you and Reed approach. She raises an
12 interesting question.

13 **THE CLERK:** If not, we'll have to bring it back.

14 **THE COURT:** I understand. It's a patriot thing for
15 y'all.

16 **THE CLERK:** Yes, sir.

17 **BENCH CONFERENCE**

18 (The following bench conference was held.)

19 **THE COURT:** Stay right here with me, Mr. Bailey. There's
20 another special condition of your sentence. Your probation
21 from this case is not to begin until after your parole hearing
22 so that I don't make you go twice. Do you understand?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** And I'm making a note on my sentence sheet.

25 Now, you're going to be supervised upon your release, and

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF COLLETON) CASE No.: 2016GS1500549

STATE,)

Vs.) Motion to Suppress, and Memo in Support of
Motion to Suppress

ERNEST RAY BAILEY,)

Defendant.)

COLLETON COUNTY
GENERAL SESSIONS COURT
2017 MAY 22 PM 5: 09

COMES NOW the Defendant and moves to suppress reference to the following:

1. Children being locked in their room;
2. Children's closets being locked;
3. Refrigerator and freezer being locked;
4. Buckets in the children's room for using the bathroom;
5. Low weight of the children.

And as grounds therefore alleges that the behavior referenced above is not relevant to any material issue, or the prejudice to the Defendant from the admission of such evidence outweighs the probative value.

DISCUSSION

The Defendant was living in the house of Loma Jones, who is the maternal grandmother and legal custodian of alleged victims Minor 2 and Minor 1 then 12 and 13 years of age, on 6/21/16, when Ms. Jones and the Defendant investigated by WPD officer Roy Blake for Child Abuse and Neglect. The Defendant and Ms. Jones were not married, and the Defendant was living in the home at Ms. Jones' pleasure. Officer Blake provided in his incident report (attached as Exhibit 1) that the Defendant and Co-Defendant were arrested, in part, because the children's rooms had locks from the outside; that their closets, the refrigerator and freezer had padlocks on them; and that children were required to use the bathroom in buckets placed in their rooms. A supplemental report (attached as Exhibit 2) filed by Blake references that one of the children complained that the Defendant "had poked her in the leg with something with (sic) resulted in a bruise. The other victim had an old scratch that appears to have already healed across his stomach" The Defendant was arrested on 6/23/16 on a warrant procured by Det. Jacob O'Quinn

(attached as Exhibit 3), and the Defendant was indicted on 9/5/16 (Indictment attached as Exhibit 4). Neither then warrant nor the indictment refer to the "poke" or the "healed scratch".

The Defendant charged with Child Neglect under section 63-5-70(A)(1) of S.C. Code, which provides:

(A) It is unlawful for a person who has charge or custody of a child, or who is the parent or guardian of a child, or who is responsible for the welfare of a child as defined in Section 63-7-20 to:

(1) place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety...

The Child Neglect statute specifically incorporates the definitions contained in 63-7-20. 63-7-20(6) defines Child Abuse, in pertinent part, as:

"Child abuse or neglect" or "harm" occurs when the parent, guardian, or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child...

(c) fails to supply the child with adequate food, clothing, shelter, or education...

(d) abandons the child...

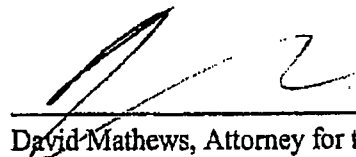
"Physical injury" means death or permanent or temporary disfigurement or impairment of any bodily organ or function". SC Code 63-7-20(20) Definitions (South Carolina Code of Laws (2016 Edition)).

The Defendant, first of all, denies any legal duty toward the children, but, assuming, arguendo, that he did, there is no indication or even allegation that the behaviors cited in the incident report inflicted or created a risk or the infliction of death or disfigurement, as the Statute requires. Furthermore, the Statute provides that "'Mental injury' means an injury to the intellectual, emotional, or psychological capacity or functioning of a child as evidenced by a discernible and substantial impairment of the child's ability to function when the existence of that impairment is supported by the opinion of a mental health professional or medical professional". SC Code 63-7-20(16) Definitions (South Carolina Code of Laws (2016 Edition)). If there are any mental

health experts to opine that is any evidence that any of those alleged actions caused a discernible impairment to the children, the State has not named any.

The behaviors certainly look bad; however, there is no allegation that any of them caused or could have caused physical, or admissible mental, injury to the children. The items listed above are not relevant to any material element of the Statute, and must be suppressed.

Respectfully Submitted this 22 Day of May, 2017.

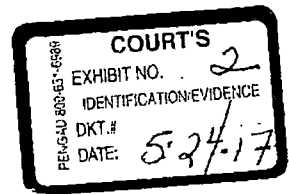


David Mathews, Attorney for the Defendant
Colleton Division, 14th Circuit Pub. Def. Ofc.
319 North Lucas Street
Walterboro, South Carolina 29488
(843)549-1633

STATE OF SOUTH CAROLINA)
)
 COUNTY OF COLLETON)
)
 STATE OF SOUTH CAROLINA,)
)
 v.)
)
 ERNEST RAY BAILEY,)
)
 Defendant.)
 _____)

IN THE COURT OF GENERAL SESSIONS
 Indictment No(s): 2016GS1500549

REDACTION MINUTES



I. State's Exhibit 1

State's exhibit 1 is a body camera video. The State of South Carolina published State's exhibit 1 in its entirety; However, the State muted certain portions in which the Defendant, speaking to the officer, referenced the fact that he was on parole. These portions which were *muted* are:

1. 14:06:15 through 14:06:45;
2. 14:08:46 through 14:09:25; and
3. 14:11:25 through 14:11:30

The remainder of State's Exhibit 1 was played with the audio on.

II. State's Exhibit 16

State's Exhibit 16 is a video of an interview of the Defendant conducted by Cpl. Jacob O'Quinn. The entire video is more than 38 minutes long. The State published only certain portions to the jury. The portions which were played for the jury are:

1. 0:00 through 1:35;
2. 10:55 through 11:28;
3. 16:07 through 17:50; and
4. 35:30 through 35:55

The remainder of State's Exhibit 16 was not published to the jury.

Respectfully Submitted,

Reed A. Evans

Assistant Solicitor
 14th Judicial Circuit

WITNESSES

DOCKET NO. 2016GS1500549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury. 145

The State of South Carolina
County of Colleton

COURT OF GENERAL SESSIONS

September Term 2016

THE STATE

vs.

Ernest Ray Bailey

Indictment For

Legal custodian, unlawful neglect of
child or helpless person

SC Code: 63-5-70(A)(1)

CDR Code: 2481

DM

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

ARREST WARRANT NUMBER

2016A1520300318

True Bill

[Signature]

Foreperson of Grand Jury

Date: 9/15/16

VERDICT

Foreperson of Petit Jury

Date:

INDICT

2016 SEP 15 AM 10:54
COLLETON COUNTY
GENERAL SESSIONS COURT

At a Court of General Sessions, convened on September 15, 2016, the Grand Jurors of Colleton County present upon their oath:

Legal custodian, unlawful neglect of child or helpless person

That in Colleton County, South Carolina, on or about June 21, 2016, the Defendant, Ernest Ray Bailey, did, as a person who had charge or custody of two children, Minor 2 and Minor 1 or was the parent or guardian of the children, or was responsible for the welfare of the children, as defined in Section 63-7-20, place the children at unreasonable risk of harm which affected their life, physical or mental health, or safety; or did or caused to be done unlawfully or maliciously any bodily harm to the children so that the lives or health of the children were endangered or likely to be endangered; or did wilfully abandon the children; all in violation of Section 63-5-70(A)(1), et al. of the Codes of Law of South Carolina.

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



Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Colleton

STATE

INDICTMENT/CASE#: 2016-GS-13-00549VS. Ernest Ray BaileyAW#: 2016A1520300318AKA: _____
Race: W Sex: M Age: 56Date of Offense: 6/21/2016

DOB: _____ SS#: _____

S.C. Code §: 63-5-70

Address: _____

CDR Code #: 2481City, State, Zip: Walterboro, SC 29488

DL# _____ SID# _____

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Unlawful Conduct Towards a ChildIn violation of § 63-5-70 of the S.C. Code of Laws, bearing CDR Code # 2481☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Reed A Evans 79925

Solicitor SC Bar # _____ Defendant Attorney for Defendant SC Bar # _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of TIME SERVED days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 2 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered ☐ PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine: _____ \$ _____

Random Drug/Alcohol Testing ☐

\$14-1-206 (Assessments 107.5%) \$ _____

Fine may be pd. in equal consecutive weekly/monthly

\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

pmts. of \$ _____ Beginning

\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

\$ _____ Paid to Public Defender Fund

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Probation) \$500 \$ 500.00\$14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

\$14-1-213 (Drug Court Surcharge) \$150 \$ _____

\$50-21-114 (BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 18.75TOTAL \$ 643.75Clerk of Court/Deputy Clerk Patricia C. GrantCourt Reporter: M. Rebecca HillPresiding Judge [Signature]Judge Code: 2122Sentence Date 5/24/17Perry M Buckner

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."

Respectfully Submitted,



Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 14th day of May, 2018.

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."

Respectfully Submitted,



Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 14th day of May, 2018.

RECEIVED
MAY 14 2018
SC Court of Appeals