

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CLARENDON COUNTY

Court of General Sessions

Michael G. Nettles, Circuit Court Judge

Case No. 2016-GS-14-0098

RECEIVED

APR 19 2019

SC Court of Appeals

The State.....Respondent,

v.

Michael James Dinkins.....Appellant

AMENDED RECORD ON APPEAL

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April 18, 2019

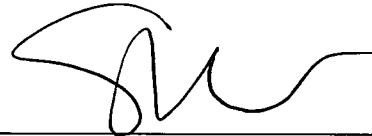
The Honorable Jennie Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
APR 19 2019
SC Court of Appeals

RE: The State of South Carolina vs. Michael James Dinkins
2017-002360

Dear Ms. Kitchings:

Enclosed herewith please find the fourteen labels along with an original unbound copy of the Amended Record on Appeal along with proof of service thereof.



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Manning, South Carolina 29102
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cc: Erenest A. Finney, III
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WITNESSES

Iberly Marlow CCSO

REST WARRANT NUMBER

6A1410100010 2016A1410100011
6A1410100012

RETURN OF GRAND JURY

True Bill

[Signature]
person of Grand Jury

08-03-2017

PREDICT

person of Petit Jury

e:

DOCKET NO. 2016-GS-14-0098

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

August TERM 2017

THE STATE

vs.

MICHAEL JAMES DINKINS

Amended Indictment for

Criminal sexual conduct - Third degree, four counts

[Signature]

ERNEST A. FINNEY, III, SOLICITOR

0000 2

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CLARENDON)

AMENDED INDICTMENT FOR

Criminal sexual conduct - Third degree

At a Court of General Sessions, convened on August 3, 2017 the Grand Jurors of
 CLARENDON County present upon their oath:

COUNT ONE

That in Clarendon County South Carolina on or about October 27th 2015, the Defendant Michael James Dinkins, date of birth 12/13/1961, a person over fourteen years of age, willfully and lewdly did commit or attempt to commit a lewd or lascivious act upon the body, or any part or member thereof, of a victim, a child under the age of sixteen (16) years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the Defendant or of said child, in violation of Section 16-3-655(C), S.C. Code of Laws 1976, as amended.

COUNT TWO

That in Clarendon County South Carolina on or about October 27th 2015, the Defendant Michael James Dinkins, date of birth 12/13/1961, a person over fourteen years of age, willfully and lewdly did commit or attempt to commit a lewd or lascivious act upon the body, or any part or member thereof, of a victim, a child under the age of sixteen (16) years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the Defendant or of said child, in violation of Section 16-3-655(C), S.C. Code of Laws 1976, as amended.

COUNT THREE

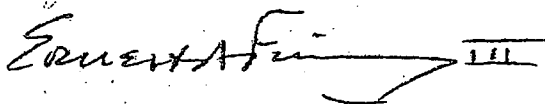
That in Clarendon County South Carolina on or about December 31, 2015, the Defendant Michael James Dinkins, date of birth 12/13/1961, a person over fourteen years of age, willfully and lewdly did commit or attempt to commit a lewd or lascivious act upon the body, or any part or member thereof, of a victim, a child under the age of sixteen (16) years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the Defendant or of said child, in violation of Section 16-3-655(C), S.C. Code of Laws 1976, as amended.

COUNT FOUR

That in Clarendon County South Carolina on or about December 26, 2015, the Defendant Michael James Dinkins, date of birth 12/13/1961, a person over fourteen years of age, willfully and lewdly did commit or attempt to commit a lewd or lascivious act upon the body, or any part or member thereof, of a victim, a child under the age of sixteen (16) years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the Defendant or of said child, in violation of Section 16-3-655(C), S.C. Code of Laws 1976, as amended.

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

Solicitor



ARREST WARRANT

2016A1410100011

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Clarendon

THE STATE

against

Michael James Dinkins

Address:

Manning, SC 29102-6365

Phone: SSN:

Sex: M Race: Height: 5 8 Weight: 175

DL State: SC DL #: 008008828

DOB: Agency ORI #: SC0140000

Prosecuting Agency: Clarendon County Sheriff

Prosecuting Officer: Kimberly Marlow - 1300

Offense: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under

Offense Code: 3661

Code/Ordinance Sec: 16-03-0655(C)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Michael James Dinkins

on 01-20-16

Linda L Martin-Smith
Signature of Constable/Law Enforcement Officer 01615

RETURN WARRANT TO:

General Sessions
Post Office Box 136
3 West Keitt Street
Manning, SC 29102

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

☒ County/ ☐ Municipality of
Clarendon

Personally appeared before me the affiant Kimberly Marlow

being duly sworn deposes and says that defendant Michael James Dinkins

did within this county and state on or about 10/27/2015

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Clarendon

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Between the dates of October 27, 2015 and January 1, 2016 the defendant, Michael Dinkins, did knowingly and willingly commit the offense of criminal sexual conduct with a minor 3rd degree in that he did get into the 11 year old victim's bed, straddle her, and make a grinding motion on top of her body. The victim disclosed this incident to a counselor as well as a forensic interviewer. This offense occurred at 1172 Locust Way in the Manning area of Clarendon County, SC. Affiant along with others is witness to prove same. CCSO case #: 16-01-00397

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Clarendon

Affiant's Address Post Office Box 1289
Manning, SC 29102-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/27/2015 defendant Michael James Dinkins

did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Clarendon) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
Sworn to and subscribed before me

on 1/19/2016

Signature of Issuing Judge

Marcia N. Frye

Judge Code: 7244

Judge's Address 102 South Mill Street

Manning, SC 29102-

Judge's Telephone (803)435-2670

Issuing Court: ☒ Magistrate ☐ Municipal

ORIGINAL

ORIGINAL

ORIGINAL

0000

2016A1410100012

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Clarendon

THE STATE
against

Michael James Dinkins

Address:

Manning, SC 29102-6365

Phone: _____ SSN: _____
 Sex: M Race: _____ Height: 5 8 Weight: 175
 DL State: SC DL #: 008008828
 DOB: _____ Agency ORI #: SC0140000

Prosecuting Agency: Clarendon County Sheriff
 Prosecuting Officer: Kimberly Marlow - 1300
 Offense: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under
16 yrs & actor over 14 yrs)
 Offense Code: 3661
 Code/Ordinance Sec: 16-03-0655(C)

This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of _____
 The accused
 is to be arrested and brought before me to be
 dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
 defendant Michael James Dinkins
 on 01-20-16

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
 Post Office Box 136
 3 West Keitt Street
 Manning, SC 29102

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

☒ County/ ☐ Municipality of _____
 Clarendon

AFFIDAVIT

SCCA 518

Personally appeared before me the affiant Kimberly Marlow who
 being duly sworn deposes and says that defendant Michael James Dinkins
 did within this county and state on or about 1/1/2016 violate the criminal laws of the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Clarendon)
 in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

On January 1, 2016 the defendant, Michael Dinkins, did knowingly and willingly commit the offense of criminal sexual conduct with a minor 3rd degree in that he did kiss the 11 year old victim and attempt to put his tongue in her mouth. The victim disclosed this incident to a counselor as well as a forensic interviewer. This offense occurred at 1172 Locust Way in the Manning area of Clarendon County, SC. Affiant along with others is witness to prove same. CCSO case #:16-01-00397

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Clarendon

Affiant's Address Post Office Box 1289
Manning, SC 29102-
 Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/1/2016 defendant Michael James Dinkins
 did violate the criminal laws of the State of South Carolina (or ordinance of
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 Sworn to and subscribed before me
 on 1/19/2016

Signature of Issuing Judge

Marcia N. Frye

Judge Code: 7244

(L.S.)

Judge's Address 102 South Mill Street
Manning, SC 29102-
 Judge's Telephone (803)435-2670

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

BEULAH G. ROBERTS
 CLERK OF COURT
 CLARENDON COUNTY, SC
 2016 JAN 21 P 4:00

0000

2016A1410100010

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Clarendon

THE STATE
against

Michael James Dinkins

Address:

Manning, SC 29102-6365

Phone: _____ SSN _____

Sex: M Race: _____ Height: 5 8 Weight: 175DL State: SC DL #: 008008828DOB: _____ Agency ORI #: SC0140000Prosecuting Agency: Clarendon County SheriffProsecuting Officer: Kimberly Marlow - 1300Offense: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim underOffense Code: 3661Code/Ordinance Sec: 16-03-0655(C)This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality ofThe accused
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dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant Michael James Dinkins
on 01-20-16Linda Martin-Smith
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Post Office Box 136
3 West Keitt Street
Manning, SC 29102

ORIGINAL

ORIGINAL

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ORIGINAL

☒ County/ ☐ Municipality of

Clarendon

AFFIDAVIT

April 21, 2003
SCCA 518Personally appeared before me the affiant Kimberly Marlow who
being duly sworn deposes and says that defendant Michael James Dinkins
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in the following particulars:DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:On October 27, 2015 the defendant, Michael Dinkins, did knowingly and willingly commit the offense of criminal sexual conduct
with a minor 3rd degree in that he did put the 11 year old victim's hand on his penis. The victim disclosed this incident to a
counselor as well as a forensic interviewer. This offense occurred at 1172 Locust Way in the Manning area of Clarendon County,
SC. Affiant along with others is witness to prove same. CCSO case #: 16-01-00397

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Clarendon

Affiant's Address Post Office Box 1289Manning, SC 29102-

Affiant's Telephone _____

ARREST WARRANT

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It appearing from the above affidavit that there are reasonable grounds to believe that

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did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Clarendon

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before meon 1/19/2016

Signature of Issuing Judge

Marcia N. Frye

Judge Code: 7244Judge's Address 102 South Mill StreetManning, SC 29102-Judge's Telephone (803)435-2670Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

STATE OF SOUTH CAROLINA,

VS.

MICHAEL DINKINS

DEFENDANT.

IN THE COURT GENERAL SESSIONS
FOR THE THIRD JUDICIAL CIRCUIT

WARRANT #: 2016A1410100010
2016A1410100011, 2016A1410100012

DEFENDANT'S MEMORANDUM IN
SUPPORT OF PSYCHOLOGICAL
EVALUATION OF THE MINOR VICTIM

FACTUAL BACKGROUND

The minor child (victim) in this matter was eleven when the alleged incidents in the indictment occurred between October 2015 and December 2015. In her forensic exam with the Durant Center in Florence, the minor child alleged inappropriate touching by the Defendant. No physical exam was conducted on the minor child. The Defendant has been indicted for four (4) counts of CSC 3rd with a minor under the age of 16.

The minor child is the niece of the former wife of the Defendant. The minor child came to live with the aunt and Defendant after the death of minor child's mother in 2012. The minor child started grief counseling in December of 2013 with Sumter Psychiatry Associates. On May 8, 2015, the minor child wrote an apparent suicide letter and was taken back to Sumter Psychiatry (See attached "suicide letter" and May 8, 2015 handwritten clinical notes from Sumter Psychiatry). The alleged incidents occurred after the May 8, 2015 "suicide letter and after the minor child was diagnosed with Major Depressive Disorder, General Anxiety Disorder, and Attention Deficit Disorder.

As stated above, the minor child was diagnosed with Major Depressive Disorder, General Anxiety Disorder, Unresolved Grief, Panic Attacks, and Attention Deficient Disorder. She was taking or currently taking the following medications: Lexapro (depression); Buspar (anxiety); Clonidine (anxiety) and Metadate (ADD).

The minor child's mother had a history of bipolar disorder. The minor child's father has severe epilepsy that renders him disabled and incapable of having custody of the minor child.

The Defendant is a registered nurse, Army veteran and has no prior criminal history.

The State's opposes Defendant's Motion for a psychological examination of the minor victim.

ARGUMENT

1. **Can the Court Order the minor victim in a sexual assault to submit to psychological testing in South Carolina?**

In, *In Re Michael H.*, 360 S.C. 540, 602 S.E.2d 729 (2004), the South Carolina Supreme Court heard this issue as an issue of first impression. In weighing the competing interests: i.e., "safeguarding child complainants from unnecessary intrusions into their privacy, while also protecting a defendant's rights to confront his accuser." The Court identified six (6) factors that a trial Court should weigh in deciding the need for a psychological evaluation of the accuser. Those factors are:

- (1) The nature of the examination requested and the intrusiveness inherent in the examination; (2) the victim's age; (3) the resulting physical and/or emotional effect of the examination on the victim; (4) the probative value of the examination to the alleged criminal act; (5) the remoteness in time of the examination to the alleged criminal act; (6) the evidence already available for the defendant's use.

Id. at 547.

The "trial judge is vested with discretion to order a child complainant to submit to an independent psychological evaluation, and the proper exercise of this discretion, upon a showing of compelling need, sufficiently protects victims from unnecessary or traumatizing invasions of their privacy." *Id.* at 548. In deciding that a psychological was warranted in the case the Court noted that the child victim in *In Re Michael H.*, had "questionable mental health" *Id.* at 551. Here, the minor child has been in mental health counseling since at least 2013. In regard the first factor under the *Michael* test, the nature of the examination and the intrusiveness inherent. The accuser has been in mental health counseling since 2013 and has been to the DuRant Center for a forensic interview. Just as in *Michael*, the questionable mental health of the minor child was

enough for the Supreme Court to order a psychological. Here, the child accuser left a "suicide letter" and was soon thereafter diagnosed with MDD, GAD, ADD and panic attacks. In *Michael*, the accuser was very young four at the time of the allegation and six at the time of trial, but like *Michael* the accuser here had been in counseling and had freely talked about the incident (indicating the accuser would not be further traumatized by another examination). The fact that the accuser was four in *Michael* when the alleged act occurred and six when the case went to trial. The alleged incident here occurred when the child was eleven and she will be thirteen when the case goes to trial. (two years was the same time frame in *Michael*). The available evidence available to the Defendant is the forensic interview, the psychological records and witness statements. However, this case is essentially the minor's word against the Defendant. If the victim has a serious mental health issue, this is the only way for the Defendant to determine that and defend himself is with a Court ordered psychological. Again, in support of the request for the psychological, the fact that the accuser here left a "suicide note" and was diagnosed with MDD, GAD, ADD and panic attacks is sufficient mental health involvement to warrant a psychological. Finally, as a result of these diagnoses, the accuser is now on at least four different medications, the Court should order a psychological of the minor accuser as the Supreme Court did in *Michael*.

CONCLUSION

For the foregoing reasons, Defendant requests that the minor accuser here undergo a psychological examination of the minor child to determine her competency to testify and also determine in the medication she is taking affects her ability to testify.

Respectfully submitted

Steven S. McKenzie
Coffey & McKenzie, PA
Attorneys for Defendant
2 N. Brooks Street
Manning, SC 29102
803-435-8847 telephone
803-435-8915 facsimile

Dear My loved Family,

I love you all, but sometimes I feel like you don't care about me that's why I did this to myself

I leave Earl the Pearl to Leigh Leigh

I leave Hankie to A'mie

I leave My Sock monkey to Hannah

I leave My iPad Mini to Hannah

I leave all of my Mommy's Pictures to Leigh Leigh

Please Make sure Hannah Mrs. Ginger and if you can Mr. Gus to my funeral

I love you all Good Bye

Also I leave all my AG Dolls to Nataleigh Jones Make sure she is at my funeral

CLINICAL NOTES

EMOTIONAL/ BEHAVIORALS STATUS

☐ UNCHANGED SINCE LAST VISIT☐ IMPROVED- EVIDENCED BY _____☐ DETERIORATED- EVIDENCED BY _____

COMMENTS: _____

UNDATED TREATMENT PLAN

PROBLEM: _____

GOALS: _____

COMMENTS: _____

OBSERVATIONS:

Mood: *flat*Affect: *flat*Thought: *logical*Hallucinations: *no*Delusions: *no*Focus: *good*Sleep: *good*Energy: *high*Suicidal Ideations: *no*DIAGNOSIS *MDA, unresolved*IDENTIFICATION *10y old w female*

ISSUES ADDRESSED IN TODAY'S SESSION:

He gripped the neck of his mother severely again. Brought to therapy by aunt and grandmother. He has been making statements about wanting to be with his mother - since a date leaving to his things to please

TEACHING/ TREATMENT:

late leaving to his things to please easily distracted in class. He having mood swings - (late mother has bipolar) Done AD/ symptoms except poor focus and concentration. Biting

PATIENT RESPONSE TO TREATMENT/ TEACHING:

nailed. Note depressing letter states she wants to join his mother. He will be referred to Dr. Gray for evaluation. Group Therapy

MEASURABLE PROGRESS TO GOALS

CLINICIAN SIGNATURE AND TITLE <i>[Signature]</i>	TIME IN 3:00	TIME OUT 4:00	DATE 5-8-10
PATIENT NAME <i>Victim</i>			

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF GENERAL SESSIONS
Indictment No. 2016-GS-14-0098

State of South Carolina,)
v.)
MICHAEL J. DINKINS,)
Defendant.)

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned Attorney for the State will move before this Honorable Court at a date to be determined for admission of following evidence of other crimes, wrongs, or acts under Rule 404 (b), SCRE:

1. During spring break of 2013, the defendant reached under the victim's nightgown and touched the victim on her vaginal area. The victim did not tell anyone until after several months later when she told her grandmother. Grandmother spoke with the victim's aunt who in turn told the defendant that this behavior was inappropriate and made victim uncomfortable.
2. Between 2013 and 2015 the defendant kissed victim on the back of her neck. This incident was witnessed by the victim's aunt who confronted the defendant, informed him that his behavior was inappropriate and made victim uncomfortable. She asked the defendant to refrain from such behavior.
3. Between 2013 and 2015 the defendant touched victim's legs and thighs making victim uncomfortable.
4. Between 2013 and 2015 the Defendant showed the victim pictures of models from Victoria Secret catalog. He told the victim that this was how he wanted the victim to look when she grow up.
5. Between 2013 and 2015 the defendant offered to buy victim revealing bathing suit.

6. Around 2014 the defendant touched victim's leg under the table. This incident was witnessed by victim's grandmother who notified victim's aunt. Aunt told the defendant that this type of behavior made victim uncomfortable.

7. On or about December 26, 2015 the Defendant send the victim the text message "LUKUAMU," which stands for "Love You, Kiss You, Already Miss You." He also sent the victim a message "You're the bomb.com."

Respectfully submitted,

Third Circuit Solicitor's Office

This ____ day of October, 2017
Sumter, South Carolina

State of South Carolina	)	Court of General Sessions
	)	Third Judicial Circuit
County of Clarendon	)	Case No. 2016-GS-14-00098

State of South Carolina,	)
	)
Plaintiff,	)

-vs-

Transcript of Record

Michael James Dinkins,	)
	)
Defendant.	)

November 2, 2017
Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

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

Katarzyna Timmons, Esquire
Attorney for the Plaintiff

Steven S. McKenzie, Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

I N D E XWITNESS/DESCRIPTIONPAGE NUMBER

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E X H I B I T S

000017

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-1	Psychological Assessment		65

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said

1 NOVEMBER 2, 2017

2 (WHEREUPON, the proceedings began at 10:01 a.m.)

3 THE COURT: All right. This is the State of South
4 Carolina versus Michael Dinkins, and do you have the
5 indictment number?

6 MS. TIMMONS: Your Honor, yes. Well, I have a copy of
7 the indictment I can hand up.

8 THE COURT: Okay. Very good. It's Indictment 2016-GS-
9 14-0098. And I'm going to ask counsel to make a note in
10 their record and to get the court reporter's information. In
11 the event there needs to be appellate review, we need to have
12 -- have it at least noted that we're having these hearings
13 here and have a different court reporter than the trial
14 court.

15 MR. MCKENZIE: Okay.

16 THE COURT: Very good. All right. I'll be glad to hear
17 any motions that are before the Court.

18 MS. TIMMONS: Your Honor, I guess I can start. The
19 State would like to introduce some prior bad acts under
20 404(b) exception.

21 The prior bad acts that we will plan to introduce, if I
22 can summarize to you, during the -- from -- or during the
23 spring break of 2013, the defendant -- I guess, while
24 defendant and victim and her family were at the beach during
25 the spring break, he reached under her nightgown and touched

1 her -- touched victim in her vaginal area. It had been, I
2 guess, at the house that they were renting during that time.
3 Defendant and the victim were alone just for a brief moment.
4 They were in the living room alone on the couch. That's
5 where he reached and, I guess, touched her in her vaginal
6 area.

7 There were other people in the house. The defendant was
8 intoxicated. The victim did not disclose that information
9 until probably nine months to a year later. She disclosed
10 that information to her grandmother. She, in turn, told her
11 daughter, victim's aunt, who happens to be defendant's --
12 well, now, ex-wife.

13 She confronted defendant about it. He just said he
14 probably was intoxicated at that time. She told him not to
15 do it again. It makes victim uncomfortable. That they
16 assumed it was just an innocent -- well, there wasn't
17 anything to it.

18 And the other acts that we plan to introduce between
19 2013 and 2015 -- sometime between 2013 and 2015, the
20 defendant kissed the victim on the back of her neck. It
21 happened at -- well, defendant and victim -- at defendant's
22 home. The victim and her aunt used to live at that home at
23 that time. It happened in Clarendon County.

24 The victim and defendant were alone in the hall.
25 However, victim's aunt, who witnessed that incident -- she

1 was in the kitchen. She could have seen -- well, she saw
2 defendant kiss victim on the back of her neck. The victim
3 cringed. That's when victim's aunt confronted defendant.
4 She talked to him, told him don't ever do it again. That's
5 inappropriate. It makes her uncomfortable. If you do it
6 again, we're going to have some serious talk.

7 And then victim disclosed during her forensic interview
8 that, between 2013 and 2015, defendant was touching her on
9 her legs and thighs, making her uncomfortable.

10 Also, sometime between those dates, defendant was
11 looking at the Victoria's Secret catalog. He was showing the
12 pictures to the victim, and the victim will testify that he,
13 I guess, showed her one of the pictures and he told her this
14 is how I want you to look when you grow up. He also offered
15 to buy her a swimsuit, and the victim stated that the
16 swimming suit was very revealing. I just -- I didn't like
17 that.

18 Another incident happened around 2014. Victim and her
19 grandmother were doing homework at their home. Defendant
20 entered the room, sat on the opposite side of the table, and
21 started rubbing victim on her leg with his leg. It made
22 victim and grandma extremely uncomfortable. They moved to a
23 different room. Defendant kept following them. It got to
24 the point that victim's grandmother had to call her daughter,
25 who had to come back from work, talk to defendant. Do not

1 act like that; it makes them -- it makes victim very
2 uncomfortable.

3 And also on December 26th of 2015, defendant sent victim
4 a text message. They were just letters, LUKUAMU, which
5 stands for love you, kiss you, already miss you. He also
6 sent her a message, you're da bomb.

7 Victim got a -- as one of her Christmas presents, she
8 got a cell phone. And the day after Christmas, victim and
9 her grandma left the residence in Manning and they went to
10 grandma's house in Sumter and, as they were driving, that's
11 when the defendant sent that text message. Again, it made
12 victim very uncomfortable.

13 And, Your Honor, the basis for -- we would like to
14 introduce -- the basis for -- I guess, we would like to
15 introduce those evidence based on the one common scheme and
16 plan, which is one of the exceptions under Rule 404(b). The
17 Court ruled that, I guess, the trial judge, which is you,
18 would have to look at the -- consider several factors,
19 including the age of the victim when -- when these incidents
20 occurred. It all happened within a two-year span.

21 The relationship between the victim and the perpetrator.
22 It's the same victim, and the defendant and the victim -- and
23 like I said, he's -- he was married to the victim's guardian
24 at that time. Pretty much all of those incidents occurred at
25 their house in Manning, except the beach incident.

1 During all of those incidents, at none of the -- during
2 no point in time did he use any threats or force. So that's
3 another similarity. And all of those incidents -- pretty
4 much all of them were -- included nonconsensual touching,
5 except the text message.

6 And, Your Honor, it shows -- I guess, his behavior,
7 those prior bad acts, show that he was -- that defendant was
8 involved -- I guess, engaged in a pattern of behavior
9 consistent with grooming. That -- that he was trying to
10 elicit sexual advances.

11 And also, we tried to introduce those facts to show the
12 defendant's intent and lack of mistake. I know our Supreme
13 Court said that -- I guess, that one of the exceptions that
14 they would allow those prior bad acts to come in is whenever
15 defendant admits that there was touching, but he states that
16 there was -- that there wasn't anything inappropriate behind
17 that touching.

18 Whatever -- however, defendant, whenever he was
19 interviewed by Kimberly Marlowe with the Sheriff's office, he
20 stated that, yes, he was touching the victim. However, there
21 was nothing inappropriate. That he kissed her on her neck.
22 That's how they used to do as kids.

23 One of the counts that he is charged with, the
24 allegations are that he kissed her on her -- on her lips and
25 tried to put tongue -- her -- his tongue in her mouth. He

1 explained to investigator that what he did was kiss his
2 fingers and then place them on the victim's mouth, and we
3 would like to introduce those prior bad acts to show that
4 there was nothing innocent. He was told on prior occasions
5 do not touch the victim in that manner, it makes her
6 uncomfortable, it's inappropriate, and yet he continued to do
7 it.

8 And also, Your Honor, he is charged with four counts of
9 CSC with a minor in the third degree. We need to prove that
10 that touching was done with an -- with an -- I guess, in a --
11 that it was criminal behavior and since it's, I guess, one of
12 the elements of the crime, it's very important for us to be
13 able to present evidence of his intent and motive.

14 THE COURT: All right. Mr. McKenzie, I'll be glad to
15 hear from you.

16 MR. MCKENZIE: Thank you, Your Honor. Your Honor, I
17 think one of the -- I understand the State can have the
18 prosecution witness in the stand or the officer that test --
19 or the officer that did the investigation, but I think one of
20 the witnesses is also present that would testify in a 404(b)
21 hearing, in an in-camera hearing, and I would ask the Court
22 if we could sequester her before I start my argument.

23 THE COURT: Any -- any objection to a sequestration?

24 MS. TIMMONS: No, Your Honor.

25 THE COURT: All right. And I'll ask that you give all

1 of the witnesses instruction that they do not discuss the --
2 not only that they not witness it, but they aren't to discuss
3 their testimony or questions with one another.

4 MS. TIMMONS: Okay. Your Honor, we also have, I guess,
5 other witnesses to prove by clear and convincing evidence
6 prior bad acts made by the defendant. That includes victim,
7 her grandmother. Would it be possible for you to give us
8 which way you are inclined to rule? I just would not want
9 the victim to testify twice in the matter. She'll have to
10 testify during the trial on Monday, and I think it's just
11 going to be traumatic for -- for her.

12 THE COURT: Well, is there a witness in the courtroom
13 now?

14 MR. MCKENZIE: There is, Your Honor.

15 THE COURT: Okay. Well, let's see if we can't get --
16 get her sequestered at this point.

17 MS. TIMMONS: Oh, I can explain to her? Okay.

18 THE COURT: Yes.

19 (WHEREUPON, there was a pause in the proceedings for any
20 witnesses to leave the courtroom, after which the
21 proceedings resumed as follows.)

22 THE COURT: All right. Mr. McKenzie, you're recognized.
23 Yes, sir?

24 MR. MCKENZIE: Thank you, Your Honor. Your Honor, to
25 give you the -- the factual background, my client and Ms.

1 Leigh Dinkins, his wife, got custody or were granted custody
2 of this child pursuant -- after this child's mother died.
3 The victim's mother died. The victim -- the victim's father
4 has severe epilepsy and was unable to care for the child.

5 So the child went to live with her maternal aunt.
6 There's a Family Court order. This child was given custody.
7 So the victim is the uncle of the child.

8 So with that background, the allegations have to deal
9 with touching and inappropriate kissing, things like that,
10 and so, Your Honor, the 404(b) evidence and the reason we
11 objected or we object to these prior bad acts is the biggest
12 concern I have is I have an indictment which is an amended
13 indictment, and I'll pass that up to the Court and I'll pass
14 up the indictment that was actually the prior one.

15 But you can see from the amended indictment, the State
16 basically mirrors in the indictment the statute. The statute
17 says any type of lewd and lascivious conduct towards a child
18 from when the actor is over the age of 16 and the child is
19 under the age of 14 is criminal sexual conduct, third-degree.
20 That's basically what the allegations are in the amended --
21 the amended indictment.

22 The problem with that is I don't know what they are --
23 what they intend to show is the act that we are going to have
24 to -- that's going to -- that we're going to have to prove or
25 defend. I'm not asking the Court to quash the indictment. I

1 think it passes the basic indictment test.

2 THE COURT: The notice? The notice test?

3 MR. MCKENZIE: Yes, sir. I think it puts us on notice
4 of what we have to defend. The problem is some of the prior
5 bad acts bleed into what the indictment -- what I understand
6 from the amended -- from the first indictment are the actual
7 acts in this case, which is kissing, touching.

8 THE COURT: That -- and have you -- is your motion to
9 resolve all of these at one time? Are you moving to sever or
10 what are you doing?

11 MR. MCKENZIE: Well, I don't know what they're intending
12 to -- because I've got an amended superseding indictment. I
13 don't know what the acts are they're actually saying he
14 committed.

15 Your Honor, I've got -- I've got an incident report.
16 I've got a -- I've got a Durant Center investigative report
17 and a video. I've got a first indictment. And all three of
18 those things allege three different types of acts on the part
19 of my -- the only one that's consistent is the attempt of my
20 client to kiss her on the lips on January 1st. That's the only
21 consistent bad act.

22 For example, in the Durant Center, there's -- there's a
23 statement from the Durant Center where -- and ^{Victim} ~~the~~ the minor
24 child here, states that he never touched her on the vagina.
25 He touched her on her legs, but he never touched her on the

1 vagina. Now, I'm getting a prior bad act saying in 2013 he
2 touched her on the vagina, and that's -- that's the first
3 thing that they are alleging on there.

4 THE COURT: All right. Well, let's -- that was one of
5 the things that concerns me is that, you know, we've got four
6 separate and distinct offenses or alleged dates on the
7 indictment: October 27th -- two on October 27th, one on
8 December 31st, one on December 26th.

9 In order for us to discern the difference between the
10 substantive acts set forth in the indictment and prior bad
11 acts, let's -- let me hear from the Solicitor's Office. What
12 is the October 27th -- what is October 27th -- the factual
13 basis on October 27th?

14 MS. TIMMONS: Your Honor, what we allege happened at
15 that time, victim was -- it was victim's birthday. She was
16 in her bedroom laying in her bed. She was sick.

17 Defendant -- whenever he knew that victim was alone, he
18 came to her room and he made -- moved her hand to touch him
19 under his, I guess, belly. She said she could feel something
20 soft and squishy. Then he left the room and sometime later
21 he came back to her room, laid on top of her, and made -- I
22 guess, started moving up and down on top of her. It was all
23 above the clothes.

24 THE COURT: All involved with clothes on you're saying?

25 MS. TIMMONS: Yes. She -- she had her clothes on.

1 THE COURT: And he had his clothes on?

2 MS. TIMMONS: Well, he had her -- his clothes on
3 whenever he laid down on top of her. Whenever he made her
4 touch his penis, I guess she could feel something soft and
5 squishy under his belly.

6 MR. MCKENZIE: And, Your Honor, just -- I hate to
7 interject here, but according to all the records, she never
8 actually saw this because her face was faced away from him.
9 If I'm -- if I'm misstating something, please correct me, but
10 --

11 THE COURT: Well, all of those are factual issues.

12 MR. MCKENZIE: They are. Correct. I agree with you. I
13 think those are something a jury has to determine who's
14 telling the truth on that issue, but --

15 THE COURT: What I'm trying to do is try to discern
16 which allegations they're alleging. It sounds to me as if
17 this is a very definite event that took place on or near her
18 birthday.

19 MS. TIMMONS: That's correct, Your Honor.

20 THE COURT: And it involves in the bedroom, some
21 inappropriate touching, and laying on top of her. Is that
22 essentially it?

23 MS. TIMMONS: That's correct, Your Honor.

24 THE COURT: Okay.

25 MS. TIMMONS: One of those counts --

1 THE COURT: All right.

2 MS. TIMMONS: -- is that he made her --

3 THE COURT: Well, obviously, that is admissible. I mean
4 that's the substance of the indictment. Okay?

5 And how about these? Count II is what? That's October
6 27th as well.

7 MS. TIMMONS: Well --

8 THE COURT: Those -- what you told me, are those two
9 separate and distinct events?

10 MS. TIMMONS: Yes. We decided to indict it as two
11 separate offenses since at first he went to her room and made
12 her touch him, and then he left the room and sometime later
13 on that night he came back and laid on top of her and, I
14 guess, made humping motions.

15 THE COURT: Okay. Very good. All right. So -- all
16 right. So that covers Count I and II. How about III?

17 MS. TIMMONS: Your Honor, that's December?

18 THE COURT: December 31st.

19 MS. TIMMONS: That's New Year's Eve incident. That's
20 whenever victim was --

21 THE COURT: All right. New Year's -- New Year's Eve?

22 MS. TIMMONS: That's correct, Your Honor. Victim -- I
23 guess, victim and defendant and there was also grandmother
24 there watching TV. Grandmother went to lay down. So victim
25 and defendant were left alone. Victim looked like she was

1 asleep. That's when defendant, I guess, bent down and kissed
2 her on her lips and tried to put tongue in -- his tongue in
3 her mouth.

4 THE COURT: Okay. All right.

5 MS. TIMMONS: So that's the basis.

6 THE COURT: And Count IV? December 26th?

7 MS. TIMMONS: That was day after Christmas. Victim was
8 in her room. Defendant, whenever he saw that nobody is
9 around, came to her room, made her sit on -- on his lap, and
10 started touching her on her breast above -- above her bra.

11 THE COURT: All right. Well, it sounds to me that, you
12 know, the defendant has not moved to sever these, and this is
13 indeed a pattern of conduct which you're alleging, and we've
14 got four separate events, one of which took place on the same
15 night --

16 MS. TIMMONS: Yes, Your Honor.

17 THE COURT: -- moments after one another. And you're
18 wanting to introduce more to establish more of a pattern?

19 MS. TIMMONS: Yes, Your Honor. We would like to
20 establish the pattern because --

21 THE COURT: What would the additional offenses -- you
22 know, we've got one -- two -- four different instances right
23 here, which they aren't objecting to.

24 MS. TIMMONS: The -- the incident that happened on
25 October, victim didn't disclose it until sometime later. So

1 pretty much the first time -- if I won't be able to talk
2 about the bad acts, pretty much the first time the aunt finds
3 out about -- well, the New Year's Eve incident, victim --
4 after it happened and defendant left the room, she came
5 running out looking for her grandma and aunt, and that's when
6 she said Uncle Mike kissed me. At that moment, aunt went to
7 confront defendant, and that night they moved out.

8 And I guess during his -- defendant's -- whenever
9 defendant was talking to law enforcement, he said all he did
10 was just kissed his lips -- I mean kissed his fingers and put
11 it on -- on her lips. He was claiming that it was innocent
12 touch, that there was nothing inappropriate in it. And the
13 reason why we want to introduce prior bad acts is to show
14 that he was told don't do it, it makes her uncomfortable,
15 it's inappropriate, and he kept continuing to do it.

16 THE COURT: Right. Well, with regard to the kissing --
17 the kissing event --

18 MS. TIMMONS: He was told twice before don't touch her,
19 it makes her uncomfortable, it's inappropriate, and yet on
20 New Year's Eve he kissed her and, I guess, that was the last
21 straw for victim's aunt.

22 THE COURT: Okay. All right.

23 MS. TIMMONS: And she moved out.

24 THE COURT: The seminal case that deals with -- not the
25 seminal case, the most recent case that deals with prior bad

1 acts -- do y'all have a copy of that one? Is it the Williams
2 case?

3 MS. TIMMONS: Your Honor, the case that I'm relying on
4 are State v. Kirton, which is 2008 case where our Court
5 allowed to introduce prior bad acts of touching under common
6 scheme or plan, and also State v. Clasby, where also prior
7 incidents were allowed under common scheme or plan. And I
8 have copies.

9 THE COURT: Okay. Let me see those. Which case were
10 you speaking of that you --

11 MR. MCKENZIE: Well, Your Honor, I was talking about
12 State v. Wallace. I provided a memo to you. You may not
13 have it, but State v. Wallace. Obviously, the -- and that's
14 what we were talking about in chambers about the fact that
15 Wallace is a Supreme Court case and I think at that time had
16 Justice Pleicones. Yet, it was a three/two split on it.

17 Basically, it -- it states that the -- that the factors
18 that you had to follow in regards to determine whether or not
19 prior bad acts were -- were admissible, and it starts off
20 with the first factor is the age of the victim when the abuse
21 occurred, the relationship between the victim and the
22 perpetrator, the location where the abuse occurred, the use
23 of coercion or threats, the manner of the occurrence, for
24 example the type of sexual battery.

25 And, Your Honor, if you look at -- and that's -- that's

1 why I went -- that's where I was starting off with this is I
2 really don't know what they're asking or where we are in
3 regards to the indictment. That it --

4 THE COURT: Well, it's -- it's clear where we are with
5 regard to the indictment.

6 MR. MCKENZIE: Well, I mean I know, but I don't
7 understand what the acts are that -- you know, the indictment
8 just basically meets the minimum test in regards to notice.

9 But as far as what are the acts, in order to be a prior
10 bad act, I've got to know what the original act is, and I've
11 got several. I've got conflicting statements as to what acts
12 we're actually here on in October because a lot of different
13 statements have been made about what happened in that October
14 event, what happened in December, and so I -- you know, in
15 order to get a prior bad act, you've got to -- you know,
16 you've got to test the bad act versus what the actual act
17 that's being charged.

18 And so, for example, if you look at the spring break
19 2013, there was an allegation under the nightgown in the
20 vaginal area. Told grandmother several months later. That's
21 the -- that's what they're relying on, but if you look at the
22 forensic interview for ^{Victim} ~~the~~, the forensic interview goes into
23 great lengths to say that never did -- ^{Victim} ~~the~~ says never did
24 Mr. -- Mr. Dinkins ever touch her on the vaginal area.

25 So I'm not really sure, you know, how -- I understand

1 this is evidence for cross-examination, Your Honor, but
2 there's no common scheme or plan if you -- if you've never
3 touched the vaginal area. And so if the allegation is that
4 -- that we're trying to prove is that he touched her
5 inappropriately on her legs, then the 2013 vaginal area
6 touching is not a common scheme or plan.

7 THE COURT: All right. Let me see your memorandum.

8 MR. MCKENZIE: Certainly. And I've been writing all
9 over this thing; so it's --

10 THE COURT: That's all right.

11 MR. MCKENZIE: And it -- my memorandum starts off by
12 saying what the allegations were in the initial -- in the
13 initial incident report. Then it goes to the allegations
14 that were put in the warrants. Then it goes to the
15 allegations in the first indictment, and then it goes to the
16 allegations that were the prior bad acts.

17 And I -- and I placed in there the law in regards to
18 Wallace, Your Honor, and the test that I think the Court
19 needs to adhere to, and obviously this is a clear and
20 convincing standard. And I think the only way we can
21 probably get a handle on this is to have testimony as to what
22 the prior bad acts were and about the allegations that are
23 currently pending.

24 MS. TIMMONS: Judge, if I may address the --

25 THE COURT: Yes.

1 MS. TIMMONS: -- the vaginal area? The victim, during
2 the forensic interview, yes, she clearly stated he didn't
3 touch me -- he didn't touch me on my vagina. He touched me
4 around -- well, I don't think she used that words, vaginal
5 area. It was around her vaginal area. So I guess the prior
6 bad act that we plan to introduce is that he touched her
7 around or not on her vagina, but around her vaginal area.

8 MR. MCKENZIE: And, Your Honor, that's not what the --
9 the allegation is. If you look at the first, it's that he
10 actually -- in 2013 spring break, he actually touched her
11 vagina. That's what -- that's what the original -- that's
12 what -- that's what was sent to me in a memo.

13 And -- and then if you look at the forensic reports, it
14 says ~~he~~ ^{Victim} says several times he would rub her legs and go to
15 but not actually touch her tee hiney, which is her vaginal
16 area.

17 MS. TIMMONS: Well, I guess, the -- the notice that I
18 sent the defense was that he touched victim on her vaginal
19 area. If I wanted to say that he touched her on her vagina,
20 I would have said. It was the area.

21 And, Your Honor, I think the indictment is very clear.
22 It sets specific dates. The prior bad acts that we plan to
23 introduce had been prior to that. They're spring break 2013,
24 the kissing on the neck sometime between 2013 and 2015, since
25 we don't have the exact date of the incident.

1 So I believe the -- well, the defense was clearly on
2 notice. There was specific dates on the -- on the
3 indictments, specific conduct, prior bad acts since --

4 THE COURT: And let's -- we know what's been alleged.
5 The -- the October 27th, 2015, bedroom incident, two separate
6 and distinct events -- we know what allegedly transpired
7 there. Then we've got the -- the New Year's Eve tongue kiss,
8 and then we've got the Christmas touching of the breast.

9 All right. Now, let's set forth the prior bad acts that
10 you want to relate to each of these four events.

11 MS. TIMMONS: Well, Your Honor, the -- we would like to
12 introduce the spring break whenever the defendant touched
13 victim on her vaginal area.

14 THE COURT: Spring break of what year?

15 MS. TIMMONS: 2013. And the victim will testify she was
16 eight or nine years old. Whenever I talked to the victim's
17 aunt, they weren't able to pinpoint exactly to the day.
18 Also, sometime between 2013 and 2015, whenever he kissed her
19 on the back of her neck.

20 THE COURT: All right. Now, this is 2013 kiss on the
21 back of the neck?

22 MS. TIMMONS: Sometime between that date. Sometime
23 between 2013 and 2015 prior to New Year's Eve when he kissed
24 her on the back of the neck. That incident was witnessed by
25 victim's aunt, and she confronted defendant and told him

1 don't do it, it's extremely inappropriate.

2 THE COURT: All right. And the next prior bad act?

3 MS. TIMMONS: Between 2013 and 2015, defendant was
4 touching victim on her legs. The victim will be able to
5 testify to that. It's just whenever they were sitting on the
6 couch. Sometimes he was rubbing her. It was just, I guess,
7 a series of events.

8 THE COURT: Is there another prior bad act?

9 MS. TIMMONS: Yes, Your Honor. Between 2013 and 2015,
10 defendant showed victim a Victoria's Secret catalog. He told
11 her this is how I want you to look like when you grow up. He
12 offered to buy her some revealing bathing suit.

13 Another bad act. It was around 2014 when victim and her
14 grandmother were doing homework. Defendant came into the
15 room, was making them very uncomfortable. Grandmother will
16 be able to testify that she saw his leg under the table. She
17 didn't actually see him touch the victim. Just his behavior
18 was making her uncomfortable. Victim will be able to testify
19 that he was rubbing on her leg.

20 And then December 26th whenever defendant sent her --
21 sent victim the text message love you, kiss you, already miss
22 you, and you're da bomb.

23 THE COURT: The other prior bad act was the texting
24 event?

25 MS. TIMMONS: Yes, Your Honor. And, I guess, it depends

1 if you allow us to play forensic interview. During the
2 forensic interview, the victim described another incident
3 whenever defendant, I guess, was walking around the house
4 with a banana in front of his pants. I did not include it in
5 this notice. I guess it just slipped my mind and I don't --
6 I mean it may be --

7 THE COURT: All right. Since there was no notice,
8 there's going to be no mention of a banana.

9 MR. MCKENZIE: And, Your Honor, what -- what I would say
10 about that, I mean obviously I think one of these allegations
11 is rubbing her legs. I mean so in this -- in the indictment,
12 that may be something that probably can show a common scheme
13 or plan, but the problem is is that in order to show this
14 common scheme or plan, I think you -- and the Wallace factors
15 say that you have to show some similarities between what
16 happened in the past.

17 Even though you've got some of those tests, we've got
18 the same victim, we've got the same perpetrator -- alleged
19 perpetrator, the locations are different. For example, the
20 text. There's no prior -- if you're viewing this as a prior
21 bad act, love you, kiss you, miss you, and you're da bomb, I
22 mean there's no other allegation that a cell phone or
23 anything was disseminated via that kind of communication.
24 None of the indicted actions here involve electronic means or
25 anything like that.

1 So I mean there's no -- there's no common scheme or plan
2 with that. Obviously, you can't -- you have to have some
3 connection between the indictment and the prior bad act, and
4 nothing in the prior bad act -- or in the indictment says
5 that he ever used a telephone to -- you know, I think it
6 would be different if one of the indicted actions were, hey,
7 he had been calling her up, talking sexually to her on the
8 phone. Then that may be relevant, but here it's not.

9 The other issue, Your Honor, in regards to the
10 Victoria's Secret catalog and swimsuits, all those things, no
11 other allegations or nothing in the indictment itself says
12 that he showed her any type of pornography, pornographic
13 materials, or anything like that. So again, I'm not sure how
14 that prior bad act is relevant to this case.

15 He touched her on her leg. That's -- that's part of the
16 allegations. I think, you know, if the grandma is going to
17 come in and testify that she saw Mike's leg under the table
18 when they all were sitting there, I think that may be
19 relevant to testify to that, but -- and if ^{Victim} ~~he~~ testifies
20 that he was rubbing her leg, then obviously that may be a
21 connection. That may be one of the common ways that this --
22 this common scheme or plan. I think that may be relevant,
23 but to take that leap about Victoria's Secret, the text
24 messaging, and say they're connected to the indictment in a
25 common scheme or plan --

1 THE COURT: What are you having to say about the 2013 to
2 2015 kiss on the back of the neck?

3 MR. MCKENZIE: Well, Your Honor, there is a -- there's
4 an allegation of a kiss. The kiss was that he -- the
5 allegation I think was the New Year's Eve kiss where ~~the~~^{Victim} is
6 alleging that he tried to put his tongue in her mouth.

7 Again, I understand this is a kiss, but there's no --
8 this is the back of the neck and so, obviously, that may mean
9 there's a difference between an affectionate kiss versus a
10 kiss that's sexual. I think the jury can go in -- I think
11 there's actually a case on point that says, you know, a
12 French kiss may be more than just sexual or more than just an
13 affectionate kiss.

14 Obviously, if the jury believes that he tried to put her
15 tongue -- his tongue in her mouth, that may be the situation
16 that they believe. But again, back of the neck versus mouth
17 is a totally different situation. I mean that may be an
18 affectionate-type situation versus a -- and we may have to
19 have testimony to elicit that, Your Honor, the circumstances
20 surrounding that kiss. You know, if someone actually saw it,
21 then what was the circumstances and the nature around it?
22 Was he praising her and just simply showing affection to her
23 or was it something more than that? I mean --

24 THE COURT: All right.

25 MR. MCKENZIE: -- some sexual context with it. I don't

1 know the answer to that.

2 THE COURT: All right. Well, I think that we kind of
3 have the parameters of what the substantive allegations are,
4 and we have six different prior bad acts that have been
5 delineated by the State.

6 And I think that we need to elicit testimony in order
7 for me to -- to determine whether or not there's clear and
8 convincing evidence with regard to these prior bad acts, and
9 evaluate how they -- these prior bad acts relate to the
10 substantive offenses. In order for us to do that, we're
11 going to have to have their testimony.

12 MR. MCKENZIE: Yes, sir.

13 MS. TIMMONS: Yes, Judge. I guess one of my witnesses
14 will be victim, ... She is 13 now. I know the
15 defendant -- I mean Mr. McKenzie made a motion to sequester
16 witnesses. She's here with her grandmother and aunt. Could
17 at least her aunt be here just for comfort or --

18 MR. MCKENZIE: Your Honor, the problem with that is -- I
19 mean I think once a witness testifies, then certainly that
20 witness can stay in the courtroom. That's allowed under
21 sequestration. So it may be that -- and I'm not trying to
22 tell the State how to call their case. I mean she may want
23 to call the aunt or whoever she wants to comfort the child.
24 I have no objection after that person testifies. What I
25 think sequestration is is that we make sure we get the

1 person's testimony from their source and not from another
2 person's source, if they hear it.

3 THE COURT: So we call the aunt first is what you're
4 saying?

5 MR. MCKENZIE: Yeah. I mean I think the order of events
6 would be call --

7 THE COURT: All right.

8 MR. MCKENZIE: -- aunt first and then call the victim,
9 and the aunt can sit in here during the victim's testimony.

10 THE COURT: Let's do that.

11 MS. TIMMONS: I guess we can do it. It's just I guess
12 part of the aunt's testimony, I guess especially to spring
13 break of 2013, she find out from her grandmother -- I mean
14 from her mom, who in turn -- mom, who in turn found out from
15 victim. So I guess it will be -- part of that testimony will
16 be hearsay.

17 MR. MCKENZIE: I'm not going to object to that, Your
18 Honor. I think this is a -- this is a --

19 THE COURT: This is a threshold to determine whether
20 it's related.

21 MR. MCKENZIE: Yeah. I think just we're trying to
22 determine whether or not this is -- and I will let that --
23 obviously will not object to that type of testimony coming
24 in, but again, I think it's very important that each witness
25 testify based on their own knowledge and not someone else's.

1 THE COURT: Okay.

2 MS. TIMMONS: Okay. We can do it. And, Judge, I guess
3 the only testimony I'm going to try to get is considering
4 prior bad acts. I guess I don't have to go through questions
5 for the victim to establish that she's competent.

6 THE COURT: Well, I think for purposes of the -- you
7 know, we might could go ahead and go through those competency
8 questions here today and make it a part of the record, and we
9 can lay that to rest for the trial as well.

10 MR. MCKENZIE: That would -- that would be fine, Your
11 Honor. We can get that out of the way.

12 THE COURT: And obviously, we have the report. We can
13 do that. When she comes up, the first thing we're going to
14 do is talk about her competency to testify.

15 MS. TIMMONS: Okay.

16 THE COURT: And then we'll -- we'll lay that issue aside
17 -- I mean lay it to rest.

18 MS. TIMMONS: Okay. All right.

19 THE COURT: All right. Very good.

20 MS. TIMMONS: That will be my first --

21 THE COURT: Okay. Very good.

22 MS. TIMMONS: I'll call my first witness.

23 MR. MCKENZIE: Your Honor, the defendant is going to run
24 to the restroom real quick.

25 THE COURT: Very good.

1 THE DEFENDANT: Thank you, sir.

2 (WHEREUPON, there was a pause in the proceedings until
3 the witness entered the courtroom, after which the
4 proceedings resumed as follows.)

5 THE COURT: Yes, ma'am. If you could, just have a seat
6 just for a moment until the defendant comes back.

7 (WHEREUPON, there was a pause in the proceedings until
8 the defendant entered the courtroom, after which the
9 proceedings resumed as follows.)

10 MS. TIMMONS: Judge, I don't know -- will it be okay
11 with you if I ask those gentlemen to leave the courtroom just
12 because of the nature of the accusations, how sensitive they
13 are?

14 THE COURT: Yes. We're dealing with a criminal sexual
15 conduct case, and the minor is going to testify. If y'all
16 could have a seat -- y'all are welcome to have a seat in my
17 chambers, if you'd like.

18 THE ATTORNEY: Yes, Judge. We'll be perfectly situated
19 out here. Thank you.

20 (WHEREUPON, the gentlemen exited the courtroom.)

21 THE COURT: Very good.

22 MS. TIMMONS: Your Honor?

23 THE COURT: All right. You may call your witness.

24 MS. TIMMONS: Your Honor, the State calls Leigh Reed.

25 THE COURT: Yes, ma'am. If you could, come forward and

LEIGH REED - DIRECT BY MS. TIMMONS

1 place your left hand on the Bible and raise your right hand
2 as the clerk administers the oath. Do you swear to tell the
3 truth, the whole truth, and nothing but the truth, so help
4 you God?

5 THE WITNESS: Yes, I do.

6 THE COURT: I'm going to ask you to have a seat in the
7 witness chair. Pull up real close to that microphone and
8 speak loudly, clearly, and slowly in order that we can hear
9 everything that you have to say.

10 THE WITNESS: Yes, sir.

11 THE COURT: Let's start with your full name, please,
12 ma'am.

13 THE WITNESS: Leigh Durant Reed.

14 THE COURT: Very good. Yes, ma'am.

15 MS. TIMMONS: Okay. Thank you.

16 LEIGH DURANT REED, being first
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. TIMMONS:

20 Q: Ms. Reed, could you tell us about when first -- when
21 have you learned the first time about defendant touching ^{Victim} ~~the~~
22 inappropriately?

23 A: The -- the first time that I was aware was the time that
24 he kissed her on the neck.

25 Q: Okay. Can you tell us around what time?

1 A: That would've been 2014, maybe early 2015. It's really
2 hard to nail the date down, but that was when I saw him come
3 up behind her in the hallway and lift her hair up off her
4 neck and kissed her on her neck right here. (Gesturing.)
5 And I was positioned where I suppose he didn't see me, and
6 she went on down the hall.

7 (Gesturing.) She did like that, kind of trying to
8 squirm away from him, and she went on down the hall, and I
9 just said to him I need to talk to you, could you come here,
10 and we left the house and went outside in the car and had a
11 discussion about that being very inappropriate.

12 Q: Okay. Did you ask him not to do it again?

13 A: I asked him not to do it. I emphatically stated not to
14 do it. You know, this is not acceptable. That's not a touch
15 that you do to a young girl. That's an intimate gesture
16 between a man and a woman, somebody, you know, partners.
17 That's not appropriate for you to kiss a child like that, and
18 she's not your child. You're -- you're not her father, you
19 know.

20 Q: Okay. Can you tell us where -- where was it? Was it in
21 --

22 A: The kiss occurred in the hallway going --

23 Q: Where? Where were you living at that time?

24 A: Oh, I'm sorry. We were living in Manning at the
25 residence, 1173 Locust Way.

LEIGH REED - DIRECT BY MS. TIMMONS

1 Q: Okay. And where was he? I mean it happened in the
2 hallway?

3 A: It happened in the hallway at the house.

4 Q: Okay. And where were you?

5 A: I was in the kitchen of the house, and it's -- the
6 kitchen has a low bar. So it's basically like I was standing
7 on that side of the table looking into the hallway. So it
8 was no -- you know, nothing to block my sight from him.

9 Q: Okay. Was there anybody else present?

10 A: No, not at that time.

11 Q: Okay. Do you think defendant could see you --

12 A: No.

13 Q: -- from where he was?

14 A: I don't.

15 Q: Okay. So he was -- how was he standing in regard to
16 you?

17 A: ^{Victim} would have been standing here, and he came up
18 behind her, and I would've been in the kitchen about right
19 here. I can't recall if I was already standing there, but I
20 believe I had just come into the kitchen, which is why he
21 would've been unaware that I was coming in.

22 Q: Uh-huh.

23 A: And to do something and then saw it and -- and just went
24 from there, you know.

25 Q: All right. Were you told about any other incident?

LEIGH REED - DIRECT BY MS. TIMMONS

1 A: The -- the next time would have been -- it wasn't
2 anything about the touching. It was just when I had to come
3 home that day that he was intoxicated. I did not learn about
4 the other incidents until -- the first one was that night on
5 December the 31st of 2015, and then in counseling after that,
6 the other incidents.

7 Q: Okay. Can you tell us something about the night when
8 you got a phone call from your mother?

9 A: Right. I was at work and my mother called and said that
10 Mr. Dinkins had arrived at the home very intoxicated. They
11 were trying to do some studying for school, and he kept
12 trying to sit between the two of them. So they got up and
13 moved, and he followed them there. He was still intoxicated.
14 My mother stated that he was stumbling he was so intoxicated.

15 So she called me and said, you know, he's making us very
16 uncomfortable. He's very intoxicated. He can barely stand
17 up. I need for you to come home. So I had to go to my boss
18 and just make up an excuse and say I need to go to my house.

19 Q: And do you remember around what time it happened?

20 A: What time of the day?

21 Q: What time of the year?

22 A: No, ma'am. I can't recall the exact time of the year.
23 I wouldn't be able to.

24 Q: I mean -- but do you know the year?

25 A: That would have been early 2015.

LEIGH REED - DIRECT BY MS. TIMMONS

1 Q: Okay. And where did that incident occur? What
2 residence was that at?

3 A: That was at the Manning residence.

4 Q: Okay. The same residence where you witnessed the
5 defendant touch --

6 A: That's correct.

7 Q: -- touch the victim? Did you talk to him about it?

8 A: I did. We talked about his state of intoxication and I
9 said, you know, you're a different person when you're
10 intoxicated and, when you are, you make everybody very
11 nervous. You cannot do this in front of ^{Victim} ~~him~~, nor my mother.
12 You cannot do this.

13 Q: Okay. Did you had a chance -- do you remember when Gigi
14 got her cell phone -- when she first got her cell phone?

15 A: That would have been Christmas of 2015.

16 Q: Okay. Did you had a chance to see text messages that
17 she had on her cell phone?

18 A: I saw text messages after we left the home. I went
19 through her phone and saw the text messages that he had sent
20 -- Mr. Dinkins had sent to her.

21 Q: Can you tell us what were the messages?

22 A: The one message said the initials, love you, kiss you,
23 already miss you, LUKUAMU, already miss you.

24 Q: Okay.

25 A: And then you're da bomb. Da bomb, like D-A, you're da

LEIGH REED - DIRECT BY MS. TIMMONS

1 bomb.

2 Q: Okay. All right. But then -- so those were after you
3 already moved out --

4 A: Right.

5 Q: -- of his residence? During any time were you told that
6 -- were you informed about inappropriate touching during the
7 spring break of 2013?

8 A: Yes. I was informed, and I'm not sure if it was maybe a
9 week or so after the spring break trip, but was told what had
10 happened. And I talked to him and, again, it was the excuse
11 of the inebriation and he said that he had just been
12 stretching and had accidentally grazed her vaginal area.

13 Q: Okay. Can you tell us what were you told? I guess,
14 what were the allegations back then?

15 A: What ^{Victim} [REDACTED] told me?

16 Q: What your, I guess, mother told you.

17 A: (Gesturing.) My mother told me that he came and sat by
18 ^{Victim} [REDACTED] on the couch and she had on a nightgown and he rubbed
19 his hand up all the way on her thigh like that and came
20 across where her thigh crease meets the --

21 MR. MCKENZIE: Can you ask her to stand and demonstrate
22 that.

23 THE WITNESS: Okay.

24 MR. MCKENZIE: I can't see what --

25 MS. TIMMONS: Okay.

LEIGH REED - DIRECT BY MS. TIMMONS

1 MR. MCKENZIE: -- she's doing alone below her --

2 THE WITNESS: (Gesturing.) He said that he touched her
3 on her thigh and then came across like this on her, with a
4 finger maybe grazing her vagina, like this.

5 THE COURT: Did -- did you have a discussion with the
6 defendant about this incident? You said something about
7 inebriation. Did you discuss it with the defendant?

8 THE WITNESS: Yes, I did. And at that point, he told me
9 that she had misinterpreted that. That he must've been
10 stretching and accidentally hit her on the thigh.

11 BY MS. TIMMONS:

12 Q: Okay. Were there other people present?

13 A: Well, my mother was at the home at the -- are you
14 talking about when that incident occurred?

15 A: Yes. I mean when it happened. Was anybody else in the
16 room?

17 A: Nobody was in the room with her. I had stepped out and
18 my mother had gone to the bathroom, and then she ended up
19 coming back and I think later that evening *victim* told her.
20 And she assumed the same thing, that, you know, he was
21 intoxicated and it was not an intentional act.

22 Q: And you talked to defendant about it?

23 A: Yes.

24 Q: What did you tell him?

25 A: I told him, you know, the intoxication is no excuse for

LEIGH REED - DIRECT BY MS. TIMMONS

1 you making anybody feel uncomfortable. If you're that
2 intoxicated that you don't know what you're doing, then --

3 THE COURT: Let me clarify something, if we could. Is
4 it that he's saying that one of the prior bad acts was
5 accidental or one of the substantive acts was accidental?

6 MS. TIMMONS: Your Honor, he's saying that, I guess, the
7 New Year's Eve event. The victim is claiming that he kissed
8 her on her mouth and tried to put his tongue in his -- in her
9 mouth. He's saying that all he did was kiss his fingers and
10 then place his fingers on her mouth.

11 THE COURT: No. I was talking about the accidental
12 touching of the vaginal area.

13 MS. TIMMONS: He -- yeah. He was claiming that it was
14 an accident.

15 THE COURT: Okay. And that's one of the prior bad acts?

16 MS. TIMMONS: Yes, Your Honor.

17 THE COURT: Okay.

18 MS. TIMMONS: And the reason why we want to introduce it
19 is because he was told don't do it and yet he kept on. I
20 guess, continued his behavior.

21 THE COURT: All right. Go ahead.

22 MS. TIMMONS: Your Honor, I think that's all the
23 questions I have for --

24 THE COURT: Okay.

25 MS. TIMMONS: -- Ms. Reed for just -- for the prior bad

LEIGH REED - DIRECT BY MS. TIMMONS

1 acts.

2 THE COURT: All right. Does she know anything about the
3 kissing of the lips? You've mentioned that here, but is she
4 --

5 MS. TIMMONS: The New Year's Eve incident?

6 THE COURT: Yes.

7 MS. TIMMONS: Well. Yes, but that's the -- she didn't
8 witness it. Just victim came to --

9 THE COURT: All right. Very good.

10 MS. TIMMONS: After she was kissed, victim came running
11 and said Uncle Mike kissed me, and that's the -- I mean
12 that's one of the allegations --

13 THE COURT: Okay.

14 MS. TIMMONS: -- in the indictment. So I think --

15 THE COURT: Very good.

16 MS. TIMMONS: -- that's not 404(b).

17 THE COURT: All right. Mr. McKenzie?

18 MR. MCKENZIE: Thank you.

19 CROSS-EXAMINATION

20 BY MR. MCKENZIE:

21 Q: Ms. Reed --

22 A: Yes.

23 Q: You and the defendant were married; is that correct?

24 A: Yes.

25 Q: In 2010, I believe you were married?

LEIGH REED - CROSS BY MR. MCKENZIE

- 1 A: Yes, sir.
- 2 Q: Okay. And you've subsequently divorced?
- 3 A: Yes, sir.
- 4 Q: And divorced as a result of these actions according to
- 5 you; is that correct?
- 6 A: That is correct.
- 7 Q: Okay. Now, what I understand is is that you actually
- 8 witnessed him kiss her on the back of the neck?
- 9 A: That's correct.
- 10 Q: Okay. Now, prior to -- after you guys got married, the
- 11 child -- the minor child here came to live with you guys; is
- 12 that correct?
- 13 A: That's correct.
- 14 Q: And she -- you actually were granted custody and so was
- 15 Mr. Dinkins of her?
- 16 A: That is correct.
- 17 Q: Okay. And that was pursuant to a Family Court order?
- 18 A: That's right.
- 19 Q: When you went to Family Court, you had no problem with
- 20 Mr. Dinkins being -- having custody of this child?
- 21 A: That's correct.
- 22 Q: Okay. And y'all moved in to -- or I guess you already
- 23 were living in the residence in Manning, and that was Mr.
- 24 Dinkins' home?
- 25 A: That's correct.

1 Q: Okay. And ~~she~~ ^{Victim} came to live with you guys in what year?

2 A: Full time would have been 2014, the beginning of the
3 school year, but at the time after my sister's death, my work
4 schedule was a lot different and I would have six days in a
5 row off, and ~~she~~ ^{Victim} would come and spend those days with me so
6 I could take her to Lawrence Manning and then sometimes my
7 mother would come spend the night also, but her main
8 residence was still in Sumter.

9 Q: And your mother --

10 MS. TIMMONS: Your Honor, I would, I guess, object to
11 those questions. We're here just considering 404(b) prior
12 bad acts. The questions that Mr. McKenzie has asked, I think
13 he's just getting his shot at the witness, getting ready for
14 trial.

15 THE COURT: I'm going to allow him to do that.

16 MR. MCKENZIE: Yes, sir.

17 THE COURT: Certainly, the location of these events is
18 relevant.

19 MR. MCKENZIE: I'm just asking some background of where
20 the child was, Your Honor.

21 BY MR. MCKENZIE:

22 Q: And Barbara Reed is your mother?

23 A: That's correct.

24 Q: And she -- she would keep the child sometimes and you
25 guys would keep the child sometimes?

LEIGH REED - CROSS BY MR. MCKENZIE

- 1 A: That's correct.
- 2 Q: Okay. And the Manning residence was where the child was
- 3 living when all of these incidents occurred?
- 4 A: That is correct.
- 5 Q: Okay. Now, I think there was -- apparently, the back of
- 6 the neck was in the Manning residence?
- 7 A: Yes, sir.
- 8 Q: Okay. And that was 2014?
- 9 A: Right.
- 10 Q: And did Mike ever show affection towards this child any
- 11 other time or in any other way?
- 12 A: Well, sure. I mean, you know, have a good night. You
- 13 know, he may give her a hug.
- 14 Q: Okay. So hugging is appropriate?
- 15 A: Hugging is appropriate if you do it appropriately.
- 16 Q: Okay.
- 17 A: There's --
- 18 Q: What is an appropriate hug? Explain that to us.
- 19 A: An upper body hug is --
- 20 Q: Okay.
- 21 A: -- an appropriate hug.
- 22 Q: All right. So --
- 23 A: When you hug a child around their waist, it's
- 24 inappropriate.
- 25 Q: I mean you're talking about with his head around her

LEIGH REED - CROSS BY MR. MCKENZIE

- 1 waist? I mean --
- 2 A: No. I'm talking about if you -- if you're hugging
3 someone, you should go in like this. (Gesturing.)
- 4 Q: Right.
- 5 A: (Gesturing.) You should not go in like this and squeeze
6 somebody around their waist or lower body where they would
7 feel uncomfortable about that --
- 8 Q: Okay.
- 9 A: -- from an adult.
- 10 Q: And I'm trying to get the relevance of this because
11 everybody shows affection different ways.
- 12 A: Right.
- 13 Q: Would you say that's a fair statement? Is that a fair
14 statement?
- 15 A: There's appropriate affection and inappropriate.
- 16 Q: Okay. And so it's inappropriate for a man who has
17 custody of a child to kiss her on the back of the neck?
- 18 A: Inappropriate.
- 19 Q: Okay.
- 20 A: Yes, sir.
- 21 Q: And that -- that's your opinion on that?
- 22 A: Yes, it is.
- 23 Q: Okay. And I think you told -- you had a meeting with
24 him and said it was inappropriate?
- 25 A: Yes.

LEIGH REED - CROSS BY MR. MCKENZIE

1 Q: And he shouldn't do it again?

2 A: That's correct.

3 Q: And so did you -- did you discuss kissing in general or
4 kissing on the back of the neck?

5 A: Kissing on -- well, probably basically in general
6 because I said you should -- if you kiss her anywhere, the
7 top of her head.

8 Q: Okay.

9 A: That's where you should kiss her.

10 Q: Okay.

11 A: At that point, I didn't even feel comfortable telling
12 him to kiss her on the cheek because it just seemed like it
13 may have been another accident.

14 Q: Well, in the 2014 back of the neck, was he intoxicated?

15 A: He was intoxicated a lot of the time; so chances are,
16 yes, sir, he was intoxicated.

17 Q: But you don't remember specifically?

18 A: I don't remember specifically --

19 Q: Okay.

20 A: -- if he was.

21 Q: So one of the -- one of the MOs here is he was
22 intoxicated?

23 A: Right.

24 Q: And now, did -- you know, part of the statute that we're
25 here on is it had to be a lewd or lascivious act.

1 A: Correct.

2 Q: Okay. And so do you consider kissing on the back of the
3 neck to be lewd?

4 A: When it's not her biological father, which her
5 biological father doesn't even kiss her on the back of the
6 neck. It was a very sensual action that I witnessed with
7 lifting someone's hair like this and then gently placing your
8 lips on the back of somebody's neck. (Gesturing.)

9 Q: Okay. Did he have any other gestures with his hands or
10 body or anything other than just a kiss?

11 A: Not that night, no, sir.

12 Q: Okay. All right. So that's in 2014, and you witnessed
13 that one?

14 A: That's correct.

15 Q: And you think he was intoxicated?

16 A: Yes, sir. And there's a difference between him being
17 intoxicated and him being falling down drunk.

18 Q: Okay. All right. So was he intoxicated or falling down
19 drunk?

20 A: Intoxicated.

21 Q: Okay. And what do you consider to be intoxicated?

22 Because that's different for different people.

23 A: With Mr. Dinkins, I could tell that he was intoxicated
24 as soon as he opened his mouth. His speech pattern would be
25 very different and would indicate to me that he had had some

LEIGH REED - CROSS BY MR. MCKENZIE

1 kind of alcohol.

2 Q: Okay. Now, another part of this statute says it has to
3 arouse the sexual desires of the -- of the victim or of the
4 perpetrator. Okay? Do you -- do you recall anybody being
5 sexually aroused by this?

6 A: That would have not been something I was looking for.

7 Q: Okay.

8 A: So --

9 Q: But you don't -- but you witnessed --

10 A: No, I don't recall.

11 Q: -- this and you didn't -- no one said that this was a --
12 Mr. Dinkins -- you didn't see him sexually aroused?

13 A: No, sir.

14 Q: Okay. And ^{Victim} ~~was~~, obviously, was not sexually aroused by
15 this?

16 A: No, sir.

17 Q: Okay. Now, so your question to him was that he's not
18 her father? I mean that's how you questioned him. You're
19 not her father. You can't kiss her like that?

20 A: Right.

21 Q: Now, this child has gone through the death of her
22 mother?

23 A: That's correct.

24 Q: And her father has severe epilepsy and can't have
25 custody of her?

LEIGH REED - CROSS BY MR. MCKENZIE

1 A: That's correct.

2 Q: Because of his physical condition?

3 A: That is correct.

4 Q: Okay. So was Mr. Dinkins trying to be the father of
5 this child?

6 A: No, sir. I don't believe so.

7 Q: Okay. But he did have custody?

8 MS. TIMMONS: Your Honor, once again, I have an
9 objection. We're here just to decide about prior bad acts.

10 THE COURT: I think we probably do need to stay a little
11 bit more towards the facts.

12 MR. MCKENZIE: I will get on that.

13 THE COURT: And the fact pattern.

14 MR. MCKENZIE: Okay.

15 THE COURT: These are things that are going to be --
16 there's going to be wide open cross-examination with regard
17 to all of these factual issues, but what we're trying to do
18 is to ascertain the relevance of these prior bad acts and,
19 obviously, you know, the age, the relationship of the victim
20 and the perpetrator, whether it's the same and, of course, in
21 this case, it's clear that the victim and the perpetrator are
22 the same in each one.

23 MR. MCKENZIE: Right.

24 THE COURT: Where it took place, we've already
25 established that, and the circumstances, whether there were

LEIGH REED - CROSS BY MR. MCKENZIE

1 coercion and threats. Clearly, there has been none of that.

2 MR. MCKENZIE: Right.

3 THE COURT: And the manner of the -- of the occurrence.

4 MR. MCKENZIE: And that's why I --

5 THE COURT: And I think we -- I think we've -- that's

6 what we kind of need to focus on.

7 MR. MCKENZIE: All right, Your Honor.

8 BY MR. MCKENZIE:

9 Q: All right. So we go back to --

10 THE COURT: But once again, when the case is tried, all
11 of these things --

12 MR. MCKENZIE: I understand.

13 THE COURT: -- are wide open cross-examination for
14 everybody.

15 MR. MCKENZIE: Thank you, Your Honor. Well, I think the
16 intoxication goes to the manner, Your Honor.

17 THE COURT: I think it does, and you've asked her.

18 MR. MCKENZIE: Okay. All right.

19 BY MR. MCKENZIE:

20 Q: So he was intoxicated on that issue that you saw. I
21 think you stated that on the other things, you didn't hear
22 about until you went to counseling?

23 A: Correct. Except --

24 Q: Except for the kiss --

25 A: Correct.

1 Q: -- on the lips?

2 A: Correct.

3 Q: Okay. So any other incident you would not have seen
4 personally?

5 A: That is correct.

6 Q: Anything you would have would be hearsay or you would
7 have seen through some -- or someone else would have told you
8 about it?

9 A: Correct.

10 Q: Okay. But I think that you -- after those hearsay
11 incidents, for example, when you -- you testified about the
12 -- the -- that his finger may have grazed her vaginal area?

13 A: Right.

14 Q: Did she have clothes on? And that was -- this would be
15 the spring break incident?

16 A: She had a nightgown on.

17 Q: Okay. Did she have underwear on?

18 A: Oh, yes, sir.

19 Q: Okay. I mean she wasn't -- this wasn't a -- this was an
20 allegation above the clothing?

21 A: That's right.

22 Q: And your -- and was he intoxicated at that point in
23 time?

24 A: Yes --

25 Q: Okay.

LEIGH REED - CROSS BY MR. MCKENZIE

- 1 A: -- sir.
- 2 Q: And you confronted him again?
- 3 A: Correct.
- 4 Q: Okay. But this was -- you did not see this? This was
- 5 something your mother told you about?
- 6 A: Right.
- 7 Q: And so she --
- 8 A: And it was not that day necessarily.
- 9 Q: Okay.
- 10 A: It may have been a few days later. It could have been a
- 11 week later.
- 12 Q: Okay.
- 13 A: I'm not exactly sure.
- 14 Q: And this was 2013?
- 15 A: April the 1st of 2013.
- 16 Q: And I -- and I should have crossed you or asked you
- 17 about this issue before the 2014 incident because that would
- 18 be in sequence, but the 2013 incident was at spring break.
- 19 It wasn't in the home?
- 20 A: That's correct.
- 21 Q: Okay. But it was between Mike and ^{Victim}, the victim?
- 22 A: That's correct.
- 23 Q: All right. And so were they -- and so this was the
- 24 first time that you had heard or had an indication that he
- 25 was rubbing her leg?

LEIGH REED - CROSS BY MR. MCKENZIE

- 1 A: Correct.
- 2 Q: Okay. And again, this came from the grandmother?
- 3 A: Correct.
- 4 Q: And no one was present for that incident except for ~~the~~ ^{Victim}
5 and Mike?
- 6 A: That's correct.
- 7 Q: And Gigi told the grandmother about it, but told her
8 sometime later?
- 9 A: Correct.
- 10 Q: Okay. And you confronted Mike sometime later?
- 11 A: Correct. Yes, sir.
- 12 Q: Okay. What did you tell Mr. Dinkins?
- 13 A: I said -- basically, asked him what happened, and I knew
14 that he was intoxicated that night and I said, you know, it
15 has been said that you touched ~~her~~ ^{Victim} on her very upper thigh,
16 right beside her vagina, and grazed her -- her vagina. Oh,
17 no, I didn't do that. I would have been just stretching.
- 18 Q: Okay. So the difference between this incident and the
19 2014, he didn't deny the 2014 kiss on the back of the neck
20 because you saw that?
- 21 A: That's correct.
- 22 Q: He didn't deny that?
- 23 A: He didn't.
- 24 Q: But this incident he said did not happen?
- 25 A: He said it was misinterpreted.

LEIGH REED - CROSS BY MR. MCKENZIE

1 Q: Okay.

2 A: That he may have just grazed her by stretching.

3 Q: Okay. But -- but he -- but he said anything that
4 happened was an unintentional act?

5 A: Correct.

6 Q: Okay. So that's the 2013 incident; is that correct?

7 A: That's correct.

8 Q: All right. So I think the next incident, if I got these
9 down right, Victoria's Secret --

10 THE COURT: Clearly, she's not going to be able to
11 testify about what took place at the beach with the vaginal
12 touching.

13 MR. MCKENZIE: That's going to be the child.

14 THE COURT: So she can't -- but she can testify about
15 what he told her --

16 MR. MCKENZIE: Right.

17 THE COURT: -- about that.

18 MR. MCKENZIE: Right, Your Honor, and the reason I'm
19 going -- because I'm trying to -- I think the State's
20 contention is it's a common scheme or plan. I'm showing that
21 this was a different location, obviously.

22 BY MR. MCKENZIE:

23 Q: The only connection here I think would be that he was --
24 the perpetrator is -- the perpetrator is the same and the
25 victim is the same and also the intoxication. Other than

1 that, these incidents are totally separate. Is that correct?

2 Is that better, Ms. Reed? I mean is that -- the are totally
3 separate incidents?

4 A: Yes, sir. It's separate incidents.

5 Q: Okay. But you did have a conversation with Mr. Dinkins
6 and he did tell you that if anything happened, it was an
7 accident?

8 A: Correct.

9 Q: Okay. All right. Now, 2013 to 2015, ^{Victim} [REDACTED] tells you, I
10 guess, that he showed her a Victoria's Secrets catalog?

11 A: She told that in counseling afterwards.

12 Q: And you had never heard this before?

13 A: I had never heard this.

14 Q: Okay. And so this was in -- this would be in the
15 counseling records?

16 A: I believe so.

17 Q: Okay.

18 A: I mean I'm not sure if they put verbatim what she says.

19 MS. TIMMONS: Your Honor, that was, I guess, disclosed
20 during the forensic interview. Like I said, I didn't -- this
21 was not -- I mean I did not question this witness about this.
22 So I don't see why Mr. McKenzie is questioning Ms. Reed about
23 that.

24 MR. MCKENZIE: Well, I --

25 THE COURT: I think what she's saying is that she's not

LEIGH REED - CROSS BY MR. MCKENZIE

1 going to be tendered for the Victoria's Secret.

2 MR. MCKENZIE: Okay.

3 THE COURT: If it's determined to be relevant.

4 MR. MCKENZIE: Okay.

5 BY MR. MCKENZIE:

6 Q: All right. The next one would be -- I guess in 2014,
7 you -- someone told you that -- that Mr. Dinkins was trying
8 to -- was intoxicated again at the home?

9 A: Right.

10 Q: Was trying to get between ^{Victim} ~~and~~ and the grandmother
11 whenever they were studying?

12 A: Correct.

13 Q: Okay. And did you have a discussion with Mr. Dinkins
14 about that incident?

15 A: Yes.

16 Q: Okay.

17 A: I -- when I got home -- when my mother called me home,
18 he was heavily intoxicated. So I said you're making them
19 very uncomfortable. You know, you're following them around.
20 They're trying to study. You're making them very
21 uncomfortable. You need to stop.

22 Q: Okay. Was there any allegation that he did anything
23 improper that time?

24 A: That's when ^{Victim} ~~and~~ told us that he sat across from her at
25 the table and put his foot under the table between her legs

LEIGH REED - CROSS BY MR. MCKENZIE

1 and --

2 Q: Okay.

3 A: -- put it on the edge of the seat where she was sitting.

4 He put his foot right there on the edge of the seat.

5 Q: So he put his foot on the seat?

6 A: On the seat between her legs.

7 Q: Did he touch her in any way with his foot?

8 A: No, sir. She did not say he did.

9 Q: Okay. He did not say he did or she didn't?

10 A: She did not say he did.

11 Q: Okay. So the incident -- this incident is sitting at
12 the table, but he had actual no contact with her body?

13 A: Well, I'm sure that his foot was grazing her inner
14 thighs if it was between her legs and the chair.

15 Q: But what you were told was it was on the chair and that

16 --

17 A: Correct.

18 Q: -- that that made her uncomfortable?

19 A: Correct.

20 Q: Okay.

21 THE COURT: Most importantly, what did the defendant
22 tell you about this incident?

23 THE WITNESS: I don't know that he and I talked about
24 that incident because I was not aware of that for quite some
25 time about the foot incident. I was aware of him making them

1 --

2 THE COURT: Are you tendering her with regard to the
3 foot incident on prior bad acts?

4 MS. TIMMONS: No. I tender her to show that she talked
5 to him and told him you're making victim uncomfortable when
6 you're --

7 MR. MCKENZIE: But she said she --

8 MS. TIMMONS: Your behavior is inappropriate and makes
9 victim uncomfortable, but I guess she will not be able to
10 testify to foot incident because she -- she was not there,
11 she didn't witness it.

12 THE COURT: And the defendant --

13 THE WITNESS: My mother witnessed that.

14 THE COURT: -- didn't say anything about it.

15 MS. TIMMONS: Yes. All she'll testify --

16 THE COURT: So -- so to answer the question is she's not
17 tendered to talk about the substance of the homework
18 incident?

19 MS. TIMMONS: That's correct, Your Honor.

20 THE COURT: Okay. Very good.

21 MS. TIMMONS: She would just --

22 THE COURT: All right. Very good.

23 MS. TIMMONS: That she talked to defendant and told him
24 don't, you're making them uncomfortable.

25 THE COURT: Okay. Very good.

1 MR. MCKENZIE: All right. So she's not tendered for the
2 Victoria's Secrets, the homework incident. The only thing is
3 the kissing of the back of the neck and the touching of the
4 leg at the -- where she had a conversation with the defendant
5 where he supposedly grazed the vaginal area and he said it
6 was an accident?

7 THE COURT: Right.

8 MR. MCKENZIE: Okay. So so far, that's the only two
9 items. Now, then the next one would be the text messages. I
10 think that's the last item.

11 MS. TIMMONS: That's correct.

12 MR. MCKENZIE: Okay.

13 THE COURT: And I think we've covered that.

14 MR. MCKENZIE: Okay.

15 BY MS. MCKENZIE:

16 Q: But the text messages -- you had no conversation with
17 Mr. Dinkins about that?

18 A: No, sir.

19 Q: Okay. Because you -- at that point in time, you guys
20 were gone?

21 A: Yes, sir.

22 Q: Okay. Because that text message was received on January
23 1st?

24 A: That text message was received on the 26th --

25 Q: All right. And --

1 A: -- of December.

2 Q: The 26th of December, but you guys didn't leave until
3 after the --

4 A: On the 26th of December, my mother, ^{Victim}~~XXXX~~, and her father
5 left the Manning home to go to Sumter, since it was the
6 Christmas holiday.

7 Q: Right.

8 A: He texted her as soon as she got in the car.

9 Q: But the kissing of the mouth incident happened --

10 A: January --

11 Q: -- January --

12 A: December 31st.

13 Q: Right. Okay. So this -- you guys had not left the home
14 for the purposes of getting a divorce?

15 A: Correct. Not until January the -- or December 31st.

16 Q: So did you have a conversation with Mr. Dinkins about
17 the context of the -- or the contents of the text message?

18 A: No, sir. I had no contact with Mr. Dinkins -- Mr.
19 Dinkins from the moment that I left that house. He blocked
20 my number.

21 Q: All right. But let me -- let me back up. You had not
22 left the house when this text message was sent?

23 A: Right. But I was not aware of it until after we left
24 the home.

25 Q: Okay. So Gigi didn't tell you until after you left the

1 home?

2 A: That's correct.

3 Q: Did you actually see the text messages?

4 A: Yes, I did.

5 Q: Okay. And had he ever sent her text messages before?

6 A: No, sir, not really. She'd only had the phone for a day
7 or so.

8 Q: Okay. So this is the first time that he ever sent her a
9 text message?

10 A: I can't say it's the first time. I'm not sure. She may
11 have deleted a message previously. I don't know about that.

12 Q: Well, was it the --

13 THE COURT: I think we've pretty much covered the text
14 messages.

15 MR. MCKENZIE: Okay. Well, I mean the only thing I want
16 to ask about it, Judge, is --

17 BY MR. MCKENZIE:

18 Q: Did he ever tell the child that he loved her in person?

19 A: Sure, he did.

20 Q: Okay.

21 A: Yes.

22 Q: So the context of the text message was love you, miss
23 you, kiss you; right?

24 A: Love you -- wait. Miss you -- love you, miss -- love
25 you, kiss you, already miss you, was the text.

LEIGH REED - CROSS BY MR. MCKENZIE

- 1 Q: Already miss you?
- 2 A: Right.
- 3 Q: Okay. And you had said that it was appropriate for him
- 4 to kiss her on top of the head?
- 5 A: Correct.
- 6 Q: But not anywhere else?
- 7 A: Correct.
- 8 Q: Okay. So he loved her, kissed her, and missed her?
- 9 A: Correct.
- 10 Q: Okay. And then you're da bomb?
- 11 A: And he missed her 20 minutes after she left the home.
- 12 Q: Okay.
- 13 A: When he texted her.
- 14 Q: So would there be any doubt Mr. Dinkins loved this
- 15 child?
- 16 A: I have doubts now. Yes, sir.
- 17 Q: Okay. Doubts now, but at the time, do you think he
- 18 loved the child?
- 19 A: I thought so. Yes, sir.
- 20 Q: Okay.
- 21 MR. MCKENZIE: No other questions, Your Honor.
- 22 THE COURT: Very good. All right. No redirect?
- 23 MS. TIMMONS: No. No, Your Honor.
- 24 THE COURT: All right. You may step down.
- 25 THE WITNESS: Thank you.

1 THE COURT: All right. I'm going to ask -- there's one
2 civil matter and I think I made some misjudgments with regard
3 to scheduling. So we need to tend to all of this before we
4 leave, particularly with regard to scheduling matters next
5 week. So don't go a place and I'm going to -- we're going to
6 resolve the -- all of these issues before we leave, but let's
7 get that civil matter in here. We're going to resolve that
8 and I think we can do that with speed and dispatch.

9 (WHEREUPON, there was a break in the proceedings from
10 11:12 a.m. until 12:28 p.m., after which the proceedings
11 resumed as follows.)

12 THE COURT: I'll tell you Clarendon County is causing
13 all kind of problems for our docket over here. That was a
14 Clarendon County case we had.

15 MS. MCKENZIE: Was it?

16 THE COURT: Yeah, it was.

17 MS. TIMMONS: Sorry about that.

18 THE COURT: All right. I was being facetious. But at
19 any rate, we're ready to proceed. You may call your next
20 witness.

21 MS. TIMMONS: Your Honor, our next witness will be
22 ~~Victim~~ and I'm just going to --

23 THE COURT: Yes.

24 MS. TIMMONS: -- round her up.

25 THE COURT: All right.

Victim

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~~REDACTED~~ - DIRECT BY MS. TIMMONS

1 (WHEREUPON, there was a pause in the proceedings until
2 the witness entered the courtroom, after which the
3 proceedings resumed as follows.)

4 THE COURT: Yes, ma'am. Please come forward. I'm going
5 to ask you, if you could, to place your left hand on the
6 Bible and raise your right hand as the clerk administers the
7 oath. Do you swear to tell the truth, the whole truth, and
8 nothing but the truth, so help you God?

9 THE WITNESS: Yes, sir.

10 THE COURT: All right. Have a seat. Yes, ma'am.

11 MS. TIMMONS: Okay.

12 *Victim*
~~REDACTED~~, being first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. TIMMONS:

16 Q: Can you tell us what's your name?

17 A: *Victim*
~~REDACTED~~.

18 Q: Excuse me. And you go by a nickname?

19 A: ~~REDACTED~~ *Victim*

20 Q: Okay. How old are you, ~~REDACTED~~? *Victim*

21 A: I'm 13.

22 Q: Okay. And when is your birthday?

23 A: October 27th, 2004.

24 Q: Okay. What school -- do you go to school?

25 A: Yes, ma'am.

- DIRECT BY MS. TIMMONS

- 1 Q: Okay. What school do you go to?
- 2 A: Alice Drive Middle School.
- 3 Q: Okay. And what grade are you in now?
- 4 A: Seventh grade.
- 5 Q: Okay. Who was your teacher last year?
- 6 A: I had many -- a lot of teachers, but her name was Ms.
- 7 Evans.
- 8 Q: She was your favorite teacher?
- 9 A: Yes, ma'am.
- 10 Q: Okay. And where do you live now?
- 11 A: In Sumter, 19 Palmer Drive, Sumter, South Carolina.
- 12 Q: Okay. And who lives with you?
- 13 A: My grandma and my aunt.
- 14 Q: Okay. And what are their names?
- 15 A: Leigh Reed and Barbara Reed.
- 16 Q: Okay. Do you know the difference between right and
- 17 wrong?
- 18 A: Yes, ma'am.
- 19 Q: Okay. Can you tell me what it is?
- 20 A: Wrong is when it's something that isn't -- like, the
- 21 opposite of right. And right is when it's the good thing and
- 22 it's the best thing.
- 23 Q: Okay. Is it right or wrong to lie?
- 24 A: It's wrong to lie.
- 25 Q: Okay. Do you know what it is to tell a lie?

Victim

DIRECT BY MS. TIMMONS

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1 A: To tell something that is not the truth and to make up a
2 story.

3 Q: Okay.

4 MS. TIMMONS: Judge, I guess at this moment, I would
5 just like you to -- I would like you to find witness
6 competent to testify.

7 THE COURT: Okay. Yes, ma'am. I would assume that
8 you've probably never testified in a case before.

9 THE WITNESS: No, sir.

10 THE COURT: Okay. And you understand that these are
11 real important matters? You understand that, don't you?

12 THE WITNESS: Yes, sir.

13 THE COURT: And you understand that -- that it's wrong
14 to tell a lie. You've already mentioned that.

15 THE WITNESS: Yes, sir.

16 THE COURT: You know that you could get in trouble if
17 you were to tell a lie. Do you understand that?

18 THE WITNESS: Yes, sir.

19 THE COURT: And that you have taken an oath to listen to
20 the questions --

21 THE WITNESS: Yes, sir.

22 THE COURT: -- and provide truthful answers, and can you
23 do that?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. Very good. Any questions with

Victim

- DIRECT BY MS. TIMMONS

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1 regard to her -- her capacity to testify?

2 MR. MCKENZIE: No, Your Honor. I think we do have a
3 report from Dr. Washington. If the State wants to introduce
4 that, I have no objection --

5 THE COURT: Very good.

6 MR. MCKENZIE: -- to it.

7 THE COURT: All right. And we'll make this a part of
8 the record. Once again, we're going to -- I'm going to ask
9 -- I'm going to make this a part of the record and I'm going
10 to ask the -- the -- Madam Solicitor if she could make that a
11 part of the record over in Clarendon County.

12 MR. MCKENZIE: Your Honor, the only part that I -- Dr.
13 Washington does give some personal opinions about her
14 veracity.

15 THE COURT: This is for a Court's exhibit. It would
16 never --

17 MR. MCKENZIE: That's fine.

18 THE COURT: It's not going to --

19 MR. MCKENZIE: I wanted to make sure it doesn't go to
20 the jury.

21 THE COURT: It is not going to the jury. This is going
22 to be a part of the Court's record.

23 MR. MCKENZIE: Thank you, Your Honor.

24 (WHEREUPON, the report of Dr. Washington was marked and
25 entered as Court's Exhibit Number 1.)

victim

- DIRECT BY MS. TIMMONS

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1 THE COURT: Very good. I'm going to ask that that be
2 made a part of the record for any review with regard to her
3 competency to testify.

4 MR. MCKENZIE: Thank you, Your Honor.

5 MS. TIMMONS: Thank you.

6 THE COURT: And I -- based on what's -- based on what's
7 in this report dated -- as a result of the examination of
8 October 23rd, 2017, which was ordered by the Court, and the
9 testimony that's been elicited here today, I do indeed find
10 that she's competent to testify. And I'm going to ask the
11 solicitor to make this a part of the record as a Court's
12 exhibit, and we are here in Florence County and -- and this
13 court reporter will not maintain that exhibit.

14 MR. MCKENZIE: Thank you, Your Honor.

15 MS. TIMMONS: Thank you, Your Honor.

16 BY MS. TIMMONS:

17 Q: Okay. *victim*, I guess we'll go a little bit more
18 difficult questions. Can you tell us -- or do you remember
19 when was the first time your uncle, Mike Dinkins, touched you
20 that made you feel uncomfortable?

21 A: When we were in Topsail Island and he touched my upper
22 leg. That was the first time.

23 Q: Okay. Do you remember when it was?

24 MR. MCKENZIE: Your Honor, excuse me a second. Can you
25 have the witness -- I know she's soft-spoken, but I'm having

Victim

- DIRECT BY MS. TIMMONS

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1 a little difficulty hearing her.

2 THE COURT: All right.

3 MR. MCKENZIE: I'm not at best --

4 THE COURT: I'm going to ask if you could keep your
5 voice up, but you're doing a good job. Just listen to the
6 questions and answer them truthfully.

7 THE WITNESS: Yes, sir.

8 THE COURT: And -- and I'm going to allow you to have a
9 seat on that --

10 MR. MCKENZIE: Thank you.

11 THE COURT: -- where the -- over there on that side.

12 MR. MCKENZIE: Thank you.

13 THE COURT: Very good.

14 BY MS. TIMMONS:

15 Q: *Victim* ~~Q:~~, do you remember around what time -- what year that
16 was or how old were you at that time?

17 A: It was in 2013.

18 Q: Okay. So how old -- how old were you then?

19 A: I'm not sure.

20 Q: That's okay. And where -- where were you? Like, in the
21 -- in the house, where were you --

22 A: We --

23 Q: -- when he touched you?

24 A: We were in the living room. It was late and we were
25 watching a movie.

U.S. v. [redacted]

- DIRECT BY MS. TIMMONS

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- 1 Q: Okay. Do you remember what kind of movie it was?
- 2 A: No, ma'am.
- 3 Q: Okay. That's fine. Do you know who else was in the
- 4 room with you?
- 5 A: There wasn't anybody in the room with us.
- 6 Q: Okay. So it was just you and your uncle?
- 7 A: Yes, ma'am.
- 8 Q: Okay. Were you -- do you remember what you were
- 9 wearing?
- 10 A: It was a nightgown.
- 11 Q: Okay. And did you have underwear on?
- 12 A: Yes, ma'am.
- 13 Q: Okay. And you were laying on the couch?
- 14 A: Yes, ma'am.
- 15 Q: Okay. And where was Mike Dinkins?
- 16 A: He was sitting beside me.
- 17 Q: Okay. And can you tell us what he -- what he did?
- 18 A: He touched my leg very close to my private area.
- 19 Q: Okay. Okay. Did you tell anybody about it?
- 20 A: No, ma'am, not that day, but later.
- 21 Q: Okay. And who -- who did you tell?
- 22 A: My grandma.
- 23 Q: Okay. What did you tell her?
- 24 A: That he made me feel uncomfortable.
- 25 Q: Uh-huh.

victim

DIRECT BY MS. TIMMONS

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- 1 A: And he touched my leg.
- 2 Q: Okay. Did he say anything to you then?
- 3 A: Mike?
- 4 Q: Yes.
- 5 A: No, ma'am. I'm pretty sure he didn't.
- 6 Q: Okay. He just touched you and --
- 7 A: Yes, ma'am.
- 8 Q: Okay. Do you recall ever him kissing you on the back of
- 9 your neck?
- 10 A: Yes, ma'am.
- 11 Q: Okay. Do you remember exactly when that happened?
- 12 A: It happened more than once, but I don't remember when
- 13 exactly it happened.
- 14 Q: Okay. Was it -- do you remember if it was at the house
- 15 in Manning or --
- 16 A: It was in the house in Manning.
- 17 Q: Okay. Was anybody else present in the room?
- 18 A: One day, we were in the hallway and my Aunt Leigh saw
- 19 it, and then he sat in our computer room.
- 20 Q: Okay. What were you wearing when he --
- 21 A: I'm not sure.
- 22 Q: Okay. But you had clothes on?
- 23 A: Yes, ma'am.
- 24 Q: Okay. Did he tell you anything at that time?
- 25 A: No, ma'am. Just that he loved me.

Victim

- DIRECT BY MS. TIMMONS

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1 Q: Okay. All right. And how did it make you feel?

2 A: It made me feel uncomfortable because I'm -- I knew that
3 that -- you know, uncles were not supposed to kiss people or
4 their children on the back of their neck.

5 Q: Okay. Did he -- did he ever show you any pictures or
6 women or men?

7 A: He told -- he showed me a picture of a very -- of a very
8 pretty woman that -- and then he told me that he wanted me to
9 look like that when I was older.

10 Q: Okay. Was that woman wearing clothes?

11 A: Yes, ma'am.

12 Q: Okay. Was it a picture of somebody you know or --

13 A: No, ma'am. I didn't know.

14 Q: Okay. Did you know if it was some magazine, catalog, or
15 newspaper?

16 A: It was on his phone, but it might have been from online
17 or something. I'm not sure.

18 Q: Okay. And was it a grown woman?

19 A: Yes, ma'am.

20 Q: Do you remember how was she dressed or --

21 A: She -- I'm pretty sure she was in a bikini.

22 Q: Okay.

23 MR. MCKENZIE: I'm sorry. She was in a what?

24 MS. TIMMONS: Wearing a bikini.

25 MR. MCKENZIE: Wearing pink?

- DIRECT BY MS. TIMMONS

1 MS. TIMMONS: No. Wearing a bikini.

2 THE COURT: A bikini.

3 MR. MCKENZIE: Wearing a bikini? I'm sorry.

4 MS. TIMMONS: Yes.

5 BY MS. TIMMONS:

6 Q: Do you remember where -- where did that happen? Like,
7 was it in Manning or --

8 A: It was in Manning.

9 Q: Okay. Was it at the home that you were living at that
10 time?

11 A: Yes, ma'am.

12 Q: Okay. Was anybody else in the room with you?

13 A: No, ma'am.

14 Q: Okay. Do you know what room was it in?

15 A: No, ma'am.

16 Q: You don't remember? Okay. And I don't know if I asked
17 you that again. Do you know when it happened? Like, what
18 year it was or the range of years?

19 A: No, ma'am. I believe it was during the summer.

20 Q: Okay. Was it after the spring break incident when he
21 touched you?

22 A: Yes, ma'am.

23 Q: Okay. All right. Did he ever send you any text
24 messages?

25 A: Yes, ma'am.

- DIRECT BY MS. TIMMONS

- 1 Q: Okay. Can you tell us something about that?
- 2 A: Well, one of the text messages that he sent me was,
3 like, bomb.com or something like that, and the rest of them
4 were just kind of normal texts.
- 5 Q: Okay. Did he ever send you -- when did you get your
6 cell phone? I guess we should start with that.
- 7 A: It was around two years ago -- three years ago. I'm not
8 exactly sure. It was for Christmas.
- 9 Q: Uh-huh.
- 10 A: It was a Christmas present from my aunt.
- 11 Q: Okay. The Christmas of 2015 -- it was shortly -- a few
12 days before you moved out. Where did you spend that
13 Christmas?
- 14 A: In Manning.
- 15 Q: Okay. Did you spend, like, whole Christmas in Manning
16 or did you go anywhere afterwards?
- 17 A: I can't quite remember, but I believe I did spend the
18 whole Christmas in Manning because my dad was there with us
19 then.
- 20 Q: Okay. Did you go somewhere the day after Christmas?
- 21 A: Yes, ma'am. We went to Sumter.
- 22 Q: Okay. Did you get any text messages from Michael
23 Dinkins?
- 24 A: I can't recall --
- 25 Q: Okay.

Victim

- DIRECT BY MS. TIMMONS

000087

1 A: -- exactly.

2 Q: Do you remember him sending you a text message, I guess
3 just the letters --

4 MR. MCKENZIE: Objection to leading, Your Honor.

5 THE COURT: You need to ask direct questions.

6 MS. TIMMONS: Okay.

7 BY MS. TIMMONS:

8 Q: So can you tell me again what kind of text messages he
9 was sending you?

10 A: It was more like normal text messages, but he -- one day
11 he sent me a text that said you're bomb.com or something of
12 that -- in that order, and it had, like, a link.

13 Q: Okay.

14 A: I didn't go to the link because I didn't know what it
15 was. I didn't want to get in trouble.

16 Q: Why did you think you may get in trouble?

17 A: Because I didn't know if it was something, like,
18 inappropriate or --

19 Q: Okay. Why -- why did you thought it might be something
20 inappropriate?

21 A: I don't know. It's just because -- I don't know. It
22 just didn't seem like a good website to go to.

23 Q: Okay. Did he -- did the defendant, Michael Dinkins --
24 did he ever touch -- touch your legs?

25 A: Yes, ma'am.

Victim

- DIRECT BY MS. TIMMONS

000088

- 1 Q: Okay. Can you tell us something about that?
- 2 A: He would touch my upper leg and kind of grasp it, and
- 3 we'd be on the couch and he wouldn't let me stand up or leave
- 4 the room.
- 5 Q: Okay. Did he touch your thighs?
- 6 A: Yes, ma'am.
- 7 Q: Okay. Did he rub on them?
- 8 A: Yes, ma'am.
- 9 Q: Okay. Did it happen more than once?
- 10 A: Yes, ma'am.
- 11 Q: Okay. Do you remember when did it happen?
- 12 A: Well, with the thigh touching, it kind of just happened
- 13 whenever he had the chance to do it when nobody was in the
- 14 room.
- 15 Q: Okay. So the only time he touched you on your legs or
- 16 your thighs was when nobody else was in the room?
- 17 A: Yes, ma'am.
- 18 Q: Okay. Do you remember when did you move in with -- with
- 19 your aunt and Mike Dinkins?
- 20 A: Not exactly. No, ma'am. It was around three to four
- 21 years ago. I'm not exactly sure.
- 22 Q: Okay. And did he touch you anytime before you moved in
- 23 with them?
- 24 A: No, ma'am.
- 25 Q: Okay. So he started touching you after you moved in?

Victim

- DIRECT BY MS. TIMMONS

000089

- 1 A: Yes, ma'am.
- 2 Q: Okay. Did he -- did he ever make you uncomfortable?
- 3 A: Yes, ma'am.
- 4 Q: Can you tell us about that?
- 5 A: He made me uncomfortable when he would tell me never to
- 6 say no to him and touched my legs and kissed me on the back
- 7 of my neck.
- 8 Q: Okay. Excuse me. Did he ever use -- did he ever
- 9 threaten you?
- 10 A: No, ma'am.
- 11 Q: Okay. Did he ever tell you don't tell anybody that I
- 12 touched you?
- 13 A: No, ma'am.
- 14 Q: Okay. Did he offer to buy you things?
- 15 A: Yes, ma'am.
- 16 Q: Like -- what are, like -- did he ever offer to buy you
- 17 something that you considered inappropriate?
- 18 A: No, ma'am.
- 19 Q: Okay. Did he ever make you uncomfortable whenever,
- 20 let's say, you were with your grandmother?
- 21 A: Yes, ma'am.
- 22 Q: Can you tell us something about that?
- 23 A: We were -- my grandma and I were -- she was helping me
- 24 study.
- 25 Q: Uh-huh.

Victim

~~REDACTED~~ DIRECT BY MS. TIMMONS

000090

1 A: And he came in the house when my aunt was not home and
2 he didn't seem like he was sober.

3 Q: Uh-huh.

4 A: He -- we were doing our homework and we decided to move
5 to the living room to sit at the table, and he sat at the
6 table with us and he put his leg between my legs in the
7 chair.

8 Q: Okay. Was he -- could you feel him touching you?

9 A: No, ma'am. He just had it there and he was -- didn't
10 seem like he was sober.

11 Q: Okay. Was he saying anything?

12 A: I can't remember. That's been a while ago.

13 Q: Do you remember when -- when it was?

14 A: No, ma'am.

15 Q: Okay. But do you remember if you lived with your aunt
16 at that time?

17 A: Yes, ma'am, I did.

18 Q: Okay. Did you tell anybody about that?

19 A: Yes, ma'am. We told my aunt, but my grandma saw it
20 happen.

21 Q: And do you know what she told her aunt or --

22 A: No, ma'am. I'm not sure what she told my aunt.

23 Q: Okay. Did you move? Did you stay in the same room or
24 did you move to a different room?

25 A: Yes, ma'am. We stayed in the dining room.

Victim

DIRECT BY MS. TIMMONS

000091

1 Q: Okay. And after he came and started -- I mean sat next
2 to you, did you move to a different room or --

3 A: No, ma'am. I don't believe we did.

4 Q: Okay. And that happened in Manning; right?

5 A: Yes, ma'am.

6 Q: Okay. The house in Manning. Okay.

7 MS. TIMMONS: I don't think I have any further questions
8 at this time.

9 THE COURT: Any cross-examination?

10 MS. MCKENZIE: Yes, sir. Just a few.

11 CROSS-EXAMINATION

12 BY MR. MCKENZIE:

13 Q: *Victim* I'm going to stand right here. I have a little
14 bit of problem hearing you.

15 A: Yes, sir.

16 Q: It may be because I'm getting older and I don't hear as
17 well as I used to, but I think you testified -- you said
18 Topsail?

19 A: Yes.

20 Q: What is Topsail?

21 A: It's in the mountains.

22 Q: Okay.

23 A: It was a town or a city or something.

24 Q: All right. Were you on spring break when that happened?

25 A: Yes, sir.

Victim

~~██████████~~ - CROSS BY MR. MCKENZIE

000092

1 Q: Okay. And he touched you on your leg during that
2 incident?

3 A: Yes, sir.

4 Q: Where on your leg did he touch you?

5 A: My upper leg, like upper thigh.

6 Q: Okay. When you say upper leg, what do you mean by upper
7 leg?

8 A: Right around my --

9 Q: Can you stand up so we can see that? We -- what do you
10 mean upper leg?

11 (WHEREUPON, the witness stood.)

12 A: (Gesturing.) Like, right here.

13 Q: Right there?

14 A: Yes, sir.

15 (WHEREUPON, the witness sat down.)

16 Q: Okay: Now, how did he touch you? Like, was it a quick
17 touch? Did he have his hand sitting there for a while? What
18 was the mechanism of it?

19 A: He had his hand sitting there for a while and he was
20 kind of just rubbing back and forth.

21 Q: So he was just rubbing your leg?

22 A: Uh-huh.

23 Q: Okay. Now, you called him Uncle Mike; is that right?

24 A: Yes, sir.

25 Q: Okay. Because he was your uncle?

- 1 A: Yes, sir.
- 2 Q: Okay. Did he tell you that he loved you?
- 3 A: Yes, sir.
- 4 Q: On a regular basis?
- 5 A: Yes, sir.
- 6 Q: Okay. Did he tell his -- your Aunt Leigh that he loved
- 7 her?
- 8 A: Yes, sir.
- 9 Q: Did he tell you that in public?
- 10 A: Yes, sir.
- 11 Q: Was he -- is he an affectionate person?
- 12 A: Yes, sir.
- 13 Q: Okay. So at Topsail --
- 14 MS. TIMMONS: Your Honor, I'll object.
- 15 THE COURT: All right. Might counsel approach the
- 16 bench?
- 17 (WHEREUPON, a bench conference was held off the record,
- 18 after which the proceedings resumed as follows.)
- 19 MR. MCKENZIE: Thank you, Your Honor.
- 20 THE COURT: All right.
- 21 MR. MCKENZIE: Okay.
- 22 THE COURT: Any redirect?
- 23 MS. TIMMONS: No, Your Honor.
- 24 THE COURT: Okay.
- 25 MR. MCKENZIE: Thank you, Your Honor.

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

3 (WHEREUPON, the witness complied and then left the
4 courtroom.)

5 THE COURT: All right. For purposes of -- of the prior
6 bad acts, I've taken into consideration the Wallace factors.

7 The age of the victim. She is what? Thirteen now?

8 MS. TIMMONS: Yes, Your Honor.

9 THE COURT: Thirteen. She was probably nine when some
10 of these things started; is that correct?

11 MS. TIMMONS: Yes, Your Honor. She was eight -- eight
12 or nine.

13 THE COURT: Yeah. Sometime between eight and nine and
14 thirteen as far as the first factor goes.

15 And based on her demeanor, the report, her finding of
16 competency, I think that all of that is relevant. I think
17 that she's certainly capable of recalling and testifying with
18 regard to that. Of course, the defendant is going to have
19 wide range of cross-examination.

20 I think the relationship of the victim and the
21 perpetrator is obviously a family member. It doesn't really
22 -- and it's the same victim and the same perpetrator
23 throughout.

24 And the location of the abuse all took place in the
25 home, with the exception of the Topsail incident in the

1 mountains at spring break, and that was obviously within the
2 family confines. It might not have been physically the same,
3 but -- and I've taken into consideration there were no
4 threats, no coercion. And -- and the manner of each of these
5 alleged sexual batteries comes into play.

6 I believe that the 2013 Topsail incident is indeed
7 admissible. I think -- given all of those factors, I think
8 we're talking about inappropriate conduct, the manner in
9 which it took place, and I think that is relevant and
10 admissible, taking into consideration all of the factors.

11 The kiss, I believe, is indeed relevant and admissible.
12 I'm going to allow that as the kiss in the hallway. I'm
13 going to allow that in.

14 I'm going to allow the -- the lady who testified, is
15 that her aunt or married to the uncle?

16 MS. TIMMONS: Yes, Your Honor. She's the aunt.

17 THE COURT: So I reckon she was married, aunt by
18 marriage; correct?

19 MS. TIMMONS: No. She -- that's her marriage. She was
20 her mom's sister.

21 THE COURT: That's correct.

22 MS. TIMMONS: She used to be married to the defendant.

23 THE COURT: That's right. Yes. Well, the maternal aunt
24 will be able to testify as to what -- what she observed with
25 regard to that. She will be -- the alleged victim will be

1 able to testify as to what took place, and the aunt is going
2 to be able to testify as to what the defendant said with
3 regard to her confrontation of that.

4 The Victoria's Secret incident I'm not going to allow.
5 Of course, there needs to be clear and convincing evidence.
6 There seemed to be some vagaries with regard to that. She
7 didn't really say -- I got the impression from hearing the
8 other people it was a Victoria's Secret catalog, but she's
9 saying something took place on the phone. There seemed to be
10 some vagaries with regard to that.

11 And plus, this isn't an allegation of pornography. It
12 doesn't really relate to the substance of offenses. So all
13 reference to the Victoria's Secret episode is not admissible,
14 not admissible at all.

15 With regard to the texts, once again, I don't think it's
16 relevant taken into consideration all of the circumstances.
17 This is not a situation where a child has been shown
18 pornography or there's not any allegation of any sexual
19 activity on Facebook or anything like that or inappropriate
20 -- I mean there's -- none of the substantive indictments talk
21 about text messages and inappropriate actions on the phone.
22 I'm not going to allow that.

23 There was general allegations by her that he generally
24 touched her upper leg and thigh when other people is not in
25 the room. I'm not going to allow that generalized

1 discussion.

2 The homework episode I'm not going to allow because
3 there was really no discussion about there being any
4 inappropriate touching. She said -- first of all, there's a
5 difference between her recollection of what transpired and
6 what the other witnesses said, which caused me some concern
7 and hesitation, and plus, she didn't say that -- she just
8 said that he was intoxicated and that his foot was on -- did
9 not touch her, but was in-between her legs and he was
10 intoxicated at the time.

11 Have we covered all of the prior bad acts?

12 MS. TIMMONS: Yes, Your Honor. I guess the only one
13 that we didn't cover specifically was when he offered to buy
14 her a revealing bathing suit, but she didn't remember that.

15 THE COURT: That's related to the Victoria's Secret
16 thing, and I'm not going to allow that.

17 MS. TIMMONS: Okay.

18 THE COURT: And you need to have a long discussion with
19 your -- with your witnesses that there will be no discussion
20 about these matters and -- and they need to understand how
21 important this is and, of course, I'm giving you instructions
22 to give them instructions and tell them not to do that and if
23 -- you know, that could have grave ramifications if, contrary
24 to my instructions, that comes out and there's a mistrial. I
25 mean there's going to be problems. So we don't -- we don't

1 want that to happen.

2 All right. Is there -- I think -- does that cover all
3 the 404(b) matters?

4 MS. TIMMONS: Yes.

5 MR. MCKENZIE: I think it does, Your Honor.

6 MS. TIMMONS: Yes, Your Honor.

7 THE COURT: Okay.

8 MS. TIMMONS: So just to be clear --

9 THE COURT: We're going to be able to talk about Count
10 I, II, III, IV, and the Topsail spring break incident, the
11 kiss in the hallway.

12 MS. TIMMONS: Yes, sir.

13 THE COURT: No as to the Victoria's Secret and the
14 buying of the bathing suit. No to the text message. No to
15 any generalized always touches me on the leg when nobody else
16 is in the room.

17 MS. TIMMONS: Okay.

18 THE COURT: And the homework episode is excluded because
19 of the -- I didn't think there was clear and convincing
20 evidence. There was contradiction between the facts that
21 took place and, in addition to that, there was no testimony
22 as to any inappropriate touching.

23 MS. TIMMONS: Okay.

24 THE COURT: Just that he was drunk and made her
25 uncomfortable.

1 MS. TIMMONS: Okay. And in regards to the first two
2 incidents, spring break and kissing on the back of the neck,
3 we'll be allowed to testify as to -- I mean, I guess, her
4 confronting defendant and what she told him?

5 THE COURT: Yes.

6 MS. TIMMONS: Okay.

7 THE COURT: All right.

8 MS. TIMMONS: Thank you.

9 THE COURT: All right. Anything else? Do we have a
10 Jackson v. Denno hearing?

11 MS. TIMMONS: Yes, Your Honor.

12 THE COURT: Okay. Well, let's do that.

13 MR. MCKENZIE: Okay.

14 MS. TIMMONS: Okay.

15 MR. MCKENZIE: And I think that as far as the other
16 motions, Your Honor, mostly procedural about when witnesses
17 testify, like for example, I think that one of my motions --

18 THE COURT: Well, let's do the Jackson v. Denno and then
19 we'll clean it up.

20 MR. MCKENZIE: Okay.

21 THE COURT: Let's do that.

22 MR. MCKENZIE: That's fine.

23 MS. TIMMONS: Okay. Your Honor, I guess another motion
24 that I had was to -- to be allowed to play forensic
25 interview. Forensic interview is pretty much eaten up by

1 some of those -- by prior bad acts and a lot of them, I
2 guess, we will not be allowed to --

3 THE COURT: Certainly, any reference to any of the prior
4 bad acts other than what I've allowed is -- you need to
5 redact that or not use it.

6 MS. TIMMONS: Okay. Could I -- could we then have the
7 -- could I reserve that motion until the trial so that I can
8 view the video again and just see, you know, what --

9 MR. MCKENZIE: That's --

10 MS. TIMMONS: -- small portion of the forensic interview
11 --

12 THE COURT: How long is that? How long is it?

13 MS. TIMMONS: The forensic interview takes from -- it
14 says 37 minutes.

15 THE COURT: Okay. Well, I'll -- what we can do -- what
16 I -- I'm going to get there a little bit early and I'm going
17 to -- you give me the redacted disk and -- and I'll take a
18 look at it.

19 I imagine we will draw the jury in the morning and
20 hopefully be able to do opening statements and maybe one
21 witness. Then over the lunch break, maybe I can watch that
22 and we can move forward.

23 MS. TIMMONS: Okay.

24 THE COURT: But I'm going to ask that you look and make
25 a determination as to whether or not you actually need that

1 because that's really -- I'm not saying that it's
2 inadmissible, but you've got a very coherent witness who can
3 testify as to these things, and you need to examine whether
4 or not you think it's -- it's helpful to your case to do
5 that.

6 MS. TIMMONS: Yes. Like I said, there's a lot of
7 reference to --

8 THE COURT: It's going to be difficult to do that. I'm
9 not saying that -- I'll entertain any requests that you have,
10 but I'm not telling you how to try your case.

11 But it sounds as though you've got very clear and
12 distinct separate events, Count I, II, III, and IV, and
13 you've got some prior bad acts, all of which are direct
14 evidence, and I would ask that you give serious consideration
15 as to whether or not you even want to do that. But I'm not
16 saying that I'm not going to do it. I'm just saying that it
17 doesn't seem to be the appropriate thing to do, but go ahead.

18 MS. TIMMONS: That's what I was --

19 THE COURT: Not appropriate -- I didn't say -- it could
20 be appropriate. I'm just saying it doesn't sound as though
21 -- I haven't seen it, but I don't -- I think it might be
22 cumulative is what I'm saying.

23 MS. TIMMONS: All right.

24 THE COURT: Okay.

25 MS. TIMMONS: All right. Judge, next witness will be

1 Kimberly Marlowe of the Sheriff's Office. I'm going to grab
2 her really quick.

3 THE COURT: Yes.

4 MR. MCKENZIE: I'm going to step to the restroom while
5 she does that.

6 THE COURT: All right.

7 MR. MCKENZIE: Thank you.

8 THE DEFENDANT: Can I go to the restroom, please?

9 THE COURT: Yeah. There's two of them back there.

10 (WHEREUPON, there was a pause in the proceedings until
11 the witness entered the courtroom, after which the
12 proceedings resumed as follows.)

13 THE COURT: Yes, ma'am. Please come forward. I'm going
14 to ask you, if you could, to come forward and place your left
15 hand on the Bible and raise your right hand as I administer
16 the oath -- administer the oath. Do you swear to tell the
17 truth, the whole truth, and nothing but the truth, so help
18 you God?

19 THE WITNESS: Yes, sir.

20 THE COURT: Watch your step. Have a seat in the witness
21 chair. Pull real -- up real close to that microphone and
22 speak loudly, clearly, and slowly.

23 THE WITNESS: Okay.

24 THE COURT: And let's start with your full name, please,
25 ma'am.

1 THE WITNESS: My full name is Kimberly Marlowe.

2 THE COURT: Thank you, Ms. Marlowe. Yes, ma'am?

3 MS. TIMMONS: Okay.

4 INV. KIMBERLY MARLOWE, being
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. TIMMONS:

8 Q: Inv. Marlowe, could you tell us what's your occupation?

9 A: I'm an investigator with --

10 Q: Okay.

11 A: With the Lake City Police Department.

12 Q: How long have you been employed with them?

13 A: I have been with the Lake City Police Department since
14 May 15th of this year.

15 Q: Okay. Where did you work before?

16 A: With the Clarendon County Sheriff's Office.

17 Q: Okay. And what were your duties over there?

18 A: I was an investigator --

19 Q: Uh-huh.

20 A: -- with the Sheriff's Office -- with the Clarendon
21 County Sheriff's Office.

22 Q: Okay. And you were investigating what?

23 A: I was a criminal investigator. We investigated
24 anything, any criminal -- any criminal charge or any criminal
25 cases that came in. We handled everything except for

KIMBERLY MARLOWE - DIRECT BY MS. TIMMONS

1 narcotics.

2 Q: Okay. And how long have you been an investigator in
3 Clarendon County?

4 A: Since September of 2013.

5 Q: Okay. And how long have you been working as a law
6 enforcement officer?

7 A: September was 10 years.

8 Q: Okay. And all those years you worked in Clarendon
9 County?

10 A: Yes, ma'am.

11 Q: Okay. Did you work as a patrol officer or --

12 A: Yes. I started with the City of Manning, and I was on
13 patrol. I worked for about two years with the City of
14 Manning on -- as a patrol officer, and then I moved to the
15 Sheriff's Office, at which point I started off as a deputy
16 with the Sheriff's Office on patrol and worked on patrol
17 until January the 1st of 2012. And then I went into
18 narcotics, and I worked in narcotics until September of 2013.

19 Q: Okay. And did you -- or are you familiar with Miranda
20 warnings?

21 A: Yes, ma'am.

22 Q: Okay. Did you have an occasion to advise suspects of
23 those rights?

24 A: Yes, ma'am.

25 Q: Okay. How were you brought to this case, the State

KIMBERLY MARLOWE - DIRECT BY MS. TIMMONS

1 versus Michael Dinkins case?

2 A: The -- if I'm not mistaken, the victim's aunt came in
3 and I happened to be the investigator that answered the phone
4 to meet with her. I met with her and spoke with her and, at
5 that point, the case was assigned to me.

6 Q: Okay. Did you get -- did you have a chance to talk to
7 the defendant in this case, Michael Dinkins?

8 A: Yes, I did.

9 Q: Okay. Did you advise him of his constitutional rights?

10 A: Yes, ma'am, I did.

11 Q: Okay. What did you use to assist you?

12 A: We have a form with the Sheriff's Office that we use
13 most every time that -- that we interview anybody, and it has
14 the -- the Miranda rights spelled out. It has everything
15 under -- it has the list of the Miranda rights and then it
16 has a waiver of their rights at the bottom.

17 We -- I end up giving the suspect or whoever I'm
18 interviewing the sheet, let them read along as I read it to
19 them. They initial off saying that they understand them. At
20 the bottom, they answer the question of do you understand
21 these rights that I've explained to you. They either circle
22 yes or no. And then it is having these rights in mind, do
23 you still wish to talk to me now. They circle yes or no.
24 And then it's a waiver of their rights saying that we didn't
25 use any kind of coercion or -- or make them make that

KIMBERLY MARLOWE - DIRECT BY MS. TIMMONS

1 statement.

2 Q: And did you follow the same procedure?

3 A: Yes, ma'am.

4 Q: Okay. Do you remember when did you talk to defendant?

5 A: I do not. I don't remember the date, no.

6 Q: Okay. Where did you talk to him?

7 A: At the Clarendon County Sheriff's Office in the
8 interview room.

9 Q: Okay. Was anybody else present?

10 A: No. It was video- and audio-recorded.

11 Q: Okay. Do you know where the defendant worked at the
12 time of that interview?

13 A: At the time of that interview, he was at, if I'm not
14 mistaken, Santee Cooper Urgent Care.

15 Q: Okay. Do you know what was he employed as?

16 A: I think a nurse.

17 Q: Okay. So he's probably educated then?

18 A: Yes.

19 Q: Can you describe his physical appearance when he --

20 A: He seemed very well put together. He had -- we had
21 talked over the phone. He had come in just voluntarily to
22 speak with me. He said he was coming in straight from work
23 one afternoon. He seemed very well put together. Didn't
24 seem to be anything out of the ordinary.

25 Q: Okay. In your job, have you ever dealt with the people

1 that were under the influence of narcotics or alcohol?

2 A: Yes.

3 Q: Did defendant appear to be under the influence of
4 anything?

5 A: No, ma'am.

6 Q: Okay. Did he respond when you questioned -- when you
7 read him his rights?

8 A: I think on most of them he responded verbally, as well
9 as initialed by the -- the -- what I read to him, and then --
10 and then signed at the bottom saying that he agreed to speak
11 with me without an attorney.

12 Q: Did he appear to understand your questions?

13 A: Yes.

14 Q: Okay. Was his speech coherent?

15 A: Yes.

16 Q: How did he respond when you asked him whether he wanted
17 an attorney? I mean did he decline to speak to you or he
18 wished --

19 A: No. He agreed to speak with me without an attorney.
20 That's actually one of the questions on the sheet. Do you
21 want to speak now or do you want to speak to us now?

22 Q: Okay. Do you remember if he invoked his right to remain
23 silent?

24 A: No, he did not.

25 Q: Okay. Did you promise him anything in return?

KIMBERLY MARLOWE - DIRECT BY MS. TIMMONS

1 A: No, ma'am.

2 Q: Did you coerce him into talking to you?

3 A: No, ma'am.

4 Q: Did you use any threat or force?

5 A: I'm sorry?

6 Q: Did you use any force or threat?

7 A: Oh, no, ma'am.

8 Q: Okay. To the best of your knowledge, was his statement
9 given to you freely and voluntarily?

10 A: Yes.

11 Q: Okay. Okay.

12 MS. TIMMONS: And, Your Honor, we have a tape of
13 defendant's statement. I can try to get it to work so that
14 you can view the --

15 THE COURT: Very good.

16 MS. TIMMONS: -- moment whenever.

17 THE COURT: How long is it?

18 MR. MCKENZIE: It's long.

19 MS. TIMMONS: The statement that the defendant gave
20 takes probably an hour. The important part, his Miranda
21 rights, is just a few minutes.

22 THE COURT: How much do you intend on introducing it to
23 the jury?

24 MS. TIMMONS: Your Honor, I guess it depends whether he
25 decides to take the stand. I may introduce the whole tape.

1 There is a moment where he is asked by Inv. Marlowe whether
2 he -- whether anybody else made prior accusations. So I
3 don't know if defense will object to that. I assume they
4 will. So I guess that part we'll cut out.

5 THE COURT: All right. So y'all agreed to redact that
6 amount?

7 MS. TIMMONS: Yes. If it's your motion, then I will
8 redact. And I think all the other part defense does not
9 object to.

10 MR. MCKENZIE: Yeah. I don't think I'll have any
11 objections to anything else coming in, Your Honor, just that
12 --

13 THE COURT: Okay.

14 MR. MCKENZIE: -- one part coming in.

15 THE COURT: All right. Do you think that it's necessary
16 that I listen to the entire statement here today or do you
17 think I need to address the voluntariness in the Jackson v.
18 Denno issue?

19 MR. MCKENZIE: I don't think you need to look at the
20 entire video, Your Honor. I think that it's just the issue
21 of the Jackson v. Denno, the voluntariness of whether or not
22 my client made that statement. We can agree on the redacted
23 part. I think we --

24 THE COURT: Okay.

25 MR. MCKENZIE: -- can get that taken out of -- out of

1 here.

2 THE COURT: All right.

3 MR. MCKENZIE: The other issue -- I don't think -- do we
4 have a copy of the -- the signed Miranda forms and waivers?

5 MS. TIMMONS: No. We don't have that copy. The
6 Sheriff's Office doesn't have that copy, but it's clearly
7 shown on the video where Inv. Marlowe is giving him rights.

8 MR. MCKENZIE: And I'm not going to object to that.

9 THE COURT: Okay. And it's not necessary that you do
10 that.

11 MR. MCKENZIE: No. No, it's not.

12 THE COURT: And you can cross-examine her about what
13 happened to the written document.

14 MR. MCKENZIE: Sure.

15 THE COURT: Or whatever, but she says that she did it
16 and I believe she did it. So --

17 MR. MCKENZIE: And it's -- and it's on the video, Your
18 Honor.

19 THE COURT: Okay.

20 MR. MCKENZIE: I can proffer that for you. It's on the
21 video. She -- she clearly gave the statement. He clearly
22 signed something and -- and he spoke freely and -- I mean he
23 spoke about all the incidents.

24 THE COURT: All right. Any cross -- cross-examination
25 with regard to the issue of voluntariness?

1 MR. MCKENZIE: None, Your Honor.

2 THE COURT: All right. Well, I do indeed find that --
3 that he was given his Miranda warnings. That the statement
4 was given voluntarily. Apparently, he was not under the
5 influence of anything. He's clearly an educated person.
6 He's a nurse. There's been no proffer with regard to his
7 limited IQ or any kind of emotional difficulties.

8 It's clear from the testimony that's been elicited here
9 today that there were no threats. That he was not promised
10 anything. There -- I understand that there has not been any
11 offer that he was held for an extended period of time, denied
12 water or food or anything such as that.

13 So I indeed do find that the statement is admissible if
14 proffered, and I find that the statement was made voluntarily
15 and that the Miranda warnings were properly given.

16 And I assume that you do not -- do not have any evidence
17 with regard to voluntariness?

18 MR. MCKENZIE: I don't, Your Honor.

19 THE COURT: Very good. All right. So we are in a
20 position to proceed forward in that regard on Monday morning.
21 Thank you.

22 MR. MCKENZIE: Thank you.

23 MS. TIMMONS: Thank you.

24 THE COURT: Anything else?

25 MS. TIMMONS: Judge, I believe these are -- these are

1 all of my motions at this time.

2 THE COURT: Okay. And if there are any documents -- if
3 there's any documentary evidence, I'm going to ask that you
4 and Mr. McKenzie review that before Monday morning so we can
5 agree to what y'all can agree upon and, what you can't agree
6 upon, be ready to present to me as early as we can on Monday
7 morning so we can have the exhibits ready to go.

8 MS. TIMMONS: And, Judge, I guess it's typical he's --
9 well, it's a one-witness case. I mean the most important
10 witness is the victim. There isn't any other physical
11 evidence.

12 THE COURT: Okay.

13 MS. TIMMONS: So I don't think there's going to be that
14 many exhibits.

15 THE COURT: All right. Very good. All right. Anything
16 further, Mr. McKenzie?

17 MR. MCKENZIE: Your Honor, I had filed several motions.
18 One was a written objection to qualifying the -- the
19 interviewer at the Durant Center as an expert. I think
20 that's pretty standard. She's -- I mean I don't think she's
21 going to be a fact witness, but if there was an attempt to
22 qualify her as an expert in regards to believability of the
23 defendant or child psychologist, I think she's just an
24 interviewer with the Durant Center. I filed that motion, but
25 I'm understanding from Ms. Timmons that she's not going to --

1 if she calls her, it would be just to testify as to what was

2 --

3 MS. TIMMONS: Just the Durant place.

4 MR. MCKENZIE: -- what her -- what she observed at the
5 interview.

6 THE COURT: Okay.

7 MR. MCKENZIE: I also made a motion to reserve my cross-
8 examination of the victim until after the State presented --
9 I wanted to be able to -- you know, the victim I understand,
10 under 17-25-175, has to testify regarding the elements of the
11 offense.

12 So I wanted to make sure that I -- my cross-examination
13 -- she puts that up and then she testifies about the specific
14 instances. I wanted to make sure my cross-examination was
15 done after that fact.

16 Is that -- are you following that, Your Honor?

17 THE COURT: I'm not.

18 MR. MCKENZIE: Okay. Let me hand you a copy of my
19 motion.

20 MS. TIMMONS: And I guess what Mr. McKenzie -- if I
21 understand correctly --

22 MR. MCKENZIE: Go ahead.

23 MS. TIMMONS: In case victim testifies first and then I
24 present forensic interview --

25 MR. MCKENZIE: That's right.

1 MS. TIMMONS: I guess he would like to cross-examine
2 victim about the forensic interview after forensic interview
3 is played.

4 MR. MCKENZIE: That's -- that's correct.

5 THE COURT: Okay.

6 MR. MCKENZIE: That's correct.

7 MS. TIMMONS: Well, there is a case on point, State v.
8 Anderson, which says that the confrontation clause requires
9 that the defendant has the right to cross-examination of the
10 victim, and it -- the confrontation clause will be satisfied
11 if he only -- I mean if he can fully cross-examine the
12 victim, he doesn't have to cross-examine the victim after
13 forensic interview is played.

14 THE COURT: Okay.

15 MS. TIMMONS: So I think --

16 THE COURT: Do you have any authority that says that --
17 that you're entitled to have the forensic interview played
18 before you cross-examine her?

19 MR. MCKENZIE: Yes, Your Honor. I've got -- well, I've
20 got my motion. I'll hand it to you.

21 THE COURT: All right.

22 MR. MCKENZIE: It's contained in my motion. Basically,
23 I'm just -- I think as far as the coherency for the -- for
24 the jury -- let me get my motion out so I can follow it along
25 too.

1 Okay. Your Honor, 17-23-175(a)(3) requires that the
2 child to testify at the proceeding subject to cross-
3 examination on the elements of the offense and making of the
4 out-of-court statement.

5 And, you know, my proposal would be first to ensure that
6 the child testified. In the -- in the hearing, the child
7 must testify about the elements of the crime before any
8 evidence of the out-of-court statement is admissible.

9 THE COURT: You're talking about, like, time, place, and
10 --

11 MR. MCKENZIE: Yes, yes.

12 THE COURT: Yes.

13 MR. MCKENZIE: That's correct, Your Honor, and so I'm
14 just trying to get the sequence down so it's coherent for the
15 jury, and then I can --

16 THE COURT: I think the only requirement is that before
17 she's able to play the statement, the defendant has to
18 testify first.

19 MR. MCKENZIE: That's -- that's correct. Okay.

20 THE COURT: Well, I agree with that.

21 MR. MCKENZIE: The victim testifies first.

22 THE COURT: Yeah. Did I say defendant?

23 MR. MCKENZIE: You did, Your Honor.

24 THE COURT: I meant the victim --

25 MR. MCKENZIE: Yes, sir.

1 THE COURT: -- has to testify before you can start
2 talking about what -- yes, that does have to take place
3 first.

4 MR. MCKENZIE: Okay. And that's what I was talking
5 about, Your Honor.

6 MS. TIMMONS: Well, I think you wanted to -- if I play
7 forensic interview, victim testifies first, then we play
8 forensic interview, and I think Mr. McKenzie would want us to
9 call victim again to the stand so that he would have a chance
10 to cross-examine her.

11 MR. MCKENZIE: Yes. After -- after the forensic
12 interview is played so I can get the --

13 THE COURT: Well, I don't think that they -- I think
14 what she's anticipating is that the forensic interview is not
15 going to be --

16 MR. MCKENZIE: The tape is not going to be played?

17 THE COURT: -- not going to be played through the
18 victim. It very well could be introduced through the
19 interviewer.

20 MR. MCKENZIE: But I think there's enough prior bad acts
21 on there that I think that we're probably not going to see
22 the -- see that, but maybe the -- and so it may be a moot
23 point. I mean it just -- I don't think there's going to be
24 --

25 THE COURT: We'll address that.

1 MR. MCKENZIE: Yes, sir.

2 THE COURT: We'll address that, but before anything
3 about the interview is going to be able to be played, I do
4 know that the defendant has to testify first.

5 MR. MCKENZIE: Okay.

6 MS. TIMMONS: The victim does.

7 THE COURT: Yeah. I mean the victim. I don't know.
8 It's been a long morning. The victim is going to have to
9 testify first.

10 MS. TIMMONS: I would like for the defendant to testify
11 first.

12 MR. MCKENZIE: It's been a long day without lunch.

13 THE COURT: The defendant very well might not testify.

14 MR. MCKENZIE: Yes, sir.

15 THE COURT: I don't know, but certainly before you can
16 get into any interview or anything that's said, the alleged
17 victim has to testify first.

18 MR. MCKENZIE: Your Honor, I had made a motion also
19 about requiring the disclosure of alleged victim's counseling
20 records. We have those. You've seen those also from Sumter
21 Psychiatry.

22 We may have to discuss how -- because obviously, I'm
23 going to -- you know, my position is is that none of these --
24 this child was going to psychotherapy or counseling, whatever
25 she was doing, during the period of time when all these

1 incidents were alleged to have happened, but none of them
2 were disclosed to the psych -- to the counselor until after
3 January of 2016 after -- like, January 8th I think is the
4 first time they were disclosed; so the entire time.

5 So when we have the -- for example, you had said that
6 the 2013 incident at the -- at the beach is going to be one
7 of the prior bad acts as mentioned, not mentioning in the
8 counseling records at all. So obviously, I'm going to want
9 to try to impeach the victim's credibility regarding the fact
10 she did not mention any of this to the counselor.

11 THE COURT: Okay.

12 MR. MCKENZIE: So my -- I've got all these records.

13 THE COURT: You can do that a number of different ways.

14 MR. MCKENZIE: I know. I know, Your Honor, and -- but
15 I've got a -- again, I've subpoenaed the counselor herself
16 and so I could get -- I could put her on the stand to testify
17 in regards to were any of these statements made to her or was
18 any -- was she -- any allegation of inappropriate conduct as
19 the victim has alleged and -- but anyway, I've made that
20 motion, Your Honor, but I have the records. The question is
21 how much of the records come in. It may be we have to wait
22 until the testimony comes in.

23 MS. TIMMONS: Judge, I guess I would object to that. I
24 mean all of those counseling records -- they're -- I mean
25 that's private information. We already had -- I mean victim

1 already met with psychiatrist. She was found competent.

2 Obviously --

3 MR. MCKENZIE: Not about competence, about impeachment.

4 MS. TIMMONS: I mean Steve McKenzie -- Mr. McKenzie can
5 cross-examine victim. He can cross-examine her aunt, her
6 grandmother. There's many other ways he can try to introduce
7 the fact that maybe she didn't mention it to the counselor
8 without providing those records to the jury.

9 THE COURT: I'll have to take a look at the records, but
10 I think that they probably are admissible either through a
11 records custodian or through the counselor herself and --

12 MR. MCKENZIE: And I have her subpoenaed.

13 THE COURT: -- if you have an objection to them, you
14 need to delineate exactly what your objections are.

15 MS. TIMMONS: Well, Judge, all that information is
16 private information. It's, I guess, protected under HIPAA
17 and --

18 THE COURT: It's protected until I say it's not.

19 MS. TIMMONS: That's correct.

20 THE COURT: There you go. All right.

21 MR. MCKENZIE: And, Your Honor -- and again, it goes to,
22 I think, impeachment purposes for the defendant.

23 THE COURT: Right. And what I want you to do -- you
24 know, it might be that there are some things in there that --

25 MS. TIMMONS: Judge, I have those records with me. If

1 Mr. McKenzie is okay with it, I guess we can make a copy of
2 them and you --

3 THE COURT: Yeah. We can take a look at that, but what
4 -- you just want them all in?

5 MR. MCKENZIE: Yeah. I mean -- and the reason, Judge,
6 is that there's a -- I mean there's -- this child for -- was
7 going to counseling, which obviously is grief counseling
8 because her mother has passed away, but they talk about a lot
9 of things in there, like how are you doing, what's going on.
10 They mention Uncle Mike in there, but they never mention any
11 inappropriate conduct, that she wasn't feeling -- you know,
12 that this --

13 THE COURT: All right.

14 MR. MCKENZIE: -- you know, this made her feel
15 uncomfortable and one -- there's a couple things and the
16 records show is that she trusted her counselor, was very open
17 with her counselor about her life and what was going on. In
18 fact, she mentioned to her counselor that she had seen some
19 pornography at a friend's house. That's noted in there, but
20 she never mentions anything about Uncle Mike.

21 THE COURT: Okay.

22 MR. MCKENZIE: And the testimony is going to -- you
23 know, you've heard that from the stand that she --

24 THE COURT: Well, I --

25 MR. MCKENZIE: -- never told --

1 THE COURT: I probably am going to lean more towards
2 allowing that in unless I hear convincing argument to the
3 contrary.

4 MR. TIMMONS: Okay.

5 MR. MCKENZIE: Thank you, Your Honor, and I think that's
6 it.

7 THE COURT: All right. We'll stand at ease and we'll
8 see y'all bright and early. I'll probably -- what time does
9 the jury come in?

10 MS. TIMMONS: At 9:30.

11 THE COURT: All right. I'll probably be there a little
12 bit early. I'll probably be there around 9:00. If y'all
13 could be there at 9:00, we'll make sure that we're ready to
14 go. Let's do that.

15 Could I speak with counsel in chambers for just one
16 moment? I know y'all are hungry.

17 MR. MCKENZIE: That's fine, Your Honor.

18 (WHEREUPON, the proceedings ended at 1:24 p.m.)

19

20 --- END REQUESTED TRANSCRIPT ---

21

22

23

24

25

1 State of South Carolina)
2) Certificate
3 County of Florence)
4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 107, constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 General Sessions for Clarendon County, South Carolina, held
13 in Florence, South Carolina, on the 2nd day of November, 2017.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.

16
17 Krystal J. Smith

18 Court Reporter

19
20 Florence, South Carolina

21 January 16, 2017

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STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
16-GS-14-0098

MICHAEL JAMES DINKINS,)

DEFENDANT.)

November 6, 2017
Manning, South Carolina

B E F O R E :

THE HONORABLE MICHAEL G. NETTLES, JUDGE;
AND JURY

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

KATARZYNA K. TIMMONS, ESQ.
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1 THE COURT: Ms. Timmons, you're
2 recognized. You may call your first case.

3 MS. TIMMONS: Thank you, Judge, may it
4 please the Court, the State of South Carolina versus
5 Michael James Dinkins, indictment number
6 2016-GS-14-0098. The defendant is charged with four
7 counts of criminal sexual conduct with a minor in
8 the third degree.

9 THE COURT: Very good. Ladies and
10 gentlemen of the jury panel, as the solicitor has
11 indicated the defendant Mr. Michael James Dinkins
12 has been indicted for four separate and distinct
13 counts of criminal sexual conduct with a minor third
14 degree. These, this indictment alleges four
15 separate and distinct events which took place on or
16 about October 27th, 2015, another on October 27th,
17 2015, one on December 31st, 2015, and one
18 December 26th, 2015. Ladies and gentlemen of the
19 jury, they've made reference to this indictment. I
20 hold in my hand the indictment itself; it's simply a
21 sheet of paper. And this indictment bears
22 absolutely no evidentiary value whatsoever. As a
23 matter of fact, as the defendant Mr. Dinkins seated
24 at the defense table he's presumed to be just as
25 innocent as me or you. That's the frame of

1 reference that we start from.

2 Mr. McKenzie, I'm gonna ask if you could
3 to stand with your, I'm gonna ask the defendant
4 Mr. Dinkins to stand around and face the jury panel.

5 Ladies and gentlemen of the jury panel,
6 this is Michael James Dinkins, the defendant in this
7 case.

8 You may be seated.

9 Is there any member of the jury panel who
10 is related by blood or marriage, you have a close
11 social or business, or personal relationship with
12 Mr. Dinkins, if so, please stand.

13 Yes, sir, if you could come forward.

14 (WHEREUPON, potential juror approached the
15 Bench for an on-the-record discussion.)

16 THE POTENTIAL JUROR: I'm Jason Lowder,
17 116.

18 THE COURT: Juror number 116.

19 THE POTENTIAL JUROR: Okay, I own an
20 ambulance service and we used to do interfacility
21 transfers for Urgent Care.

22 THE COURT: Right.

23 THE POTENTIAL JUROR: And our main
24 controller is Marvin D. Williams and I think that's
25 where he works at now; but I haven't had any

1 dealings with him there.

2 THE COURT: You -- he's essentially
3 employed there and you service that facility; is
4 that correct?

5 THE POTENTIAL JUROR: I do not serve that
6 facility, no, sir.

7 THE COURT: What is your relationship with
8 him?

9 THE POTENTIAL JUROR: Basically just work
10 related.

11 THE COURT: Okay.

12 THE POTENTIAL JUROR: For interfacility
13 transfer, I own an ambulance service.

14 THE COURT: Okay. He doesn't pay you or
15 you don't pay him?

16 THE POTENTIAL JUROR: No, sir.

17 THE COURT: Okay, but you just know each
18 other from business, from the type of business that
19 you're involved in. He's involved in the medical
20 industry and you're involved in the ambulance
21 business.

22 THE POTENTIAL JUROR: Correct.

23 THE COURT: Have you ever been to his
24 house on a social basis?

25 THE POTENTIAL JUROR: No, sir.

1 THE COURT: Has he ever been to your
2 house?

3 THE POTENTIAL JUROR: No, sir.

4 THE COURT: Would you consider him a close
5 personal friend?

6 THE POTENTIAL JUROR: Just a work related
7 friend.

8 THE COURT: Okay. But the main question
9 we need to ask and you need to ask yourself is, if
10 called upon to serve on this jury could you set
11 aside the fact that you know him on a casual basis,
12 business related basis, listen to the evidence
13 that's presented in this case or the lack of
14 evidence that you have and the law as I charge it to
15 you and give both the State and the Defendant a fair
16 and impartial trial?

17 THE POTENTIAL JUROR: Yes, sir, I think
18 I — that will be fine.

19 THE COURT: In polite conversation we
20 always qualify what we say. You say yes, I think I
21 can, but these are matters we deal with in
22 absolutes. The questions is, could you be fair and
23 impartial?

24 THE POTENTIAL JUROR: Absolutely.

25 THE COURT: Okay, very good. Now if he

1 were to testify, by virtue of the fact that you know
2 him in your business relationship, would you give
3 greater weight or lesser weight in what he would
4 have to say by virtue of your knowledge of him; or
5 could you evaluate his testimony like any other
6 witness?

7 THE POTENTIAL JUROR: Yeah, absolutely.

8 THE COURT: You could?

9 THE POTENTIAL JUROR: Oh, yes, sir.

10 THE COURT: Very good, you're qualified to
11 serve.

12 THE POTENTIAL JUROR: I have three
13 children so, I, yeah, either way, you know.

14 THE COURT: Right. Very good. You're
15 qualified to serve.

16 THE POTENTIAL JUROR: Okay, I just wanted
17 to be clear.

18 THE COURT: Very good.

19 (Potential juror approached the Bench for an
20 on-the-record discussion.)

21 THE COURT: Yes, sir.

22 THE POTENTIAL JUROR: I know him from
23 Urgent Care treating me many times down there. I
24 don't know what bearing that would have on this
25 but...

1 THE COURT: Okay. Well, if called upon to
2 serve on this jury could you set aside the fact that
3 he has seen you in a professional capacity, and
4 listen to the evidence or the lack of evidence and
5 give a fair and impartial trial to both the State
6 and the Defendant?

7 THE POTENTIAL JUROR: I'm pretty sure I
8 could, yes.

9 THE COURT: Okay. You know, in polite
10 conversation we always qualify what we say. And
11 these are matters where we have to deal in
12 absolutes. My question to you is, could you be fair
13 and impartial?

14 THE POTENTIAL JUROR: Yes, sir.

15 THE COURT: Okay. If called upon to serve
16 on this jury and if, would you give greater or
17 lesser weight to anything he might say or any
18 position he might take by virtue of the fact that
19 you know him, or could you, could you evaluate
20 things just like you would any other case?

21 THE POTENTIAL JUROR: I think, yes. Yes,
22 I could.

23 THE COURT: Are you certain that you
24 could?

25 THE POTENTIAL JUROR: Uh-huh.

1 THE COURT: You're qualified to serve.
2 Thank you.

3 THE POTENTIAL JUROR: Okay, thank you.
4 (Potential juror approached the Bench for an
5 on-the-record discussion.)

6 THE POTENTIAL JUROR: How are y'all? I
7 work with his uncle at the post office. My wife is
8 interacted with school, and I've -- he's not a close
9 friend, but he's a friend.

10 THE COURT: Okay. Good.

11 THE POTENTIAL JUROR: I mean...

12 THE COURT: If, you say he's a relation?

13 THE POTENTIAL JUROR: No, no, he's not
14 related to me.

15 THE COURT: Do you have a social
16 relationship with him, do you know him?

17 THE POTENTIAL JUROR: Yes, I know him.

18 THE COURT: All right. Have you ever, has
19 he ever been to your house to have dinner?

20 THE POTENTIAL JUROR: No.

21 THE COURT: Have you ever been to his
22 house?

23 THE POTENTIAL JUROR: No.

24 THE COURT: All right. And how often
25 would you interact with him?

1 THE COURT: Any from Defense?

2 MR. MCKENZIE: None from Defense, Your
3 Honor.

4 THE COURT: All right. I'm gonna ask each
5 of you to raise your right hand as the Clerk
6 administers the oath.

7 MS. TIMMONS: Your Honor, before the jury
8 is sworn in can I just have one matter outside of
9 their presence?

10 THE COURT: You can approach the Bench,
11 yes.

12 (WHEREUPON, counsel approached the
13 Bench for an off-the-record discussion.)

14 THE COURT: Raise your right hand as the
15 Clerk administers the oath.

16 THE CLERK: Thank you, Your Honor.

17 (WHEREUPON, the jury was sworn at 11:45 a.m.)

18 THE CLERK: Thank you. You may be seated.

19 THE COURT: Ms. Dawn Still, I'm gonna ask
20 if you can serve as forelady of this jury and I'm
21 gonna ask that you change chairs with this young
22 lady right here. Ms. Still, I'm gonna appoint you
23 as forelady of this jury and you, like everyone
24 else, when it comes time to deliberate you're gonna
25 have one vote but you're gonna have some additional

1 responsibility. If there are questions or concerns
2 that's develop throughout the trial of this case,
3 I'm gonna ask that jurors communicate that question
4 concern to you. You reduce it to writing and give
5 it to the bailiff; and if it's something I can help
6 you with, I'll be happy to do that. In addition to
7 that, when it comes time to deliberate your job and
8 responsibility is to insure that everyone's voice is
9 heard, and you're to preside over the deliberation
10 process.

11 I want each of you to kind of pay
12 attention as we start to talk about this case.
13 We're about to begin the trial of the case of State
14 of South Carolina versus Michael James Dinkins.
15 It's become imminently clear to you that the forum
16 which you've been asked to take a very important
17 part in is criminal court. The State of South
18 Carolina has accused Michael James Dinkins of four
19 different, separate and distinct criminal acts. And
20 I point that out to you because many of you have
21 probably served on a civil jury before. As you
22 know, when we talk about in criminal court the State
23 is alleging that an individual has violated the
24 criminal codes of the State of South Carolina; and
25 if someone is convicted, of course, they're subject

1 to fine and possible incarceration.

2 There's also another type of court and
3 it's called civil court. A good example of that
4 would be an automobile accident, medical malpractice
5 case, a contract dispute. And really, that's where
6 two citizens of Clarendon County have gotten
7 involved in a dispute. They're essentially arguing
8 about money, monetary damages, and things of that
9 nature. I point that out to you because many of you
10 have probably served on a civil jury before; and as
11 a matter of fact, if you were sitting in the back of
12 this courtroom and take a look at this proceeding,
13 it'll be very difficult for you to determine whether
14 or not just from the set up whether or not it's
15 criminal court or civil court because in both forums
16 you have litigants on both sides of the courtroom,
17 you have a judge presiding, and a jury listens to
18 the evidence that would come from the witness stand.
19 But the similarities really stop there because
20 there's a very real difference between civil court
21 and criminal court. Because as I mentioned, in this
22 case we're talking about a person's very important
23 constitutional rights, their civil liberties, so
24 certain constitutional safeguards come into play
25 when we're talking about criminal court. The first

1 of which is Mr. Dinkins is sitting over there beside
2 Mr. McKenzie. He's presumed to be just as innocent
3 as me or you, just as innocent as the solicitor's
4 office, just as innocent as me, just as innocent as
5 you. That's the frame of reference that we start
6 upon.

7 The presumption of innocence is a very
8 real right that belongs to all of us as American
9 citizens. I envision that as a cloak of
10 righteousness that follows all of us throughout our
11 lives; and if you're accused of a crime, that
12 presumption follows you throughout the trial of the
13 case and only into the deliberation room. That's
14 where we start.

15 The second constitutional safeguard is the
16 State has the burden of proof. There's some -- that
17 means they're the ones that have to bring the
18 evidence to you. You know, in some third world
19 countries you can be accused of a crime, hauled
20 before a court, and be required to prove yourself
21 innocent. That's not the way it is in the United
22 States of America, never has been and never will be.
23 The State bears the sole burden of proof of each and
24 every element of this crime beyond a reasonable
25 doubt. There's some theoretical reasons behind that.

1 because we live in a free and democratic society and
2 in order for the State government to take away those
3 liberties, they're gonna have to prove their case.
4 There's some practical reasons behind that as well
5 because the State has at their beck and call all of
6 the law enforcement, the Clarendon County Sheriff's
7 Department, the Manning Police Department, SLED, all
8 those resources. They're the ones who have to meet
9 the burden of proof.

10 The third constitutional safeguard is that
11 the State has to meet the highest burden of proof
12 known in our judicial system. If we were involved
13 in a wreck case or a medical malpractice case or a
14 contract dispute, the plaintiff comes before this
15 forum and they're, being the plaintiff they would be
16 the ones who are required to meet the burden of
17 proof. And in a civil case, imagine if you will,
18 the scales of justice where the lady is blind folded
19 from all bias and all prejudice. When the trial
20 starts, the scales are even. And if throughout the
21 medical malpractice case if the, if the plaintiff,
22 the one who has alleged injuries, tilts the scales
23 ever so slightly in their favor, they would prevail
24 because after all, in civil court all you're talking
25 about is money. But in criminal court, I envision

1 the State has the burden of proof and they have to
2 prove it beyond a reasonable doubt, more than a mere
3 preponderance. Now I envision that as locking up
4 the scales, proof beyond a reasonable doubt.

5 I want to talk to you a little bit about
6 how the trial is gonna proceed. First of all, the
7 lawyers, Ms. Timmons and Mr. McKenzie are gonna have
8 an opportunity to get up before you, kind of tell
9 you about what this case is about. The State is
10 gonna have an opportunity to talk about what the
11 elements of the offenses are and what they intend to
12 prove. The defendant is gonna have an opportunity
13 to make an opening statement. As I mentioned to
14 you, the State has the burden of proof. The
15 Defendant need not say anything, but they're gonna
16 be given an opportunity to give an opening statement
17 if they elect to do so and I anticipate they
18 probably will. They're not required to do so.

19 After the opening statements the State
20 will be required to present evidence in full. They
21 will call one witness after another. They will take
22 an oath to tell the truth and have a seat on the
23 witness stand. The State will ask them questions.
24 Mr. McKenzie will have an opportunity to
25 cross-examine them. They will call each one of

1 their witnesses, one right after the other, and then
2 they will rest their case; they will have presented
3 their case in chief. Then the defendant is gonna be
4 given an opportunity to present any evidence to
5 support any defenses they might have. They're not
6 required to do so because, once again, they have no
7 burden. They need not testify, need not present any
8 evidence, no witnesses; the burden is solely on the
9 State to do so. In the event the defendant would
10 elect to present any evidence whatsoever, then the
11 State would have an opportunity to reply and present
12 some reply testimony. After that, then the lawyers
13 once again have an opportunity to stand up before
14 you in summary fashion and give what's known as
15 closing argument, very similar in form to opening
16 statements. They'll stand up and talk with you.
17 But they're truly argumentative in nature at this
18 point because at that time you will have heard all
19 of the evidence, and these very fine lawyers have an
20 opportunity to point to the evidence that supports
21 their relative theory of the case. What they have
22 to say is not evidence, but will aid you immensely
23 in your deliberation process so I'm gonna ask that
24 you pay very close attention to the closing
25 arguments when they proceed.

1 Ladies and gentlemen of the jury, you and
2 I have very distinct and separate roles to fulfill
3 in this proceeding. I am the trier of the law,
4 arbiter of the law, which means I preside over this
5 proceeding and I also determine what evidence you
6 get to hear. This is a proceeding that's governed
7 by the rules of criminal procedure and the rules of
8 evidence; and I determine what evidence you get to
9 hear, what's relevant, what's admissible. And at
10 the conclusion of case I'll also explain and charge
11 to you the substance of the law. Your job is very
12 different than that. You also are judges, but y'all
13 are gonna be the judges of the facts. Every case
14 that's tried in United States of America, there's
15 always a conflict about the facts in the case.
16 There are very rare occasions where the litigants
17 agree as to the facts, but disagree as to the
18 inference to be drawn from the fact. But in both
19 cases it's gonna be, you're gonna be called upon to
20 resolve those issues. Necessarily in your job in
21 determining what the true facts are in the case,
22 you're gonna be called upon to evaluate the
23 credibility of the witnesses and I'll charge you at
24 the conclusion of the case exactly how to do that.
25 I'm gonna tell you from the very outset, when a

1 witness takes the witness stand, ask yourselves what
2 opportunity they had to observe the things to which
3 they're testifying to. Ask yourself whether or not
4 there's any interest or bias in their testimony,
5 whether or not they have something to gain by the
6 testimony. Ask yourself whether or not what this
7 particular witness says is corroborated by other
8 evidence and other testimony or whether or not it's
9 in contradiction of other evidence or other
10 testimony. I'll tell you from the very outset that
11 you can believe all of what a witness says, none of
12 what a witness says, or a portion thereof. It's
13 completely within your province as a jury, as a jury
14 panel, to make those type decisions. It's also
15 important for you to pay very close attention to
16 what the witness says, but also how they say it.
17 Many of you who have teenage children, it's
18 important to listen to what they say and also how
19 they say it. We in our everyday lives evaluate
20 people's credibility every day, and the law doesn't
21 say anything about leaving you're good common sense
22 at home. Watch the people, pay attention to what
23 they have to say and the way they say it, whether or
24 not they look like they're telling the truth. Pay
25 very close attention.

1 Ladies and gentlemen of the jury, at the
2 conclusion of the case you need to understand that
3 you have a very important role to play in this case.
4 You take a solemn oath that you'll listen to the
5 evidence that comes from this witness stand, put it
6 all together, determine what the truth is, and apply
7 it to the law as I charge it to you. I'll tell you
8 from the very outset that if I make an error with
9 regard to admission of evidence, if I charge the law
10 wrong, those are errors easily corrected. One thing
11 you need to understand is if you make an error with
12 regard to the findings of fact, quite often those
13 errors can never been corrected. So this is an
14 awesome responsibility that you have on your
15 shoulders is to listen to the evidence that comes
16 from the witness stand and determine what the truth
17 is and apply it to the law. You've taken a very
18 solemn oath to do that and I'm convinced that you
19 will.

20 I'm gonna, at the conclusion of the case I
21 will charge you the law, then I will tell you to
22 begin deliberations; but until that point in time,
23 do not discuss the case amongst yourselves or with
24 anyone else. There'll be times where you're in the
25 jury room, Madam Forelady, where you're back there

1 outside of our presence as we take care of legal
2 matters. Madam Forelady, I'm gonna ask that you
3 enforce that rule. They'll be no discussion
4 whatsoever with regard to what a witness has to say,
5 anything about the personalities involved in this
6 case. Y'all can talk about Carolina football,
7 Clemson football, y'all can talk about Santee, talk
8 about the weather, whatever you want to talk about,
9 but you can't talk about this case.

10 Pay very close attention as the trial
11 progresses. This is an important case. It's an
12 important case to the State of South Carolina. It's
13 an important case to the defendant. And most
14 important, it's an important case to you 'cause
15 you've taken a solemn oath that you will listen to
16 the evidence, apply it to the law, and do what's
17 right and what's fair. Pay very close attention as
18 the State proceeds.

19 Ms. Timmons, you're recognized for opening
20 statement.

21 MS. TIMMONS: December 31st, 2015, it's
22 New Year's Eve, it's late at night, an 11 year old
23 Gigi Joyce has been laying on the couch in the
24 living room of her aunt and uncle's house. She was
25 watching Dumb and Dumber. She was watching the

1 movie together with her uncle, the defendant, Mike
2 Dinkins. And when they were alone in the living
3 room, Mike Dinkins kissed her on her mouth and then
4 put his tongue in her mouth. ^{Victim} [REDACTED] was pretending
5 she was asleep. And as soon as she heard, as soon
6 as she was sure that the defendant left the room,
7 she came running looking for her aunt or her
8 grandma. And she saw them, and as soon as she saw
9 them she said, Leigh, Leigh, Uncle Mike just kissed
10 me, he kissed me and he put his tongue in my mouth.
11 It wasn't the first time that her aunt was aware of
12 some kind of inappropriate touching went on; but
13 this time there wasn't any explaining away, there
14 could have not been any mistake, it couldn't have
15 been a misunderstanding. So she made a decision.
16 She decided to leave their home right there that
17 night. They left in a hurry. They packed just a
18 few things. And on December 31st on New Year's Eve
19 late at night, ^{Victim} [REDACTED], her aunt, and her grandma left
20 their home here in Manning.

21 And you see, ^{Victims} [REDACTED]'s daddy is suffering
22 from severe epilepsy; he cannot take care of her.
23 So whenever her mom passed away, ^{Victim} [REDACTED] was staying
24 with her aunt and her uncle. They have got custody
25 of her. So the very person that was supposed to

1 protect ^{Victim} committed those acts.

2 A week after they moved out ~~Victim~~ disclosed
3 three additional lewd act committed by defendant.
4 She disclosed that on October 27th, 2015, it was, it
5 happened to be her 11th birthday. She stayed home
6 from school; she was sick. She was laying in her
7 aunt's bedroom. She was laying on her tummy. And
8 whenever nobody else was around, her uncle came to
9 the bedroom, got on top of her on all fours and
10 started thrusting so that his pelvic area started
11 touching her buttocks. On the same day when ^{Victim} ~~Victim~~
12 was laying on the couch with her head facing the
13 back of the couch, he came to her, there was nobody
14 else around. He came to her and he made her touch
15 his penis. And then on December 26th, the day after
16 Christmas, ^{Victim} ~~Victim~~ got a new Playstation. Her daddy
17 helped her set it up. She was playing Minecraft.
18 And whenever she was alone in her room the defendant
19 came to her room, sit on the chair, make her sit
20 down on his lap, and while talking to her about
21 Minecraft, he started rubbing her breast under her
22 shirt.

23 Ladies and gentlemen, the defendant is
24 charged with four counts of criminal sexual conduct
25 with a minor in the third degree. And to find

1 somebody guilty of the charge the State has to prove
2 to you that a person, the defendant, was over 14
3 years of age and he willfully touched any part,
4 willfully and with intention of lewd and lascivious
5 intention to try to touch a body or any part of a
6 child's body under 16 years of age and he has to do
7 it with a intent to gratify his sexual desires. It
8 simply means that we have to prove to you that the
9 defendant was over 14 years of age and he touched a
10 child that was under 16 years of age in a sexual
11 manner. So Mike Dinkins is charged with four
12 counts, that twice on October 27th he touched [REDACTED]
13 ^{Victim} [REDACTED]; and then on December 26th, again, he touched
14 her in a lewd manner, and then on New Year's Eve of
15 2015.

16 Sex crimes are very secret in their
17 nature. Usually the only witness to the crime is
18 the victim themselves, and this case is no
19 different. ^{Victim} [REDACTED] now 13 year old ^{Victim} [REDACTED], she
20 will have to take this stand and she will have to
21 tell you when, where, and what her uncle did to her;
22 and it's gonna be very embarrassing for her, it's
23 gonna be very intimidating.

24 Ladies and gentlemen of the jury, I trust
25 that at the conclusion of this case you will find

1 the defendant Michael Dinkins guilty of four counts
2 of criminal sexual conduct with a minor in the third
3 degree. Thank you.

4 THE COURT: Thank you, Ms. Timmons.

5 MR. MCKENZIE: Your Honor, may we
6 approach?

7 THE COURT: Yes.

8 (WHEREUPON, counsel approached the
9 Bench for an off-the-record discussion.)

10 MR. MCKENZIE: May it please the Court,
11 Madam Clerk, ladies and gentlemen of the jury, My
12 names is Steve McKenzie. The judge made me
13 introduce myself at the beginning. I represent Mike
14 Dinkins. Mike Dinkins is a registered nurse. He
15 has, he's a life long resident of Clarendon County.
16 His family has been here forever, okay. He's one of
17 these people that his family grew up here. He grew
18 up here as children or his siblings grew up here
19 with him. Mike entered the army at an early age,
20 went through combat and medic school training. He
21 ended up being in the Gulf war so he's a veteran.
22 He's got some disabilities from that. But he
23 continues to work, he continues to be a registered
24 nurse. And he has spent his whole life helping
25 people.

1 Now the solicitor told you some certain
2 things about criminal sexual conduct cases. Now the
3 law in this case is he is charged with CSC third,
4 and a person is guilty of criminal sexual conduct
5 with a minor in the third degree if he willfully and
6 lewdly commits or attempts to commit a lewd or
7 lascivious act. That's what the statute says. Now
8 this was -- Mike and the victim, this is his niece
9 by marriage, and Mike took this child into his home
10 along with his wife and they attempted to raise this
11 child. And Mike comes from a strong family and in
12 his family people showed affection towards each
13 other, and that happens in a lot of families. In
14 fact, I think that's a good thing. We show
15 affection to people in our family. But what happens
16 when someone -- and as the solicitor said, these
17 acts usually do occur in private. But what happens
18 whenever you're a man and you get accused of
19 inappropriate touching of a child who at the time
20 was around 11 years old? And what is inappropriate?
21 Can you tickle that child, for example, under the
22 underarms? Can you kiss the child, okay. The facts
23 are in dispute or we wouldn't be here, okay. So the
24 question is, what is that line? What is the line
25 that you pass to the conduct where it's lewd and

1 lascivious conduct. And the statute goes on to say
2 with the intent to arouse or appeal of to gratify
3 the lust, passions, or the sexual desires of the
4 actor or the child.

5 So that is the law. And the judge is
6 gonna tell you the law at the end of the case, but
7 that's -- the judge, the judge is the judge of the
8 law; you guys are the judge of the facts. He told
9 you that whenever we first started this case; and so
10 you have to determine the believability, credibility
11 of the people who take the stand here. It's gonna
12 be our position this child has had a tragic life,
13 absolutely no doubt about it. Her mother died, I
14 think, when she was eight years old, probably had a
15 heart attack, we're not really sure what happened.
16 But she came to live with her grandmother for a
17 while and then eventually went to live with her
18 mother's sister, which was Mr. Dinkins' wife, and
19 Mr. Dinkins did everything he could to provide for
20 this child. It wasn't his child; he didn't have to
21 do these things. And in fact, the family court
22 awarded custody of this child to Mr. Dinkins and to
23 Mr. Dinkins' wife so this wasn't just a situation
24 where this child shows up. He actually went to
25 court and got custody of this child. And so here we

1 are.

2 Mr. Dinkins, as I said, army veteran. He
3 was a paramedic for 11 years here in Clarendon
4 County. He, first responder, he went out to
5 accidents on I-95. He resuscitated people who were
6 dying. He's done all of these things, and he has
7 saved lives. It is not in his nature or character
8 to hurt people. It is his nature and character to
9 help people. And so, the allegations here do not
10 fit the actions and dynamics of Mr. Dinkins' profile
11 of his life. He has been a life of service, first
12 with the army, combat medic, Desert Storm, then a
13 paramedic. And then he decides, I want to do more.
14 Puts himself through nursing school, self-made man,
15 puts himself through nursing school. He's worked at
16 Urgent Care. He worked at the hospital. He's
17 worked for doctors here in the county. You heard
18 some of the names that were cited that may be
19 potential witnesses. This is the kind of man who
20 has presented himself as a servant, a giver, not a
21 taker. A giver, not a taker.

22 One of the things that -- and I have five
23 children, okay. That's a lot now, believe me, a lot
24 of education and a lot of, that's a lot, okay. And
25 so, I know and I think you when you bring your

1 common sense into this courtroom, you know that
2 children will tell you a story. They do it all the
3 time. Now sometimes children get in a story and
4 that story snowballs on them, okay. Also what came
5 up as a result of these allegations is a divorce.
6 That ended up being, this child also broke up a
7 marriage. Now having said that, she came to live
8 with Mr. Dinkins and his wife at the time and a home
9 was provided. Mr. Dinkins added on to his home to
10 accommodate this child, to help this child. And he
11 was raised in a situation, large family himself,
12 where, you know, he was affectionate towards a
13 child; but the question is, does affection rise to
14 the level of a lewd act. And that's what you guys
15 have to decide. You know, were these actions, do
16 they rise to the level of lewd act on a minor? And
17 the answer is going to be, no, at the end of this
18 case because you can say Mike Dinkins is a life
19 saver. You can say that Mike Dinkins is a combat
20 veteran, and you can say Mike Dinkins was a first
21 responder. You can say those things. But at the
22 end of this case, what you can't say is Mike Dinkins
23 is guilty of a lewd act on a minor. He is a giver,
24 not a taker. Sexual predators are takers. Mike
25 Dinkins is not. He has a life of service. At the

1 end of this case I know that you will say that he is
2 a life saver, a paramedic, a veteran, decorated
3 veteran, but he is not a child molester.

4 I thank you for your service today. You
5 had to sacrifice to be here and we appreciate that.
6 You were chosen because, as the judge said, you were
7 chosen to be fair and impartial. You will listen to
8 the evidence as it's presented, and I know that you
9 will come back in the end and you will determine
10 that Mr. Dinkins is not guilty. As I said before,
11 he's a giver, not a taker, and people who commit
12 lewd acts on children, who sexually assault
13 children, they're takers, not givers. That man
14 seated right there has been a giver his entire life,
15 and now the State is asking to take it from him.
16 Thank you.

17 THE COURT: Thank you, Mr. McKenzie.

18 Madam Forelady and ladies and gentlemen of
19 the jury, we're gonna take a break for lunch. I
20 have certain instructions for you before you leave.
21 Madam Forelady, ladies and gentlemen of the jury,
22 once again, when you leave here following you go
23 back to your home, place of work, or have contact
24 with your significant others, and they're probably
25 gonna say, well, tell me what's going on with the

1 Everybody else is what we call general admission so
2 it's a good idea when you come in to go all the way
3 to the end so people won't have to walk over you.

4 Ms. Timmons, you're recognized. You may
5 call your first witness.

6 MS. TIMMONS: Your Honor, the State calls
7 Virginia Joyce to the stand.

8 THE COURT: Yes, ma'am. If you can please
9 come forward. I'm gonna ask if you could approach
10 the Clerk, place your left hand on the Bible and
11 raise your right hand as the Clerk administers the
12 oath. State your name.

13 THE WITNESS: *Victim*

14 WHEREUPON,

15 *Victim*

16 having been duly sworn by the Clerk, testified
17 as follows:

18 THE COURT: I'm gonna ask that you come up
19 here and have a seat in the witness chair. Take a
20 moment to just get settled and pull up real close to
21 that microphone. I'm gonna ask that you speak
22 loudly, clearly, and slowly in order that we can
23 hear everything you have to say. Let's start with
24 your full name please, ma'am

25 THE WITNESS: *Victim* —

SW - *Victim* - DIRECT

1 THE COURT: Very good, Ms. Joyce.

2 Ms. Timmons, you're recognized.

3 MS. TIMMONS: Thank you, Your Honor.

4 **DIRECT EXAMINATION**

5 BY MS. TIMMONS:

6 Q And you go by the nickname *Victim* right?

7 A Yes, ma'am.

8 Q Okay. *Victim* tell me how old you are...

9 A I'm 15 years old.

10 Q And when was your birthday?

11 A October 27th, 2004.

12 Q Where do you go to school?

13 A Alice Drive Middle School.

14 Q Okay. In Sumter, right?

15 A Yes, ma'am.

16 Q Okay, what grade are you in?

17 A Seventh grade.

18 Q Okay, do you have any favorite teachers?

19 A Yes, ma'am. Her name is Ms. Shuler.

20 Q Okay, what is she teaching?

21 A English.

22 Q Okay. Do you have a favorite subject?

23 A Yes, ma'am.

24 Q Is it English Lit?

25 A Yes, ma'am.

SW - *Victim* DIRECT

1 Q Do you know the difference between right and
2 wrong?

3 A Yes, ma'am.

4 Q Okay, could you tell me what it is.

5 A Right is the correct thing that you should do and
6 wrong is something that you shouldn't do.

7 Q Okay. And is it right or wrong to lie?

8 A It's wrong.

9 Q Okay. Do you know what it is to tell a lie?

10 A To make up a story about something.

11 Q Okay. Could you tell me, where do you live now?

12 A In Sumter.

13 Q Okay, and who do you live with?

14 A My aunt and my grandma.

15 Q Okay. Where did you live in 2015?

16 A With my aunt and uncle in Manning.

17 Q Okay. Do you know the address? Do you remember
18 the address?

19 A 1173 Locust Way..

20 Q Did anybody else live with you at that time over
21 there?

22 A No, my grandma lives with us.

23 Q Okay. So it was you, your aunt, your grandma?

24 A And my uncle.

25 Q Okay. And your uncle is -- do you know, it's

SW - *Victim* DIRECT

1 Michael Dinkins, right?

2 A Yes, ma'am.

3 Q He's the defendant in this case?

4 A Yes, ma'am.

5 Q Do you see him sitting in this courtroom?

6 A Yes, ma'am.

7 Q Can you point to him?

8 A (Indicating.)

9 MS. TIMMONS: Your Honor, let the record
10 reflect that the victim pointed to the defendant
11 Michael Dinkins.

12 BY MS. TIMMONS:

13 Q (*Victim*), I guess now we go to the uncomfortable
14 part. Could you tell us when was the first time you
15 remember your uncle touched you that make you
16 uncomfortable?

17 A When we were in Topsail Island and it was the
18 evening and we were sitting on the couch, and he
19 touched my leg.

20 Q Okay. Do you remember when it was?

21 A 2013.

22 Q Okay. Was this a summer vacation?

23 A Spring break. We were on spring break.

24 Q Okay. Do you remember who else was in the house?

25 A My grandmother and my aunt.

SW - *Victim* DIRECT

1 Q Okay. And there was -- so it was your grandma
2 and your uncle?

3 A Yes, ma'am.

4 Q Do you remember where were you, what room were
5 you in?

6 A The living room.

7 Q Okay. And was -- do you know if it was later in
8 the evening?

9 A It was in the evening.

10 Q Okay. What were you doing?

11 A We were watching TV.

12 Q Okay. And do you remember what you were
13 watching?

14 A No, ma'am.

15 Q Okay. Did you already have your pajamas on?

16 A Yes, ma'am.

17 Q And who was in the room with you?

18 A Nobody. My grandma had just gone to bed.

19 Q Okay. And where was your aunt?

20 A I'm not exactly sure.

21 Q Okay. Was your uncle in the room with you?

22 A Yes, ma'am.

23 Q Do you remember if you were laying on the bed or
24 sitting on the couch?

25 A We were sitting on the couch.

SW - *Victim* - DIRECT

- 1 Q Okay. And he was sitting right next to you?
- 2 A Yes, ma'am.
- 3 Q And what did he do?
- 4 A We were sitting on the couch and he put his hand
- 5 on my leg, upper thigh.
- 6 Q Was it under your nightgown?
- 7 A Yes, ma'am.
- 8 Q Was it above your underwear?
- 9 A Yes, ma'am.
- 10 Q Was he rubbing his hand?
- 11 A He was kind of rubbing back and forth, yes,
- 12 ma'am.
- 13 Q Could you stand up and show the jury where he
- 14 touched you.
- 15 A (Indicating.) Right here on my leg.
- 16 Q Okay. Did you tell anybody about that?
- 17 A I told my grandma, my grandmother about it.
- 18 Q And when did you tell her?
- 19 A The night that it happened.
- 20 Q Okay, all right. Do you remember your uncle
- 21 kissing you on the back of the neck?
- 22 A Yes, ma'am.
- 23 Q Do you remember exactly when it was?
- 24 A No, ma'am, not exactly when it was.
- 25 Q Was there -- do you remember where it happened?

SW - *Victim* DIRECT

1 A We were in the hallway of our house in Manning.

2 Q Okay. And was there anybody else in the hallway?

3 A My aunt was, she was not in the hallway, but she
4 was able to see him kiss me on the neck.

5 Q Okay, and did she stop him?

6 A I can't remember. She talked to him about it
7 though.

8 Q Okay. And then do you remember your birthday,
9 your 11th birthday?

10 A Yes, ma'am.

11 Q When was it?

12 A When was it? October 27th. It was, we were
13 still living in Manning.

14 Q Okay. And you remember anything special about
15 that day?

16 A Yes, ma'am. He climbed in bed with me when I was
17 laying on the bed, and he pushed up his pelvic area
18 up and down on top of me.

19 Q Okay. Do you remember whose bed it was?

20 A My aunt and his bed.

21 Q Okay. Why were you laying in the bed?

22 A Because I was sick and I needed to take a nap to
23 make myself feel better.

24 Q Okay. Was there, was your aunt present?

25 A Ma'am?

SW - *Victoria* DIRECT

1 Q Was your aunt ---

2 A No, ma'am.

3 Q Okay. Where was your grandma?

4 A She was in the living room or either in the back
5 bedroom probably using the restroom.

6 Q Okay. Do you remember if you had your clothes
7 on?

8 A I had my clothes on, yes, ma'am.

9 Q Like day clothes or pajamas?

10 A It was pajamas.

11 Q Okay. And you were laying in the bed. Do you
12 remember if you had your covers on or?

13 A No, ma'am, I did not have the covers on.

14 Q Okay. And that's when your uncle got in the bed
15 with you?

16 A Yes, ma'am.

17 MR. MCKENZIE: Objection, Your Honor,
18 leading.

19 THE COURT: Sustained.

20 BY MS. TIMMONS:

21 Q Do you know if he was -- did he feel heavy?

22 A Yes, ma'am.

23 Q Okay. Do you remember if he was laid down
24 completely flat on you?

25 MR. MCKENZIE: Still objection, Your

SW - *Victim* - DIRECT

1 Honor.

2 THE COURT: Sustained. Ask her what
3 positions were.

4 BY MS. TIMMONS:

5 Q Can you tell us what position he was in.

6 A He was on all fours with his legs separated to
7 where my body was under his legs.

8 Q Okay. In what position were you laying down?

9 A On my stomach.

10 Q Okay. And can you, could you, were you able to
11 feel any part of his body?

12 A No, ma'am, just his pelvic area.

13 Q Where did you feel it touching your body?

14 A Around my butt or my behind.

15 Q Okay. Were you awake or asleep?

16 A I was trying to fall asleep, but I was awake.

17 Q Okay. Did he tell you anything?

18 A No, ma'am, he was quiet.

19 Q Did you tell him anything?

20 A No, ma'am.

21 Q Do you know what made him stop?

22 A No, ma'am.

23 Q Okay. And did anything else happen on that day?

24 A Yes, ma'am. I was on the couch and my face was
25 facing the couch and he ---

SW - *Victim* DIRECT

- 1 Q Where was the couch?
- 2 A In the living room. Yes, ma'am, in the living
- 3 room.
- 4 Q Okay. Were you trying to watch TV or were you
- 5 taking a nap?
- 6 A I was trying to take a nap again, and my face was
- 7 facing the couch.
- 8 Q Okay. And do you remember if you had your
- 9 blanket on top?
- 10 A No, ma'am, did not have my blanket on.
- 11 Q Okay. Was there anybody else in the room?
- 12 A No, ma'am.
- 13 Q Okay. And what happened?
- 14 A He grabbed my hand behind me and made me touch
- 15 something that was wet and kind of spongy feeling.
- 16 Q Okay. Do you remember, did you feel how long
- 17 that thing was?
- 18 A It didn't last very long. It lasted for maybe
- 19 two minutes.
- 20 Q How long was the thing that he made you touch?
- 21 A Longer than a finger's length like.
- 22 Q Can you demonstrate to us how he made you touch
- 23 that thing.
- 24 A It was like that (indicating).
- 25 Q Okay. And do you remember, do you know if it was

SW - *Victim* - DIRECT

1 wet when he made you touch it or did it got wet
2 after you were touching it?

3 A It was kind of wet, but it wasn't like soaked or
4 anything.

5 Q Okay, all right. Did he make you move your hand?

6 A No, ma'am.

7 Q Okay. Do you know at what level was your hand,
8 like how high was your hand?

9 A It was kind of in the middle, like where his
10 private area was.

11 Q Okay. Could you feel any part of his body other
12 than ---

13 A No, ma'am.

14 Q Okay. And do you know what made him stop, or did
15 he say anything to you?

16 A No, ma'am, he didn't say anything, but I'm not
17 sure what made him stop.

18 Q Did you tell anybody about that thing that day?

19 A Not that day.

20 Q Okay. Did you tell anybody any time afterwards?

21 A Yes, ma'am, I told my grandmother and my aunt.

22 Q When did you tell them that?

23 A I told my grandma before I told my aunt, but I
24 can't quite remember exactly when it was.

25 Q Did you tell them after you moved out from the

SW - *Victim* DIRECT

1 house in Manning?

2 A I believe so, yes, ma'am.

3 Q Okay. Why didn't you tell anybody?

4 A Because I knew that my aunt was happy, and I
5 didn't want her to have to get a divorce from my
6 uncle.

7 Q She was happily married?

8 A Yes, ma'am.

9 Q So you saw that she was happy?

10 A , Yes, ma'am.

11 Q Why did you think that it may have caused her to
12 divorce?

13 A I'm not sure. I just felt like that would happen
14 because, you know, she'd just not want to be married
15 to him anymore if he did stuff like that to me.

16 Q So you knew this was something wrong?

17 A Yes, ma'am.

18 Q Do you remember the next time he touched you?

19 A It was, I can't quite.

20 Q Was it December 26th?

21 A Yes, ma'am.

22 MR. MCKENZIE: Objection, Your Honor,
23 leading again.

24 THE COURT: All right, sustained. Just
25 ask her a direct question.

SW *Victim* DIRECT

- 1 MS. TIMMONS: Okay.
- 2 BY MS. TIMMONS:
- 3 Q Do you remember where you were on that day?
- 4 A I was in the living room watching a movie.
- 5 Q Okay. Was, what was so special about that day?
- 6 A It was, we had, it was the day after Christmas
- 7 and we had just gotten — I just got my Playstation,
- 8 and I moved in the Playstation, I mean, my bedroom
- 9 to play Playstation with my dad.
- 10 Q Your daddy came to see you?
- 11 A Yes, ma'am.
- 12 Q Okay. And so he helped you set up Playstation.
- 13 Is that what you wanted to get from Santa?
- 14 A Yes, ma'am.
- 15 Q Okay. Must have been good since you got it. Do
- 16 you remember what game were you playing?
- 17 A A game called Minecraft.
- 18 Q Okay. Did you heard about that game before or?
- 19 A Yes, ma'am.
- 20 Q So you really wanted to play it, okay. Did you
- 21 play that game with your daddy?
- 22 A I played it while my dad was watching me and he
- 23 asked me some questions about it, and we just kind
- 24 of talked.
- 25 Q Okay. And at some point while you were playing

SW - *Victim* - DIRECT

1 that game were you alone in the room?

2 A Yes, ma'am.

3 Q Okay. And you were still playing the game?

4 A Yes, ma'am.

5 Q And have you seen the defendant Michael Dinkins?

6 A Yes, ma'am.

7 Q What did he do?

8 A He walked in the bedroom and he told me to stand
9 up so he can sit in the chair, and I was sitting in
10 his -- he sat me in his lap, and he put his hands
11 under my shirt and grabbed my breasts.

12 Q Do you remember did you have your bra on?

13 A Yes, ma'am.

14 Q Did he remove your bra?

15 A No, ma'am.

16 Q So he was touching you outside of your bra?

17 A Yes, ma'am.

18 Q Was he touch-- but did you had, did you still
19 have your shirt on?

20 A Yes, ma'am.

21 Q Was he talking to you?

22 A He was, yes, ma'am. He asked me questions about
23 the game I was playing.

24 Q Okay. Do you know how long he was touching you?

25 A For maybe three, four to five minutes.

SW *Victim* - DIRECT

1 Q Did he had both of his hands?

2 A Yes, ma'am.

3 Q Was there anybody else in the room?

4 A No, ma'am.

5 Q And do you know if there was anybody else around?

6 A My grandmother and my father and my dad were in
7 the living room, must have been watching TV show or
8 something.

9 Q How far was the living room from your room?

10 A I'm not exactly sure, not very far.

11 Q Okay. Do you remember if the doors were open or
12 closed, the doors to your room?

13 A The door in my bedroom was open.

14 Q Okay, all right. And the chair that he was
15 sitting on, how close was it to the door?

16 A It was on the opposite side from where the door
17 was.

18 Q Okay. Could you see the door from the chair?

19 A Yes, ma'am.

20 Q Okay. Did you tell anybody right away?

21 A No, ma'am.

22 Q Could you tell us why you haven't told anybody?

23 A Because as I said before, I was afraid my aunt
24 would get divorced from him and I didn't want her to
25 have to do that because I saw that she was happy.

SW - *Victim* - DIRECT

1 Q Okay. And on December 26th where were you? I
2 mean, was it at your house in Manning?

3 A It was in the house in Manning and the next day
4 we went down to Sumter.

5 Q Okay. And then do you remember where you were on
6 New Year's Eve of 2015?

7 A I was in the house in Manning in the living room.

8 Q Do you remember who else was in the house?

9 A My grandma and my aunt and my uncle.

10 Q Did you guys do anything special for ---

11 A No, ma'am, not much, but my uncle and I stayed up
12 to watch some movies.

13 Q Do you know what movie were you watching?

14 A Dumb and Dumber.

15 Q Okay. Is it funny?

16 A Yes, ma'am.

17 Q Okay. And where were you when you were watching
18 that movie?

19 A We were sitting on the couch in the living room.

20 Q Okay. Is it the same couch you were laying on on
21 your birthday?

22 A Yes, ma'am.

23 Q Okay. Was there anybody else in the living room?

24 A No, ma'am.

25 Q Okay. Do you know where was your grandma?

SW *Victim* --DIRECT

1 A My grandma was, she was asleep in the bedroom.

2 Q Okay.

3 A In her bedroom.

4 Q Do you know around what time it was?

5 A It was probably around 10:30 or somewhere in
6 between 10 and 11.

7 Q Okay. And where was your aunt?

8 A She was outside talking to her friend Brandon.

9 Q Okay. Do you remember if you already had your
10 pajamas on or —

11 A I already had my pajamas on.

12 Q Were you laying under the blanket?

13 A I didn't have a blanket on me. I was just lying
14 on the couch.

15 Q Okay. And during that day did your uncle touch
16 you?

17 A Yes, ma'am, he — when we were — I was asleep
18 and he came up to me and kissed me and put his,
19 kissed me on the lips and put his tongue in my
20 mouth.

21 Q Okay. How did you reacted to that?

22 A I just kept pretending like I was asleep because
23 I was scared and I didn't want to have him know that
24 I was awake. When I was sure he was out of the room
25 I went back to my grandma's room.

SW - *Victim* - DIRECT

1 Q And what did you do?

2 A I just kind of stand and like paced around and
3 then I heard my aunt come into the room and I told
4 her what happened.

5 Q Okay. What did you tell her?

6 A I told her that Mike had kissed me on my lips and
7 put his tongue in my mouth.

8 Q What was her reaction?

9 A She, my aunt was upset and kind of angry and she
10 went into where Michael was and she talked to him.

11 Q Do you remember what, do you know what she was
12 talking to him about?

13 A No, ma'am, she told me to stay back where I was.

14 Q Okay. After she talked to him did she come back
15 to you?

16 A Yes, ma'am, she came back and she said that we
17 were going to ---

18 MR. MCKENZIE: Your Honor, hearsay, what
19 the aunt said.

20 THE COURT: Sustained.

21 BY MS. TIMMONS:

22 Q Do you remember spending the night at that home,
23 or did you go somewhere else that night?

24 A When? New Year's Eve?

25 Q Yes.

SW - *Victim* - DIRECT

1 A We at New Year's Eve we were at Manning, and then
2 we was leaving, came back to Sumter and then we---

3 Q Okay. But you decided to leave after your uncle
4 kissed you?

5 A Yes, ma'am.

6 Q Okay. What made you tell your aunt and grandma
7 this time?

8 A I knew that it was really wrong and I didn't need
9 to let it go on anymore.

10 Q You couldn't handle it anymore?

11 A No, ma'am.

12 Q Okay. And the person that touched you on those
13 occasions, twice November 22nd, December 26th, and
14 December 31---

15 MR. MCKENZIE: Objection to the word
16 attack.

17 THE COURT: Sustained. Ask and rephrase
18 the question if you could.

19 MS. TIMMONS: I said touched, touched.

20 MR. MCKENZIE: I'm sorry?

21 THE COURT: Just rephrase it. I think you
22 might have misheard. Just rephrase the question.

23 MR. MCKENZIE: Okay.

24 BY MS. TIMMONS:

25 Q The person that touched you twice on your

SW - *Victim* - DIRECT

1 birthday and the day after Christmas and then on New
2 Year's Eve, is that person here in the courtroom?

3 A Yes, it's him.

4 Q Could you point to him.

5 A (Indicating.)

6 MS. TIMMONS: Your Honor, let the record
7 reflect that the victim pointed to the defendant.
8 Court's indulgence.

9 BY MS. TIMMONS:

10 Q *Victim*, those last four incidents that we talked
11 about, do you remember how old you were when it
12 happened?

13 A I was between 8 and 11.

14 Q Okay. And the incidents that happened on
15 October 27th and then the day after Christmas and
16 New Year's Eve, do you know how old you were?

17 A Yes, ma'am, I was 11 years old.

18 Q You told us earlier about the spring break
19 incident when your uncle touched you. Do you
20 remember how old you were then?

21 A I was eight years old.

22 Q Okay. Do you remember when you were, when you
23 started living with your aunt and your uncle in the
24 house in Manning?

25 A Yes, ma'am.

SW - *Victim* CROSS

1 Q Do you know how old you were?

2 A No, ma'am, not exactly.

3 Q Okay. Do you know maybe what grade you were in?

4 A I was in fourth. Yes, ma'am, fourth grade.

5 Q Okay. When you started living here in Manning
6 full time? Okay.

7 MS. TIMMONS: Your Honor, I don't have any
8 further questions at this time.

9 THE COURT: Thank you, Ms. Timmons.

10 Mr. McKenzie, you're recognized for
11 cross-examination.

12 MR. MCKENZIE: Thank you, Your Honor.
13 Court's indulgence.

14 **CROSS-EXAMINATION**

15 BY MR. MCKENZIE:

16 Q *Victim*, you stated that you know the
17 difference between a lie and bad acts and good acts?

18 A Yes.

19 Q Who is Hannah?

20 A My very best friend. We've been friends with
21 each other since fourth grade.

22 Q And you and Hannah used to do some bad things;
23 didn't you?

24 A No, sir.

25 Q Do you ever remember staying on the school bus

SW - ~~Victim~~ - CROSS

1 and not going home and going to Hannah's house?

2 A We did, but we had told my grandmother I was
3 going with her.

4 Q So your grandmama knew every time that happened?

5 A It only happened once.

6 Q Okay. But you stayed on the school bus, went to
7 Hannah's house?

8 A Yes, sir.

9 Q Okay. Do you remember being at Lawrence Manning
10 Academy and got in trouble?

11 A Yes, sir.

12 Q For writing a bad word?

13 A Yes, sir.

14 Q Okay. Do you remember telling the counselor at
15 Durant Center that you and Hannah watched pornograph
16 together?

17 A No, sir.

18 Q You don't remember that?

19 A No, sir.

20 Q Okay. You have been seeing a psychiatrist for a
21 while; have you not?

22 A Yes, sir.

23 Q And part of that was having to deal with your
24 mother's death?

25 A Yes, sir.

SW - *Victim* CROSS

1 Q And in that, in those psychiatric meetings with a
2 counselor you opened up to that counselor; did you
3 not?

4 A Yes, sir.

5 Q You told that counselor some pretty intimate
6 details; did you not?

7 A Yes, sir.

8 Q And part of the accusation here today is that
9 when you were eight and at Topsail your uncle
10 inappropriately touched you?

11 A Yes, sir.

12 Q Okay. Between the time you were at Topsail and
13 January of 2016 when these allegations came out, you
14 didn't disclose any of that to your counselor, did
15 you?

16 A No, sir.

17 Q Okay. And you told the counselor some pretty
18 intimate stuff about your father; didn't you?

19 A (No verbal response.)

20 Q Is that a yes?

21 A Yes, sir.

22 Q Okay. Your father has severe epilepsy?

23 A Yes, sir.

24 Q And one of the things you told your counselor was
25 that he exhibits bad behavior when he has epilepsy.

SW - *Victim* - CROSS

1 A Yes, sir.

2 Q Okay. And did you mention any of that to law
3 enforcement?

4 A No, sir.

5 Q Okay. But your father exhibits bad behavior;
6 doesn't he?

7 A Yes, sir.

8 Q Okay. Whenever you were, I think June of 2015,
9 you actually decided you were -- this is before all
10 these incidents occurred because all these instances
11 that you're alleging occurred in October that my
12 client's been charged with, October of 2015, is that
13 right?

14 A Yes, sir.

15 Q October to December; is that correct?

16 A Yes, sir.

17 Q Before that you wrote a suicide note; did you
18 not?

19 A Yes, sir.

20 Q And I'm gonna hand that to you. And you wanted
21 to go be with your mother because she died and
22 that's tragic and we all understand that; but in
23 that suicide note you don't mention a thing about
24 Uncle Mike, do you?

25 A (No verbal response.)

SW - *Victim* - CROSS

1 Q Is that a no?

2 A Yes, sir.

3 Q All right. So you all of a sudden in October
4 this is all about Uncle Mike; isn't it? And in
5 fact, after that suicide note that you wrote, you
6 were put on a lot of medication. You were put on a
7 major depressive disorder medication; is that
8 correct?

9 A I'm not sure.

10 Q You believe so?

11 A Yes.

12 Q You take medication today?

13 A Yes, sir.

14 Q Okay. And in fact, you had actually said that
15 you didn't want your father coming to see you; isn't
16 that correct?

17 A Um...

18 Q To the counselor?

19 A Yes, sir.

20 Q Is that correct, *Victim*?

21 A Yes, sir.

22 Q And when you went to counseling your aunt and
23 your grandmother took you every time?

24 A Not every time. Sometimes I went with just my
25 grandmother.

SW - ~~Victim~~ CROSS

1 Q I'm sorry, I can't understand you.

2 A Not every time. Sometimes I just went with my
3 grandmother.

4 Q Okay. But one or the other would take you
5 because you can't drive there, can you?

6 A No, sir.

7 Q Okay. So did they sit in on the interviews with
8 your?

9 A Sometimes they did and sometimes I went in there
10 by myself.

11 Q Well, you felt probably pretty confident because,
12 again, you have a lot of the records here where you
13 say things about what's bothering you and what's --
14 and you, Sarah McClam was your counselor?

15 A Yes.

16 Q Is that correct?

17 A Yes, sir.

18 Q And from the time that you started seeing her I
19 think in 2013 until the end of January or beginning
20 of January, you mentioned none of these things to
21 them?

22 A Yes, sir.

23 Q And you had a counselor and you opened up to that
24 counselor about very intimate details of your life.

25 A Yes, sir.

SW - ~~Victim~~ CROSS

1 Q And in fact, you talked to her about that, about
2 that suicide note; didn't you?

3 A Yes, sir.

4 Q And you told her all of the problems that you
5 were having?

6 A Yes, sir.

7 Q And you never mentioned Uncle Mike was a problem?

8 A No, sir.

9 Q Do you remember telling the counselor that your
10 mother was bipolar?

11 A Yes, sir.

12 Q Okay. And do you remember the counselor telling
13 you that you have major depressive disorder, general
14 anxiety disorder? You remember him telling you all
15 that?

16 A Yes, sir.

17 Q In fact, 7/9/15, before this accident, you told
18 the counselor that you're so concerned about your
19 father you don't want to be around him.

20 A Yes, sir.

21 Q Do you remember going to the Durant Center, ^{Victim} ?

22 A Yes, sir.

23 Q Do you remember having a conversation with the
24 counselor there?

25 A Yes, sir.

SW - ~~Victim~~ CROSS

1 Q Now you testified today in court that Mr. Dinkins
2 put his hand up your shirt and touched your breast.

3 A Yes, sir.

4 Q Did you tell that to the counselor?

5 A No, sir.

6 Q You didn't, did you? First time we've heard that
7 today is in court; isn't it? You told the counselor
8 he put his hand up your shirt, but you didn't say
9 anything about him touching your breasts, did you?

10 A No, sir.

11 Q Okay. You also told the counselor, and it's
12 right here, but you told the counselor that Aunt
13 Leigh was always there where she could see what was
14 going on. Do you remember telling the counselor
15 that? Did you?

16 A Yes, sir.

17 Q But you're not saying that today in court.
18 You're saying that Aunt Leigh was, no one was ever
19 around, this was done in private. Isn't that what
20 you said?

21 A Yes, sir.

22 Q You told the counselor that the time that he was
23 on top of you in the bed according to you, you were
24 sound asleep. Is that correct?

25 A Yes, sir.

SW - *Victim* - CROSS

1 Q And so you were sound asleep and he woke you up.
2 So you don't know what was going on prior to that,
3 do you?

4 A No, sir, I don't.

5 Q And you said, I think, in October you were home
6 sick, right?

7 A Yes, sir.

8 Q I have all of your records here from Urgent Care.

9 A Yes, sir.

10 Q You weren't -- you didn't go to Urgent Care.

11 That's where you went; isn't it?

12 A Yes, sir.

13 Q That's because Uncle Mike took care of you when
14 you got sick; didn't he?

15 A Yes, sir.

16 Q And there's no record of you being at Urgent Care
17 in October so what were you sick from, *Victim*

18 A I was, I threw up a few times and my, I had two
19 ear infections.

20 Q But you were so sick that you didn't go to Urgent
21 Care though, right?

22 A I'm not sure why we didn't go to Urgent Care.

23 Q Now you stated today that he put his tongue in
24 your mouth, right?

25 A Yes, sir.

SW - *Victim* CROSS

1 Q But you didn't tell the counselor at the Durant
2 Center that, did you?

3 A I'm not sure.

4 Q You told the counselor at the Durant Center he
5 tried to, tried to put his tongue in your mouth.
6 The police officer incident report says he tried;
7 but today, he went and got his tongue in your mouth
8 according to your testimony; is that correct?

9 A Yes, sir.

10 Q So *Victim* did he ever do anything to you that was
11 a lewd act?

12 A Yes, sir.

13 Q Tell us what that was, *Victim*

14 A He touched me on my upper thigh in my private
15 area and —

16 Q Is that the only thing, *Victim* Is that the only
17 thing?

18 A No, sir. He kissed me and he put his tongue in
19 my mouth.

20 Q But you didn't tell anybody that story until
21 today, did you?

22 A I told the judge on Thursday.

23 Q Let me ask you another question, *Victim* Have you
24 talked to anybody since we were in court on Thursday
25 about this case?

SW - *Victim* CROSS

1 A No, sir.

2 Q Nobody? Your aunt, your grandmother, no one?

3 A No.

4 Q Did anybody at the Solicitor's office talk to you
5 about your testimony today?

6 A I think so, yes, I'm not sure.

7 Q Who?

8 A I'm not sure.

9 Q You're not sure? You don't know if somebody did
10 or didn't?

11 A Yes, sir.

12 Q Who talked to you, *Victim*

13 A Ms. Timmons told me to tell the truth.

14 Q And what did she tell you during that
15 conversation, *Victim* She talk to you about your
16 testimony?

17 A Yes, sir.

18 Q Okay.

19 MR. MCKENZIE: Your Honor, can we have a
20 recess, a motion?

21 THE COURT: All right. Madam Forelady,
22 ladies and gentlemen of the jury, I'm gonna ask that
23 you retire to the jury room. Once again, do not
24 discuss the case. Madam Forelady, I'm gonna ask
25 that you enforce that rule. Everyone remain seated

SW - ~~Victim~~ - CROSS

1 as the jury exits the courtroom.

2 (WHEREUPON, the jury was removed from the
3 courtroom at 2:07 p.m.)

4 THE COURT: Yes, sir.

5 MR. MCKENZIE: Thank you, Your Honor.

6 Your Honor, I remember explicit instructions from
7 the Court where you said that no one of the
8 witnesses that testified that day at the motions
9 hearing in regards to this case were to have any
10 contact regarding their testimony before court
11 today, and you were explicit about it. That either
12 you wanted the testimony to be, not coached between
13 now and then. Obviously all the coaching should
14 have been done prior to that hearing, that this
15 would have been just as if we were here today. And
16 we did all these motions, we did it for convenience
17 sake and time sake, Your Honor. And you were
18 explicit to the prosecutor Ms. Timmons, and you said
19 no one is to talk to these witnesses about this
20 case. And from what I'm hearing from the stand from
21 Gigi is that she has talked with Ms. Timmons and
22 Ms. Timmons told her how to testify today.

23 THE COURT: Well, I don't anticipate that
24 — well, first of all, I did not say that
25 Ms. Timmons was not to discuss the case with *Victim*

SW - *Victim* - CROSS

1 I think the issue that I addressed was that the
2 witnesses were not to discuss their testimony with
3 one another. But it's always appropriate for a
4 solicitor to talk with their witnesses, and what we
5 were trying to do was to keep witnesses from
6 comparing testimony with one another. And my
7 instruction was they're not to be present when the
8 other was to testify and they were not to discuss
9 their, the substance of their testimony with one
10 another. But if you gleaned from what I said
11 Ms. Timmons was not supposed to discuss it with *Victim*
12 ---

13 MR. MCKENZIE: And I apologize, Your
14 Honor, I misunderstood.

15 THE COURT: Well, I think it'd be
16 inappropriate for me to ever do that because I think
17 that you have an obligation to discuss with your
18 client. And of course, Ms. Timmons is not *Victim*
19 lawyer, but it's imperative that the lawyer be able
20 to discuss testimony with each witness.

21 Ms. Timmons, I'll be glad to hear from
22 you.

23 MS. TIMMONS: Judge, it's my
24 understanding, I mean, I guess you explained it,
25 summarized it best.

SW - ~~Victim~~ CROSS

1 THE COURT: You agree with me then?

2 MS. TIMMONS: Yes, Your Honor.

3 THE COURT: Very good. Well, anything
4 further from the Defense?

5 MR. MCKENZIE: Nothing, Your Honor, and I
6 appreciate your clarifying that. Obviously I did
7 misunderstand you.

8 THE COURT: Okay. Might counsel approach
9 the Bench one moment.

10 (WHEREUPON, counsel approached the
11 Bench for an off-the-record discussion.)

12 THE COURT: All right, we are ready for
13 the jury.

14 (WHEREUPON, the jury was returned to the
15 courtroom at approximately 2:17 p.m., and
16 the following proceedings commenced in
17 open court.)

18 THE COURT: Madam Forelady, ladies and
19 gentlemen of the jury, thank you for your patience.

20 Mr. McKenzie, you're recognized.

21 MR. MCKENZIE: Thank you, Your Honor.

22 BY MR. MCKENZIE:

23 Q ~~Victim~~ the incident where he touched you on your
24 leg —

25 A Yes, sir.

SW - *Victim* 7 - CROSS

- 1 Q That was in North Carolina at Topsail?
- 2 A Yes, sir.
- 3 Q In 2008?
- 4 A No, sir.
- 5 Q It was sometime before these other incidents in
- 6 October of ---
- 7 A Yes, sir.
- 8 Q ---2015; is that correct?
- 9 A Yes, sir.
- 10 Q But he's not charged with that, is he?
- 11 A No, sir.
- 12 Q Okay. So the only thing that you're saying that
- 13 he did wrong to you was in Topsail?
- 14 A No, sir.
- 15 Q What else did he do wrong to you?
- 16 A He repeatedly touched me and he put -- he kissed
- 17 me on my neck and he put his tongue in my mouth.
- 18 Q He kissed you on the neck?
- 19 A Yes, sir.
- 20 Q Okay. And he touched you?
- 21 A Yes, sir.
- 22 Q Okay. And this is the one that you told the
- 23 counselor touching underneath your shirt, that he
- 24 did not touch your breasts?
- 25 A No, sir.

SW - *Victim* - REDIRECT

1 Q But now you're saying he did?

2 A Yes, sir.

3 Q Okay. And he kissed you on the back of the neck?

4 A Yes, sir.

5 Q And that's it?

6 A Yes, sir.

7 Q Okay.

8 MR. MCKENZIE: No other questions, Your
9 Honor.

10 THE COURT: Any redirect, Ms. Timmons?

11 MS. TIMMONS: Yes, Your Honor.

12 **REDIRECT EXAMINATION**

13 BY MS. TIMMONS:

14 Q *Victim* Mr. McKenzie asked you if you talked to me
15 before.

16 A Yes, sir.

17 Q And you told him ---

18 A I mean, yes, ma'am.

19 Q That's okay. And you told him that you did,
20 right?

21 A Yes, ma'am.

22 Q And what was the most important thing I told you
23 to do?

24 A To tell the truth and to not lie.

25 Q Okay. The incident, the Topsail incident where

SW - *Victim* - REDIRECT

1 he kissed you on the back of the neck, Mr. McKenzie
2 asked you about it, did you tell anybody right away
3 about it?

4 A I told my grandma right away about the Topsail
5 Island thing, and my aunt saw him kiss me on my
6 neck.

7 Q Okay. And at that time you haven't lived in
8 Manning, right?

9 A Yes, ma'am.

10 Q You haven't lived with the defendant?

11 A Yes, ma'am.

12 Q Okay. Do you remember how old you were when your
13 mom passed away?

14 A I was seven years old.

15 Q Okay. Do you remember the reason why you were,
16 you started seeing a therapist, Ms. Sarah McClam?

17 A Because I was depressed my mom passing away.

18 Q All right. And this note that Mr. McKenzie
19 handed you, do you remember when did you write that
20 note?

21 A No, ma'am.

22 Q Do you remember what month it was or around what
23 event?

24 A It was around Mother's Day.

25 Q Okay. Do you remember kids at school writing

SW - *Victim* - REDIRECT

1 Mother's Day cards?

2 A Yes, ma'am.

3 Q And this is when the wrote, the note was written?

4 A Yes, ma'am.

5 Q Have you seen your therapist to talk about it?

6 A Yes, ma'am, she just asked me how I was feeling
7 and...

8 Q Okay. Do you remember when was, around what time
9 you started seeing Ms. Sarah McClam?

10 A No, ma'am.

11 Q Okay. But it was sometime after your mom passed
12 away?

13 A Yes, ma'am.

14 Q Do you remember her visit, your visit with
15 Ms. Sarah McClam on August 2015?

16 A I'm not sure.

17 Q Okay. Do you remember that it was the last visit
18 you had with her till January 2016?

19 A Yes, ma'am.

20 Q Because you were doing so well Ms. Sarah McClam
21 said she doesn't need to see you anymore.

22 MR. MCKENZIE: Objection to what
23 Ms. McClam said.

24 THE COURT: Sustained.

25 THE WITNESS: Yes, ma'am.

SW - *Victim* : - REDIRECT

1 BY MS. TIMMONS:

2 Q So you haven't seen Ms. McClam since August of
3 2015 till January?

4 A Yes, ma'am.

5 Q Okay. You haven't seen her during the time those
6 allegations, I mean, those acts happened?

7 A Yes, ma'am.

8 Q So you couldn't have told her about it?

9 A No, ma'am.

10 Q Okay. Court's indulgence. *Victim*, just one more
11 question. The October 27th incident.

12 A Yes, ma'am.

13 Q You told Mr. McKenzie that you were asleep on the
14 bed —

15 A Yes, ma'am.

16 Q —whenever your uncle came to you.

17 A Yes, ma'am.

18 Q Did it wake you up?

19 A Yes, ma'am.

20 Q Were you awake when you could feel him touch you?

21 A Yes, ma'am.

22 Q Okay.

23 MS. TIMMONS: I don't have any further
24 questions for her.

25 THE COURT: All right, you may step down.

1 Thank you very much. You may step down.

2 MR. MCKENZIE: I have a couple of
3 followup, Your Honor.

4 THE COURT: You know, the rule is very
5 specific in that, you know, direct examination,
6 cross-examination, and redirect. And it's incumbent
7 upon you to object to anything that she brings up in
8 redirect that's new in nature. That applies to all
9 witnesses. Some judges allow re-cross. I
10 personally don't believe there's such a thing as
11 re-cross. All the people who are cross-examined
12 have an obligation to object to anything brought out
13 on redirect that's new evidence. That rule applies
14 to all witnesses, all lawyers. That's the way we
15 operate: Direct, cross, redirect.

16 MR. MCKENZIE: Yes, sir.

17 THE COURT: Very good. You may call your
18 next witness.

19 MS. TIMMONS: All right. Your Honor, the
20 State is gonna call Ms. Barbara Reed, if we can have
21 a minute to bring her over.

22 (Pause.)

23 THE COURT: Yes, ma'am, if you could watch
24 your step. Take your time.

25 THE CLERK: Raise your right hand, place

SW - B. REED - DIRECT

1 your left hand on the Bible.

2 WHEREUPON,

3 **BARBARA REED,**

4 having been duly sworn by the Clerk, testified
5 as follows:

6 THE COURT: I'm gonna ask you if you
7 could, to take your time, have a seat in the witness
8 chair. Pull up real close to that microphone. I'm
9 gonna ask you speak loudly, clearly, and slowly in
10 order that we can hear everything that you have to
11 say. Let's start with your full name.

12 THE WITNESS: Barbara Newmeyer Reed.

13 THE COURT: Very good.

14 Ms. Timmons.

15 **DIRECT EXAMINATION**

16 BY MS. TIMMONS:

17 Q Ms. Reed, could you tell us what your
18 relationship is to *Victim*

19 A I'm her grandmother.

20 Q Okay. Are you her mother or her mother or? I
21 mean, are you mom of her mom?

22 A Yes.

23 Q Paternal?

24 A Yes, ma'am, I'm sorry.

25 Q How long has *Victim* been living with you?

SW - B. REED - DIRECT

1 A Since she was a little over three or between
2 three and four.

3 Q Okay. Do you remember when her mom passed away?

4 A Yes, I do.

5 Q How old was *Victim* then?

6 A Seven.

7 Q Okay. And when that happened where were you
8 living?

9 A Well, I was living in Sumter in my home there.
10 When she actually died we were down at the beach at
11 her home and it was on a weekend. And *Victim* I was with
12 me; I had taken her down there. I went down there
13 just about every weekend so they could be together,
14 and during the week she was in Sumter with me.

15 Q Okay. And after her mom passed away who got
16 custody of *Victim*?

17 A We decided it would be in the interest on the
18 week to go ahead and get custody so we wouldn't have
19 to go through it more than once. It was fine with
20 me. She was living with me at the time.

21 Q Okay. Why was she living with you at the time
22 and not with her aunt?

23 A With Leigh?

24 Q Yes.

25 A This was something that Ann, her mother and I had

SW - B. REED - DIRECT

1 talked about. Ann worked long hours and *Victim* was in
2 day care sometimes 12 hours a day, and it just
3 seemed to me like that's an awful long time for a
4 little girl to be in day care and so I decided that
5 I would ask her how she would feel about *Victim* being
6 with me during the day and we would come home on the
7 weekend to see her or she would come to Sumter to
8 see us. So that's basically how it started and it
9 worked out really well, and Ann was very interested
10 in *Victim* going to school in Sumter because she had
11 gone to private school there and that's where she
12 had wanted *Victim* to go. So it sort of led into that
13 over the summer, and we started her in private
14 school.

15 Q Okay. Do you remember when *Victim* moved, started
16 living with her Aunt Leigh and Uncle Mike?

17 A Yes, we both did at the same time.

18 Q When was it?

19 A I'm not sure exactly, it was right before the
20 school year started at Lawrence Manning. I think it
21 might have been the year after Ann died in July.

22 Q So it was sometime in 2013?

23 A I think so, but I'm not absolutely positive. My
24 time is sort of iffy sometimes.

25 Q Okay. So the soonest it would have been it would

SW - B. REED - DIRECT

1 be the summer of 2013?

2 A I think so, yes.

3 Q Okay. And did *Victim* ever told you about her uncle
4 being inappropriate with her?

5 A Would you repeat that again? I'm hard of hearing
6 in one ear, I'm sorry.

7 Q I know I have an accent. Has *Victim* ever told you
8 about her uncle being inappropriate with her?

9 MR. MCKENZIE: Objection, Your Honor.

10 THE WITNESS: Yes, she did.

11 MR. MCKENZIE: Hearsay.

12 THE COURT: Well, party opponent, I'll
13 allow it.

14 MR. MCKENZIE: Okay.

15 BY MS. TIMMONS:

16 Q Could you tell us when that happened.

17 A It happened during spring break. The first year
18 after her mother died we had taken a trip to Topsail
19 Island in North Carolina. We wanted to do something
20 for Gigi to get her mind off the fact that it was
21 her mother's birthday. Her mother was born on April
22 Fool's day and so we always, you know, celebrated
23 with it and we wanted to do that the year after she
24 passed so we -- Leigh arranged a trip for us to go
25 to Topsail Island in North Carolina and spend a week

SW - B. REED - DIRECT

1 and that was when it, she approached me with what
2 had happened.

3 Q What did she tell you?

4 A She came in the bedroom. I had retired and I
5 wasn't asleep. The bedroom door was open. But she
6 came in. She said -- and this is, these are her
7 exact words, Mike touched me on my tee-hiney,
8 meaning her private areas.

9 Q And what did you do with that?

10 A Well, I didn't really know what to do and I
11 thought about it and we -- she and I talked about it
12 right then. There had been some drinking that day
13 and I thought perhaps that had contributed to what
14 she said had happened and that she and I maybe
15 needed to just watch things more, very carefully
16 before we said anything to Leigh because we were
17 afraid if we said something to Leigh right then,
18 then it'd just make everything that was, seemed to
19 be going really well with them, it would shatter
20 everything. And so we, she and I together talked
21 about it and we just decided we would be very
22 careful about what had happened and see if it
23 happened again or if anything was inappropriate
24 after that.

25 Q Okay. You said that there had been some

SW - B. REED - DIRECT

1 drinking. Who was drinking?

2 A Mike was. This week had had some visitors that
3 day. It was several people from his family had come
4 to visit us at the house we were staying in, and he
5 just -- I don't know whether, and I really don't
6 know if he was upset because company was there or
7 just what, but he had had a good bit to drink during
8 the day. And I thought perhaps that was a
9 contributing factor at the time, I didn't know.

10 Q Okay. And did you tell Leigh about it sometime
11 later?

12 A Later on we did, but not right then we didn't do
13 it.

14 Q Do you remember when?

15 A No, I do not. I can't honestly say that I do
16 remember when we actually told her about that.

17 Q Was it --

18 A But I think it was on an occasion when something
19 else had happened and so we decided that, you know,
20 in light of the fact that there was something else
21 that was going on that this, you know, would be an
22 appropriate time to tell her about that.

23 Q Okay. Do you remember where were you on
24 December 31st, 2015?

25 A Yes, we were at the house in Manning.

SW - B. REED - DIRECT

1 Q Okay. Did you guys do anything special for New
2 Year's Eve?

3 A No, we were just there at the house.

4 Q Okay. Who else was there at the house?

5 A It's *Victim* Leigh, Mike, and myself and that was
6 it.

7 Q Okay. What were you doing?

8 A Not anything special. I think we were watching
9 some Netflix or something on TV.

10 MR. MCKENZIE: Your Honor, I didn't get
11 the date that she's discussing, I'm sorry.

12 MS. TIMMONS: Excuse me?

13 THE COURT: What day was it?

14 MS. TIMMONS: December 31st.

15 MR. MCKENZIE: December 31st, okay. Thank
16 you.

17 MS. TIMMONS: Yes.

18 BY MS. TIMMONS:

19 Q So you were watching some movies on TV. Do you
20 remember at what time you went to sleep?

21 A No, I don't. I had gotten tired. Whatever we
22 were watching wasn't over so I went back to the
23 bedroom and got ready for bed, and I think I was
24 reading a little bit and I must have dozed off.

25 Q Okay. When you left the bedroom who else, I

SW - B. REED - DIRECT

1 guess you were watching TV in the living room?

2 A Yes, ma'am.

3 Q Okay. So when you left the living room to go to
4 bed, who was left in the living room?

5 A Leigh was for a little while, but then Mike and
6 ~~Victim~~ And I think Leigh went shortly after I did or
7 she might have gone before I did. I honestly do not
8 remember.

9 Q Okay. Later that evening had you, have you heard
10 from ~~Victim~~?

11 A I was awakened. She was upset and she was
12 sniffing like that, you know, she was crying.

13 Q She was upset?

14 A Yeah, she was very upset. She was crying and
15 asking for her Leigh Leigh. She wanted her Leigh
16 Leigh.

17 Q Who is?

18 A That's what she calls Leigh.

19 Q Her aunt?

20 A Yes, her Aunt Leigh Leigh.

21 Q Okay. Was Leigh Leigh somewhere around?

22 A Yes, she was. She came into the bedroom and was
23 in there. All three of us we were in there. I was
24 coming out of the bathroom at that time.

25 Q Okay. And ~~Victim~~ was very upset?

SW - B. REED - DIRECT

1 A Oh, yes, yeah. Yes.

2 Q What did she say?

3 A She just, she was sniffing and she just said
4 Mike kissed her, Mike touched her.

5 Q Okay. Well, did you, what did you and Leigh do
6 about it?

7 A Well, I was just waiting to see what else was
8 going to be said; and Leigh just said, come on, get
9 your things together, we're gonna leave, we're not
10 gonna stay here.

11 Q Okay. So the decision was made like on a
12 minute's notice?

13 A Yes. Yes, it didn't take long at all.

14 Q Okay. Well, what did you pack?

15 A Whatever I could grab and it was just more like
16 gonna be gone for a night or two, just whatever
17 happened to be lying around. Not a whole bunch of
18 clothes or things like that, but mainly things like
19 pajamas or a change of clothes, but not a whole lot.

20 Q Okay. And after you left that house in Manning
21 where did you go?

22 A To my home in Sumter.

23 Q Okay. And what was the atmosphere in the car
24 whenever you were leaving Manning?

25 A Ma'am, I'm sorry?

SW - B. REED - DIRECT

1 Q What was the atmosphere in the car whenever you
2 were leaving Manning?

3 A Everybody was upset. You know, naturally
4 everybody was upset. And we were just trying to
5 figure out what the next step was going to be at
6 that point. I mean, I was upset too and, you know,
7 it's just like you don't know which way to turn with
8 something like this, what will be the next step, was
9 sort of looking toward Leigh to tell us what we were
10 going to do next. I just knew we were going home to
11 my home.

12 Q Okay. After *Victim's* mom passed away did she
13 started seeing somebody to help her, did *victim*
14 started seeing somebody?

15 A Yes, she did. Yes, she did.

16 Q Who was she seeing?

17 A Sarah McClam who's a, I believe a social worker,
18 therapist.

19 Q Okay.

20 A And she was seeing her. It wasn't right
21 immediately after Ann passed away. It seemed to
22 almost like a little delayed reaction so she was
23 experiencing, I thought, sort of mood changes,
24 swings, and seemed to be depressed more so than she
25 had been and I was just beginning to really worry

SW - B. REED - DIRECT

1 about her. And I really thought this would be, and
2 so did Leigh, this would be beneficial for her to
3 see someone.

4 Q Okay. Do you know how long *Victim* has been seeing
5 Sarah?

6 A No, because it's been a kind of an off and on.
7 She saw her for a period of time and then things got
8 better and Sarah thought that, you know, she could
9 just basically cut her loose and then we could just
10 see her if we needed to, or *Victim* could see her if
11 she needed to.

12 Q Do you remember around what time Sarah cut her
13 loose?

14 A No, I do not.

15 Q Do you know, do you remember if *Victim* was 11 years
16 old then, or was it prior to her 11th birthday or
17 you're not sure?

18 A I'm just not sure.

19 Q Okay. But at some point *Victim* stopped seeing
20 Sarah?

21 A Yes, she did. Yes, she did.

22 Q Do you know for how long she stopped seeing—

23 A You say how long she stopped?

24 Q Yes.

25 A It was a good many months things seemed to kind

SW - B. REED - DIRECT

1 of level out and then, you know, something else
2 occurred that started making us have doubts about
3 how well she was doing.

4 Q Okay.

5 MS. TIMMONS: Court's indulgence.

6 (Pause.)

7 BY MS. TIMMONS:

8 Q During the spring break incident when *Victim* told
9 you that her uncle touched her tee-hiney, what did
10 you understand by that term? What did you —

11 A What did I understand what she said?

12 Q Yes.

13 A That he had put his hands on her private parts.

14 Q Okay.

15 A That, I guess that was the word that we used then
16 within the family for private area.

17 Q And you talked to *Victim* about that?

18 A Yes, ma'am.

19 Q And you helped her decide not to tell Aunt Leigh
20 for some time?

21 A Right. Well, I told her that he had been
22 drinking that day and it could have been totally a
23 mistake or, you know, maybe it wasn't, we just
24 didn't know. And I thought we needed to not jump to
25 conclusions as were, as it were.

SW - B. REED - CROSS

1 Q But you assumed that it was a mistake, something
2 in the sense —

3 A I just didn't know. I just really didn't know,
4 but I didn't want to jump to something that could
5 shatter everything, you know, for everybody.

6 Q Okay.

7 MS. TIMMONS: Court's indulgence. I don't
8 have any further questions at this time.

9 THE COURT: Thank You, Ms. Timmons.
10 Cross-examination, Mr. McKenzie.

11 MR. MCKENZIE: Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 BY MR. MCKENZIE:

14 Q Ms. Reed?

15 A Yes, sir.

16 Q You're *Victims*'s grandmother, correct?

17 A That's correct.

18 Q Gigi had a very difficult time after her mother's
19 death; is that true?

20 A Right after her mother's death I thought she did
21 well and seemed to come through it quicker, and then
22 it seemed like there was a little bit more of a
23 delay when it seemed to hit her hard.

24 Q At some point in time y'all decided to put her in
25 counseling, right?

SW - B. REED - CROSS

1 A Yes.

2 Q And that counseling, I think the first date was
3 around December of 2013; is that correct?

4 A I'm not sure of the exact day.

5 Q Okay. Do you remember when you were at Topsail?

6 A Yes, I do.

7 Q When was that?

8 A That was the week of April 1st because it was her
9 mother's birthday.

10 Q April 1st, what year?

11 A 2013.

12 Q April 1st, 2013?

13 A I think so.

14 Q Okay. At any point, and you took *victim*
15 counseling regularly? to

16 A Yes.

17 Q And you sat in on some of those things; did you
18 not?

19 A Yes, I did.

20 Q And you have a counselor and eventually she went
21 to see a psychiatrist; did she not?

22 A Yes, she did.

23 Q And but you sat in on those meetings and I have
24 the records back to December 2013. At no time did
25 *victim* mention Topsail, at no time did Ms. Reed

SW - B. REED - CROSS

1 mention Topsail; is that correct?

2 A Right.

3 Q Okay. Because obviously it was not a big deal;
4 is that correct?

5 A It was because she was there for some other
6 reason other than that. She was having ---

7 Q Well, she told the counselor some pretty intimate
8 details about her life.

9 A Well, I do not know what she told the counselor
10 on ---

11 Q Well, you sat in on some of them; didn't you?

12 A Yes, I did.

13 Q And so, and in fact, those records reflect you
14 were actually in the meeting with them.

15 A I was in several meetings with them, yes.

16 Q And the event that you guys or, I guess, that
17 you — when you said there was another event she
18 wasn't doing too good, was that the suicide note? I
19 hand you a copy of it.

20 (Pause.)

21 THE WITNESS: Yes, this was when we
22 decided that she needed to see Sarah.

23 BY MR. MCKENZIE:

24 Q And that was for Sarah McClam, right?

25 A Yes.

SW - B. REED - CROSS

1 Q And she was the counselor. In fact, you guys
2 were so concerned that Sarah actually sent her to
3 Doctor Gray at that point in time?

4 A We went -- or she went to Doctor Gray when she
5 had experienced a drop in her grades. She was
6 having difficulty at school concentrating and her
7 grades were not like they had always been. And it
8 was my understanding that we were, that she was
9 going to see him to see what could be done about
10 that.

11 Q And in fact, I think *Victim* was actually sleeping
12 in your bed with you at that point in time because
13 she didn't want to be alone.

14 A That's right.

15 Q And she didn't want to be, she didn't want to be
16 alone, she didn't -- she was scared you were going
17 to leave her, her Aunt Leigh was going to leave her,
18 and all those things, right?

19 A I'm sure.

20 Q Okay. Now at no time in that suicide note did
21 she say, I'm doing this because Uncle Mike touched
22 me?

23 A No, not in this note.

24 Q I mean, she was, wanted to be with her mother.
25 She was majorly depressed.

SW - B. REED - CROSS

1 A I think so.

2 Q Okay. And Doctor Gray then put her on an
3 antidepressant medication?

4 A Yes, he did.

5 Q And she's currently still on that today, right?

6 A Yes, she is.

7 Q Okay. He diagnosed her with major depressive
8 disorder, general anxiety disorder. I think she has
9 ADD.

10 A Yes.

11 Q That's not uncommon. A lot of kids have that?

12 A No.

13 Q But a lot of kids don't have major depressive
14 disorder, is that ---

15 A As far as I know.

16 Q Okay. Now were you at the Durant Center?

17 A Yes, I was.

18 Q Okay. Were you there for that interview?

19 A I didn't participate or speak in the interview.
20 I just simply waited in the waiting room and waited.

21 Q But you, you took ~~Victor~~ to the Durant Center and
22 were you aware that she told the Durant Center
23 counselor that Uncle Mike never touched her private
24 area?

25 MS. TIMMONS: Your Honor, objection. This

SW - B. REED - CROSS

1 witness has no basis, no knowledge of that fact.

2 THE COURT: I'll allow him to ask the
3 question.

4 BY MR. MCKENZIE:

5 Q Are you aware that the Durant Center counselor,
6 that ^{Victim} told the Durant Center counselor that
7 Uncle Mike had never touched her on her private area
8 down here?

9 A No, I'm not aware of that.

10 Q You're not aware of that?

11 A No, sir.

12 Q Now you were asleep the night that all, that on
13 December 31st?

14 A Uh-huh.

15 Q Did you witness anything else in October, any of
16 the October incidents?

17 A I'm confused now.

18 Q Okay, let me, maybe I asked a bad question. My
19 client is charged with two incidents in October, one
20 in December, and the December 31st incident, okay.
21 So this is October, two incidents in October 20, one
22 of them was on ^{Victim's} birthday in October.

23 A Okay.

24 Q And another incident in October and another two
25 incidents in December. He's not charged with

SW - B. REED - CROSS

1 Topsail, okay.

2 A Uh-huh.

3 Q But as far as you said you were present for the
4 incident happened December 31st.

5 A Yes.

6 Q Were you present for the incident that happened
7 in October?

8 A Well, I had to be there because I wasn't anywhere
9 else.

10 Q Okay. But *Victim* did not disclose those things to
11 you, did she?

12 A No, she went to Leigh.

13 Q Okay. When did she go to Leigh with those
14 incidents?

15 A I assume just as soon as it happened.

16 Q So as soon as those happen she went and told,
17 right?

18 A That's what I, I am aware of or...

19 Q So that's your recollection?

20 A Yes.

21 Q How about the other December incident?

22 A One, the last one when we left?

23 Q Right.

24 A She was very upset and calling for Leigh. She
25 was trying to get Leigh. And I was in the bathroom

SW - B. REED - CROSS

1 I believe when all that was going on and coming out.

2 Q Right. So you didn't see that. You didn't see
3 that incident?

4 A No.

5 Q Did anybody see that incident?

6 A I do not know. I do not think so.

7 Q Okay. And Leigh was, I mean, I'm sorry, ~~Victim~~ was
8 asleep where?

9 A She might have been asleep on the sofa in the den
10 or she was coming to the bedroom where I was.

11 Q Okay. 'Cause she slept in your bedroom, right?

12 A Many times, yes.

13 Q Many times. And that's one of the things she did
14 was she slept in your bedroom?

15 A Yes. When she was afraid or upset about
16 something that's when we had our talks and ---

17 Q Well, the incident happened with the suicide note
18 in May of 2015, okay. All these other incidents
19 that are alleged to have occurred are two in
20 October, two in December, okay. Would she have been
21 scared during this period of time?

22 A She could have been. I don't, you know, I don't
23 know.

24 Q So ~~Victim~~ sleeps with you on a regular basis most
25 of the time. Does she still sleep with you?

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1 A No.

2 Q She's too old for that now. But when she was 11
3 it wasn't unusual for her to sleep with you every
4 night?

5 A No. Well, at the time that she didn't have a bed
6 there. Her bed had not been moved so she just —

7 Q So in October and December, she didn't have a bed
8 there?

9 A No.

10 Q Of 2015?

11 A No, no, no, she had a bed there then, but at the
12 very beginning when we moved there.

13 Q Understood. 'Cause Mr. Dinkins added on to the
14 house; did he not?

15 A Oh, yes.

16 Q To accommodate his niece and to you?

17 A Yeah, yes.

18 Q Okay. And Mr. Dinkins, registered nurse here in
19 town?

20 A Yes.

21 Q And so did he provide for *victim*?

22 A In the sense of a roof over her head, absolutely.

23 Q And put a pool into the house; is that correct?

24 A The pool was there when we moved, but you know.

25 Q He doubled the size of his house and was he

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1 affectionate towards *Victim*?

2 A I don't know, I mean, not any more so than any of
3 the rest of us. We weren't huggy kissy kind of
4 people.

5 Q But you didn't see the incident in Topsail,
6 right?

7 A Didn't see it?

8 Q Yeah.

9 A No, I did not.

10 Q And you didn't know about it till some months
11 later?

12 A No, she came to me right then when it happened.

13 Q Oh, so she came to you right then?

14 A Yes.

15 Q And you just didn't think it was a big deal?

16 A I didn't know. I did not know.

17 Q Okay. Has *Victim* ever lied to you?

18 A No, not that I know of, but that's not to say it
19 hadn't happened.

20 Q Did *Victim* go stay on the bus one time and go to
21 her girlfriend Hannah's house? You remember that
22 incident where she just didn't come home? She
23 went -- and she was staying with you? Do you
24 remember that?

25 A No, I don't.

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1 Q Do you remember *victim* asking you to do that?

2 A I'm, I really don't. I can't say that I do.

3 Q So if -- you had her in your custody at that
4 point in time. If she would have gone and
5 disappeared you would have known about it?

6 A Well, of course I would.

7 Q Okay. You said at some point in time that Sarah
8 cut her loose, but Sarah didn't cut her loose.

9 Sarah sent her to a psychiatrist; is that correct?

10 A I think that was because of the ADD. That was my
11 understanding.

12 Q Well, the psychiatrist put her on major
13 depressive disorder medication?

14 A Right.

15 Q And he put her on general anxiety medication; is
16 that correct?

17 A As far as I know, yes.

18 Q Do you know that *victim* was afraid of her father
19 when he had his seizures?

20 A Yes.

21 Q Do you know that he did bad things, according to
22 *victim* when he had his seizures?

23 A Yes.

24 Q You were there when *victim* said on December 31st
25 that Uncle Mike kissed her. What else did he say,

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1 what else did she say?

2 A I think that was when she said he put his tongue
3 in her mouth.

4 Q So she said on that night he put his tongue in
5 her mouth; is that correct?

6 A That is best of my recollection, yes.

7 Q Do you remember what was told to the police
8 officers? Do you remember what was told to Leigh?

9 A No.

10 Q You don't remember any of that stuff?

11 A No, I do not.

12 Q Do you know what was told to the counselor at the
13 Durant Center? Were you present for that?

14 A No, I was not.

15 Q Okay. Were you present whenever after all this
16 happened on January 8th whenever she went to Sumter
17 psychiatry and for the first time mentioned this to
18 the counselors? I'm sorry, it was January 7th.

19 A There was just times when I was there and then
20 there were other times when I just sat in the
21 waiting room, and I'm just not really certain which
22 times were which.

23 Q So ^{Victim} was asleep on the couch on January -- I'm
24 sorry, December 31st, 2015?

25 A Whether she was asleep or not, I don't know,

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1 'cause I was not in there.

2 Q She was not in your room?

3 A No.

4 Q Okay.

5 A She would come through to go to the restroom.

6 Q Where were you?

7 A I was in the bedroom on my bed. I'd been reading
8 and I guess I fell asleep while I was reading.

9 Q Okay. So the only people that would have
10 witnessed this would have been *Victim* and Mr. Dinkins?

11 A Yes.

12 Q Okay.

13 A As far as I know. I don't think Leigh was in
14 there, I don't know.

15 Q Did Mr. Dinkins say anything to you that night?

16 A No, he did not.

17 Q Her mother was bipolar, was she not, *Victim's*
18 mother?

19 MS. TIMMONS: Your Honor, objection,
20 that's not relevant.

21 THE WITNESS: That is something I did not
22 know.

23 BY MR. MCKENZIE:

24 Q You know the dad's a severe epileptic though?

25 A Oh, yes.

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1 Q The May 8th, 2015, note says that she was
2 brought — this was after the suicide note was
3 written. Said she was brought in to therapy by the
4 grandmother. And you were there right after this
5 note was written?

6 A Yes, I guess.

7 Q Okay. No mention of Topsail, no mention any of
8 these things that happened before?

9 A I don't think so.

10 Q And she wasn't upset about that?

11 A About the note?

12 Q No. Wasn't upset about anything that Uncle Mike
13 had done?

14 A It was never broached as a subject.

15 Q Okay, but she did not say anything about Uncle
16 Mike in this note?

17 A No, the note speaks for itself.

18 Q It does, thank you.

19 MR. MCKENZIE: No other questions, Your
20 Honor.

21 THE COURT: Redirect.

22 MS. TIMMONS: Yes, Your Honor.

23 **REDIRECT EXAMINATION**

24 BY MS. TIMMONS:

25 Q Ms. Barbara.

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1 A Yes, ma'am.

2 Q This note Mr. McKenzie refers to, do you remember
3 around what time it was written?

4 A The note?

5 Q Yes, ma'am.

6 A No, I do not. I really do not.

7 Q Okay.

8 A I'm sorry.

9 Q All right. I don't have any further questions.

10 THE COURT: You may step down. Thank you,
11 ma'am. I'm gonna ask, let's let the bailiff help
12 you. If you can come up and assist her.

13 MS. TIMMONS: Your Honor, the State's next
14 witness is Ms. Leigh Reed.

15 THE COURT: I'm gonna ask if y'all can
16 stand, stretch a little bit while the witness comes.

17 MS. TIMMONS: Your Honor, may we approach?

18 THE COURT: Yes.

19 (WHEREUPON, counsel approached the
20 Bench for an off-the-record discussion.)

21 THE COURT: Madam Forelady, ladies and
22 gentlemen of the jury, we're gonna take a five
23 minute recess. Once again, do not discuss the case.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 3:00 p.m.)

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1 THE COURT: All right. We're ready for
2 the jury.

3 (WHEREUPON, the jury was returned to the
4 courtroom at approximately 3:15 p.m., and
5 the following proceedings commenced in
6 open court.)

7 THE COURT: Mr. Foreman, ladies and
8 gentlemen of the jury, thank you for your patience.

9 Ms. Timmons, you are recognized. You may
10 call your next witness.

11 MS. TIMMONS: Thank you, Your Honor. The
12 State calls Ms. Leigh Reed to the stand.

13 THE COURT: Yes, ma'am, please come
14 forward.

15 THE CLERK: I need you to raise your right
16 hand, place your left hand on the Bible, repeat your
17 name.

18 THE WITNESS: Leigh Reed.

19 WHEREUPON,

20 LEIGH REED,
21 having been duly sworn by the Clerk, testified
22 as follows:

23 THE COURT: I ask you, if you could have a
24 seat in the witness chair, pull up real close to
25 that microphone. Speak loudly, clearly, slowly in

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1 order that we can hear everything that you have to
2 say. And let's start with your full name please,
3 ma'am.

4 THE WITNESS: Leigh Durant Reed.

5 THE COURT: Thank you, Ms. Reed.

6 Ms. Timmons.

7 MS. TIMMONS: Thank you.

8 **DIRECT EXAMINATION**

9 BY MS. TIMMONS:

10 Q Ms. Reed, could you tell us, where do you work.

11 A McLeod Health, Clarendon.

12 Q And who do you work as, your occupation?

13 A I'm a registered nurse in the operating room.

14 Q Okay. Can you tell us about your relationship
15 with the defendant. Like, when did it started?

16 A I actually met him many, many years ago when I
17 first worked at the hospital, 25 or so. He was
18 married to someone else; I was married to someone
19 else. I left the hospital for a brief period, came
20 back, began working in the operating room and
21 shortly after that I met him one night when I was on
22 call. Again, which we'd already known each other.

23 Q Okay. How long have you been dating?

24 A Maybe about a year-and-a-half before we got
25 married.

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1 Q Okay. Do you know how far in the relationship
2 did you move in with him?

3 A Probably about a year.

4 Q Okay. Do you remember when ~~Vic~~ met him?

5 A It wouldn't have been too long after we were
6 dating because he would come to the home to see me
7 and she would be there.

8 Q Okay. And do you remember how many years ago it
9 was, or when did you marry him?

10 A I married him in 2010, April.

11 Q Okay. And you were dating for at least a year?

12 A A year-and-a-half.

13 Q Okay. How long have you been married?

14 A We were married for six years.

15 Q Okay. Do you know what's his birthday?

16 A December 13th, 1961.

17 Q Okay. Did you consider yourself happily married?

18 A Yes, ma'am, I did.

19 Q Okay.

20 A Up until New Year's Eve my world shattered.

21 Q And you're not married to Mr. Dinkins anymore?

22 A No, ma'am, we divorced in April of this year,
23 2016.

24 Q When did you file for divorce?

25 A I filed for separation, legal separation

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1 immediately, and then the divorce began one year
2 after we'd been separated.

3 Q So do you -- when did you separated?

4 A We separated on December 31st of 2015.

5 Q And what was the reason for separation?

6 A *Victim* came to me that night and told me that Mike
7 had kissed her on the lips and put his tongue in her
8 mouth. So after she told me that, I believed her
9 instantly, went out to talk to him on the porch,
10 knew immediately that he was lying, and came back in
11 and told my mother and *Victim* to pack some belongings,
12 that we were leaving not to return.

13 Q You said you knew immediately that he was lying.
14 How, how did you know?

15 A His body language and his decadence of his
16 speech. He was stammering and doing his arms, and I
17 would never hurt her and I just love her and I don't
18 know what she's talking about, and da, da, da. And
19 it was like, well, explain to me, explain this away
20 for me, and he never explained it away.

21 Q Okay. Was it the first time you heard about him
22 touching her?

23 A No, it was not. That was the most serious time.
24 That was the icing on the cake. The first time I
25 had heard that I actually knew anything was the time

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1 he kissed her on the neck in the hall way, and I
2 witnessed that.

3 Q Do you remember when it was?

4 A I would say late 2014, possibly early 2015,
5 somewhere in there.

6 Q And was *Victim* living with you full time?

7 A Yes, she was, and my mother was also at that
8 time.

9 Q Okay. You said you witnessed the defendant kiss
10 Gigi on the back of her neck. Where were they?

11 A They were in the hallway and I was in the
12 kitchen.

13 Q Could he, could he have seen you from the
14 hallway?

15 A No, ma'am. He was ahead of me in the hallway,
16 and I was behind them in the kitchen as he was
17 approaching her.

18 Q Okay. What were -- do you remember what you were
19 doing in the kitchen?

20 A Probably went to get something to drink or
21 something like that.

22 Q Okay. And can you describe to us how that kiss
23 was like?

24 A He walked up behind her in the hallway, and she
25 was heading, I believe, to the computer room and he

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1 walked up behind her in the hallway and took her
2 hair and pulled it up on her head like that and then
3 tenderly laid his lips on her. It wasn't like a
4 quick smack. It was like a, like a tender, not a
5 kiss between parent and child.

6 Q Okay. Do you remember what was *Victim's* reaction
7 to that?

8 A She did like that and cringed and kind of backed
9 away from me, and that's when I said I need to speak
10 to you right away.

11 Q And *Victim* heard you?

12 A Yeah, she heard me.

13 Q Okay. And did you talk to defendant?

14 A I did. I did. I took him outside. As a matter
15 of fact, he and I went in my car to the very back of
16 the yard and I talked to him severely; I admitted
17 that. And I said, you know, inappropriate,
18 absolutely inappropriate, made her uncomfortable,
19 you will not ever do that again, ever. If you're
20 gonna kiss her, you kiss her on top of her head,
21 don't ever kiss her on the neck again. That's not
22 between even a parent and a child, that's between
23 lovers.

24 Q Okay. So then whenever *Victim* told you about him
25 kissing her on her mouth and putting his tongue in

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1 her mouth, that's why you reacted the way you
2 reacted?

3 A Right, because, you know, when that incident
4 first happened you just think that it was an
5 innocent mistake. But then as things progressed,
6 you realize it was not an innocent mistake; it was a
7 continual thing he was doing.

8 Q Okay. Were you aware of any other incident?

9 A Around the time of the kiss on her neck incident
10 my mother relayed to me about the incident in
11 Topsail when he had placed his hand on her thigh,
12 upper thigh area, vagina, and was rubbing back and
13 forth.

14 Q Okay. And was it you — did you talk to him
15 about this?

16 A I did. I told him, you know, and he threw it off
17 he was intoxicated, and you know, I just grazed her.
18 And you know, you don't want to think that about
19 somebody; it's a very serious accusation. You don't
20 want to think somebody would, you want to give them
21 the benefit of the doubt, not once but twice, but
22 the third time, there's no giving the benefit of the
23 doubt, not with something as serious as what he did
24 to her.

25 Q Okay. The incident at Topsail, do you remember

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1 what time it happened?

2 A That would have been April 1st of 2013. It was
3 my sister's first birthday after she passed.

4 Q Okay. Do you know if *victim* was living with you
5 full time at that time?

6 A Not full time, no, ma'am. She would come on
7 weekends and my time off when I had time off from
8 the hospital.

9 Q So most of the time she was spending summers
10 there?

11 A With my mother, that's correct.

12 Q Where was it?

13 A In Sumter with my mother.

14 Q Was she going to school there too?

15 A She was going to Lawrence Manning at the time and
16 my mother would take her to the bus and she would
17 catch the bus from Sumter to Lawrence Manning.

18 Q Okay, all right. Can you, I guess probably
19 should have started with that question, can you tell
20 us how are you related to *victim* how she came to live
21 with you.

22 A She is my niece. My sister Barbara Ann passed
23 away and her father was unable to care for her so I
24 got custody of her immediately.

25 Q Did you have sole custody of her or?

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1 A I did not. Since Michael I and were married I
2 asked that it be put in joint custody simply for
3 things like school and, you know, signing papers and
4 legal papers and that kind of thing.

5 Q Do you remember around what time you got custody
6 of Gigi?

7 A That was in October of 2012. My sister died in
8 July, and it took till October for all paperwork and
9 everything and the court date.

10 Q In that time you were happily married?

11 A Yes, ma'am.

12 Q Or you were happily married till December?

13 A Till December 31st about 11:15 p.m.

14 Q Okay. And you said her dad cannot take care of
15 her?

16 A No, ma'am, he has epilepsy. He is unable to
17 drive; therefore, getting her back and forth to
18 school would be a problem. Getting her to shopping
19 mall would be a problem for him. He's not able to
20 drive her. And he felt also, we talked that day,
21 and he agreed that it would be better for her to
22 come with us.

23 Q Okay. Has he -- is he seeing her?

24 A Oh, he sees her a good bit. He comes at least
25 every three weeks. He spends several days with us

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1 at the home where my mother and I share and spend
2 time with *Victim* He's very active in her life.

3 Q Okay. How, where does he live now?

4 A Murrells Inlet, South Carolina.

5 Q How does he get from over there to?

6 A His sister brings him to our house.

7 Q Okay. Do you remember around what time *Victim*
8 started living with you full time?

9 A That would have been August of 2014, wait, excuse
10 me, yes, 2014. August of 2014, which was right
11 before the school year.

12 Q Okay. And after *Victim's* mom passed away how did
13 she deal with her grief?

14 A She was, she was devastated, I mean, and at the
15 same time she was so young that she didn't
16 understand really the permanency of it and what she
17 would be missing out. So when a few months went on,
18 you know, it sunk in more for her. It was more a
19 parent and she became depressed and just very upset
20 grieving for her mother and Mother's Day was around
21 the corner and other milestones like that that just
22 really hit her hard.

23 Q Okay. Did you guys take her to see a specialist?

24 A I did. I took her to Sarah McClam in Sumter and
25 she began seeing her for her mother's death.

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1 Q Okay. Do you remember around what time she
2 started seeing Ms. McClam?

3 A She was a little over eight years old. She was
4 two months shy of eight whenever her mother died.
5 So I would say November, December, somewhere in
6 there after she had turned eight.

7 Q Okay. And has she, how often had she been seeing
8 Sarah?

9 A She saw her regularly there for a good bit for at
10 least a year or more. She went at least every
11 couple of weeks and saw her, see how her progress
12 was. And Ms. McClam would talk to her individually.
13 She would talk to my mother and I to see how *Victim's*
14 school was going, how things were going with her.
15 She was, you know, acting sad at home and just
16 making sure they was progressing.

17 Q Okay, and what was the primary purpose of *Victim*
18 seeing Sarah?

19 A Her mother's death, grieving.

20 Q Okay, so she was treated for grief?

21 A Right.

22 Q Do you remember if at some point Sarah McClam
23 said, you know, *Victim* is doing good?

24 A She did, and that was around I believe maybe
25 August of 2015. Said, you know, she's doing great,

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1 you know, y'all come back when you need to, I'll see
2 you soon, but y'all just make an appointment when
3 you feel like she needs to come back and have
4 another visit or a couple of visits.

5 Q So after August 2015, 2015, when was the next
6 time *Victim* saw Sara?

7 A That would have been the week of the 31st of
8 December. It was either the 6th or the 7th of
9 January, which would have been that Thursday, the
10 beginning of the year.

11 Q So she had not seen Sarah in October and
12 December, right?

13 A That's correct.

14 Q And any time in between?

15 A No, ma'am.

16 Q Okay. New Year's Eve, 2015?

17 A Yes, ma'am.

18 Q Where were you that day?

19 A I was sitting on the porch outside. My mother,
20 *Victim*, and Mike were inside watching a movie. You
21 know, it was getting close to 11:00. I was out
22 there, movie was going to be over about 11.

23 Q And why weren't you watching the movie with them?

24 A It was a silly movie. Dumb and Dumber I think is
25 what it was, and I've seen it a million times and it

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1 didn't get any funnier so I just didn't care to
2 watch it.

3 Q So what were you doing outside? Were you talking
4 to somebody or?

5 A I was actually outside smoking a cigarette on the
6 porch.

7 Q Okay. It's good *Victim* is not here. So you were
8 outside. Had you seen Mike?

9 A Oh, he came out there sometime between, say,
10 three and five minutes after I left when the movie
11 was over. He came out there to have a cigarette.
12 And at that time I asked him if *Victim* had gotten into
13 bed and he said, no, she had fallen asleep on the
14 couch, but he was gonna go in there and pick her up
15 and take her to the bedroom. And I said, well, no,
16 you know, she's big enough that she can walk to the
17 bedroom; and something about the way he said it made
18 me very uneasy so I just got up to go check and see
19 where she was and if she was okay. She was no
20 longer on the couch so I headed to my mother's
21 bedroom down the hall. When I walked into the
22 bedroom she came out of the bathroom at that time
23 and she ---

24 Q She?

25 A *Victim* came out of the bathroom at that time very,

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1 very upset going, Leigh Leigh, Leigh Leigh, Leigh
2 Leigh, Mike just kissed me on the mouth, put his
3 tongue on my mouth. And I said, what? And she was
4 crying and about this time she said, I don't know
5 why he did it but he just put his lips on my lips
6 and tried to stick his tongue in my mouth, I'm so
7 scared, I'm so scared. And I said, hang on, I'll be
8 right back. And I left and talked to him at that
9 time; and when I talked to him, I had already known
10 she was telling the truth but —

11 MR. MCKENZIE: Objection, Your Honor.

12 THE COURT: Sustained.

13 BY MS. TIMMONS:

14 Q After she told you that what decision, I mean,
15 did you make any decision to —

16 A After I spoke with him I went in there and told
17 them, my mother and *dictum*, to pack their stuff, that
18 we were leaving, just to grab a few things, we
19 needed to get out of there quickly.

20 Q And how soon after you left? Four?

21 A Maybe five minutes.

22 Q Okay. Why did you leave?

23 A Because of what he had done to her.

24 Q Okay. So where did you go?

25 A We went to my mother's house in Sumter that she

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1 still had. We had not sold that yet.

2 Q Okay. And what was the, I guess, the atmosphere
3 in the car whenever you were driving back to Sumter?

4 A *victim* was crying and she was upset. You know, she
5 was just saying I just didn't know what to do, I
6 just didn't know what to do, I was so scared. I
7 said, honey, you're safe, you're in this car right
8 now, you are safe, we're going back to your
9 grandmother's house, it's going to be fine, it's
10 going to be fine.

11 Q And what did you do the rest of that night?

12 A Huh?

13 Q What did you do the rest of that night?

14 A I got on the phone with one of my girlfriends and
15 was just talking to her going, I just, I'm in shock.

16 MR. MCKENZIE: Objection what she told the
17 girlfriend.

18 THE COURT: Sustained.

19 BY MS. TIMMONS:

20 Q You didn't call the police right away, did you?

21 A No, ma'am.

22 Q Okay. Did you, did you know what to do whenever
23 you were leaving home? Did you have a plan what you
24 were going to do next?

25 A I did. That plan would have been for her to talk

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1 to Sarah McClam about her saying so. You know,
2 that's where she felt safe so I felt like Sarah
3 would be the one to talk to her and figure out what
4 had happened.

5 Q Okay. And why did you, why did you think about
6 Sarah?

7 A 'Cause she had been so good to her after her
8 mother's death and *victim* really had a rapport with
9 her and trusted her immensely.

10 Q Okay. And when was the time? Do you remember
11 when Gigi saw Sarah after?

12 A It was that Thursday afternoon.

13 Q So it was January.

14 A I guess 6th maybe, whenever that Thursday would
15 have been.

16 Q Okay. And were you the one to call the police?

17 A No, ma'am, that was Ms. McClam. We decided that
18 night that she would notify the police.

19 Q That night?

20 A She and I decided that night that she would be
21 the one to do it. Now whether she did it that night
22 or the next morning, I'm not sure. I got the call
23 the next morning to come in to the police station.

24 Q But when you were referring to that night do you
25 think about December 31st or the day, the night of

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1 the day when *victim* saw Sarah?

2 A When we were making the plan, or is that ---

3 Q Whenever you were talking to Sarah and you
4 decided that she was gonna call the police, when was
5 it?

6 A That was on that Thursday.

7 Q Okay.

8 A 'Cause I did not speak to Sarah personally until
9 that Thursday.

10 Q Okay.

11 A I called the office and asked for an emergency
12 appointment, and that was the first available
13 appointment that they had.

14 Q Okay. Whenever you confronted Mike after you saw
15 him kissing *victim* on the back of the neck, ---

16 A Right.

17 Q ---how did he responded to that?

18 A He didn't deny it because he knew I had seen the
19 kiss, but he said that he was just trying to show
20 her affection. And I said, well, that's not the way
21 you show affection. If you want to show affection
22 you kiss her on the top of the head, kiss her on the
23 cheek, but not on the back of the neck.

24 Q Okay. I don't have any further questions.

25 THE COURT: Cross-examination. Before we

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1 proceed an objection was made with regard to this
2 witness' testimony about her believing the alleged
3 victim. That's ultimately the question — that
4 objection was made, sustained. The reason for that
5 is that's the ultimate question that y'all need to
6 resolve. Very good.

7 MR. MCKENZIE: Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 BY MR. MCKENZIE:

10 Q Ms. Reed, this incident happened, the kissing of
11 the mouth incident, apparently happened according to
12 you on December 31st, 2015?

13 A That's correct.

14 Q And do you recall what you told Sergeant Linda
15 Smith of the Clarendon County Sheriff's Department
16 about what happened?

17 A Do I recall about what happened or what I said to
18 him?

19 Q You testified that you, you went to see
20 Ms. McClam on the 7th of January.

21 A Okay.

22 Q The next morning you went in and saw the
23 sheriff's department.

24 A The captain, right.

25 Q And they took a statement from you?

SW - L. REED - CROSS

1 A That's correct.

2 Q And you gave the statement?

3 A That's correct.

4 Q And did you tell her that at that point in time
5 that Mr. Dinkins put his tongue in her mouth?

6 A I did.

7 Q Okay. And you said that you were on the back
8 porch —

9 A Correct.

10 Q —when this occurred. What were you doing?

11 A I was smoking a cigarette.

12 Q Okay.

13 A I was playing on my iPad.

14 Q And the child was asleep?

15 A She was in the living room watching TV.

16 Q And nobody else was in there except for
17 Mr. Dinkins and the child?

18 A At first my mother was in there, but she went and
19 laid down.

20 Q Right. So this incident, the incident at
21 Topsail?

22 A Correct.

23 Q Nobody witnessed it except for Mr. Dinkins and
24 the child allegedly?

25 A That's correct.

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1 Q Okay. Now the incident that you saw and we're
2 not here about today, but you think it's improper
3 contact to kiss her on the back of the neck?

4 A That's right.

5 Q Okay. The incident at Topsail, we're not here
6 about today. It's just the two incidents in
7 October, two incidents in December of 2015?

8 A I think it all is together.

9 Q You think it's all together, okay.

10 A Yes.

11 Q But he's only been indicted, or this is the only
12 charges that are before this court today are those
13 incidents we're talking about.

14 A Right.

15 Q And the only incident that you witnessed was the
16 Topsail, but we're not here, or not here on today,
17 and you incident -- witnessed an incident where he
18 kissed her on the back of the neck?

19 A That's correct.

20 Q I'm sorry, you did not witness Topsail?

21 A No, I did not.

22 Q She just told you that later on?

23 A That's right.

24 Q Okay. And you put her in counseling shortly
25 after her mother's death?

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1 A That's correct.

2 Q And you took her to a lot of her counseling
3 sessions?

4 A A lot of them I did and a lot of them my mother
5 took her.

6 Q Okay. And she was very intimate about personal
7 things with Sarah McClam because she trusted Sarah;
8 did she not?

9 A That's right.

10 Q And she told her a lot of things that bothered
11 her?

12 A I'm sure she did.

13 Q Okay. And at no time in her records until
14 January 7th when you took her back to Sara McClam,
15 did she mention any inappropriate conduct with
16 Mr. Dinkins?

17 MS. TIMMONS: Objection, hearsay.

18 MR. MCKENZIE: She was there personally,
19 Your Honor.

20 THE COURT: Rephrase.

21 THE WITNESS: I don't know what Ms. McClam
22 is gonna say.

23 BY MR. MCKENZIE:

24 Q But you sat in -- I've got the notice where it
25 says you sat in a lot of the counseling sessions.

SW - L. REED - CROSS

1 A Right.

2 Q Did you ever hear *Victim* tell Ms. McClam, hey,
3 Uncle Mike's been inappropriate with me?

4 A No, sir.

5 Q Did you ever tell Ms. McClam until January 7th
6 that Mike was inappropriate with *Victim*?

7 A No, sir.

8 Q Okay. And in fact, the reason that, I think you
9 stated that in August of 2015 she was doing great,
10 no problems, nothing whatsoever; is that correct?

11 A That's correct.

12 Q But she had written a suicide note earlier; had
13 she not?

14 A This was the Mother's Day after her mother died.

15 Q Okay. Well, if Ms. McClam's records say it was
16 August, I'm sorry, May 8th, 2015, her mother didn't
17 die in 2015, did she?

18 A Her mother, no, 2012, that's been established.

19 Q Okay. But if Ms. McClam's notes referenced
20 something else about that suicide note, we have to
21 rely on those notes; is that correct?

22 A Yes, sir.

23 Q Okay. So your testimony is that that suicide
24 note was written right after her mother died?

25 A This was the Mother's Day after her mother died.

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1 Q Okay. So that would have been in 2012.

2 A That would have been 2013. Her mother died July
3 so Mother's Day comes in May which would have been
4 the following year.

5 Q 2013, excuse me.

6 A Yes, sir.

7 Q But it wasn't 2015?

8 A I suppose it was not. I ---

9 Q Did Ms. McClam send *dictum* to a psychiatrist,
10 Doctor Austin Gray, at Sumter Psychiatry in May of
11 2015?

12 A Yes, sir.

13 Q Why?

14 A She needed to be on medication due to the
15 depression that she was experiencing from the acts
16 that had been committed by Mr. Dinkins.

17 Q Oh, in May of 2015?

18 A In May of 2015.

19 Q So ---

20 A Wait, May of 2015?

21 Q Yes, May of ---

22 A She did not go to Doctor Gray in May of 2015.

23 Q She didn't, but these records would reflect that,
24 right?

25 A That she did not go to Doctor Gray ---

SW - L. REED - CROSS

1 Q No, no, she went to Doctor Gray. Whatever the
2 records are they speak for themselves, right?

3 A The records speak for themselves. I know she did
4 not go until 2016 to Doctor Gray.

5 Q Okay. So when did she get on the medication?

6 A 2016.

7 Q So she wasn't on medication in 2015?

8 A No, sir, she was not.

9 Q Okay. All right, and you went with her whenever
10 she went to see the doctor on most occasions or
11 either her grandmother would go with her?

12 A That's correct.

13 Q And so your testimony today is the medication
14 didn't start until after the incident with Mr.
15 Dinkins?

16 A Which medicine are you talking about? Doctor
17 Gray give her on Ritalin. He put her on a
18 depression medicine. That was all in 2016.

19 Q Okay. So she would not have been on any
20 medication in 2015?

21 A No, sir.

22 Q Okay. And that's your testimony?

23 A Yes, sir.

24 Q Okay. And what was her diagnosis in 2015?
25 You're a nurse, what was it?

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1 A I'm her diagnosis? I'm not into diagnosing. I'm
2 not able to do that. What they said was that she
3 had —

4 Q I'm asking do you know as her guardian.

5 A ADHD was her diagnosis, depression, some sort of
6 situational reaction to what had occurred.

7 Q In 2015?

8 A In 2016. She did not see Doctor Gray until 2016.

9 Q All right, Ms. Reed, and I'm not trying to
10 confuse you.

11 A Well, you are, I mean...

12 Q Okay. That note was written according to you in
13 2012, I'm sorry, 2013, Mother's Day after 2013?

14 A As far as I can recall, yes, sir.

15 Q Okay. And that was not a significant event where
16 you took the child to the doctor?

17 A Yes, it was.

18 Q Okay.

19 A I took her to Sarah McClam, not to Doctor Gray,
20 to Sarah McClam.

21 Q Okay. Did Sarah McClam refer her to Doctor Gray
22 after that?

23 A No sir, she did not.

24 Q Okay. Do you know that *victim* was concerned about
25 her father exhibiting very bad behavior when he

SW - L. REED - CROSS

1 seizes?

2 A Yes.

3 Q Okay. Were you in those sessions when she
4 discussed that?

5 A Sometimes I was, but sometimes she had personal
6 sessions with Sarah where she discussed that by
7 herself.

8 Q Okay. In 2015, October of 2015, did *Victim* say, I
9 want to go back to see Sarah?

10 A No, sir.

11 Q Okay. And in fact, I think in August of 2015 you
12 said everything was great.

13 A That's correct.

14 Q She was doing good, everything was great. So in
15 October 2015 she didn't say, hey, I need to go see
16 Sarah and talk to her?

17 A No, sir.

18 Q November 2015, I need to go back to see Sarah and
19 talk to her?

20 A No, sir.

21 Q December of 2015, I need to go see Sarah?

22 A December 31st.

23 Q After this event, okay?

24 A Right.

25 Q And again, you gave the report to the officer,

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1 arresting officer, and you said that the tongue went
2 in the mouth?

3 A That's correct.

4 Q Okay. Mr. Dinkins denied that; did he not?

5 A I'm sure he did, yes, sir.

6 Q Well, you were there, I wasn't there. Did he
7 deny it or not?

8 A When I spoke with him —

9 Q Yes.

10 A —or in talking with the detective just now?

11 Q No, no, I'm talking about with you.

12 A With me?

13 Q When you confronted him.

14 A Oh, yeah, he did.

15 Q He said it didn't happen?

16 A Uh-huh.

17 Q Okay.

18 A He said that he kissed his fingers, put his
19 fingers to her forehead and put them on her mouth.

20 Q And *Victim* was asleep when this happened; wasn't
21 she?

22 A No, she was not.

23 Q So she was not asleep on the couch?

24 A She was laying on the couch. She was falling
25 asleep is what she told me.

SW - L. REED - CROSS

- 1 Q So she's faking asleep?
- 2 A I guess so. When he approached her I suppose
- 3 that she faked sleeping.
- 4 Q She was faking asleep?
- 5 A Uh-huh.
- 6 Q Okay. Mike's a registered nurse also, right?
- 7 A Correct.
- 8 Q Army veteran?
- 9 A Correct.
- 10 Q I think he was called up for Desert Storm?
- 11 A He never went.
- 12 Q But he was called up to active duty; was he not?
- 13 A Sure.
- 14 Q And he was a medic in the army?
- 15 A I'm sure he was sure.
- 16 Q I'm sure he discussed that with you.
- 17 A Uh-huh.
- 18 Q He was a paramedic for a number of years?
- 19 A Uh-huh.
- 20 Q Put himself through nursing school?
- 21 A I believe he had inheritance to do that with.
- 22 Q But he spent his own money to do it, right?
- 23 A Correct.
- 24 Q Okay. The incidences that are alleged to have
- 25 occurred in October, —

SW - L. REED - CROSS

1 A Yes, sir.

2 Q ---you did not personally witness those
3 incidents, were you?

4 A No, sir.

5 Q Okay. And *Victim* slept with your mother most of
6 the time; did she not?

7 A Yes.

8 Q Okay. And according to, I think your testimony,
9 you didn't find out about those incidents until the
10 counseling session with Sarah.

11 A That's correct.

12 Q And so you were present on that day with Sarah
13 whenever *Victim* talked to her?

14 A That's correct.

15 Q Did you tell Sarah then you were pursuing a
16 divorce?

17 A I'm not a hundred percent sure, but I'm sure that
18 it came up. I can't attest a hundred percent that I
19 said that.

20 Q Again, *Victim* felt very comfortable telling Sarah
21 intimate details of her life?

22 A Yes, sir.

23 Q And the first time she told her any, about any of
24 these incidents was January 7th, 2016?

25 A That's correct.

SW - L. REED - REDIRECT

1 MR. MCKENZIE: Court's indulgence, Your
2 Honor.

3 (Pause.)

4 MR. MCKENZIE: No other questions, Your
5 Honor.

6 THE COURT: Redirect?

7 MS. TIMMONS: Yes, Your Honor.

8 **REDIRECT EXAMINATION**

9 BY MS. TIMMONS:

10 Q Leigh, you said that or told Mr. McKenzie
11 whenever you confronted Mike Dinkins about New
12 Year's Eve incident, how did he explain it to you?
13 Can you say it again?

14 A He was just, I guess the word is bristling, like
15 going, I don't know what you're talking about, no, I
16 didn't do that, I kissed my fingers and then I put
17 it on her forehead, and then, I didn't do that, I
18 wouldn't have done that, I didn't do that.

19 Q Is it this type of kiss, is it common for
20 household members?

21 A No.

22 MR. MCKENZIE: Objection, Your Honor.

23 THE WITNESS: No, ma'am.

24 MR. MCKENZIE: That's the jury's burden.

25 THE COURT: Overruled.

SW - L. REED - REDIRECT

1 BY MS. TIMMONS:

2 Q So you have never seen defendant kiss *victim* like
3 that before?

4 A No, ma'am.

5 Q This was the first time you heard about
6 something?

7 A I heard about, yes, ma'am.

8 Q Okay. And you knew right away?

9 A Uh-huh.

10 Q Okay. The Topsail incident, you find out about
11 it sometime around the neck, kiss on the neck?

12 A Right.

13 Q And you confronted Mike about both of those
14 incidents?

15 A That's right.

16 Q And what was his explanation to the Topsail
17 incident?

18 A He said oh, no, no, I might have been just
19 stretching or something and done like this. And he
20 admitted to intoxication that night and he said, I
21 was well intoxicated.

22 Q Okay. Also on January the 8th, you testified
23 that you talked to law enforcement, right?

24 A That's right.

25 Q Do you remember who did you talk to?

SW - L. REED - REDIRECT

1 A Kimberly Marlow and there was another lady, I
2 think Detective Smith that was there also.

3 Q Okay. Was *Victim* with you?

4 A She was.

5 Q Okay, did she talk to them?

6 A She did.

7 Q Okay. Did she tell them about the details of?

8 A Yes, she did, not -- in her words she told them
9 the details, yes.

10 Q Okay, all right. I don't have any further
11 questions.

12 THE COURT: You may step down.

13 THE WITNESS: Thank you.

14 THE COURT: You may call your next
15 witness.

16 MS. TIMMONS: Your Honor, that's all the
17 witnesses we have here for today. We will have
18 several witnesses, more witnesses coming tomorrow
19 morning.

20 THE COURT: Madam Forelady, ladies and
21 gentlemen of the jury, that concludes your work for
22 today. I'm gonna ask that you be back 9:30 in the
23 morning. Once again, it's very important, no
24 independent investigation. Don't discuss this case,
25 anything about it with anyone else, amongst

1 yourselves. Do not engage in any social media with
2 regard to this case. I do not anticipate there be
3 any kind of media coverage with regard to this case.
4 If there is, divert your attention from that. If
5 there was an article, don't read it. If you,
6 something were to come on TV, don't listen to it.
7 You're to base your decision on what transpires here
8 in this courtroom. We'll see you back at 9:30, 9:30
9 sharp in the morning. Everyone remain seated as the
10 jury exits the courtroom.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 3:56 p.m.)

13 THE COURT: Is there anything from the
14 State before we recess for the evening?

15 MS. TIMMONS: No, sir, Your Honor.

16 THE COURT: Anything from Defense?

17 MR. MCKENZIE: Nothing, Your Honor.

18 THE COURT: There's been some discussion
19 about the lesser included charge of assault and
20 battery first degree or some other lesser included
21 offense. What is the Defendant's position on that?

22 MR. MCKENZIE: Your Honor, I think that in
23 that the, when South Carolina changed the, they
24 codified ABHAN to the lesser assault versus assault,
25 we no longer have ABHAN, the common law criminal

1 offense of ABHAN, I think that there were some case
2 law that said, you know, ABHAN was a lesser included
3 offense. I think now it's up to, I don't think that
4 we specifically have ruled on that; but I think that
5 a lesser included offense contains, obviously
6 contains the elements of the higher offense or the
7 included offense and I think assault or some type of
8 assault would include the same elements as CSC.

9 THE COURT: What are you requesting, that
10 I charge the lesser included offense? Assault and
11 battery first?

12 MR. MCKENZIE: Well, I think assault and
13 battery second is akin to the ABHAN, but Your Honor,
14 I leave that to your discretion.

15 THE COURT: Well, I think clearly the most
16 appropriate would be assault and battery first.

17 MR. MCKENZIE: Yes, sir.

18 THE COURT: But contemplates attempting to
19 do serious bodily harm or death like shooting a
20 person, shooting at a person and missing them or
21 almost hitting them with a car, and it also deals
22 with inappropriate touching. Assault and battery
23 second degree is zero to three. It's not, it's a,
24 contemplates physical contact and does not
25 contemplate sexual nature. What is your, what's

1 your position on that, Ms. Timmons?

2 MS. TIMMONS: Your Honor, I believe that
3 assault and battery first requires touching of
4 private parts, and it's not a requirement of
5 criminal sexual conduct minor in the third degree.
6 So I don't believe that there, 'cause criminal
7 sexual conduct with minor third degree requires any
8 touching, is done in a sexual manner by somebody
9 over 14 on a child so I don't believe that —

10 THE COURT: That doesn't make a whole lot
11 of sense because really criminal sexual conduct with
12 a minor in the third degree requires lewd and
13 lascivious motive which would certainly be sexual.

14 MS. TIMMONS: Yes. And if somebody
15 touches a minor without lewd and lascivious motive,
16 then I guess, I'm not sure, I don't think it's they
17 don't commit a crime.

18 THE COURT: Say that again now.

19 MS. TIMMONS: I said any touching done in
20 lewd, lascivious way is criminal sexual conduct. So
21 to suggest that it's not done in a lewd and
22 lascivious way, that it's just innocent, then
23 there's no crime committed unless it's done with
24 intention to, it is cause injury, then it would have
25 been assault and battery.

1 THE COURT: All right. Let's see what
2 Mr. Durant has to say about it. I'll want to hear
3 from Mr. McMillan as well.

4 MR. DURANT: Thank you, Your Honor, if it
5 please the Court. Your Honor, if we consider CSC
6 with a minor third or greater offense of A&B first,
7 the only element that would differ between the two
8 would be the victim's age. Because that's not the
9 issue here, we don't feel that A&B would be
10 appropriate as a lesser included. Even if it is a
11 lesser included in certain situations, in certain
12 special circumstances in which the victim's age is
13 an issue, then that might be appropriate to charge
14 A&B first. But when the victim was 11 years old,
15 it's not an issue in this trial, we don't think it
16 would be appropriate to charge lesser included even
17 if it is.

18 THE COURT: What do you have to say about
19 that?

20 MR. MCKENZIE: Your Honor, you know, a
21 lesser, my understanding of lesser included offense,
22 it has to contain not all of the elements of the
23 original offense or the higher offense, but it has
24 all the elements of the lesser included offense are
25 all contained in the higher offense and there may be

1 additional like the age has to be this age to this
2 age. So if you have -- and I don't, I can't cite
3 verbatim the statute about assault and battery
4 first, but I think the Court is correct that you can
5 have an assault and this jury can find, in its
6 discretion say that it did not contain lewd,
7 lascivious conduct, but yet it was an assault. And
8 so that, I think that would be a definition of a
9 lesser included offense.

10 THE COURT: Mr. McMillan, what do you have
11 to say about it?

12 MR. MCMILLAN: I'm gonna leave it to your
13 discretion, Your Honor.

14 MR. MCKENZIE: A very wise man beyond his
15 years, Your Honor.

16 THE COURT: I'm gonna ask, Ms. Timmons,
17 I'm gonna ask you take a look at that and formulate
18 all of your theories in that regard and your,
19 whatever your arguments are for not charging it, and
20 I'll ask Mr. McKenzie to do that as well and we'll
21 address that issue tomorrow.

22 MR. MCKENZIE: Yes, sir.

23 THE COURT: I understand we have two
24 expert witnesses in the morning and did you resolve
25 the issue with regard to the investigator?

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1 serious and contemplated mind.

2 Ms. Timmons, you're recognized.

3 MS. TIMMONS: Thank you, Judge. The State
4 calls Sarah McClam to the stand.

5 THE COURT: Yes, ma'am. If you can please
6 come forward. I'm gonna ask, if you could, place
7 your left hand on the Bible and raise your right as
8 the Clerk administers the oath.

9 THE CLERK: If you'll raise your right
10 hand, place your left hand on the Bible. Repeat
11 your name please.

12 THE WITNESS: Sarah Katherine McClam.

13 WHEREUPON,

14 **SARAH K. MCCLAM,**

15 having been duly sworn by the Clerk, testified
16 as follows:

17 THE COURT: If you would, pull that
18 microphone up close to you and speak slowly,
19 clearly, and loud in order that everybody can hear
20 you. Start with your full name please, ma'am.

21 THE WITNESS: Sarah Katherine McClam.

22 THE COURT: Ms. Timmons, you're
23 recognized.

24 MS. TIMMONS: Thank you.

25 **DIRECT EXAMINATION**

SW - S. MCCLAM - DIRECT

1 BY MS. TIMMONS:

2 Q Ms. McClam, would you tell us where are you
3 employed?

4 A I own my own business in Sumter, South Carolina,
5 Exceptional Therapeutic Counseling.

6 Q Okay. And what services do you provide?

7 A Therapeutic counseling to adolescents and adults.

8 Q Okay. And how long have you been, I guess —

9 A About 35 years all together. Worked at
10 Psychiatry Associates in Sumter, South Carolina, up
11 until February of this year. Before that I was
12 assistant commissioner at the Department of Juvenile
13 Justice, and before that I was a faculty member at
14 the University of Tennessee.

15 Q Okay, thank you. Did you have a chance to meet
16 *victim 2*

17 A Yes, I did.

18 Q Okay. Do you remember when did you first met
19 her?

20 A December 10th, 2013.

21 Q Okay. Do you remember who brought her to see
22 you?

23 A Her aunt and her grandmother.

24 Q Okay. And do you remember what was the primary
25 purpose of her coming to see you?

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1 A Approximately a year-and-a-half before her mother
2 had died and ~~Victim~~ had begun to experience grief
3 again related to her mother's death.

4 Q And why was she experiencing grief again?

5 A She was thinking about her mother a lot. She
6 wrote notes about her. She had gotten to the age
7 where she understood the gravity of death.

8 Q Okay. So what was the primary purpose of her, I
9 mean, of counseling?

10 A To help her resolve the grief.

11 Q Okay. And do you remember how long she had been
12 attending counseling?

13 A To address the grief she attended counseling from
14 December until February, and I thought she was able
15 to handle it at that point. She was doing well.

16 Q Okay. December of what year?

17 A 2013.

18 Q Till February?

19 A Of 2014.

20 Q Okay. Have you seen her any time after that?

21 A Yes, they came back in May of 2015. Again, the
22 aunt and grandmother said the grief had resurfaced.

23 Q Okay. Do you remember what were you discussing
24 during that session?

25 A She said she had a rough Mother's Day. This was

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1 in the month of May. She had written a letter to
2 her mother wanting to join her.

3 Q And did you address that with *Victim*?

4 A Yes, I did.

5 Q And were you happy with the results?

6 A She came to counseling for, from May through
7 August and we made a great deal of progress.

8 Q May 2015 till August 2015, right?

9 A Right, uh-huh.

10 Q And how was she doing in August, when you saw her
11 in August?

12 A She was doing very well. She was looking forward
13 to going back to school and being with her friends.
14 She had been staying in her grandmother's house and
15 that was very comfortable for her.

16 Q Okay. So after, during the visit on August 2015,
17 did you see any need to see her again?

18 A No, I told the aunt and grandmother if her
19 situation changed to bring her back to me, but at
20 that point she was discharged.

21 Q Okay. And when was the next time you saw her
22 after August?

23 A January 7th of 2016.

24 Q Okay, so between August 2015 and January 7th,
25 2016 you haven't seen *Victim*?

SW - S. MCCLAM - DIRECT

1 A No.

2 Q Okay. When you met with *Victim* on January 2016, I
3 guess what was the purpose of that meeting?

4 A It was an emergency work-in appointment. Her
5 aunt and grandmother said something hard had
6 happened to her and wanted *Victim* to talk to me about
7 it.

8 Q And she talked to you about it?

9 A Yes, she did.

10 Q Did she disclose anything to you?

11 A I sat and listened to her and she told me that on
12 New Year's Eve that her uncle had kissed her and put
13 ---

14 Q You don't have to go into ---

15 A She told me that incident and several others; and
16 again, I just sat and listened to her and let her
17 talk.

18 Q Okay. And did you do anything with that
19 information?

20 A Yes, I did.

21 Q Okay, what did you do?

22 A First I called Social Services and it was after
23 hours and got the on-call person. They said they
24 would call me the very next morning after they
25 staffed the case and saw if it was an appropriate

SW - S. MCCLAM - DIRECT

1 matter for them. I did speak with them the next
2 morning, and they told me to call the sheriff's
3 department in Clarendon County and that's what I
4 did.

5 Q Okay. Do you remember who did you talk with at
6 the sheriff's department?

7 A Linda Smith.

8 Q Okay. And, I guess you're a therapist. Do you
9 have a, are you one of those people that has to do
10 whenever you hear about any allegations of child
11 abuse that you have to report?

12 A Yes, I am a mandated reporter.

13 Q Okay. That's why you called DSS?

14 A Yes.

15 Q And the sheriff's office. Did *victim* when you met
16 with her on January 7th, did she told you why she
17 didn't tell anybody else about ---

18 MR. MCKENZIE: Objection, Your Honor.

19 THE COURT: Rephrase the question.

20 BY MS. TIMMONS:

21 Q Did *victim* on January 7th disclose to you any fear
22 she had that were related to that incident?

23 A Yes, most definitely.

24 Q What did she, what was her biggest fear?

25 A Her exact words to me was that her mother was

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1 deceased, her father was disabled, and she was very
2 afraid she was going to be taken away from her aunt
3 and grandmother's care.

4 Q Okay. Also, during those meetings that you had
5 with *Victim*, has she ever talked to you about her
6 daddy?

7 A Yes.

8 Q And what, how did she feel about her daddy?

9 A She has a very close relationship with him. He
10 visits regularly and they talk on the phone. She's
11 very concerned about his disability and the fact he
12 has seizures quite frequently.

13 Q Okay. Is she -- those seizures, is she scared of
14 them or?

15 A She was very afraid of them. They were very
16 frightening to her and if her friends were around
17 she was embarrassed because it would be very bad
18 activity to witness.

19 Q Okay. Do you know what kind of activity it was?

20 A Just like if, the way she described to me a
21 typical seizure you fall on the ground, you know, he
22 would have difficulty talking. His speech would be
23 mumbled. He would say things that didn't make
24 sense. On some occasions he would use the word
25 damn.

SW - S. MCCLAM - DIRECT

1 Q Okay, so she was scared for her daddy?

2 A Very.

3 Q Okay. And I guess whenever it was happening
4 around her friends she was a little bit embarrassed?

5 A Yes.

6 Q Okay. But she has very loving and affectionate
7 relationship with her daddy?

8 A Yes.

9 Q Okay. Court's indulgence. Ms. McClam, the
10 reason why you started seeing *Victoria* was to help her
11 deal with grief?

12 A That's correct.

13 Q She was suffering from depression?

14 A As the months went on I could see that it was
15 becoming to be more depression and anxious feelings.

16 Q Okay. And this type of feeling are common for a
17 child that has lost a parent, whenever you were
18 seeing her in 2013?

19 A Yes.

20 Q Okay. Then at some point have you referred her,
21 have you referred her to see a psychiatrist?

22 A Yes. In May of 2015 when I discerned that the
23 depression and anxiety were factors, I did refer her
24 to the doctor and she saw Doctor Presley Ward.

25 Q Okay. Was she put on any kind of medication?

SW - S. MCCLAM - DIRECT

1 A No, it was in June of that year and the doctor's
2 recommendations were to wait and monitor the ADD and
3 anxiety depression and continue her therapy with me.

4 Q Okay. Did you refer her to see a psychiatrist
5 any time later?

6 A Yes, in February of this year when she came to me
7 in my new practice she was struggling and struggling
8 in school, and I referred her to Doctor Gray for
9 evaluation.

10 Q Okay. So it wasn't until February 2017 that she
11 started seeing Doctor Gray?

12 A Yes.

13 Q Okay. And the primary reason why you referred
14 her to Doctor Gray was to help her with ADD?

15 A For her ADD and for some, well, symptomology that
16 I thought was, needed to be evaluated by the NG.

17 Q Okay. So up until February 2017 she wasn't put
18 on any medication, she was just a normal child
19 dealing with grief?

20 A Not to my knowledge she was not on any
21 medication.

22 Q Okay, all right.

23 MS. TIMMONS: Court's indulgence. No
24 further questions at this time.

25 THE COURT: Cross-examination, Mr.

SW - S. MCCLAM - CROSS

1 McKenzie.

2 MR. MCKENZIE: Thank you, Your Honor.

3 **CROSS-EXAMINATION**

4 BY MR. MCKENZIE:

5 Q Sarah, how are you doing today?

6 A Fine, thank you.

7 Q I think you stated that you originally saw her
8 sometime in December of 2013?

9 A That's correct.

10 Q And do you have your notes in front of you?

11 A I have the charts here.

12 Q Okay. Is that like these notes I have?

13 A Yes.

14 Q These are your handwritten notes that you would
15 have taken down at the time?

16 A Yes.

17 Q Okay. On 12/23 — well, I guess the initial, the
18 initial date was 12/10/13, right?

19 A That's correct.

20 Q You gave a, I guess you gave a history; is that
21 correct? You look on the second page your notes on
22 12/10/13.

23 A I have the doctor's notes here too so it takes a
24 moment to find them. Now you're asking for what
25 date, I'm sorry.

SW - S. MCCLAM - CROSS

1 Q 12/10/13, your initial visit.

2 A I don't think those are included in this copy.

3 THE COURT: Mr. McKenzie, you might want
4 to allow her to refresh her memory from what you
5 have and ask her.

6 MR. MCKENZIE: I have a copy of those.
7 I'll ask her if she has them.

8 THE WITNESS: Okay.

9 BY MR. MCKENZIE:

10 Q Have you found them?

11 A I got these from the other practice yesterday. I
12 think they neglected to copy everything.

13 Q I have a copy of those right there for you if you
14 want to take a look at them.

15 A Okay.

16 Q That, you recognize, you see the 10--12/10/13?

17 A Yes.

18 Q Is that your handwriting?

19 A It is.

20 Q And you would have written that note; is that
21 correct?

22 A That's correct.

23 Q And the nine year old patient brought in by aunt,
24 I think brought in by aunt and grandmother?

25 A Correct.

SW - S. MCCLAM - CROSS

1 Q Did they give you a history of what was going on?

2 A As always the parents give me a brief medical and
3 social history.

4 Q On the second page of that, of those notes,
5 almost at the bottom, mother possible bipolar.

6 A Uh-huh.

7 Q Would that have been something you would have
8 taken from the grandmother and the aunt?

9 A Yes.

10 Q Okay. Third page, father exhibits bad behavior
11 when seizing. Is that correct?

12 A Yes.

13 Q Okay. You wrote that note down?

14 A Yes.

15 Q Okay. Father exhibits bad behavior and you, I
16 think you said, elaborated. He had a typical
17 seizure and that would be unfortunately on the floor
18 kind of spazing around, but also, he would say cuss
19 words?

20 A On some occasions.

21 Q And yeah, and she -- and that frightened *victim*

22 A No, the seizure frightened *victim*

23 Q Okay, but cuss words are not?

24 A She was embarrassed.

25 Q Okay, all right. The next note is 12/23/13.

SW - S. MCCLAM - CROSS

- 1 A Yes.
- 2 Q You see that?
- 3 A Yes, I do.
- 4 Q Okay. Again, this time grandmother and father
- 5 brought her in.
- 6 A That's correct.
- 7 Q According to your, to your notes. And they gave
- 8 a history -- I'm assuming you got this from
- 9 grandmother; is that correct?
- 10 A Yes.
- 11 Q Quick temper; is that right?
- 12 A Yes.
- 13 Q Mood swings?
- 14 A Yes?
- 15 Q Paranoid. Did I read that correctly? Quick
- 16 temper.
- 17 A Mood swings, quick temper, some decline in
- 18 grades.
- 19 Q How about down a little bit further, patient
- 20 response to treatment. Is that paranoid right here
- 21 or is this a bad copy? I'll hand you mine and let
- 22 you see. What is that word right there?
- 23 A That is a bad copy. I don't know what that word
- 24 is.
- 25 Q Before that what does it say about therapy?

SW - S. MCCLAM - CROSS

- 1 Mother therapy.
- 2 A Patient was still grieving the death of her
- 3 mother?
- 4 Q Okay. But, you don't know whether that word says
- 5 paranoid or not?
- 6 A No, I'm not really sure about that.
- 7 Q Okay. And then a little bit further down patient
- 8 worries about father.
- 9 A Correct.
- 10 Q Okay. Did at any point at that time was patient
- 11 worried about her uncle?
- 12 A No.
- 13 Q Okay. On 1/8/14 the next time you saw her?
- 14 A Okay.
- 15 Q Your diagnosis was ADD and depression.
- 16 A Correct.
- 17 Q You see that? And then patient wishes her father
- 18 did not come as often.
- 19 A Correct.
- 20 Q Okay. Didn't you say earlier that the patient
- 21 had a good relationship with her father?
- 22 A Yes.
- 23 Q Okay. But at this point in time she didn't want
- 24 her, didn't want to see her father?
- 25 A No, that is not it. She had other activities.

SW - S. MCCLAM - CROSS

1 She was in dancing and other activities, and when he
2 came she would spend the majority of the time with
3 him.

4 Q Okay, but that's not what you put. You said
5 patient wished his father didn't come as often.

6 A For that reason.

7 Q Okay. But does it say that, for that reason? I
8 mean, I'm looking at your note.

9 A She wishes he did not come as often is all that
10 it says in here; but I know what she was telling me,
11 the reason she did not wish him to come as often.

12 Q Okay, but I don't see that anywhere in here about
13 him not coming as often 'cause she had other
14 activities to do.

15 A Well, this is an abbreviated version of a
16 session. I certainly couldn't write everything in a
17 session.

18 Q But you remember this session on January 8th,
19 2014?

20 A Yes, I remember ---

21 Q How many people do you see a day?

22 A Seven, seven or eight.

23 Q And so this is three years ago you remember this
24 specific session?

25 A I certainly remember the relationship she had

SW - S. MCCLAM - CROSS

1 with her father.

2 Q Okay, all right. On 12/10/14, if you'll look at
3 that one.

4 A Okay.

5 Q Diagnosis again, ADD depression. Worries about
6 father having seizures, you see that?

7 A Yes.

8 Q Okay. Any mention of Uncle Mike in this note?

9 A No.

10 Q Okay. You had a conference with the grandmother
11 that day?

12 A Yes.

13 Q Okay. You recall what that conference of that
14 grandmother was?

15 A I have a conference with patients at the end of
16 every session.

17 Q What do you remember? What'd you talk to
18 grandmama about?

19 A I would just ask her progress, what had been
20 going on with her, did he see her getting better,
21 how the symptoms were going. Anything significant I
22 would have indicated here.

23 Q Okay. On 5/8/18 ---

24 A 18?

25 Q 5/8-- I'm sorry, 15, 5/8/15, diagnosis changed.

SW - S. MCCLAM - CROSS

1 A Uh-huh.

2 Q What is MDD.?

3 A Major depressive disorder.

4 Q Okay. And unresolved grief, ADD?

5 A Yes.

6 Q So we went from just depression to major
7 depressive disorder?

8 A At that age with a child the diagnosis does
9 change.

10 Q Okay. You go down here, you say brought to
11 therapy by aunt and grandmother. Patient has been
12 making statements, aunt wanting to, or about being
13 ---

14 A About wanting to be with her mother.

15 Q So the child was at this point in time so
16 depressed she wanted to die?

17 A She was depressed. She did not indicate to me
18 that she wanted to harm herself.

19 Q Okay, but did you see the note she wrote?

20 A No, I did not.

21 Q Okay. But the grandmother and mother said there
22 was a note written, right?

23 A Correct.

24 Q And you had not made a reference to any note in
25 your records prior to 5/8/15; is that correct?

SW - S. MCCLAM - CROSS

1 A Wrote depressing letter so that was my first
2 knowledge on it.

3 Q Wrote a depressing letter.

4 A Uh-huh.

5 Q Said she wanted to be with her mother.

6 A I don't know the contents of the letter.

7 Q You never saw it? No one ever showed it to you?

8 A No.

9 Q But in '10, in 2013 that note wasn't written that
10 you're aware of?

11 A I don't know when the note was written.

12 Q Okay, but ---

13 A I think there have been several episodes of *victim*
14 expressing her feelings.

15 Q Okay.

16 A Writing.

17 Q There's no record of you writing that down. And
18 you recall everything that she said, right?

19 A Uh-huh. I wrote she wrote the depressing letter
20 on May of '15.

21 Q Okay. So the first time you were made aware of a
22 depressing letter was on that date?

23 A Yes.

24 Q Does any reference in that note to Uncle Mike?

25 A No.

SW - S. MCCLAM - CROSS

1 Q You also say she wants to join her mother.

2 Patient will be referred to Doctor Gray.

3 A Correct.

4 Q Doctor Gray is a psychiatrist?

5 A Correct.

6 Q Okay. Was the patient seen by Doctor Gray?

7 A She was seen by the other psychiatrist in
8 practice.

9 Q Okay. And you don't know what that psychiatrist
10 prescribed to her?

11 A Yes, I have that record. She didn't prescribe
12 anything to her.

13 Q Okay. On that date?

14 A Right.

15 Q Now how many times did he see her?

16 A No, this is a female psychiatrist?

17 Q How many times did she see her?

18 A She saw her one time in June of 2015.

19 Q June of 2015?

20 A Pressley Borick.

21 Q Okay, we'll get to that, okay. She said she
22 was — on 5/8/15, again, that same note. She was
23 having mood swings, wrote depressing letter, wants
24 to join her mother, refer to Doctor Gray, but she
25 didn't go see Doctor Gray.

SW - S. MCCLAM - CROSS

1 A Well, they usually give the patient the first
2 available psychiatrist.

3 Q Okay. But her condition changed so much she went
4 from counseling to go see a psychiatrist?

5 A Her ability to express her feelings had advanced
6 with her age and she understood the gravity of the
7 situation.

8 Q Okay. The next note is 5/19/15 that you saw her.
9 This would have been before she saw the psychiatrist
10 according to you, what you said, right? You have
11 5/19/15?

12 A I have to get back to those notes. 6/9/15, June
13 9th.

14 Q 5/9/15 — 5/9/15, I'm sorry.

15 A Okay, I have those.

16 Q Okay, you see that note?

17 A Yes, I do.

18 Q All right. Diagnosis, MDD, ADD, unresolved
19 grief. MDD, again, is Major Depressive Disorder.

20 A Correct.

21 Q Okay. Aunt, per your note, aunt feels patient
22 acts out to get attention. You see that?

23 A Yes, I do see that.

24 Q Okay. Patient gets along with aunt and her
25 husband.

SW - S. MCCLAM - CROSS

1 A Correct.

2 Q That would be her uncle; would it not?

3 A Yes.

4 Q Okay. First reference to Uncle Mike; isn't it?

5 A Yes.

6 Q Okay. Anything bad about Uncle Mike in this
7 note?

8 A No.

9 Q Okay. Let's go to June 9th, I think -- yeah,
10 June 9th. You see that?

11 A Yes.

12 Q MDD, GAD, unresolved grief. At this time patient
13 doing better per fifth grade A and B honor roll.

14 You see that?

15 A Yes.

16 Q Okay. Then we have a record which appears to
17 be -- is that your, is the next one your note again?

18 A July 9th, 2015, is my note?

19 Q July 9th, '5?

20 A Yes.

21 Q And then that one it says, again, mother possible
22 bipolar?

23 A No, not on July 9th, '15.

24 Q Okay, I'm sorry. I see your July 9th. There's a
25 note in between that and it may be the same note

SW - S. MCCLAM - CROSS

1 that we've already been over. That may be a ---

2 A Apparently so.

3 Q You see July 9th, '15. Okay. Again, patient
4 worried about father having seizure. On July 9th,
5 2015?

6 A Yes.

7 Q Now *victim* opened up to you about her concerns and
8 her fears; did she not?

9 A She did about her father.

10 Q About her father?

11 A Uh-huh.

12 Q And you had a very close rapport with her; is
13 that correct?

14 A Yes.

15 Q She trusted you?

16 A Yes.

17 Q Okay. Apparently there is a record here and
18 you'll see a 6/11/15, is that the female
19 psychiatrist you're talking about right here written
20 beside?

21 A Yes.

22 Q Is that whenever she would have seen *victim*?

23 A That is correct.

24 Q Okay. And as far as you know that's the only
25 time she saw her until August of 2015?

SW - S. MCCLAM - CROSS

1 A The only time Doctor Presley wanted, saw her
2 June 11th, 2015.

3 Q Okay. Look on a little bit further down on
4 July 28th, '15. Who saw her then? This is not your
5 handwriting.

6 A Okay.

7 MS. TIMMONS: Your Honor, objection, it
8 calls for hearsay. I don't think that this witness
9 has a basis, she has no knowledge of that.

10 THE COURT: Well, I think you -- although
11 she's not been qualified as such, she's been
12 tendered as a expert witness. An expert is by their
13 very nature rely on hearsay testimony, or hearsay
14 information.

15 BY MR. MCKENZIE:

16 Q You see a progress record -- thank you, Your
17 Honor -- on July 28th, 2015?

18 A Yes, I do.

19 Q Who wrote this?

20 A Doctor Presley Ward's handwriting.

21 Q Okay. So Doctor Ward would have seen her twice
22 that summer; --

23 A Right.

24 Q --would she not?

25 A Yes.

SW - S. MCCLAM - CROSS

1 Q So the one time in June that she testified on
2 direct and on cross you're saying she also saw her
3 on July 28th?

4 A Yes, we're totally separate in that practice so I
5 would not have been, had knowledge of her visits to
6 the doctor.

7 Q And you don't, and in that practice Doctor Gray
8 and the doctors, they would offer, give free samples
9 of drugs; don't they?

10 A Yes, they do.

11 Q Okay. Now you saw her 8/14/2015?

12 A Okay, let me get those notes again.

13 Q You see that one?

14 A I'm not there yet. Yes, I have that note,
15 uh-huh.

16 Q And any mention of Uncle Mike?

17 A No.

18 Q What is her concern on 8/14/2015?

19 A Hasn't seen father in a while. She worries about
20 him and she'd been on a month's vacation and she had
21 missed seeing him.

22 Q Okay. Is she also afraid of him having seizure
23 again?

24 A Correct. She's always afraid of his having a
25 seizure.

SW - S. MCCLAM - CROSS

1 Q Okay. In that note where does it say that you
2 don't need to come back to see me except PRN? PRN
3 means as needed.

4 A That's what I told the parents that brought her.

5 Q I understand that, but wouldn't you have put that
6 in the note?

7 A Not necessarily, no.

8 Q But no where ---

9 A We leave the case open. I did not discharge her,
10 close the case. I said if she needs to return,
11 call.

12 Q At this point she was denied having any sad
13 thoughts, okay. And grandmother joined session,
14 confirmed patient's good behavior this time.

15 A Uh-huh.

16 Q Right? And what's the last supported therapy?

17 A Given today.

18 Q Given today?

19 A Uh-huh.

20 Q But absolutely no record or anything on that
21 record that says you're going great, don't come back
22 to see me unless you need to?

23 A I guess you don't understand our process. If I
24 were to discharge the patient that would have been
25 written there. This is an open case that she's able

SW - S. MCCLAM - CROSS

1 to come back to me without having to be readmitted
2 to the practice.

3 Q Okay. And this issue was so serious that she saw
4 a psychiatrist twice during that summer from the May
5 incident where she was having sad thoughts, wrote
6 bad letter, and it was so serious that by August she
7 was completely better.

8 A That is out goal. I think four months is a
9 reasonable time frame that she did get better.

10 Q Okay. But all of those records prior to, and I
11 think it was exactly, you had seen her exactly ten
12 times since 2013, and two psychiatry visits in that
13 time frame; in none of those time frames did she
14 ever mention to you any bad conduct for Uncle Mike?

15 A No.

16 Q She mentioned bad conduct for dad, but not for
17 Uncle Mike.

18 A I would not say it was bad conduct from her
19 father. It was upsetting conduct.

20 Q All right. I've used the word conduct. Your
21 note says bad behavior.

22 A Uh-huh.

23 Q I apologize, okay. All right. On 1/7/16 she
24 came into the session and I think you wrote down --
25 this is 1/7/16. You have that note in front you?

SW - S. MCCLAM - CROSS

1 A I'm sorry, I did not put these together, the
2 other office did so. Yes, I do have that.

3 Q Okay. She told about some bad conduct first time
4 Uncle Mike?

5 A Correct.

6 Q And you have to report this to DSS and to law
7 enforcement?

8 A Correct.

9 Q Who else, are parents, do parents required to do
10 that under the law, legal guardians?

11 A My only concern is myself, sir, and my
12 obligations.

13 Q I understand that, your obligation, but you said
14 you had to do it 'cause you're a mandatory reporter.

15 A Uh-huh.

16 Q Do you know who else are mandatory reporters?

17 A A variety of people.

18 Q Do you know whether parents or legal guardians
19 are?

20 A No, I don't.

21 Q They're not -- you don't know?

22 A No.

23 Q Okay. Who is MSW?

24 A That's myself.

25 Q That's yourself.

SW - S. MCCLAM - CROSS

1 A Yeah.

2 Q Okay. So patient — first of all, you met I
3 believe with the aunt and grandmother?

4 A Correct.

5 Q They gave you a history of what was going on?

6 A They told me it was an emergency ~~victim~~ was very
7 upset and that they wanted her to talk to me.

8 Q So you did not know anything about it other than
9 it was an emergent situation?

10 A You're correct.

11 Q Grandmother or aunt didn't tell you a word about
12 it?

13 A No.

14 Q Okay. All right, so she comes in. She said she
15 was, that her Uncle Mike attempted to kiss her, or
16 kissed her.

17 A Correct.

18 Q Okay. He -- you also said that she said he put
19 his hand under her shirt.

20 A Correct.

21 Q Did she say that he touched her breasts?

22 A I wrote exactly what she said. He put his hand
23 under my shirt.

24 Q But she did not say he touched my boobies,
25 breast,---

SW - S. MCCLAM - CROSS

1 A No.

2 Q —Anything that you would refer to as to a —

3 A No.

4 Q She did not say that?

5 A And there was a third thing she said.

6 Q And going back in 2013 up until May you never
7 heard of a suicide note?

8 A I was told that she would write bad things, her
9 feelings in a journal, that they had found pieces of
10 paper in her bedroom where she had written sad
11 thoughts.

12 Q But —

13 A I have not seen any letter.

14 Q But they never showed them to you?

15 A No.

16 Q But on May 8 it was so serious that they brought
17 her in, right?

18 A Yes.

19 Q And you — look at that May 8 note again.

20 A Yes.

21 Q And in that note about midways down you said late
22 mother was bipolar.

23 A That's what they told me.

24 Q Does bipolar run in families?

25 A Thinking —

SW - S. MCCLAM - REDIRECT

1 MS. TIMMONS: Objection, it's not
2 relevant, simply has no —

3 MR. MCKENZIE: No other questions.

4 THE COURT: Overruled.

5 MS. TIMMONS: Your Honor, may we approach
6 with Defense attorney?

7 THE COURT: Yeah.

8 (WHEREUPON, counsel approached the

9 Bench for an off-the-record discussion.)

10 **REDIRECT EXAMINATION**

11 BY MS. TIMMONS:

12 Q Ms. McClam, just briefly, we're here on trial for
13 the incidents that happened between October 2015 and
14 January and December 31st, 2015. Mr. McKenzie asked
15 you about meetings that you had with *victim* between
16 December 2013 and February 2014, right? That's
17 correct?

18 A Correct.

19 Q And she made no mention of Uncle Mike; is that
20 correct?

21 A Correct?

22 Q Because it had been before the offenses that
23 happened in October and December of 2015?

24 MR. MCKENZIE: Objection, Your Honor,
25 leading the witness.

SW - S. MCCLAM - REDIRECT

1 THE COURT: Sustained.

2 MS. TIMMONS: Okay.

3 THE COURT: This is redirect, not cross,
4 so you need to ask a direct question.

5 BY MS. TIMMONS:

6 Q Okay. And the only thing that *Victim* was -- what
7 were the only things that *Victim* was diagnosed with?

8 A Originally adjustment disorder with anxiety and
9 unresolved grief.

10 Q Okay. And you, the reason why you referred her
11 to a psychiatrist was?

12 A Because she was struggling, she was having bad
13 thoughts, she was getting more depressed and
14 extremely anxious, difficulty sleeping at night.

15 Q Okay. And what about her grades?

16 A They were spiraling downward.

17 Q Can you tell us what is ADD.

18 A Attention Deficit Disorder.

19 Q Okay. Can you explain that, how it ---

20 A That's when a child would have a difficulty
21 focusing and concentrating on their schoolwork.

22 Q Okay.

23 MS. TIMMONS: I don't have any further
24 questions.

25 THE COURT: You may step down. Thank you

SW - K. MARLOW - DIRECT

1 ma'am, you're free to leave.

2 Ms. Timmons, you're recognized. You may
3 call your next witness.

4 MS. TIMMONS: Thank you, Your Honor. The
5 State is gonna call Kimberly Marlow.

6 (WHEREUPON, State Exhibit No. 1 was
7 was marked for identification only.)

8 MR. MCKENZIE: Your Honor, there's another
9 fact witness in the courtroom. I'd ask that --
10 Linda Smith was here. You got her out. Thank you,
11 Your Honor.

12 THE COURT: Yes, ma'am, if you can please
13 come forward, place your left hand on the Bible and
14 raise your right hand as the Clerk administers the
15 oath.

16 THE CLERK: Repeat your name please.

17 THE WITNESS: Kimberly Marlowe.

18 WHEREUPON,

19 **KIMBERLY MARLOW,**
20 having been duly sworn by the Clerk, testified
21 as follows:

22 THE COURT: I ask you, if you could, to
23 have a seat in the witness chair up there. Pull up
24 real close to that microphone. Speak loudly,
25 clearly, and slowly in order that we hear everything

SW - K. MARLOW - DIRECT

1 that you have to say. Let's start with your full
2 name please.

3 THE WITNESS: Kimberly Marlow.

4 MS. TIMMONS: Thank you, Your Honor.

5 **DIRECT EXAMINATION**

6 BY MS. TIMMONS:

7 Q Investigator Marlow, can you tell us where do you
8 work, how long have you been working there?

9 A I work now with the Lake City Police Department.

10 I've been there since May 15th of this year. I
11 started out in law enforcement with the Manning
12 Police Department in 2007. I worked there for two
13 years on patrol. I left there and went to the
14 Clarendon County Sheriff's Office where I worked
15 for, from November of 2009 until January of 2012 on
16 patrol. Then I left, or I left patrol and went to
17 narcotics. And in September of 2013 I started in
18 criminal investigations with the Clarendon County
19 Sheriff's Office.

20 Q Okay. Are you familiar with Miranda warnings?

21 A Yes, I am.

22 Q Did you ever had occasion to advise suspects of
23 those rights?

24 A Yes, ma'am.

25 Q Okay. Did you have an occasion to become

SW - K. MARLOW - DIRECT

1 involved in the investigation of this case?

2 A Yes, ma'am.

3 Q Okay. Do you remember how were you brought into
4 this case?

5 A To the best of my knowledge I think Sergeant
6 Smith came back to investigations and stated that
7 she had a victim and her aunt who were in the
8 conference room at the sheriff's office and that she
9 needed somebody to speak with them so I went up and
10 spoke with Ms. Leigh Dinkins. And her father and —
11 give me one second to look at my notes, I can tell
12 you who all was there. I do believe it was her,
13 Ms. Leigh Dinkins which is *Victim's* aunt, Tommy Riggins
14 which is Leigh's father, and Barbara Reed which I
15 believe is Leigh's mother who were in the room when
16 they were in the conference room.

17 Q Did you talk to *Victim*?

18 A I did not.

19 Q Okay. Can you tell us why?

20 A I am not trained to speak with kids so that is
21 something that we send them for a forensic interview
22 with somebody who is actually trained to speak with
23 kids and they know how to ask them questions and —

24 Q So there is proper protocol, I guess, special
25 protocol that you have to follow any time under

SW - K. MARLOW - DIRECT

1 allegations of child sex abuse?

2 A Yes, there is.

3 Q And you followed that protocol?

4 A Yes.

5 Q Okay. Did you collect any physical evidence?

6 A No, I did not.

7 Q Can you tell us why you didn't.

8 A We came in to the sheriff's office about a week
9 prior, I mean, a week after the incident happened.

10 If I'm not mistaken it was like eight days. So
11 there would have been no physical evidence from no
12 collect.

13 Q Okay.

14 A And it was also just an alleged kiss on the lips
15 and so there really wouldn't have been anything for
16 us. And he lives in the home so there would have
17 been no physical evidence at the home of DNA or
18 anything such as that inside the home.

19 Q Okay, so, you wouldn't be able to collect any
20 physical evidence that would make this crime more or
21 less probable?

22 A No.

23 Q Just because of the nature of the accusation?

24 A No, I don't.

25 Q Okay. Did you, did you had a chance to talk to

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- 1 the defendant in this case?
- 2 A Yes, I did. On January 11th.
- 3 Q Okay. Do you remember where it happened?
- 4 A Yes, that was at the Clarendon County Sheriff's
- 5 Office in one of our interview rooms.
- 6 Q Okay. Did you advise the defendant of his
- 7 constitutional rights?
- 8 A Yes, I did.
- 9 Q Do you know what kind of rights?
- 10 A Yes, I have the Miranda.
- 11 Q Did you use anything to assist you?
- 12 A Yes. We use a, we now use a Miranda sheet and it
- 13 has — we use a Miranda sheet which is, it has all
- 14 the rights on it so we, the way I always do it is I
- 15 a copy in front of whoever I'm speaking with or
- 16 whoever I'm interviewing, I sit a copy in front of
- 17 them and I take a copy and I read them and tell them
- 18 if they understand to initial beside it and then —
- 19 would you like me to read the actual sheet or?
- 20 Q I guess it's going to be played on the —
- 21 A But, yes, and he just either signed it if he
- 22 agrees or says no, he does not.
- 23 Q Okay. Was anyone else present?
- 24 A No, ma'am, but it was video and audio recorded.
- 25 Q Okay. Do you know where defendant worked at the

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1 time of the incident?

2 A Santee Cooper Urgent Care.

3 Q Do you know what his occupation?

4 A He was a nurse.

5 Q And he's educated?

6 A Yes.

7 Q Do you remember what was his physical appearance?

8 A He seemed to be well put together. He did not
9 seem to be under the influence of any kind of drugs
10 or alcohol. He seemed to be very smart. He seemed
11 to, didn't seem out of the ordinary.

12 Q Okay. Have you ever dealt with people who are
13 under the influence of alcohol or narcotics?

14 A Yes.

15 Q Okay. Did defendant appear to be intoxicated by
16 anything.

17 A No.

18 Q How did he respond to the questions that you read
19 him and his rights?

20 A He agreed and he said that he understood each
21 question I asked him and then he agreed to speak, to
22 speak with me.

23 Q Okay. And his speech was coherent?

24 A Yes.

25 Q Okay. So you didn't coerce him into talking to

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1 you, you didn't do any threats?

2 A No, I did not.

3 Q Okay. I'm gonna show you what's been marked as
4 State's Exhibit Number 1.

5 A Okay.

6 MR. MCKENZIE: Your Honor, may I approach?

7 THE COURT: Yes.

8 (WHEREUPON, counsel approached the
9 Bench for an off-the-record discussion.)

10 MR. MCKENZIE: Thank you, Your Honor.

11 BY MS. TIMMONS:

12 Q Investigator Marlow, you testified that you had a
13 chance to talk to defendant?

14 A Yes, I did.

15 Q Did you ask him about an incident that occurred
16 on New Year's Eve?

17 A Yes, I did.

18 Q And —

19 THE COURT: Might counsel approach the
20 Bench for a moment.

21 (WHEREUPON, counsel approached the
22 Bench for an off-the-record discussion.)

23 THE COURT: All right, let's proceed.

24 BY MS. TIMMONS:

25 Q Investigator Marlow, whenever you asked defendant

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1 about the New Year's Eve incident what did he tell
2 you?

3 A He first stated that he had kissed her and then
4 he changed his story that he kissed her on the
5 forehead and then he changed his story to — or, I'm
6 sorry, he didn't change his story. He then added
7 that he kissed his fingers and touched it to her
8 mouth, but that he did not attempt to stick his
9 tongue in her mouth.

10 Q So he changed his story —

11 A Yes.

12 Q —several times?

13 A Yes.

14 MS. TIMMONS: Court's indulgence.

15 BY MS. TIMMONS:

16 Q And Investigator Marlow, whenever you talked to
17 the defendant what was the date?

18 A It was January 11th, 2016.

19 Q And was it prior to forensic interview?

20 A Yes, it was. It was prior to the forensic
21 interview.

22 Q So you had no knowledge of the other facts?

23 A No.

24 Q So the only reason why you asked defendant on the
25 New Year's Eve incident was that was the only one

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1 you had knowledge of; is that correct?

2 A My understanding was I did ask him about other
3 accusations that *victim* made.

4 Q Okay. But you, at this time it was prior to the
5 forensic interview, you only knew about New Year's
6 Eve?

7 A There were other incidents that I knew about or
8 that I didn't necessarily know about, but that had
9 been brought to my attention that had been -- they
10 had not come from *victim* necessarily. They didn't, it
11 wasn't, I never spoke to her so it was just stuff
12 that I heard.

13 MR. DURANT: Your Honor, may we approach.

14 THE COURT: Yes.

15 (WHEREUPON, counsel approached the
16 Bench for an off-the-record discussion.)

17 THE COURT: Madam Forelady, ladies and
18 gentlemen of the jury, we have certain legal matters
19 that we need to resolve outside of your presence. I
20 ask you to retire to the jury room. Once again, do
21 not discuss the case. Madam Forelady, enforce that
22 rule.

23 (WHEREUPON, the jury was removed from the
24 courtroom at 10:47 a.m.)

25 THE COURT: A leading question was asked

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1 by the State about the reason why she didn't ask
2 about other instances, and obviously opening up the
3 door or other instances clearly could elicit from
4 this witness inadmissible prior bad acts. And it's
5 actually the solicitor Mr. Durant who objected to it
6 seeing the problems that we would get into, all
7 right. And number one, I'm not gonna allow you to
8 ask the leading question although to some extent
9 she's already asked it, but what do you intend to
10 elicit from this witness with regard to prior bad
11 acts?

12 MS. TIMMONS: I had no intention to elicit
13 prior bad acts. My only, I guess the only thing
14 that I wanted to elicit from this witness was that
15 she didn't question the defendant about the other
16 charged offenses, the two October 27th and
17 December 26th because she had no knowledge of it.

18 THE COURT: Apparently she does 'cause she
19 said that she did know about other acts.

20 MS. TIMMONS: Well, I assumed she didn't
21 know.

22 THE COURT: Okay. Well, that's a very
23 real problem.

24 But Mr. McKenzie, what do you have to say
25 about that?

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1 MR. MCKENZIE: Your Honor, I plan on
2 questioning her about her knowledge and I don't know
3 whether she's reading from a report. She keeps
4 looking down. I have no idea what she's ---

5 THE COURT: You do have a right to look at
6 the notes and ---

7 THE WITNESS: Yeah, it's just my case
8 notes.

9 MR. MCKENZIE: That's your notes?

10 THE WITNESS: Uh-huh.

11 MR. MCKENZIE: I haven't received those.

12 THE COURT: Well, you're not entitled to
13 case notes as a general rule.

14 MR. MCKENZIE: But I would like to see
15 those obviously.

16 THE COURT: You can since she's referred
17 to them you can see them, but as a general rule case
18 notes are not discoverable.

19 MR. MCKENZIE: Your Honor, I would like
20 to --- I'm going to cross-examine her, but I do not
21 want to get into the situation that you've already
22 ruled on 404(b) evidence.

23 THE COURT: All right, well, let's, in
24 fairness to this witness and in an attempt not to
25 cause a mistrial by the State tendering inadmissible

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1 matters, what specifically do you intend to get
2 into? Apparently ---

3 MR. MCKENZIE: Your Honor ---

4 THE COURT: Apparently, the State does not
5 want to ask anymore about other instances; is that
6 correct?

7 MS. TIMMONS: That's correct, Your Honor.

8 THE COURT: But you want in
9 cross-examination to talk about other instances.
10 And what specifically do you want to talk about and
11 let's delineate for this witness what is
12 inadmissible with regard to previous relationships
13 and previous allegations.

14 MR. MCKENZIE: Okay. Your Honor, I have,
15 there were three warrants initially in this case.

16 THE COURT: Right.

17 MR. MCKENZIE: That my client charged on.
18 The indictment was later admitted. Obviously, I'm
19 sorry, the indictment was later amended to reflect a
20 fourth charge. One of the things I want to bring
21 out is the fact that that fourth charge was never
22 discussed 'cause my client was not originally
23 charged with it so these all the four charges in the
24 indictments, the only thing that I would be
25 discussing with her. So, and her warrants that she

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1 actually signed in regards to the facts and the
2 knowledges of the case I think are different than
3 what been brought out in testimony today or
4 yesterday.

5 THE COURT: Okay.

6 MR. MCKENZIE: So I would be just
7 cross-examining her on the warrants of that were
8 charged as part of the original indictment and the
9 four counts in the indictment.

10 THE COURT: And apparently there's been
11 some discussion about allegations of prior
12 misconduct with another child from another
13 relationship.

14 MR. MCKENZIE: That's correct, Your Honor.

15 THE COURT: And are you aware of that?

16 THE WITNESS: Yes, sir, I asked him during
17 the interview about that.

18 THE COURT: Okay, we aren't getting into
19 that; that's inadmissible. You can talk about
20 anything -- and let's delineate for this witness the
21 specific events and the indictment so she doesn't
22 get into anything else. Madam Solicitor, list out
23 the two October and two December events.

24 MS. TIMMONS: There are two incidents that
25 happened on October 27th and one of them is *victim* was

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1 laying in her aunt's bed. She was laying on her
2 tummy. Defendant came to her laying on, got on top
3 of her on all fours, started thrusting so that his
4 pelvic area was touching her.

5 THE WITNESS: And that's the one I done
6 the warrant for, correct?

7 BY MS. TIMMONS:

8 Q I guess. Okay, there's another allegation that
9 on October on the same day whenever ~~Victim~~ was lying
10 on the couch, her face facing to the back of the
11 couch he made her touch his penis. And then there's
12 allegation that on December 26th, day after
13 Christmas, she was playing a game, Playstation.
14 Defendant came to her room, makes her sit on his lap
15 and started touching her breast. And then New
16 Year's Eve incident whenever both victim and
17 defendant were laying on the couch, he, when he
18 thought she was asleep he kissed her and put his
19 tongue in her mouth. So there are those four.
20 He's, yeah, he's charged with that or indicted for
21 those four offenses.

22 THE COURT: Okay. And do you want to talk
23 about anything other than the four indicted cases?

24 MR. MCKENZIE: I do not.

25 THE COURT: Well, let's restrict that

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1 testimony to those four instances.

2 THE WITNESS: Okay.

3 THE COURT: And you made reference to the
4 fact that she'd been referring to notes. She indeed
5 was. I see the notes here. You can read those
6 right now.

7 MR. MCKENZIE: Thank you, Your Honor.

8 MS. TIMMONS: I need to read those too
9 just to make sure.

10 (Pause.)

11 MR. MCKENZIE: There's a part about the --
12 and I'll just read this, Your Honor. "Michael
13 stated he had been accused of inappropriately
14 touching his stepdaughter Heather from his previous
15 marriage. Mike stated it was Heather, was just out
16 of high school," so.

17 THE COURT: There will be no discussion
18 about that. You understand that?

19 THE WITNESS: Yes, sir, I understand that.

20 MR. MCKENZIE: I don't want that
21 inadvertently discussed. If I'm asking about her
22 notes, I don't want that obviously to come up.
23 Because first of all, it's not even tangentially
24 related because the child was out of high school so,
25 you know, so the problem he was an adult; but

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1 anyway, having said that.

2 MS. TIMMONS: I guess, Judge, to be clear
3 so Mr. McKenzie is gonna cross-examine investigator
4 about I guess the warrant incident, and I guess he's
5 not allowed to cross-examine her about self-serving
6 statement made by the defendant, right, it's a
7 hearsay.

8 THE COURT: No, he can ask — any
9 statement of the defendant is admissible.

10 MS. TIMMONS: Even if it's self-serving?

11 THE COURT: You say it's self-serving; he
12 says it's exculpatory. Any statement of a defendant
13 is always admissible. And if she agrees that he
14 said that, then it's admissible and the jury will
15 make a determination as to give, and give it
16 whatever weight they think it deserves.

17 MR. DURANT: We recognize the Court's
18 position and don't mean to be argumentative, I
19 believe there is case law that states that the
20 defense is not allowed to ask investigator about the
21 defendant self-serving statements. There's case law
22 very on point that says that that's hearsay, it's
23 not admissible if — you can't get away around
24 putting your client on the stand by getting his
25 story in through the investigator.

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1 THE COURT: Well, I disagree and I'm gonna
2 allow him to ask about any statements that he made
3 to the investigator. And if she says that did not
4 take place, then that's one thing; but if she says
5 it did take place, I'm gonna allow him to ask her.
6 All right, very good. Anything else?

7 (No response.)

8 THE COURT: All right, let's bring the
9 jury out.

10 (WHEREUPON, the jury was returned to the
11 courtroom at approximately 10:52 a.m.,
12 and the following proceedings commenced
13 in open court.)

14 THE COURT: Mr. McKenzie, you're
15 recognized.

16 **CROSS-EXAMINATION**

17 BY MR. MCKENZIE:

18 Q Investigator Marlow, you currently work for the
19 Lexington City Police Department?

20 A Yes, sir, I do.

21 Q Okay. And there was no physical evidence that
22 this incident took place or any of these incidents
23 took place?

24 A No, sir, but that's normal.

25 Q That's normal?

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1 A Yes, sir.

2 Q You never have physical evidence in these kind of
3 cases?

4 A There's some occasions where there are, but
5 there's -- most of the time there's not.

6 Q Now the defendant you took, did the interview
7 with him, and he denied these allegations?

8 A Yes, sir, as far as I can remember.

9 Q I'm sorry?

10 A Yes, sir.

11 Q Okay. And you actually did three warrants in
12 this case?

13 A Yes, sir.

14 Q You signed them yourself?

15 A Yes, sir.

16 Q I'll hand them to you. You didn't do four
17 warrants, did you?

18 A No, sir, I did not.

19 Q Okay. Now you know he's indicted for four
20 counts, right?

21 A Yes, sir.

22 Q Okay. But only three warrants were ever actually
23 served?

24 A Yes, sir.

25 Q Okay. Did you ever talk to the victim?

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1 A I never interviewed the victim, no.

2 Q Okay. So you never interviewed the victim in
3 this case. Wouldn't that be something you think you
4 need do as the investigative officer?

5 A No, sir, I'm not trained to speak with kids and
6 defense attorneys love to say that our questions are
7 leading so that's why we choose to have a forensic
8 interview, somebody that are in -- where somebody is
9 trained in speaking with kids to make sure they're
10 not asking leading questions to the children.

11 Q So where did you get your information from?

12 A The forensic interview.

13 Q Okay. And did you talk to the aunt and
14 grandmother?

15 A Yes.

16 Q Okay, so you got information from them also?

17 A Yes, sir.

18 Q And would you have talked to them before you
19 signed these warrants?

20 A Yes, sir.

21 Q Okay. Now there's a warrant dated October 27th
22 and let's get the proper warrant number. This would
23 be one ending in ten.

24 A Uh-huh.

25 Q You see that warrant?

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1 A Yes, sir.

2 Q This warrant says on October 27th, 2015, the
3 defendant Michael Dinkins did knowingly and
4 willfully commit the offense of criminal sexual
5 conduct with a minor third degree in that he put the
6 11 year old victim's hand on his penis.

7 A Yes.

8 Q And that's actually what's told to you?

9 A That was told to the forensic interviewer, and I
10 watched the forensic interview.

11 Q And that's on the forensic interview?

12 A To the best of my knowledge. I don't know
13 whether it's in those exact terms, but that's...

14 Q Nothing about that when she had supposed-- this
15 is when she was supposedly asleep on the couch; is
16 that correct?

17 A I don't recall.

18 Q Okay. You don't recall?

19 A No, sir?

20 Q Nothing that she -- and your testimony is that
21 *Victim* said penis?

22 A No, I'm saying I don't recall her exact
23 terminology for what was used in saying that.

24 Q Okay, but that's what you wrote in the warrant.
25 This is an affidavit and it's a sworn statement.

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1 A Yes, but it's not in quotation marks. I mean, if
2 she called it a man part I wouldn't put that in the
3 warrant. I would have changed that to penis.

4 Q If she said her back was turned and she didn't
5 see anything, would you still think this was correct
6 enunciation of what happened?

7 A Say that one more time.

8 Q Okay. If she had stated that her back was turned
9 to Mr. Dinkins, she never actually saw it, saw
10 anything? I mean, is this word your word or is this
11 word *victim's* word?

12 A It's probably mine.

13 Q Okay, all right. Let's move on to the next
14 warrant.

15 A But it was inferred by *victim* that that ---

16 Q It was inferred, okay.

17 A If it was, if it would have been --- I'm not sure
18 exactly the exact wording that she used, but it
19 would have been something ---

20 Q Investigator Marlow, you do this for a living.

21 A Uh-huh.

22 Q Isn't it better to instead of inferring things to
23 know, to have facts?

24 A Yes, sir, but if I say that ---

25 Q Let's move on to the next warrant.

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1 A Okay.

2 Q This is ending in 11.

3 A Uh-huh.

4 Q It said that — again, I'm just paraphrasing —
5 Michael Dinkins did knowingly and willfully commit
6 the offense of criminal sexual conduct in that he,
7 he did on the 11 year old victim's bed, straddle her
8 and make a grinding motion on top of her body.

9 A Uh-huh.

10 Q Did anybody tell you that the victim slept with
11 her grandmother?

12 A I don't remember.

13 Q So again, these are your words?

14 A I have to watch the forensic interview again to
15 see exactly how I got that.

16 Q Okay. So you don't know where that came from?

17 A I mean, I know that it was said at some point,
18 you know.

19 Q Okay.

20 A I mean, I didn't just make it up if that's what
21 you're asking.

22 Q Okay. Now, and here's the next thing, on January
23 1st, 2016, this is warrant ending in 12. The
24 defendant Michael Dinkins did knowingly and
25 willfully commit the offense of criminal sexual

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1 conduct with a minor third degree in that he did
2 kiss the 11 year old victim and attempt.

3 A Uh-huh.

4 Q To put his tongue in her mouth.

5 A Uh-huh. Yes, sir.

6 Q Okay. And did — is it your understanding that
7 he never put his tongue in her mouth?

8 A I don't recall. I'd have to watch the — as I
9 said, I have to watch the forensic interview again.

10 Q Well, again, this is —

11 A But he at least attempted. If his tongue did not
12 go in there, then it was at least attempted.

13 Q Well, there's a difference between attempt and
14 actually he did do it. There's no difference in
15 attempt and he did?

16 A (No response.)

17 Q Okay, let's move on. No other incidents you were
18 aware of at that point in time, right?

19 A Yes, there were other incidences.

20 Q Nope, I'm saying between the time frame when you
21 wrote these warrants, no, October through December.
22 No other incidents that you were aware of because
23 you only wrote three warrants; is that correct?

24 A Yes, sir.

25 Q Okay.

1 (WHEREUPON, a recess was taken from the
2 proceedings.)

3 MR. MCKENZIE: Your Honor, before we, I
4 think the next witness the State is going to call
5 Detective Linda Smith who took the report from
6 Ms. Leigh Dinkins regarding these allegations. Part
7 of that report contains some 404(b) evidence that
8 you ruled inadmissible and I just want to make sure
9 that everybody knows the — this was about the text
10 messaging, that part that you ruled inadmissible.
11 So everybody realize the text messaging will not be
12 brought up.

13 THE COURT: Okay. That's the only
14 inadmissible 404(b) material that's —

15 MS. TIMMONS: I think there's another
16 thing too that defendant kissed her on the neck.
17 The only reason why I want Officer Smith, what I'm
18 gonna ask her I guess is that what happened, what
19 was she told about December 31st incident and the
20 charged offense.

21 MR. MCKENZIE: Okay. That's fine, Your
22 Honor. I just want to make sure everybody is on the
23 same —

24 THE COURT: Where is she?

25 MR. MCKENZIE: She's right here.

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1 THE COURT: All right. You understand
2 that we're gonna limit your testimony to that
3 particular incident?

4 THE WITNESS: Yes, sir.

5 THE COURT: Very good. Don't talk about
6 anything else.

7 THE WITNESS: Yes, sir.

8 THE COURT: Very good. All right, we're
9 ready for the jury.

10 (WHEREUPON, the jury was returned to the
11 courtroom at approximately 11:20 a.m.,
12 and the following proceedings commenced
13 in open court.)

14 THE COURT: Ms. Timmons, you're
15 recognized.

16 MS. TIMMONS: Thank you, Your Honor. The
17 State will call Ms. Linda Smith.

18 THE COURT: Ms. Smith, please come
19 forward. I'm gonna ask if you could place your left
20 hand on the Bible and raise your right as the Clerk
21 administers the oath.

22 THE CLERK: Repeat your name please.

23 THE WITNESS: Linda Martin Smith.

24 WHEREUPON,

25 LINDA M. SMITH,

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1 having been duly sworn by the Clerk, testified
2 as follows:

3 THE COURT: Yes, ma'am, I'm gonna ask if
4 you can have a seat in the witness chair. Pull up
5 real close to the microphone. Speak loudly,
6 clearly, and slowly in order that we can hear
7 everything that you have to say. She referred to
8 you as lieutenant. I see three stripes. Are you a
9 lieutenant or a sergeant.

10 THE WITNESS: Sergeant.

11 THE COURT: You're a sergeant?

12 THE WITNESS: Yes, sir.

13 THE COURT: She's giving you a promotion.
14 I just wanted ask. Very good.

15 **DIRECT EXAMINATION**

16 BY MS. TIMMONS:

17 Q Sergeant Smith, could you tell us where do you
18 work, how long you have been working there?

19 A I work with the Clarendon County Sheriff's Office
20 here in Manning, South Carolina. I've been there
21 since December 27th, 2010.

22 Q Okay. Did you have an occasion to become
23 involved in the investigation of this case?

24 A I'm involved. I did the report.

25 Q Then how did you become involved?

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1 A I took the report.

2 Q Okay. Who did you, did you talk to anybody?

3 A I spoke with Ms. Leigh Dinkins.

4 Q And who is she?

5 A Ms. Leigh Dinkins, I believe she's the
6 grandmother of the victim.

7 Q Okay. What was reported to you, I mean?

8 A It was reported to me that on New Year's night
9 Mr. Dinkins and -- Mr. Dinkins and the victim were
10 watching television, watching a movie. Mrs. Dinkins
11 and her mother were sitting on the porch. The
12 child's grandmother and she went inside and told
13 Mr. Dinkins it was bedtime. He said the child was
14 asleep, he would wake her. Suddenly the child ran
15 into Mrs. Dinkins' bedroom shaking her hands and
16 stumbling about. Mrs. Dinkins attempted to see what
17 was wrong when the child said excitedly, Uncle Mike
18 touched my hand to see if I was asleep, kissed me on
19 the mouth and tried to open my lips with his tongue.

20 Q Do you know where it occurred, at what address?

21 A Yes, it was at 1172 Locust Way in the Manning
22 area of Clarendon County.

23 Q Okay. So that address 1172 Manning is in
24 Clarendon County?

25 A Yes, ma'am.

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1 Q Okay.

2 MS. TIMMONS: Court's indulgence. No
3 further questions.

4 THE COURT: Mr. McKenzie.

5 MR. MCKENZIE: Thank you.

6 **CROSS-EXAMINATION**

7 BY MR. MCKENZIE:

8 Q How are you doing today?

9 A Okay.

10 Q Good. Now Mrs. Dinkins or Mrs. Reed now, she, I
11 think on New Year's Eve she reported to you in this
12 report that she and her mother were sitting on the
13 porch?

14 A That is correct.

15 Q Okay. She didn't say her mother was asleep or in
16 her bedroom reading a book, did she?

17 A No.

18 Q And this is Mrs. Leigh Dinkins telling you this?

19 A Correct.

20 Q Okay. And this was reported on January 8th so;
21 is that correct?

22 A That is correct.

23 Q Okay. So this would have been, this happened New
24 Year's Eve, that'd be December 31st, so about eight
25 or nine days later it was reported to you?

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1 A That is correct.

2 Q And again, Mrs. Dinkins reported that she and her
3 mother were sitting on the porch.

4 A Correct.

5 Q Okay. And then she later says the child came
6 running into her bedroom; is that correct?

7 A Correct.

8 Q Okay. And did she say, did she say that the
9 child told her that Mr. Dinkins put his tongue in
10 her mouth, or didn't she say he attempted to put her
11 [sic] tongue in her mouth?

12 A Well, according to my words on the report, kissed
13 me on the mouth and tried to open my lips with his
14 tongue.

15 Q Okay. But was he successful according to your
16 report?

17 A No.

18 Q Okay. Now also on your report Mrs. Dinkins said
19 she immediately confronted Mr. Dinkins, and what did
20 Mr. Dinkins do?

21 A Confronted Michael about the incident, he denied
22 the allegations.

23 Q He denied the allegations?

24 A That is correct.

25 Q Did Mrs. Dinkins in this report report an

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1 incident earlier in December?

2 A Yes. In October?

3 Q In December of this same year. Earlier in
4 December he -- did she report anything that happened
5 in December or even October of 2015 --

6 A Yes.

7 Q --in this report?

8 A Yes.

9 Q Okay.

10 A Yes.

11 Q And what did she say?

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

13 THE COURT: Yes.

14 (WHEREUPON, counsel approached the
15 Bench for an off-the-record discussion.)

16 BY MR. MCKENZIE:

17 Q Okay. Linda, in the report, again, it states in
18 Mrs. Dinkins, Leigh Dinkins, Leigh Reed and her
19 mother were sitting outside when this incident
20 occurred.

21 A Correct.

22 Q Okay. And that Mr. and Mrs. -- Mr. Dinkins and
23 the child were watching a movie.

24 A Correct.

25 Q And then the child suddenly ran into

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1 Mrs. Dinkins' bedroom?

2 A The child's grandmother and Leigh went inside the
3 home and told Mr. Dinkins it's our bed time.

4 Mr. Dinkins said the child was asleep and he would
5 wake her.

6 Q Okay. But prior to that Mrs. Dinkins and Ms.
7 — I'm sorry, the grandmother, I can't remember her
8 name, but the grandmother were sitting outside.

9 A That is correct.

10 Q Okay. And, and again, the child did not say that
11 he actually put his tongue in her mouth, according
12 to Mrs. Dinkins?

13 A No.

14 Q All right.

15 MR. MCKENZIE: No other questions, —

16 THE WITNESS: Tried to open.

17 MR. MCKENZIE: —Your Honor.

18 THE WITNESS: Okay.

19 THE COURT: Any redirect?

20 MS. TIMMONS: Your Honor, we would just
21 ask that Officer Smith be allowed to finish
22 answering the question.

23 THE WITNESS: Oh, the only other thing I
24 had to say is that he tried to open the child's lips
25 with his tongue.

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1 BY MR. MCKENZIE:

2 Q Okay. According to Mrs. Dinkins.

3 A Yes, sir.

4 Q But was not successful, tried.

5 A That's what I've got written tried, yes, sir.

6 Q Thank you.

7 THE COURT: Any redirect?

8 MS. TIMMONS: No, sir, Your Honor.

9 THE COURT: You may step down. You're
10 free to leave.

11 THE WITNESS: Thank you, sir.

12 THE COURT: Ms. Timmons, you're
13 recognized. You may call your next witness.

14 MS. TIMMONS: Your Honor, the State's next
15 witness is Doctor Elizabeth Ralston.

16 THE COURT: Doctor Ralston, I ask if you'd
17 come forward and approach the Clerk here in the red
18 jacket. Place your left hand on the Bible and raise
19 your right hand as the Clerk administers the oath.

20 THE CLERK: Repeat your name please.

21 THE WITNESS: M. Elizabeth Ralston.

22 WHEREUPON,

23 **M. ELIZABETH RALSTON,**

24 having been duly sworn by the Clerk, testified
25 as follows:

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1 THE COURT: I'm gonna ask if you could, to
2 have a seat in the witness chair. Pull up real
3 close to that microphone. Speak loudly, clearly,
4 and slowly in order that we can hear everything that
5 you have to say clearly. Let's start with your full
6 name.

7 THE WITNESS: M. Elizabeth Ralston,
8 R-A-L-S-T-O-N.

9 **DIRECT EXAMINATION**

10 BY MS. TIMMONS:

11 Q Doctor Ralston, can you tell us something about
12 your background, your training?

13 A Yes, I have a bachelor's science in sociology and
14 psychology from Baker University, a small Methodist
15 college in Kansas. Master's degree from University
16 of Kansas and a Ph.D. from Florida Institute of
17 Technology in clinical psychology.

18 Q Okay. Do you have any professional license?

19 A Yes, I'm a licensed independent social worker
20 clinical practice, and I'm licensed marriage and
21 family therapist.

22 Q Where are you currently employed?

23 A I serve as the director emeritus at the Dean
24 Norton Child Advocacy Center since retiring from
25 there, and I also serve as the codirector of Project

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1 Best. It's a ten year initiative funded by Duke
2 Endowment. We learned a great deal about the impact
3 of trauma on children and families and this
4 initiative is designed to train professionals who
5 work within the child welfare system on how to
6 assess children who have been traumatized and learn
7 how to treat them.

8 Q Have you attended any courses, seminars. Or
9 other training in child abuse or sexual assault?

10 A Yes, I have. I attend over the last 15 years I
11 attended the National Leadership Conference from the
12 National Children's Alliance held in Washington,
13 D.C., and it is about the services provided through
14 a children's advocacy center and that program is
15 specifically designed to identify and treat children
16 and families who experienced trauma abuse, domestic
17 violence, and trauma. And I have attended -- two
18 weeks ago I attended the Charleston Child Trauma
19 Conference as a participant, and also, I did two
20 presentations during that conference. I guess, in
21 summary I have to have 40 hours of specialized
22 training every two years to maintain my license.

23 Q Do you have any training or teaching experience?

24 A I'm on the clinical faculty of the Medical
25 University Department of Psychiatry and Behavioral

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1 Sciences, and in that capacity that's how I serve as
2 the codirector of Project Best and that is primarily
3 a teaching position not within the university, but
4 across the state of South Carolina. I also served
5 as resource associate professor at the, during a
6 sabbatical at the University of South Florida where
7 I did teaching.

8 Q Okay. And do you have, have you, do you have any
9 speaking engagements, any publications, are you a
10 member of professional organizations?

11 A I'm a member of an organization called APSAC, the
12 American Professional Society on Child Abuse. I'm a
13 member of the Natural Children's Alliance. I've
14 published a number of articles, one on the maternal
15 response to the disclosure of child abuse, the
16 impact of that response on a child. That's the most
17 recent published, an article on something called the
18 abuse clarification with some colleagues in a
19 journal, and it's about treating child victims and
20 families. I published an article in the Southern
21 Medical Journal along with a colleague on interview,
22 the medical interview of allegations of child abuse.

23 Q Have you testified previously and for and have
24 you been qualified as a expert witness?

25 A Yes, ma'am.

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1 Q Okay, thank you.

2 MS. TIMMONS: Your Honor, at this time I
3 would like to offer Doctor Ralston an expert in the
4 field of child abuse dynamics and disclosure.

5 THE COURT: Any query with regard to her
6 qualification?

7 MR. MCKENZIE: What was the offer for?

8 MS. TIMMONS: Child abuse dynamics and
9 disclosure.

10 MR. MCKENZIE: Is this common behavioral
11 characteristics of child abuse victims? Is that
12 what we're talking about?

13 MS. TIMMONS: Yes, sir.

14 MR. MCKENZIE: Is that your — okay, no
15 objection to that, Your Honor.

16 THE COURT: All right. Madam Forelady and
17 ladies and gentlemen of the jury, ordinarily a
18 witness, what we call a lay witness like all the
19 witnesses you heard up to this point, can only
20 testify as to things they heard, saw, and felt.
21 There's an exception to that rule for rules that are
22 classified as expert witnesses. If an individual is
23 because of education, experience, have become expert
24 in some field, they not only can testify as to
25 things they heard, saw, and felt, they can render

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1 their opinion in their field of expertise. By
2 virtue of the fact that an individual is an expert
3 does not mean that you have to believe what they
4 have to say. You need to evaluate it like you would
5 other evidence. Just by virtue of the fact they're
6 an expert does not mean that you have to believe
7 that, and you can disregard an expert's opinion even
8 if it's uncontroverted ed. You need to give it the
9 weight you think it deserves.

10 Ms. Timmons.

11 MS. TIMMONS: Thank you.

12 BY MS. TIMMONS:

13 Q Doctor Ralston, have you met with the victim in
14 this case, or did you have a chance to interview the
15 minor victim?

16 A No, ma'am.

17 Q Okay. Did you have a chance to review any
18 incident reports or statements associated with this
19 case?

20 A No, I did not.

21 Q So your only knowledge about this case comes from
22 discussions with the solicitor's office?

23 A Yes, ma'am.

24 Q Could you tell us what you, what is meant by the
25 term, by term delayed disclosure or delayed

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1 reporting?

2 A Delayed disclosure, that term was coined to
3 describe the characteristics of, one of the
4 characteristics of how children tell the child
5 sexual abuse. It's interesting that when we look at
6 physical abuse we know there's abuse because we see
7 evidence. And with neglect we can see evidence, but
8 with sexual abuse there's usually not evidence and
9 so people have to rely on the child reporting on
10 how. And in the literature that I depend upon in my
11 profession, the literature clearly states that the
12 primary characteristic of disclosing around child
13 sexual abuse is that it isn't disclosed. When it is
14 disclosed, it's almost always delayed. In fact, a
15 summary of some articles about delayed disclosure
16 suggests that about a third of children who are
17 sexually abused disclose within a year. About a
18 third disclose between a year and five years, and a
19 third never disclose. And so delayed disclosure is
20 just a way of describing one of the characteristics
21 of how children do disclose.

22 Q I guess you answered my next question, how common
23 is delayed disclosure among victims of child sexual
24 abuse?

25 A After non-disclosure, the children who don't

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1 disclose, and of course they don't disclose we don't
2 know about abuse. Delayed disclosure is the most
3 common characteristic.

4 Q Okay. And could you tell us what are the factors
5 that commonly play role in child delayed reporting,
6 delayed disclosure?

7 A Delayed disclosure is almost always common in
8 children who are abused by somebody within the
9 family, and they either don't disclose or delay
10 disclosure because they're fearful. They're fearful
11 of what the perpetrator might do if they disclose.
12 They're fearful of what might happen to them if they
13 disclose, that they might not be believed or they
14 might be blamed for telling or they might be blamed
15 or the perpetrator's behaviors. They delay their
16 disclosure because they don't want to hurt other
17 members of the family. They're fearful of what
18 might happen to the family. They're fearful they
19 might be removed from the family. There are a lot
20 of issuers, including that they may care about the
21 offender, and they don't want him or her to get into
22 trouble so there are tremendous number of factors
23 that play into children never disclosing or in
24 delaying their disclosure.

25 Q Okay. So what effect, if any, does it have on a

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1 perpetrator who is a family member or lives in a
2 family home, and how likely is it, how likely are
3 you to see delayed disclosure in a situation like
4 that?

5 A You're very, very likely to see it in that kind
6 of situation because of the proximity, because the
7 perpetrator is right there living in the home, and
8 that brings in a lot of the issues that I mentioned
9 earlier, the impact it may have on the family, the
10 impact it may have on the non-abusing care givers if
11 disclosure is made.

12 Q Okay. And based your professional experience can
13 you give us some examples of the different time
14 stamps that you see delayed disclosure?

15 A I have seen cases where a child disclosed
16 immediately. Very often it's an older child, an
17 adolescent and the offender was not a family member
18 and those, in those cases you may have immediate
19 disclosure. I think the most delayed disclosure I
20 ever had was an 82 year old grandmother who was the
21 grandmother of a child victim who reported at the
22 time that her granddaughter disclosed reported that
23 she, in fact, had been abused as a child and she had
24 never disclosed that.

25 Q Based on your training and experience is delayed

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1 reporting consistent or inconsistent with the
2 history of sexual abuse?

3 A As I said, delayed disclosure of child sexual
4 abused is one of the most common characteristics of
5 children who have been sexually abused and delay
6 their disclosure.

7 Q And just hypothetically, if perpetrator is a mail
8 dominant figure, authority figure, or residing in
9 the home, would delayed disclosure be consistent or
10 inconsistent with sexual abuse?

11 A It would be, again, a very common or consistent
12 characteristic.

13 Q Okay. Could you tell us what factors may
14 encourage a child to reveal sexual abuse?

15 A There are a lot of examples of children giving a
16 little bit of a disclosure and testing, kind of
17 testing the waters to see if they'll be believed or
18 if they're going to be blamed or shamed or punished;
19 and if, in fact, they're believed and so supported,
20 then they will make a disclosure. It may be a
21 delayed disclosure, but that would have encouraged
22 them to disclose. Another factor that sometimes
23 comes into play is that when an adult is engaging a
24 child in sexually activities, those sexual
25 activities sometimes progress like they may begin by

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1 just talking in a sexual way with a child, a
2 sexually inappropriate way with a child talking in
3 maybe even a romantic way. They may expose the
4 child to some visual stimulus from just some
5 suggestive sexual things up to pornography. They
6 may then progress to the next stage which could be
7 touching the child, maybe rubbing the child's back
8 and rubbing the child's legs to kind of get the
9 child used to that kind of behavior... And then the
10 next thing that might happen would be genital touch.
11 They might make the child touch their genitals or
12 they may position themselves in a way that they're
13 touching the child's genitals. And the final
14 progression would be penetration where the
15 perpetrator would insert something, a finger or an
16 object or a tongue into the child. And so if the
17 child is beginning to see that behavior escalating
18 on the part of the perpetrator, that might be a
19 motivation to tell.

20 Q Okay. Would a change in environment or sense of
21 security also encourage a child to finally reveal
22 sexual abuse?

23 A Well, I think to reveal requires the child feel
24 safe so if there was a change in the child's
25 environment that caused the child to perceive they

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1 would be believed and safe, yes.

2 Q Okay. And you just glanced over the area about,
3 I guess partial, partial disclosure.

4 A Yes.

5 Q Can you elaborate some more?

6 A Children may make an initial partial disclosure
7 and if they're believed and they're protected by
8 the perpetrator, then they began to tell more about
9 what they experienced. One the things we're also
10 really aware of is that a child then can be referred
11 for therapy and in that therapy that sense of safety
12 is stronger and they may tell more so that the
13 partial disclosure then progresses into more full
14 disclosure.

15 Q Can you tell us, or are there any typical
16 symptoms that children that are sexually abused
17 exhibit?

18 A The most common symptoms are in three areas. The
19 first is post-traumatic stress disorder. We hear a
20 lot about that, about the military. We've learned a
21 lot about that. We've learned a lot about that in
22 terms of children who have been abused. The
23 post-traumatic stress symptoms are hypervigilance,
24 being kind of on guard, being concerned that
25 something might happen, not feeling safe; and

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1 unfortunately that sometimes causes people to
2 believe the child has ADHD because they aren't able
3 to pay attention in school because they are kind of
4 on guard. Another symptom they maybe experienced,
5 what happened and feel as though it's happening
6 again. And another symptom is they may just numb
7 out. And finally, the fourth symptom of
8 post-traumatic stress is, I'm gonna tell you the
9 fourth symptom. It's avoidance, that they don't
10 want to talk about it, that talking about it makes
11 them feel bad, makes them think about what happened.
12 So those are the four primary symptoms of
13 post-traumatic stress. But on top of that, children
14 also very often experience, anxiety, and depression,
15 and so those are the most common symptoms.
16 Certainly there can be others based on a individual
17 child but, those are the most common symptoms that
18 we see in child victims.
19 Q So it's common for a victim or child, or is it
20 common for a victim of child sexual abuse to suffer
21 from anxiety, depression? Is it consistent with
22 them being victims of sexual abuse?
23 A Well, as I said, that most of the primary
24 symptoms we see from children who have been
25 traumatized by some form of abuse including sexual

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1 abuse.

2 MS. TIMMONS: Court's indulgence. I don't
3 have any further questions.

4 THE COURT: Cross-examination,
5 Mr. McKenzie.

6 MR. MCKENZIE: Thank you.

7 **CROSS-EXAMINATION**

8 BY MR. MCKENZIE:

9 Q Doctor Ralston, you talked about dramatic events
10 —

11 A Yes, sir.

12 Q —child's life?

13 A Yes.

14 Q Is it traumatic for an eight year old child to
15 lose her mother?

16 A Yes.

17 Q I mean, her mother has -- the child has a mother
18 who died at eight years old from a massive heart
19 attack, would that be, would she have symptoms of
20 PTSD?

21 A I don't know. That would be a traumatic event.

22 Q That would be a traumatic event. Would she have
23 anxiety and depression?

24 A I don't know. That depends on the child. We
25 have different coping skills, and it would depend on

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1 the child. Certainly some children are very
2 resilient and experiencing one trauma they might be
3 able to integrate that into their life and not be so
4 negatively impacted.

5 Q But is it possible the child could be suffering
6 from a major depressive disorder from the loss of
7 her mother?

8 A That's possible.

9 Q Okay. And it's possible that a child goes
10 through sexual abuse and doesn't have that major
11 depressive disorder?

12 A That's possible.

13 Q Okay. And it's possible that the child, if the
14 child had been in counseling, that the child would
15 have revealed any sexual trauma to her counselor?

16 A That's possible.

17 Q Okay.

18 A Well, let me say something about that. One of
19 the things that we've learned is that children don't
20 necessarily tell unless they're asked, and so once a
21 child is told and gets into treatment they're more
22 likely to give additional information. We certainly
23 found that children who are in counseling and aren't
24 asked about such things don't reveal such things.

25 Q Okay. But if a child has a good rapport with her

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1 counselor and speaks freely with her counselor,
2 would you expect the child to talk about these
3 events?

4 A Probably not.

5 Q Okay. Well, if a child talked about suicide with
6 her counselor.

7 A Yes, sir.

8 Q Okay. Would that make you believe that she would
9 talk about these events of sexual assault because
10 obviously they don't rise to the level of suicide,
11 do they?

12 A Well, what I might think is that the child has
13 experienced some trauma that she's not able to
14 manage and cope with and has now experiencing
15 suicidal thoughts.

16 Q Okay. But could the trauma be from the traumatic
17 event of her mother dying?

18 A Well, let me say that trauma is cumulative and we
19 have a lot of research around there's something
20 called the ace study, adverse childhood experiences,
21 and certainly the death of a mother is one of those.
22 There were, this was a research study of 17,000
23 people like us who were insured by Kaiser Permanente
24 (ph) and they looked at the background, experience
25 of those adults within their childhood and

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1 identified these adverse childhood experiences and
2 the impact that it could have on them and certainly
3 suicide was one of the impacts. But one of the
4 things that we absolute learned from that was that
5 trauma can be cumulative. So if a child loses a
6 parent, if a child goes through a flood or a fire or
7 if they're abused, or if they have a number of
8 different things that, you know, could be traumatic
9 in a child's life, that's cumulative.

10 Q Okay. Let me add another traumatic event. Child
11 has a father who has epileptic and exhibits very bad
12 behavior in front of the child, is that a traumatic
13 event?

14 A Certainly could be.

15 Q Okay. And if these diagnoses occurred before any
16 sexual allegations were made and the diagnosis being
17 major depressive disorder, general anxiety disorder,
18 okay, would this change your opinion regarding
19 whether the child is being truthful about the sexual
20 assault?

21 A No.

22 Q So the child could then be sexually assaulted
23 later on and these things aren't, that's not
24 cumulative to the sexual assault?

25 A All those are cumulative through a lifetime. In

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1 fact, the study suggests that people who experience
2 six or more may well, their life expectancy might be
3 reduced by 20 years.

4 Q Okay. What if the child is on medication,
5 antidepressant medication, Lexapro, clo-- I may be
6 butchering these names.

7 A You are.

8 Q I've already butchered one? Okay. Clonidine?

9 A Clonidine.

10 Q Okay. Buspar? And Metitate? Have I butchered
11 those pretty significantly?

12 A Uh-huh.

13 Q What is Lexapro if I'm pronouncing that
14 correctly? What is that?

15 A Well, all these are a variety of medications and
16 I'm not a psychiatrist or medical doctor so I
17 couldn't comment about why they were prescribed or
18 the intent of those prescriptions.

19 Q Do those medications, would they have any effect
20 on a child mentally that you're aware of?

21 A Mentally, same order.

22 Q Okay. Could those have, those effect or alter
23 her perception of reality?

24 A I don't believe they would alter her perception
25 of reality, no.

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1 Q Okay. So her being on four different
2 medications, her mother dying, her father being a
3 severe epileptic, all those things are in your
4 opinion just cumulative to any other allegation?

5 A Cumulative to any other allegation ---

6 Q Sexual assault allegation. Those are built on
7 top of the sexual assault allegation.

8 A All those would be a traumatic event through this
9 child's life.

10 Q Okay.

11 A I might suggest that if those prescribing have
12 not ruled out PTSD, well, let me ---

13 Q Well she ---

14 A Let me not say anymore. There's maybe a
15 misdiagnosis.

16 MR. MCKENZIE: Thank you, Your Honor. No
17 other questions.

18 THE COURT: All right. Any redirect?

19 MS. TIMMONS: No, sir, Your Honor.

20 THE COURT: You may step down.

21 THE WITNESS: Thank you, sir.

22 THE COURT: You may call your next
23 witness.

24 MS. TIMMONS: Your Honor, the State rests.

25 THE COURT: Madam forelady, ladies and

1 THE DEFENDANT: Yes, sir.

2 THE COURT: We're gonna have a brief
3 charge conference, and then we're gonna recess for
4 lunch and come back and argue and charge. Let me —
5 I'm gonna charge the jury that the arrest in and of
6 itself is not evidence. I'm gonna charge the fact
7 that there are multiple charges, that each one is to
8 be determined separately and distinctly. I'm gonna
9 explain the divergent duties of the jury and the
10 trial judge, presumption of innocence. Reasonable
11 doubt, I'm gonna charge the shorter version and the
12 alternate reasonable doubt charge, the longer. I'm
13 gonna charge direct and circumstantial evidence.
14 I'm gonna explain to them how to evaluate the
15 credibility of witnesses, expert witnesses, failure
16 of the defendant to testify, prior inconsistent
17 statements, statement of the defendant, and all
18 Miranda issues, the voluntariness issues, the fact
19 it's an ultimate question of fact for the jury to
20 decide. I'm gonna charge them the law with regard
21 to how to evaluate the testimony of a child. I'm
22 gonna charge criminal sexual conduct with a minor in
23 the third degree.

24 And there's been some discussion yesterday
25 and today about the lesser included offenses. And

1 you know, and I asked y'all to take look at it and
2 we would discuss it this morning. We discussed it
3 briefly in chambers this morning, and I think there
4 was a consensus that perhaps lesser included
5 offenses should be charged on count one and count
6 four. Upon my review of the law I have some
7 questions and I'd ask for your input from both the
8 State and the Defense, and I'm asking because the
9 law is sort of unclear in this area and I really
10 want to hear what both of you have to say in this
11 regard.

12 Assault and battery in the first degree,
13 and of course, we know that it's a multi-faceted
14 offense; but the relevant part that applies to this
15 case is, a person commits the offense of assault and
16 battery in the first degree if a person unlawfully
17 injures another person and the act either involves
18 nonconsensual touching of the private part of an
19 adult either under or above clothing with lewd and
20 lascivious intent. Two things that jump out at me
21 is number one, that there is no allegation of
22 physical injury; and secondly, this specifically
23 says it has to be of an adult and we've got a minor
24 child here. What do you have to say about that? It
25 would seem to me that the legislature contemplated

1 that it was to be distinguished from assault, I mean
2 criminal sexual conduct in the third degree with a
3 minor.

4 MS. TIMMONS: Your Honor, I guess, are you
5 looking at the newer statute online 'cause I think
6 it has been changed to persons, but I'm not sure.

7 THE COURT: Well, that's why I'm asking.

8 MS. TIMMONS: Okay.

9 THE COURT: Because I, this is the, it's
10 2015. Has it been changed since then?

11 MS. TIMMONS: If you can give me a few
12 minutes to find the latest version.

13 THE COURT: Okay.

14 MS. TIMMONS: But if the statute states
15 adult that this may, I think ---

16 THE COURT: Say that again now.

17 MS. TIMMONS: I said if the assault and
18 battery statute is referring to adult, then assault
19 and battery first would not be a lesser included
20 offense because it doesn't contain, I guess, the
21 greater of the two offenses would not include the
22 elements of the lesser offenses.

23 THE COURT: Regardless of that, I mean,
24 it's, the substantive and not applicable because it
25 says an adult and we have an minor child here. What

1 do you think about the element of the injury?

2 MS. TIMMONS: Well, there are no
3 allegations of injury in this case.

4 THE COURT: So therefore, would you think
5 that that would preclude the lesser included charge?

6 MS. TIMMONS: Oh, yes, sir. Yes, Your
7 Honor.

8 THE COURT: Well, you know, assault and
9 battery in the first degree, a lot of people think
10 that, want to allow someone to plead to assault and
11 battery in the first degree if someone were to -- if
12 someone was hurt very seriously they want a lesser
13 charge. But I don't think it applies because it
14 contemplates that there is no injury for assault and
15 battery in the first degree so I think that element
16 of the injury is significant in the structure of the
17 assault and battery statute as complicated as it is.
18 So you agree with me.

19 MS. TIMMONS: That's correct, Your Honor.

20 THE COURT: All right now, y'all check and
21 see whether it's changed since 2015.

22 MR. DURANT: Your Honor, it appears there
23 was an amendment to the statute in 2015. And
24 according to the legislative website now, I'm
25 looking at 16-3-600(c) subsection (a)(i). It says

1 involves nonconsensual touching of the private parts
2 of a person.

3 THE COURT: Oh, okay, well, that — now
4 what does it say about injury?

5 MR. DURANT: The injury language is still
6 included in the statute. My only other thought
7 would be it seems to be that maybe the legislature's
8 intent by amending the statute from adult to person
9 would be to make it a lesser included. That's not
10 expressed, but that would be just my —

11 THE COURT: Well, what do you think about
12 the element of the injury?

13 MR. DURANT: I agree with Your Honor's
14 explanation or your analysis that lewd act doesn't
15 require injury so it would seem that the proposed
16 lesser charge includes an additional element that
17 the greater charge does not which based on the
18 Blockburger test would exclude it as a lesser
19 included offense. But, and I don't mean to
20 equivocate but then I look at the, what is the
21 legislature's intent that they amended the statute
22 to say from adult to —

23 THE COURT: Well, how are you going to
24 address that to the jury? If I charge the law and
25 the law says that there has to be an injury, how

1 would you address that to the jury? Would you just
2 not talk about it or?

3 MR. DURANT: That's a good question,
4 Judge. You know, and I'm just kind of thinking out
5 loud here, but maybe the intent, maybe what they
6 mean by injury here is kind of the old law school
7 definition of a battery which is just an unwanted
8 touching.

9 THE COURT: Well, if that's what they
10 meant they should have said it, I would think, I
11 don't know. Let's see what Mr. McKenzie has to say
12 about it.

13 MR. MCKENZIE: Your Honor, I agree, I
14 don't see how you get around the injury part of
15 that. If you read the definition and it says a
16 person commits the act of, or this is under — great
17 bodily injury to another person. And they define
18 great bodily injury. Substantial risk of death or
19 which causes serious permanent disfigurement,
20 protractive loss of impairment of a function of a
21 bodily member or organ —

22 THE COURT: Now this doesn't have anything
23 to do with great bodily injury —

24 MR. MCKENZIE: Well, I understand, I'm
25 just saying that's the —

1 THE COURT: You're reading the other part
2 of it, but the issue that deals with unwanted
3 touching, nonconsensual touching just says the words
4 injury.

5 MR. MCKENZIE: Right. I'm just going to
6 show Your Honor what the definition that has
7 injuries here. I don't know how you get around the
8 injury part of that, I really don't. I agree with
9 the solicitor's office, I think the injury is, I
10 mean, I agree with the Solicitor's —

11 THE COURT: It sounds like we've got a
12 consensus on that, that it should not be charged.

13 MR. MCKENZIE: I agree.

14 THE COURT: What do you say about it?

15 MS. TIMMONS: I agree, Your Honor.

16 THE COURT: All right. Mr. Durant, what
17 do you have to say about it?

18 MR. DURANT: Your Honor, I'm not gonna
19 stand here by myself so I agree with the Court.

20 THE COURT: Well, the way I see it it's
21 not, if they interpret it a different way I think
22 we'll all be right 'cause that's what we're gonna
23 do. We're not gonna charge the lesser included
24 offenses.

25 MR. DURANT: Your Honor, now A&B second

1 does not require injury; is that correct? We agree
2 with that?

3 THE COURT: I think it does. It says a
4 person commits the offense of assault and battery of
5 a second degree if the person unlawfully injures
6 another person or offers or attempts to injure
7 another person with present ability to do so and the
8 act involves nonconsensual touching of the private
9 parts — it used to be an adult but now it must be a
10 person.

11 MR. DURANT: Right. So the way that A&B
12 second differs from first is that first requires an
13 injury and nonconsensual touching.

14 THE COURT: Yes.

15 MR. DURANT: Second is offer or attempts
16 to injure and nonconsensual touching.

17 MR. MCKENZIE: And I think that's the
18 difference, Your Honor. I think the "or offers or
19 attempts to". So if he touches her and the jury
20 finds he touches her, they can find that it wasn't,
21 that the offer would have been an injury. Obviously
22 touching a minor in a private part would be an
23 injury, I mean, if I'm wording that correctly and
24 —

25 THE COURT: Well then, if that the case,

1 then assault and battery first degree applies as
2 well.

3 MR. MCKENZIE: Yeah, but I think that's a
4 different level of the degree of the injury.

5 MR. DURANT: I think that the
6 nonconsensual touching provision of the statute as
7 far as assault and battery first degree is only
8 modified by the injury to another person; whereas,
9 with A&B second, injury or an offer or attempt to
10 injure modifies the nonconsensual so I think that
11 A&B second is a lesser included.

12 MR. MCKENZIE: I agree with him, Your
13 Honor. I think that would be the only way I could
14 read that because otherwise they would not have — I
15 don't think they would have put in this in the
16 statute the way it's written if they didn't intend
17 for it to be a lesser included offense.

18 THE COURT: I think they probably have
19 never tried a case, I think, probably.

20 MR. MCKENZIE: They probably have never
21 been in our shoes.

22 THE COURT: Well, assault and battery
23 second degree, can you look at the most current
24 amendment and see if it amends it to person as
25 opposed to adult with regard to second degree?

1 MR. DURANT: Your Honor, according to the
2 legislature website it appears to have the same
3 language A&B first as in that regard.

4 THE COURT: Okay. All right.

5 MR. DURANT: Nonconsensual touching of the
6 private parts of a person either under or above
7 clothing.

8 THE COURT: Let me ask you this question,
9 Mr. McKenzie, can you ever — perhaps you can
10 interpret injury as being emotional injury maybe,
11 but can you ever injure anybody by sticking a tongue
12 in their mouth?

13 MR. MCKENZIE: It depends on the tongue,
14 Your Honor. If it was Gene Simmons' tongue, yes,
15 probably you could injure somebody, but I'm not sure
16 about the normal person's tongue. Your Honor, I'm
17 not trying to be humorous about it. I'm simply
18 saying that I guess you could injure somebody by if
19 you put an object in any orifice, I mean I just,
20 that's, you know.

21 THE COURT: What do you have to say about
22 that?

23 MS. TIMMONS: Your Honor, there's no
24 evidence or no evidence has been presented that the
25 defendant offered or attempted to injure the victim.

1 THE COURT: So your opinion is that none
2 of it applies because there's never an offer of
3 injury because what we're talking about the kissing
4 on the neck, we're talking about a tongue in the
5 mouth, we're talking about gyrating pelvis perhaps.

6 MS. TIMMONS: Yes, Your Honor, there's no
7 ---

8 THE COURT: You don't think they would,
9 based on the conduct on its face there was no offer
10 of injury, there's an offer to please one's lewd and
11 lascivious motives?

12 MS. TIMMONS: That's correct.

13 THE COURT: What do you have to say about
14 that, Mr. McKenzie?

15 MR. MCKENZIE: There was the question
16 about, I guess, whether you consider fondling a 11
17 year old's breast to be an injury. I mean, that was
18 one of the accusations that's been directed, or been
19 indicted. Assuming that this was, again, assuming
20 ---

21 THE COURT: But the fondling of a breast I
22 don't think would contemplate a physical injury.

23 MR. MCKENZIE: I cannot disagree with
24 that.

25 THE COURT: Let's start, all right.

1 Mr. Durant, we're gonna hear from you once again.
2 Does that change your mind at all? The fact that
3 activities have been alleged do not contemplate a
4 offering of an injury.

5 MR. DURANT: I mean, I don't want to
6 contradict Ms. Timmons' and that's her position so I
7 would agree with Ms. Timmons that the conduct in
8 this case was not, do not rise to the level of an
9 injury or an attempt to physically injure the
10 victim.

11 THE COURT: All right. Ms. Timmons, have
12 you changed your mind?

13 MS. TIMMONS: Not on assault and battery
14 second, Your Honor.

15 THE COURT: Okay, all right. So
16 Mr. McKenzie, what is your position once again?

17 MR. MCKENZIE: Well, I mean, Your Honor,
18 and I keep going back to the language, "or offers or
19 attempts to injure." So an offer, if the whole
20 allegation here is that I am attempting to commit a
21 lewd act on a minor third degree, it does not
22 require the actual penetration or an injury itself;
23 but it does require an offer in lewd act on a minor.
24 I mean, it requires, you know, the attempt to
25 gratify the, you know ---

1 THE COURT: The lewd and lascivious.

2 MR. MCKENZIE: Yes. And then that, if I
3 go back to just that word "offer," so it's "or offer
4 or attempt", then I mean, that offer, another person
5 with the present ability to do so, and then I go to
6 (b), the act involves nonconsensual of the private
7 parts of a person either under or above the
8 clothing. And Your Honor, may I offer for the
9 record because I'm not — but this is a train wreck
10 of a statute so. It needs to be rewritten and
11 obviously I think whenever it was written in 2010 —
12 obviously it's been amended since then, but it is
13 not — I like the old common law definition a lot
14 better; but again, we are stuck with the statute.

15 THE COURT: Well, I think this is very
16 important and I want you to, I'm specifically asking
17 you after conferring with your client, do you want
18 me to charge assault and battery second degree?

19 MR. MCKENZIE: Let me talk to my client.

20 THE COURT: Because, and he needs to
21 understand that if he is indeed convicted of assault
22 and battery second degree which could be a
23 compromised verdict, then later they're gonna be
24 second guessing that saying that it should not have
25 been charged.

1 MR. MCKENZIE: I understand that, Your
2 Honor.

3 THE COURT: All right. I think a
4 reasonable -- I think it's reasonable to charge
5 assault and battery second degree. We all agree
6 that assault and battery first degree is not
7 applicable.

8 MR. MCKENZIE: Yes, sir.

9 THE COURT: Is that correct? We all agree
10 that assault and battery first degree is not
11 applicable.

12 MS. TIMMONS: That's correct, Your Honor.

13 THE COURT: All right. And my question to
14 you is, do you want me to charge that?

15 MR. MCKENZIE: I need to discuss that with
16 my client. I'd love to discuss it over the break.

17 THE COURT: There's no time like the
18 present. We're gonna sit right here and let you do
19 it.

20 MR. MCKENZIE: Okay.

21 (Pause.)

22 MR. MCKENZIE: Your Honor, after
23 conferring with my client, he would ask the Court to
24 charge A&B second. I think this was going to be on
25 the two October incidents; is that correct?

1 THE COURT: That's correct.

2 MR. MCKENZIE: Okay. He would ask the
3 Court to charge on those two incidents.

4 THE COURT: On one and four?

5 MR. MCKENZIE: One and four.

6 THE COURT: Is that correct?

7 MS. TIMMONS: Your Honor, I will leave it
8 up to your discretion.

9 THE COURT: All right.

10 MS. TIMMONS: I mean, but yeah, if you
11 decide to charge lesser included offense it would be
12 only on count one and count four.

13 THE COURT: Okay. I'm gonna ask counsel
14 to come forward for just one moment.

15 (WHEREUPON, counsel approached the
16 Bench for an off-the-record discussion.)

17 THE COURT: We're ready for the jury.

18 (WHEREUPON, the jury was returned to the
19 courtroom at approximately 12:26 p.m.,
20 and the following proceedings commenced
21 in open court.)

22 THE COURT: Might counsel approach the
23 Bench for one moment.

24 (WHEREUPON, counsel approached the
25 Bench for an off-the-record discussion.)

1 THE COURT: Mr. McKenzie, you're
2 recognized.

3 MR. MCKENZIE: Your Honor, the Defense
4 rests.

5 THE COURT: Very good. Madam Forelady,
6 and ladies and gentlemen of the jury, at this
7 juncture we are going to recess until 2:00 and we
8 will come back and this -- we had mentioned an
9 outline of how a trial progresses. When we come
10 back we'll hear closing arguments from the lawyers,
11 I'll charge you the law, and then give you
12 instructions of the law and tell you to begin
13 deliberations, but it's not time for you to do that.
14 Once again, the rule applies, do not discuss the
15 case amongst yourselves or with anyone else. Do not
16 engage in any independent investigation on the
17 internet or otherwise, no social media while you're
18 out. Come back at 2:00, 2:00 sharp. Everyone
19 remain seated as the jury exits the courtroom.

20 (WHEREUPON, the jury was removed from the
21 courtroom at 12:25 p.m.)

22 THE COURT: By agreement of counsel we
23 will hear the directed verdict motions in the first
24 instance here now, by agreement of counsel.

25 MR. MCKENZIE: Thank you, Your Honor.

1 THE COURT: Mr. McKenzie, you're
2 recognized.

3 MR. MCKENZIE: Thank you, Your Honor.
4 Your Honor, we would move for directed verdict
5 motion or directed verdict not guilty on count one.
6 Count one, I believe and recall, is the incident
7 with the fondling of the breast. And Your Honor,
8 the statute requires a person guilty of criminal
9 sexual conduct with a minor in the third degree if
10 the actor is 14 years of age, which we have here,
11 over 14 years of age, and the actor willfully and
12 lewdly commits or attempts to commit a lewd or
13 lascivious act upon the body or body parts of a
14 child under 16 years of age with intent of appealing
15 to or gratifying the lust, passion, or sexual
16 desires of the actor or the child. Your Honor, I
17 never have liked the way this statute is written, but
18 it is written the way it is. Lewd, lascivious
19 conduct, obviously touching the breast of a child
20 would be lewd and lascivious conduct. The question
21 is, I asked the child if I recall specifically on
22 the stand did this arouse her or incite anything in
23 her, and she said no. How about him? She said no.
24 I remember recalling and talking to her about it.

25 THE COURT: How can she know, how does she

1 know how it affected him?

2 MR. MCKENZIE: I understand, Your Honor.
3 I understand that, but that's my motion. Count two,
4 I believe, is the incident with the kissing -- am I
5 correct on that one, count two, the kissing
6 incident?

7 MS. TIMMONS: No, count one and two is
8 the --

9 MR. MCKENZIE: And the reason for the
10 confusion, Your Honor, the amended indictment now
11 just says on this date this happened on this date,
12 these were lewd, lascivious conduct, and it doesn't
13 specifically state what the event was. I'll read it
14 from the -- and maybe I'm -- so count two, that was
15 not putting tongue in the mouth. That was the
16 December, the December incident. Let me find my
17 indictment, Your Honor.

18 MR. DURANT: One and two are the October
19 incidents.

20 MR. MCKENZIE: One and two are the October
21 incidents?

22 MR. DURANT: Three is the --

23 (Attorneys confer.)

24 MR. MCKENZIE: Your Honor, all my motions,
25 all these motions for directed verdict are based on

1 the fact that there's been no testimony about the
2 intent of arousing, appealing to, or gratifying the
3 lust or passion of the sexual desires of the actor
4 in any of the indictment, so to give a bland reading
5 of the indictments in regards to each count. And
6 that's basically my motion for all four of the
7 counts that haven't been proven. Thank you.

8 THE COURT: Very good. Ms. Timmons,
9 you're recognized.

10 MS. TIMMONS: Yes, thank you, Judge.
11 There was testimony from the victim stating that she
12 was touched. There was testimony from the victim's
13 aunt that defendant was confronted before not to do
14 it. So there is enough -- well, there's some
15 evidence for the jury to infer that all those
16 touchings --

17 THE COURT: Circumstantial evidence.

18 MS. TIMMONS: Yes, Your Honor. That the
19 touching of her with the intent to gratify
20 defendant's sexual desires.

21 THE COURT: And that would be a question
22 of fact for the jury which can be arrived at by
23 circumstantial evidence.

24 MS. TIMMONS: That's correct, Your Honor.

25 THE COURT: All right. Well, I agree with

1 you and the motion for directed verdict is denied.

2 MR. MCKENZIE: Thank you, Your Honor.

3 THE COURT: Because of the stipulation of
4 counsel, you have now rested and I assume that
5 you're renewing your motion for directed verdict at
6 this time?

7 MR. MCKENZIE: I would, Your Honor.

8 THE COURT: And once again, the motions
9 are noted in the first instance, and you renewed
10 them after you've rested. You're protected on the
11 record in all respects in that regard. The motions
12 for directed verdict are denied.

13 MR. MCKENZIE: Thank you, Your Honor.

14 THE COURT: And we will stand at ease
15 until 2:00, 2:00 sharp. And before we leave, one
16 more thing, the new case with regard to the order of
17 arguments, I think, require in this instance that
18 you are required to open up in full all the way and
19 then he gets the last argument.

20 MR. MCKENZIE: That's my understanding,
21 Your Honor.

22 THE COURT: And it would be different if
23 the defendant put up evidence, it'd be done like a
24 civil trial where you'd be required to open in full,
25 he gets his argument, and then you have an

1 opportunity to reply. Is that your understanding of
2 the new law?

3 MS. TIMMONS: Yes, Your Honor. Yes, I
4 assume it's like it has always been. Since
5 defendant didn't present any defense he gets the
6 last word.

7 THE COURT: Is that your understanding,
8 Mr. Durant?

9 MR. DURANT: Yes, Your Honor.

10 THE COURT: Is that your understanding,
11 Mr. McKenzie?

12 MR. MCKENZIE: That's my understanding,
13 Your Honor.

14 THE COURT: So when we come back you'll be
15 recognized and you'll go first and that will be your
16 only closing argument will be that one so you need
17 to do it in full.

18 MS. TIMMONS: Yes, sir, Your Honor.

19 THE COURT: Very good. And Mr. McKenzie,
20 you get the last word.

21 MR. MCKENZIE: I do, Your Honor. Thank
22 you.

23 THE COURT: Very good. We'll stand at
24 ease until 2:00.

25 (Whereupon, a lunch break was taken.)

1 THE COURT: Before we proceed I'm gonna
2 ask counsel to come forward and take a look at the
3 verdict form.

4 (WHEREUPON, counsel approached the
5 Bench for an off-the-record discussion.)

6 THE COURT: Ms. Timmons, have you had an
7 opportunity to review the verdict form?

8 MS. TIMMONS: Yes, Your Honor.

9 THE COURT: Are you in agreement with its
10 form and content?

11 MS. TIMMONS: Yes, Your Honor.

12 THE COURT: Mr. McKenzie?

13 MR. MCKENZIE: I have, Your Honor.

14 THE COURT: And do you agree with its form
15 and content?

16 MR. MCKENZIE: I do, Your Honor.

17 THE COURT: All right, we're ready for the
18 jury.

19 (WHEREUPON, the jury was returned to the
20 courtroom at approximately 2:12 p.m., and
21 the following proceedings commenced in
22 open court.)

23 THE COURT: Madam Forelady, and ladies and
24 gentlemen of the jury, thank you for your time and
25 patience. Everybody looks well fed and attentive.

1 As I mentioned to you, you've heard all of the
2 evidence that's gonna be presented in this case and
3 at this juncture you're gonna hear closing
4 arguments. I'm gonna ask that you pay very close
5 attention to these presentations. Although what
6 they have to say is not evidence, it will aid you
7 immensely in your deliberation process. You and I
8 have only been dealing with this case for two days
9 now. These very fine lawyers have been dealing with
10 it for a long time so their observations will aid
11 you immensely so pay very close attention. These
12 are important matters. It's important to the State,
13 it's important to the Defendant, and it's important
14 to you. Let's proceed forward with a serious and
15 contemplated mind.

16 Ms. Timmons.

17 MS. TIMMONS: Thank you, may it please the
18 Court.

19 THE COURT: Yes, ma'am.

20 MS. TIMMONS: Mr. McKenzie.

21 I couldn't handle it anymore, I was too
22 scared. This is what Gigi Joyce told us here on the
23 stand. That's what pushed her to finally tell her
24 aunt what has been going on. That New Year's Eve
25 kiss was enough, finally made her tell. The

1 defendant is charged with four counts of criminal
2 sexual conduct with a minor in the third degree, and
3 this charge is defined: A person is guilty of
4 criminal sexual conduct with a minor in the third
5 degree if the actor is over 14 years of age and
6 actor willfully and lewdly commits or attempts to
7 commit a lewd and lascivious act upon or with the
8 body or its part of a child under 16 years of age
9 with the intent of arousing, appealing to, or
10 gratifying the lust, passions, and sexual desires of
11 the actor or the child. Put it simply means is any
12 touching on a child's body done in a sexual manner.

13 And to find defendant guilty of four
14 counts of criminal sexual conduct with a minor in
15 the third degree, you have to be firmly convinced
16 that he touched *victim* in a sexual manner on
17 four occasions. And I told you at the beginning in
18 my opening argument that sex crimes, and especially
19 sex crimes against children, they're very secret
20 crimes. They're very secret in their very nature.
21 So usually the only witness that can testify is the
22 victim themselves. Usually the only witness to the
23 crime is the victim themselves, and this case is no
24 different.

25 So you've heard from Gigi Joyce. She told

1 you what her uncle did to her. She told you, and
2 she has been consistent for the last two years. No
3 amount of intimidation on that witness stand changed
4 that. Her story has been consistent. She told you
5 that on October 27th when she was laying on her bed,
6 when she was laying on her aunt's bed, on her tummy,
7 her uncle came to the room, got on top of her on
8 four, all fours, and started thrusting so she could
9 feel his pelvic area on her buttocks. She also told
10 you that he made her touch his penis. She didn't
11 disclose that right away.

12 You've heard from Doctor Ralston. She's a
13 leading expert in child abuse sex crimes. She told
14 you that delayed disclosure is very common among
15 victims of child sex abuse. And one of the, or some
16 of the factors that are consistent with that or aid
17 in delayed disclosure is the factor whenever
18 defendant or whenever perpetrator lives with the
19 victim. And that's the case here. On October 27th
20 and December 26th ~~Victim~~ has been living with the
21 defendant. He has been that male dominant figure in
22 that household. In a household full of women he was
23 the only man so she didn't disclose it then. She
24 didn't disclose the December 26th incident whenever
25 he came to her room and started rubbing her breast.

1 She didn't disclose it then because also at that
2 time she has been living at that home with the
3 defendant. She also told you, I didn't want to ruin
4 my aunt's marriage, they were happy, I could see
5 that they were happy, I didn't want to ruin it.

6 And you've heard, she told you about the
7 spring break incident when she was just eight, nine
8 year olds, and her uncle starting rubbing her on her
9 vaginal area. She told her grandmother right away.
10 What makes it different than this incident? Well,
11 during the spring break of 2014 she didn't live here
12 in Manning with the defendant. She was still living
13 in Sumter with her grandmother. She didn't have to
14 face the defendant on a daily basis. So she told
15 her grandmother right away, and both of them
16 decided, well, it could have been innocent. They
17 just don't jump to conclusion because if we're gonna
18 tell Ann, she may leave him; and ~~Vicki~~ said, I don't
19 want to ruin my aunt's happiness.

20 Also, another factor that sometimes makes
21 kids not disclose right away that they were abused
22 is the fact that they're worried how it may affect
23 people around her and how it also may affect her.
24 You heard from the counselor. The counselor said
25 she was upset. She was very afraid that this may

1 cause her to be taken away from home. This is the
2 only home she had after her mom passed away. All
3 she had was her aunt and her grandma, and she was
4 afraid that because of defendant's actions she may
5 lose that home.

6 And then December 31st, she was laying on
7 the couch watching Dumb and Dumber New Year's Eve;
8 and whenever they were alone, the defendant kissed
9 her on the mouth and put his tongue in her mouth.
10 And finally, finally she couldn't handle it anymore.
11 She was just too scared, and she told, she finally
12 told. You've heard from Doctor Ralston that the
13 perpetrator behavior often, or the escalating
14 behavior, often encourages child to disclose. At
15 first defendant was touching the victim, then he
16 made her touch his private parts. He was rubbing on
17 her parts; and finally, whenever he tried to
18 penetrate her body with his tongue, finally *Victim*
19 gave in. She just couldn't handle it anymore.

20 You've heard from the victim's aunt and
21 her grandma. They told you whenever *Victim* came
22 running she was scared, she was upset, she was
23 crying, she was sobbing. Uncle Mike just kissed me
24 and he put his tongue in my mouth. Why would *Victim*
25 lie? Right away her aunt confronted the defendant

1 and because it wasn't the first time she heard about
2 his bad behavior, she witnessed herself defendant
3 kissing Gigi on the back of the neck and she told
4 him, don't do it, don't you ever do it again, and he
5 did it. So right away they just packed a few things
6 and they left. And when ~~Victim~~ was finally safe away
7 from the defendant, she wasn't living at his home
8 anymore, when she seen her therapist and her
9 therapist asked her, she finally disclosed October
10 incident and December 26th incident, her birthday
11 incident and the day after Christmas incident.

12 I guess you can tell from my accent I'm
13 not from around here. I was born and raised in
14 Holland. And in Holland we have a saying, don't
15 worry about roses when the forest is burning, which
16 means don't lose the sight of the big picture, don't
17 lose the sight of the issue. And the issue here is
18 whether Michael Dinkins touched ~~Victim~~ in a sexual
19 manner on four occasions. And you've heard the
20 defense kept asking and harping and saying,
21 misstating that the victim was taking some sort of
22 medication while all of this was occurring. Well,
23 you've heard from every single witness that was
24 asked here on the stand, no, she has not, no, she
25 has not, no, she has not. She has not been taking

1 something until, until 2017, two years after that
2 incident.

3 The defense also kept saying *Victim* has been
4 scared of her daddy. And every single witness said,
5 no, that's not true. *Victim* had very loving and
6 affectionate relationship with her daddy. The only
7 reason why she's not with her daddy right now is
8 because he's severely disabled, he cannot take care
9 of her. And she wasn't scared of her daddy, she was
10 scared for her daddy. She was afraid that one of
11 the seizures will finally be the last one.

12 You also heard about defense try to make a
13 big deal out of *Victim* getting on a school bus and
14 riding to her best friend's house, or *Victim* putting a
15 bad, a note with a bad word on the school bus.
16 That's what kids do. But you know what kids
17 shouldn't have to do? They shouldn't have to endure
18 their uncle kissing them, touching them on their
19 breast, making them touch his penis. Kids shouldn't
20 have to endure that.

21 Ladies and gentlemen, the defense attorney
22 during opening argument kept saying the defendant is
23 a giver, not a taker, he's a giver not a taker.
24 Well, I agree he's a giver, but he's also a taker.
25 He gave *Victim* a baggage full of memories that she

1 will have to carry for the rest of her life and she
2 [sic] took her innocence away. So I ask you, give
3 Gigi justice. Thank you.

4 THE COURT: Thank you, Ms. Timmons.

5 MR. MCKENZIE: Thank you, Your Honor.

6 THE COURT: Mr. McKenzie, you're
7 recognized.

8 MR. MCKENZIE: May it please the Court.

9 Being the father of five children one
10 thing I've learned in being a father is that
11 children are not always truthful. And this is a
12 very serious matter, and my client is charged with
13 very serious crimes, and you have an obligation as
14 to a jury to do the right thing. You have an
15 obligation to find guilt beyond a reasonable doubt.
16 Beyond a reasonable doubt, what does that mean?
17 That means that you have an obligation to look at
18 all the evidence, the evidence from that stand. And
19 when you look at the evidence from that stand, what
20 did you hear? What did you hear from *Victim*

21 *Victim's* mother died tragically and *Victim* has
22 tremendous problems from that; and that is
23 unfortunate, but that is no reason to accuse
24 somebody of something that he didn't do. This man,
25 Mr. Dinkins, brought this child into his home. He

1 didn't have to. He didn't have to bring the child
2 into his home. He did so out of the goodness of his
3 heart. He was married to her aunt, and the mother
4 died and the aunt and he got custody of this child.
5 So at some point a judge thought that he was worthy
6 to have custody of this child, and he got custody of
7 this child and he tried to love this child. And you
8 remember the records from, that I went through a
9 lot. Do you recall that I kept going through these
10 records with about every witness that was over here.
11 The reason the records are important because *Victim*
12 was going through mental health. She was seeing a
13 therapist. She was seeing therapist. Ten visits.
14 And I asked *Victim* and I asked her, I asked Aunt
15 Leigh, I said, did she confide in the therapist.
16 And she did. She confided very personal intimate
17 details of her life to the therapist.
18 The details. Her mother was bipolar.
19 Father exhibits bad behavior. Those are very
20 intimate details. She wanted, she wrote a note that
21 says she wanted to be with her mother. Now those
22 intimate details, I write a note that I want to kill
23 myself? I write a note that I'm scared of my
24 father? Okay? Those are in the records. Where is
25 the record of Mike Dinkins doing anything to this

1 child? Where is that record? There is none. Now
2 there's a record after the event, but not before it.
3 And the prosecution wants you to say, well, you
4 know, this stuff had been going on. It hadn't;
5 there's no record of it. You think that she would
6 say her father exhibits extremely bad behavior to
7 her counselor and that she's afraid of him, and she
8 wouldn't say I'm afraid of my Uncle Mike who she's
9 accusing of molesting her? That's not the way it
10 works, ladies and gentlemen. You are the believers
11 or you are the triers of the facts in the case. The
12 believability and the credibility of people who sit
13 on this stand, that is your task. You have to
14 decide did you hear correct testimony from there,
15 did someone have a reason to lie? That is your job.

16 Some of *victim's* testimony that was
17 inconsistent. She was on the sofa — well, let's
18 start with the 11th birthday. Said that she was in
19 her bed asleep. Well, it came out later on through
20 grandma that she sleeps with grandma in her bed. Is
21 that inconsistent? And that's one of the ways you
22 can tell whether someone is telling the truth or
23 not. Is there inconsistency in their story, okay?
24 So let's go on to on the sofa asleep. Now both of
25 those times she was asleep according to her

1 testimony. She never saw Uncle Mike do anything;
2 but apparently she was asleep on both those times,
3 on the sofa. Felt something wet and spongy. She
4 told grandma.

5 Now you, the judge whenever you walk in
6 this court -- he told you this in opening remarks --
7 you don't leave your common sense at that door. We
8 all bring our personal experiences and our common
9 sense to this courtroom. If you told grandmama that
10 Uncle Mike did this, don't you think we'd see it in
11 a record? Don't you think we would have a visit to
12 the psychiatrist to say, hey, this is going on?
13 Don't you think law enforcement would have been
14 involved? It wasn't. She also stated she was sick,
15 but you remember I had, *victim*, I got your records
16 from Urgent Care, there's no record of you being
17 sick that day. You remember that? The other
18 inconsistency from her story. Again, I asked her,
19 dad acted badly, yes. Okay? December 26th, 2015,
20 this is the incident when she's playing the game
21 allegedly her breasts were fondled by my client.
22 How many people were in that home? Her father, the
23 man who acts badly. Remember she testified he was
24 playing games with her? And Mike Dinkins was there.
25 Leigh Reed was there, Barbara Reed was there. The

1 only person that saw that was *Victim*; but yet, we
2 don't have a psychological record where she was
3 doing the psychological counseling, any report of
4 this. And you know what Sarah McClam said? If you
5 have any problems after August come back and see me.
6 That's a problem. The man's fondling a child's
7 breast, that's a problem. They didn't go back and
8 see her. Inconsistencies and stories is what you
9 have to decide, whether you can believe
10 believability and credibility of the witness.
11 That's what your burden is; that's what you do.

12 Now, father was there that day. Why
13 haven't we heard from the father? Her father, the
14 man who exhibits bad habits and bad acts in front of
15 *Victim* cusses in front of *Victim*, we haven't seen him.
16 Why? What does the State not want you to see? What
17 do they not want me to question him about? Tell
18 yourself that. Father was there December 26th.
19 He's not here on November 7th. Why?

20 12/31, *Victim* stated, kissed him on the
21 lips, tongue in her mouth. I got her to admit on
22 stand that didn't happen. You'll recall that. *Victim*
23 always slept with her mother? Her, I'm sorry, her
24 grandmother. *Victim* went to counseling ten times, and
25 the first time -- this supposedly happened on 12/31.

1 The first time this was reported to anyone was Sarah
2 McClam on January 7th, eight days later; and in that
3 time frame Leigh Reed says, I'm filing for divorce.
4 Why? Why does it take eight days to report this?
5 They sent *Victim* to a forensic interviewer. Did you
6 hear the forensic interviewer testify? Why?

7 The State has the burden of proof. The
8 judge is gonna tell you that in his closing remarks
9 to you. The State has the burden of proof.
10 Mr. Dinkins sits there an innocent man, has nothing
11 to prove. The State has everything to prove. Where
12 is our forensic examiner? Where is father? They
13 have the burden. Why can't we hear from them? Why
14 can't you judge their credibility and believability.
15 They have the burden, not Mr. Dinkins, not myself,
16 the State does, and we don't have either one of
17 those witnesses.

18 The child testified that she was on
19 medication in the summer of 2015 for major
20 depressive disorder, general anxiety disorder, and
21 ADD. Does that have an effect on her? I asked the
22 expert again, who's a doctor, you know what her
23 response was? I'm not a doctor, I don't know what
24 those medicines do to you. That's the State's
25 witness. That's what they want you to believe.

1 Their burden, they want you to believe that.

2 The counselor's record was so important
3 because this case is different than any case I've
4 seen in regards to this type of conduct. We have
5 actual counseling records during the time before
6 this incident, before these four incidents, and
7 immediately after with no mention to a psychiatrist
8 that the child admitted she trusted and confided in.
9 She trusted and confided in Sarah McClam. She did
10 that. She testified to that. Why wouldn't she
11 confide that Uncle Mike was touching me
12 inappropriate, but she testifies her own father has
13 bad behavior, why would she do that? That's why
14 these records are so important.

15 Remember Barbara Reed, the grandmother
16 that got on the stand and testified. I wrote this
17 down when she testified to this. Fuzzy memory,
18 fuzzy memory. Beyond a reasonable doubt is the
19 burden the State has. Do you convict somebody
20 because somebody had a fuzzy memory? That's
21 reasonable doubt, fuzzy memory alone. Do you want
22 to convict somebody because a witness says, fuzzy
23 memory? 12/31 instance, the only thing she really
24 could remember, okay, does not recall whether they
25 went to bed, okay. *Victim* came in, said she needed to

1 talk. Can't remember, never witnessed anything.

2 That's important in this case too.

3 There's no witnesses to this. And the
4 judge is gonna tell you about physical evidence.
5 He's gonna tell you about circumstantial evidence.
6 Physical evidence is somebody that comes and said I
7 saw that. Or I've got, here's the gun that
8 committed the crime; that's physical evidence. We
9 don't have that here. Again, the State has the
10 burden of proving its case beyond a reasonable
11 doubt, and we have no physical evidence. We have a
12 child who has admitted she was on medication, that
13 she was, she was suffering some severe depression,
14 severe depression. She never mentions her Uncle
15 Mike did anything? But she keeps talking about her
16 father in every record. I went through those
17 records with Ms. McClam. I said, talked about her
18 father, she's embarrassed by her father. She, her
19 father exhibits bad behavior, her father -- but she
20 never mentioned a word about Uncle Mike. In fact,
21 the only thing she said about Uncle Mike was that
22 Leigh Reed and Uncle Mike got along great, the only
23 record that says anything. Grandmama said also
24 something, that she didn't want to break up a happy
25 family. Is a family happy if the man in the family

1 is molesting a child like they claim. Grandmama
2 said that, I don't want to break up a happy family;
3 but yet, here he is molesting this child. But
4 that's what she stated. Believability, credibility
5 of witnesses. That's your job. That's what you
6 have to decide.

7 Leigh Reed, the aunt. The incident
8 report, I asked Sergeant Smith, Leigh and her mother
9 were on the porch, but mother testified she was in
10 bed reading. Again, contradictory statement, can't
11 keep a story straight. What does that mean? Does
12 that mean deception? What does that mean exactly?
13 Remember Ms. Reed and I got in this discussion about
14 the child did not see a psychiatrist until after the
15 disclosure in 2016? Had Sarah McClam get on the
16 stand and she testified. This child saw a
17 psychiatrist twice in the summer of 2015 after the
18 suicide note. Remember I asked Leigh Reed when the
19 suicide note was written? Oh, that was written in
20 2013. Why is that important? Because if you go to
21 a counselor in 2015 and you say, hey, I'm gonna take
22 my life because I want to be with my mother but I'm
23 not gonna tell you that Uncle Mike is molesting me?
24 So it's so serious and I'm so depressed that I want
25 to take my life, not mentioning Uncle Mike; but yet,

1 I'm gonna take my life. That's why the child went
2 to see the psychiatrist twice.

3 And there was discussion about medication.
4 And I asked, I asked Ms. McClam on the stand, isn't
5 it true that Sumter Psychiatry gives you free
6 samples for a while? She said, yes, they did. One
7 of the records says -- and this is from the aunt.
8 And this is in, this is in July of 2015. The child
9 acts out for attention. Now, to use our common
10 sense, children, whenever they lose a loved one, do
11 they want to make sure they have the attention of
12 other people in the household? They certainly do
13 and they should. Children deserve attention. And
14 this child, quite honestly, has a lot of things
15 going on. She's in a major depressive disorder,
16 general anxiety disorder, on medication, and it's
17 terrible and it's tragic; but does it mean that her
18 uncle molested her? The answer is, no, does not
19 mean that at all. It means this child has a lot of
20 issues. Could this child be lying? Certainly.
21 Certainly. And you have to determine whether the
22 child is telling you truth beyond a reasonable
23 doubt. That is the standard; the judge is gonna
24 tell you that. So in trying to help you determine
25 that the State called Kim Marlow. She testified

1 Mike Dinkins said he didn't do any of this, that the
2 most he did was show affection to this child. Are
3 we going to start convicting people of molesting
4 children for showing affection, kissing them,
5 tickling them, having fun with your children, having
6 fun with children that you want to show attention to
7 because they may have lost a loved one? Are we
8 going to start doing that? Then the jail is gonna
9 be full of child molesters. If we go down that
10 road, that's the road we're gonna end up on. And
11 somebody has to put a stop to it, and the law says
12 you are the people chosen to put a stop to this. If
13 we start saying that men cannot show affection to
14 their nieces, to their daughters, where do we go
15 from there? What do we do? Is it that, hey, I'm
16 sorry, my four year old daughter, you can't come get
17 in my lap and give daddy a kiss because that might
18 be considered child molesting. That's the next step
19 here. That's the next step of what's gonna happen.

20 The State had an opportunity to show you
21 'cause Kim Marlow testified that there was a video
22 of Mike Dinkins' statement. Had a choice to show
23 you that; they didn't show it to you. You know why?
24 They don't want you to see what he said. Maybe he
25 said he didn't do it. Again, the State has the

1 burden of proof. What are they hiding? Why can't
2 you see these things? Is that reasonable doubt?
3 Linda Smith, she testified the incident report and
4 the warrants that I had Kimberly Marlow look at.
5 The warrant said attempt to put a tongue in her
6 mouth. The child contradicts the statements from
7 one statement to the next, and they took -- and
8 these are sworn statements. Now if we can't believe
9 the consistency of a statement, is any of the
10 statement true?

11 Elizabeth Ralston, this was the doctor
12 that testified. And the last question I asked her,
13 I said, I went through all this with the child
14 having lost a parent, with this and that, and she
15 goes, maybe I misdiagnosed that. And I didn't ask
16 her anymore questions. At that point in time maybe
17 she misdiagnosed it, or maybe it's reasonable doubt.
18 Maybe it's reasonable doubt.

19 MS. TIMMONS: Your Honor, that's --
20 objection, misstating facts and witness testimony.

21 THE COURT: It's closing argument,
22 overruled.

23 MR. MCKENZIE: I asked her what does being
24 on Lexapro mean, Clonidine mean, Buspar, Metitatin.
25 And forgive me if I mispronounce those words.

1 Couldn't testify to exact act of those things 'cause
2 I'm not a medical doctor. Why is she here? That's
3 the State's witness. Do those things have an effect
4 on the child, keep her or maybe cause her to
5 hallucinate, cause her to do anything? We don't
6 know 'cause the State has the burden and they won't
7 tell you. At the end of today you're gonna get to
8 the end of this closing remark and the judge will
9 give his remarks to you. You're gonna go back there
10 and you're gonna deliberate, and it's your job to
11 come back with a verdict. Verdict simply means to
12 tell the truth. And you're not here to reward the
13 State of South Carolina. You're not here to reward
14 the victim in this case. You're here to speak the
15 truth, and you have to ask yourself did the State
16 prove beyond a reasonable doubt that my client
17 molested this child on four separate occasions.
18 That's what you have to decide. You have to, you
19 have to go through the believability and credibility
20 of each one of the witnesses, and you have to look
21 at the evidence that was submitted to you. And
22 where is the evidence? The State has the burden.
23 They presented no evidence to you. Testimony, and
24 that testimony was all over the place.

25 I recognize that the State has the burden

1 of proof here, but there's also another burden here.
2 That burden is upon you, each one of you for being
3 here. It took two days away from your life. But
4 this is my client's life too. And in our system
5 jurors are ultimately to determine the facts of a
6 case; and if the State did not prove to you beyond a
7 reasonable doubt that Mike Dinkins is guilty of each
8 one of these crimes, then he is innocent, he is
9 innocent. That is your burden and that's a heavy
10 burden from you.

11 A very wise man told me, there's only one
12 thing worse than being the victim of sexual assault,
13 and that will be wrongly accused of it. I thank you
14 for your service.

15 THE COURT: Ladies and gentlemen of the
16 jury, I'm gonna ask if you'd stand up and stretch
17 just a moment.

18 (Pause.)

19 THE COURT: Ladies and gentlemen of the
20 jury, you have heard all the evidence in the case.
21 You've heard the closing arguments. And when I
22 talked with you in the very beginning I told you
23 your job was to listen to all the evidence,
24 determine what the truth is, and apply it to the
25 law. That's what my job is to charge you the

1 substantive law with regard to this case. I wish
2 there were an easy way or an entertaining way to do
3 that; there isn't. We just finished lunch, and I
4 know sometimes you have a tendency to fade during
5 this period of time; but I can't emphasize how
6 important this case is. I want you to pay very
7 close attention. You've taken a solemn oath that
8 you'll pay attention to the evidence, and I've
9 watched y'all throughout the trial. When a witness
10 would testify you would look at the witness. When a
11 lawyer would ask a question you would look at them.
12 Clearly you have the tools necessary to resolve the
13 factual issues in this case. But before you are
14 able to discharge your duty, you have to understand
15 the law so I'm gonna ask that you perk up a little
16 bit and pay very close attention as I charge you the
17 law.

18 Madam Forelady, ladies and gentlemen of
19 the jury, the indictment charges the defendant with
20 four counts of criminal sexual conduct with a minor
21 third degree. There are also some lesser included
22 offenses that will be talked about when we review
23 the verdict form. I remind you that the fact that
24 the defendant was arrested, charged, and indicted is
25 not evidence. It cannot be considered by you as

1 evidence; nor does it create any presumption or
2 inference of guilt. This document is simply the
3 formal written instrument which contains the charges
4 made against the defendant. It is the formal
5 document by which this case is brought into the
6 court.

7 The indictment in this case alleges four
8 separate offenses against the defendant, along with
9 some lesser included offenses that we'll discuss
10 later. You must decide each indictment separately
11 on the evidence and law applicable to it
12 uninfluenced by your decision as to any other
13 indictment. A defendant may be convicted or
14 acquitted on any or all of the offenses charged.
15 You'll be asked to write a separate verdict of
16 guilty or not guilty for each indictment.

17 Madam Forelady, ladies and gentlemen of
18 the jury, I remind you that during this trial you
19 and I have certain duties to perform. As the trial
20 judge it is my responsibility to preside over the
21 trial. I also have the duty to rule on
22 admissibility of evidence offered during this trial.
23 You're to consider only the competent evidence
24 before you. You're to consider only the testimony
25 which has been presented from this witness stand,

1 any exhibits which have been made a part of the
2 record, and any stipulations of counsel. I have the
3 additional duty to charge you the law. As the
4 presiding judge, I'm the sole judge of the law. It
5 is your duty as jurors to accept and apply the law
6 as I now state it to you. If you already have an
7 idea as to what the law is or what the law ought to
8 be, if it does not agree with what I now tell you
9 the law is, you must abandon this idea because
10 you're sworn to accept the law, apply the law
11 exactly as I state it to you.

12 In every case tried in this court before
13 the jury the jury becomes the sole and exclusive
14 judge of the facts. A trial judge cannot intimate,
15 state, comment on, or make any statement to a trial
16 jury about the facts. Since you, the jury, are the
17 sole judges of the facts, you are not to infer from
18 what I've said during the progress of this trial in
19 ruling on admissibility of evidence or otherwise, or
20 anything that I say now during the course of this
21 instruction to you, that I have any opinion about
22 the facts. The law simply does not allow me to have
23 an opinion about the facts. This is a matter solely
24 for you, the jury, to determine. As jurors it is
25 your duty to determine the effect, value, weight,

1 truth, evidence presented during this trial.

2 The defendant has pled not guilty to this
3 indictment and that plea puts the burden on the
4 State to prove the defendant guilty. A person
5 charged with committing a criminal offense in South
6 Carolina is never required to prove himself
7 innocent. I charge you that it is an important rule
8 of law that the defendant in a criminal trial, no
9 matter what the seriousness of the charge may be,
10 will always be presumed to be innocent of the crime
11 for which the defendant is, for which the indictment
12 was issued unless guilt has been proven by evidence
13 satisfying you of that guilt beyond a reasonable
14 doubt. This presumption of innocence does not end
15 when you begin your deliberations, but it
16 accompanies the defendant throughout the trial until
17 you reach a verdict of guilt based on evidence
18 satisfying you of that guilt beyond a reasonable
19 doubt.

20 The presumption of innocence is like a
21 robe of righteousness placed about the shoulders of
22 the defendant which remains with the defendant until
23 it's been stripped from defendant by evidence
24 satisfying you of defendant's guilt beyond a
25 reasonable doubt. The presumption of innocence is

1 not a mere legal theory; it's not just a legal
2 phrase. It's a substantial right to which every
3 defendant is entitled unless you, the jury, are
4 satisfied from the evidence of defendant's guilt
5 beyond a reasonable doubt.

6 What is reasonable doubt in the law? A
7 reasonable doubt is a kind of doubt that would cause
8 a reasonable person to hesitate to act. The State
9 has the burden of proving the defendant guilty
10 beyond a reasonable doubt. Some of you have served
11 as jurors in civil cases where you're told it's only
12 necessary to prove that a fact is more likely true
13 than not true, such as by a greater weight or
14 preponderance of the evidence. In criminal cases
15 the State's proof must be more powerful than that;
16 it must be beyond a reasonable doubt. Proof beyond
17 a reasonable doubt is proof that leaves you firmly
18 convinced of defendant's guilt. There are very few
19 things in this world that we know with absolute
20 certainty, and in a criminal case the law does not
21 require proof that overcomes every possible doubt.
22 If based on your consideration of the evidence
23 you're firmly convinced the defendant is guilty of
24 the crime charged, you must find the defendant
25 guilty. If, on the other hand, you think there's a

1 real possibility the defendant is not guilty, you
2 must give the defendant the benefit of the doubt and
3 find him not guilty.

4 There are two types of evidence which are
5 generally presented during a trial, direct evidence
6 and circumstantial evidence. Direct evidence proves
7 the existence of a fact and does not require
8 deduction. Circumstantial evidence is proof of a
9 chain of facts and circumstances indicating the
10 existence of a fact. Crimes may be proven by
11 circumstantial evidence. The law makes no
12 distinction between the weight or value to be given
13 to either direct or circumstantial evidence.
14 However, to the extent the State relies on
15 circumstantial evidence, all of the circumstances
16 must be consistent with each other when taken
17 together point conclusively to the guilt of accused
18 beyond a reasonable doubt. If these circumstances
19 merely portray the defendant's behavior as
20 suspicious the proof has failed.

21 The State has the burden of proving the
22 defendant guilty beyond a reasonable doubt. This
23 burden rests with the State regardless of whether
24 the State relies on direct evidence or
25 circumstantial evidence or some combination of the

1 two. Madam Forelady, ladies and gentlemen of the
2 jury, necessarily you must determine the credibility
3 of witnesses who have testified in this case.
4 Credibility simply means believability. It becomes
5 your duty as jurors to analyze and evaluate the
6 evidence and determine which evidence convinces you
7 of its truth. In determining believability of
8 witnesses who have testified you may believe one
9 witness over several witness or several witnesses
10 over one witness. You may believe part of the
11 testimony of a witness and reject the remaining part
12 of the testimony of that same witness. You may
13 believe the testimony of a witness in its entirety
14 or reject the testimony of a witness in its
15 entirety. You may consider whether any witness
16 exhibited to you any interest, bias, prejudice, or
17 motive. You may also consider the appearance and
18 manner of a witness while on the witness stand.

19 Madam Forelady, ladies and gentlemen of
20 the jury, during this trial you have heard testimony
21 from a child. Where a witness is a child you must
22 determine as with any witness whether the witness is
23 believable. In deciding believability you may
24 consider not only matters that I have already
25 discussed with you, but you may also consider the

1 age of the child, the child's ability to observe and
2 remember facts, the child's ability to understand
3 and answer questions 'cause young children may not
4 fully understand what is happening here. It's up to
5 you to decide whether a child understood the
6 seriousness of appearing as a witness at this
7 criminal trial, whether the child, whether the child
8 understood the questions, whether the child has a
9 good memory, whether the child understands the
10 difference between lying and telling the truth. In
11 addition, young children may be influenced by the
12 way the questions are asked. It is up to you to
13 decide whether the child understood the questions
14 asked.

15 Madam Forelady, ladies and gentlemen of
16 the jury, the rules of evidence ordinarily do not
17 permit witnesses to testify to opinions or
18 conclusions. An exception to this rule exists with
19 witnesses we call expert witnesses, a witness who by
20 education and experience have become expert at some
21 art, science, profession, or calling, may state an
22 opinion as to relevant material matter which the
23 witness claims to be an expert, may also state the
24 reasons for the opinion. You should consider any
25 expert opinion received in evidence in this case,

1 and like any other evidence give it the weight you
2 think it deserves. If you decide that the opinion
3 of an expert is not based on sufficient education
4 and experience, if you conclude that the reasons
5 given in support of the opinion are not sound, that
6 the opinion is outweighed by other evidence, you may
7 disregard the opinion entirely. An expert witness'
8 testimony is to be given no greater weight than that
9 of other witnesses simply because the witness is an
10 expert. Further, you're not required to accept the
11 expert's opinion even though it is not contradicted.

12 Madam Forelady, ladies and gentlemen of
13 the jury, I will instruct you and emphasize that the
14 fact that the defendant did not testify is not a
15 factor to be considered by you in any way in your
16 deliberations and in your consideration of the
17 question of guilt or the innocence of the defendant.
18 It must not be considered by you in any manner
19 whatsoever. A defendant has the constitutional
20 right to remain silent. An assertion of this right
21 must not be considered by you in your deliberations.
22 I repeat, under your oath you're to draw no
23 conclusions whatsoever from the fact the defendant
24 in this case did not testify. The fact that this
25 defendant did not testify should not even be

1 discussed in the jury room.

2 Madam Forelady, I'm gonna ask that you
3 enforce that rule. There'll be no discussion
4 whatsoever about the fact that the defendant did not
5 testify.

6 The burden of proof as I have stated to
7 you is on the State. The defendant is not required
8 to prove his innocence. The burden of proof remains
9 on the State to prove guilt beyond a reasonable
10 doubt. There's been evidence presented that
11 witnesses have made prior statements which are not
12 consistent with the witness' present testimony. You
13 may use this evidence to decide whether to believe a
14 witness. You may also use evidence of earlier
15 contradictory statements to determine the truth of
16 those statements. It is up to you to decide whether
17 to believe the earlier statements or the testimony
18 given at trial. If a witness has shown to have
19 knowingly testified untruthfully concerning any
20 material matter, you may consider this in
21 determining whether to trust the witness' testimony
22 as to other matters. You may reject all testimony
23 of that witness or give all or part of the testimony
24 the weight you think it deserves.

25 A statement alleged to have been made by

1 the defendant has been admitted into evidence in
2 this case. The Court has determined that the
3 statement is admissible, and I instruct you that you
4 make the ultimate decision as to whether or not the
5 defendant made the statement. If the defendant did
6 make the statement, you must determine whether the
7 statement was made by the defendant voluntarily and
8 of his own free will. This means that the statement
9 was not caused by pressure, force, fear, threats,
10 coercion, or intimidation by hope or a promise of
11 leniency or a reward of any kind. In determining
12 whether the statement was voluntary you should
13 consider both the characteristics of the defendant
14 and the details of the questioning. Some of the
15 factors you must consider are: Age of the
16 defendant, the defendant's education, lack of
17 education, the defendant's mental ability or
18 capacity, the defendant's IQ or intelligence, the
19 defendant's background and environment, place and
20 length of detention, the nature of the questioning,
21 the advisement or lack thereof to the defendant of
22 his constitutional rights, but not limited to the
23 right to remain silent, that any statements can be
24 used against him in a court of law, the right to
25 have a lawyer present, if he could not afford a

1 lawyer, that if he could not afford a lawyer a
2 lawyer would be appointed to represent him without
3 any cost, and that he could stop making a statement
4 at any time. You must carefully consider all of the
5 surrounding circumstances before you give any weight
6 to an alleged statement.

7 The State has the burden of proving beyond
8 a reasonable doubt that the alleged statement was
9 voluntary. If you determine it was you may give the
10 statement any further consideration that you deem
11 proper. You must decide what weight, if any, should
12 be given to the alleged statement. If you determine
13 the alleged statement was not the free and voluntary
14 statement of the defendant, you should not consider
15 the statement at all.

16 I'm gonna charge you the substantive law
17 with regard to criminal sexual conduct with a minor
18 third degree. Pay very close attention. A person
19 is guilty of criminal sexual conduct with a minor in
20 the third degree if the actor is over 14 years age,
21 the actor willfully, lewdly, commits or attempts to
22 commit, a lewd or lascivious act upon or with a body
23 or its parts of a child under 16 years of age with
24 intent of arousing, appealing to, or gratifying the
25 lust, passion, or sexual desires of an actor or of a

1 child. However, a person may not be convicted of
2 violation of provisions of this subsection if the
3 person is 18 years of age or less when the person
4 engages in consensual lewd or lascivious conduct and
5 the other person was at least 14 years of age.

6 I want to charge you the lesser included
7 offense which applies to count one and four in the
8 indictment. I'll go over the verdict form with you,
9 but you're gonna be given the opportunity to
10 consider lesser included offenses and I'm gonna
11 charge you the substance of the lesser included
12 offense of assault and battery second degree. A
13 converse -- a person commits the offense of assault
14 and battery in the second degree if a person
15 unlawfully injures another person or offers or
16 attempts to injure another person with a present
17 intent to do so and the act involves a nonconsensual
18 touching of the private parts of a person either
19 under or above the clothing. Private parts means
20 the genital area or buttocks.

21 Madam Forelady, I'm gonna come forward and
22 share with you the verdict form.

23 Make sure the alternate, when the jury
24 retires to the jury room you'll remain with us,
25 don't go back into the jury room.

1 Madam Forelady, if you could, I want to go
2 over this verdict form with you. Before I do that,
3 you have additional duties. You, like everyone
4 else, may have one vote, but you're also gonna be
5 charged with the responsibility to preside over the
6 deliberation process. Essentially that means that
7 you're to insure that everybody's voice is heard.
8 Let me go over this verdict form with you. You can
9 stand while I do that; it might be easier. You
10 might be able to see it. The State of South
11 Carolina, County of Clarendon. It's got a caption
12 here, the fact that we're the Third Circuit General
13 Sessions Court and the indictment number. It's
14 entitled Verdict Form. There's count one, as to the
15 count of criminal sexual conduct with a minor third
16 degree occurring on or about October 27th, 2015:
17 We, the jury, find the defendant not guilty or
18 guilty. You have to find one or the other. If you
19 find him guilty, then you need to, of that
20 particular count, that's completely within your
21 province as the jury to make that determination. If
22 you find him guilty, then you obviously go on to
23 count number two because you can't be guilty of
24 criminal sexual conduct with a minor third degree
25 and a lesser included offense of assault and battery

1 second degree. It has to be one or the other.
2 However, obviously in your collective wisdom, if you
3 were to find him, if you were to find him not guilty
4 of criminal sexual conduct with a minor and not
5 guilty of assault and battery second degree, that's
6 completely within your province; but you can't find
7 him guilty of both. You follow me?

8 THE FORELADY: Yes, sir.

9 THE COURT: Count two, only as to
10 substantive indicted offense criminal sexual conduct
11 with a minor third degree, October 27th, 2015, not
12 guilty or guilty. Count three, as to criminal
13 sexual conduct with a minor third degree,
14 December 31st, 2015, not guilty, guilty. And count
15 four as it relates to the allegation on
16 December 26th, 2015, not guilty, guilty. And then
17 with regard to count four as to the December 26th,
18 2015, there's a lesser included offense. Once
19 again, he can be found guilty of both or he can be
20 found not guilty of both and he can be found not
21 guilty of that and guilty so, those are, okay.
22 There's a place for you to sign and place for your,
23 to print your name, a place for you to date. And
24 the verdict form must be unanimous; that's noted on
25 there. It can't be 11 to 1, 6 to 6, 8 to 4,

1 everyone has to be agree. And there's a note also
2 to contact the bailiff when you reach a verdict.
3 I'm gonna ask if you hang on to that verdict form
4 and have a seat. I want to talk to you just
5 briefly.

6 Madam Forelady, when you're presiding over
7 deliberation process, if someone were to get up and
8 use the restroom stop deliberations 'cause everybody
9 has to participate in all the deliberation process.
10 There might be an occasion that a question comes up;
11 and if that be the case, I'm gonna ask that you
12 reduce -- y'all communicate the question or concerns
13 to the forelady. She'll reduce it to writing and
14 give it to the bailiff; and if it's something I can
15 help you with, I'll be happy to do that. I'll tell
16 you from the very outset, the difficult questions in
17 this case are gonna be left up to you. You heard
18 the law. I cannot have an opinion with regard to
19 the facts. If you have a question about the law, I
20 can re-charge that, that's my job. I'm here to
21 charge you the law. If there's some question in
22 your mind whether or not it's a question of law or
23 question of fact, write it down and I'll tell you;
24 but I don't anticipate there are gonna be any
25 questions because you paid very close attention as

1 the trial progressed. You heard all of the
2 testimony and you have all of the evidence necessary
3 to resolve those questions of fact and you paid very
4 close attention to the charge and the law so I
5 anticipate there will not be any questions. If
6 there are, reduce it to writing, we'll be happy to
7 do that.

8 You know, when I asked you to leave the
9 courtroom previously I told you not to begin
10 deliberations; and once again, I'm gonna tell you
11 not to do so 'cause I'm gonna ask these very fine
12 lawyers if I inadvertently misstated the law or left
13 something out, put something in that wasn't supposed
14 to be. And if that's, if there's something I need
15 to address with you I'll bring you back in before
16 you begin deliberations. If after discussing this
17 matter with these lawyers and there's no need for us
18 to revisit issues of law, then we will gather up all
19 the documentary evidence and I'll send those
20 documentary evidence back to the jury room. The
21 bailiff will give you pad and paper and pencils to
22 aid you in your deliberation process and tell you to
23 begin deliberations. Once again, do not begin
24 deliberations until you've been given instructions
25 to do so. I'm gonna ask that the alternate remain

1 with us.

2 Everyone remain seated as the jury exits
3 the courtroom.

4 (WHEREUPON, the jury was removed from the
5 courtroom at 3:12 p.m.)

6 THE COURT: Yes, sir. You have discharged
7 your duty. I'm gonna release you from your jury
8 service.

9 (Alternate was excused.)

10 THE COURT: Any objection to the jury
11 charge from the State, Ms. Timmons?

12 MS. TIMMONS: No, sir, Your Honor.

13 THE COURT: Mr. McKenzie?

14 MR. MCKENZIE: Nothing from the Defense,
15 Your Honor.

16 THE COURT: All right. I'm gonna ask if
17 you could, come in front of the, come in front of
18 the court reporter, and we're gonna gather up the
19 documentary evidence.

20 MS. TIMMONS: Your Honor, there are none.

21 THE COURT: There is no documentary
22 evidence.

23 MR. MCKENZIE: There was a, I think we had
24 a ---

25 MS. TIMMONS: And the only exhibit is just

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MR. MCKENZIE: That's your exhibit.

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MS. TIMMONS: Yes, uh-huh.

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THE COURT: Very good. Mr. Bailiff, I'm gonna ask, if you could, to tell them that there is no documentary evidence and that they, to proceed forward with deliberations. There is no documentary evidence.

MR. MCKENZIE: Don't tell them there is no evidence.

THE COURT: There is no documentary evidence.

MR. MCKENZIE: Correct.

THE COURT: There are no — just say there are no documents, you may begin deliberations. Let the record reflect it's 3:15. We'll stand at ease.

(WHEREUPON, a recess was taken from the proceedings.)

THE COURT: The question has been posed, can we have written definitions of criminal sexual conduct third and assault and battery? The answer to that is, no, I will re-charge that. Can we have, can we see the police report? And the answer is, no, it's not in evidence. You can have a seat.

There's some confusion about which

1 incidents occurred on which dates, can we get
2 clarification? And there's a second part to that
3 and it goes, how do we know which incident on 10/27
4 is count one and which is count two. Those are very
5 valid concerns. And I did notice that when y'all
6 were making directed verdict motions, y'all have
7 been working on the case for years now and couldn't
8 keep straight which ones were which, which is a
9 valid concern. But my question is, can we without
10 re-playing all the testimony, how are we going to do
11 it? If y'all — we can do one of two things. We
12 can say that's a question of fact for them to
13 resolve. Or, if y'all wanted to delineate what
14 count one, two, and three is just by a couple of
15 words, if y'all can stipulate to that I'd be willing
16 to do that.

17 MS. TIMMONS: Your Honor, I guess the
18 State's position would be that if we can stipulate
19 it since count one has also lesser included offense.
20 There was the incident whenever —

21 THE COURT: All right, let's, let me ask
22 you this, all right. Count one, how would you best
23 identify count one?

24 MS. TIMMONS: That was the, I guess,
25 humping incident whenever defendant laid on top of

1 the victim in her aunt's bedroom.

2 MR. MCKENZIE: I'm not sure I'm crazy
3 about the word humping.

4 MS. TIMMONS: I mean...

5 THE COURT: That took place in allegedly
6 the bedroom?

7 MS. TIMMONS: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. MCKENZIE: Count one allegedly in the
10 bedroom.

11 THE COURT: All right. Count two?

12 MS. TIMMONS: Was the living room on the
13 couch.

14 THE COURT: Count three?

15 MS. TIMMONS: That was December 31st, New
16 Year's Eve.

17 THE COURT: Okay.

18 MS. TIMMONS: And then count four was
19 December 26th, which is correctly stated in the
20 verdict form.

21 THE COURT: December 26th? And what would
22 be the best words to describe December 26th?

23 MS. TIMMONS: Yes, touching of the breast
24 underneath the shirt in victim's room.

25 MR. MCKENZIE: How about, Your Honor, so

1 the breast of the reaching under the shirt incident.

2 THE COURT: Okay.

3 MR. MCKENZIE: Let them make the inference
4 as opposed to say touching of the breast.

5 THE COURT: And the alleged impropriety on
6 the living room couch, was that the kiss?

7 MS. TIMMONS: On New Year's Eve was the
8 kiss and, well, October 27th was also on the couch.
9 It was grabbing, I guess, touching defendant's
10 privates.

11 THE COURT: Upper part of the leg?

12 MS. TIMMONS: Excuse me?

13 THE COURT: Upper part of the leg? Upper
14 thigh?

15 MR. DURANT: It was the incident which the
16 defendant allegedly touched himself with her hand.

17 THE COURT: Okay. All right, well, this
18 is what I — let's see if we can agree to this.
19 Count one is allegations arise out of the evidence
20 that came from the stand concerning a bedroom
21 incident that involved allegations of pelvic
22 thrusting.

23 MS. TIMMONS: That sounds good.

24 MR. MCKENZIE: Okay.

25 THE COURT: Okay. Count two occurred on

1 the living room couch and it's allegations of the
2 defendant's private parts being touched.

3 MR. MCKENZIE: Okay.

4 THE COURT: And count three, New Year's
5 Eve, an alleged kiss.

6 MS. TIMMONS: That's correct, sounds good.

7 THE COURT: December 6th, an allegation
8 arising out of the assertion of the defendant
9 reaching under, under her shirt.

10 MS. TIMMONS: Yes, Your Honor, but
11 December 26th.

12 MR. MCKENZIE: The alleged kiss was New
13 Year's Eve, December 31st, that's number three.

14 THE COURT: December 26 is the allegation
15 arising around the allegation of reaching under the
16 shirt.

17 MR. MCKENZIE: And that's the December
18 26th incident. December 30 -- actually, the best
19 way for it to read would have been count three
20 should have been December 26th. Count four should
21 have been ---

22 THE COURT: We're not shuffling around the
23 indictment. We're doing it the way it is.

24 MR. MCKENZIE: I understand, Your Honor.
25 I'm just saying that it's, that's, I think that's

1 why the jury is confused.

2 THE COURT: I don't think so. I think
3 it's just difficult. I don't think that's -- that
4 might add to it, but I don't think that's the reason
5 why.

6 MR. MCKENZIE: Okay.

7 THE COURT: All right. Bear with me just
8 one moment. We're ready for the jury.

9 (WHEREUPON, the jury was returned to the
10 courtroom at approximately 3:33 p.m., and
11 the following proceedings commenced in
12 open court.)

13 THE COURT: Madam Forelady, ladies and
14 gentlemen of the jury, through stipulation of
15 counsel as a result of these questions, pay very
16 close attention. Count one can best be identified
17 as the allegations of what took place in the bedroom
18 that involved an accusation of pelvic thrust. Count
19 two took place allegedly on the living room couch,
20 and this particular count arises out of allegations
21 of the defendant's private parts being touched.
22 Count three, New Year's Eve, and the allegations
23 allege some sort of kiss. Count four,
24 December 26th, alleges allegation of reaching under
25 a shirt. All right.

1 The question was posed, can we see the
2 police report. The answer is, no, it's not in
3 evidence. Can we have written definitions of CSC
4 third, assault and battery second. Pay very close
5 attention, I will charge you the law.

6 Madam Forelady, ladies and gentlemen of
7 the jury, a person is guilty of criminal sexual
8 conduct with a minor in the third degree if the
9 actor is over 14 years of age, an actor willfully,
10 lewdly commits, attempts to commit a lewd or
11 lascivious act upon or with a body or its parts of a
12 child under 16 years of age with the intent of
13 arousing, appealing to, or gratifying the lust,
14 passion, or sexual desires of a actor or a child.
15 However, a person may want be convicted of a
16 violation of the provision of this section if the
17 person is 18 years of age or less when the person
18 engages in consensual, lewd, or lascivious conduct
19 with another person who is at least 14 years of age.

20 Assault and battery second degree. A
21 person commits the offense of assault and battery
22 second degree if a person unlawfully injures another
23 person or offers or attempts to injure another
24 person with the present ability to do so and the act
25 involves a nonconsensual touching of the private

1 parts of a person either under or above the
2 clothing. Private parts means the genital area or
3 buttocks. I'm gonna ask that you return to the jury
4 room and resume deliberations.

5 I'll make this note part of the record.

6 (Court's Exhibit Number 2 was marked
7 and made a part of the record.)

8 (WHEREUPON, the jury was removed from the
9 courtroom at 3:42 p.m.)

10 THE COURT: We'll stand at ease, and I'm
11 gonna ask everybody to remain in the courtroom until
12 we reach a verdict.

13 (WHEREUPON, a recess was taken from the
14 proceedings.)

15 THE COURT: Plaintiff had indicated one of
16 the jurors indicated that they need to make a phone
17 call to have someone picked up. And I'm gonna give
18 the bailiff instructions to tell them that we're
19 gonna, if a verdict has not been reached by five
20 we're gonna recess for the evening and reconvene in
21 the morning. Any objection to that from the State?

22 MS. TIMMONS: No, sir, Your Honor.

23 THE COURT: Any from Defense?

24 MR. MCKENZIE: No, sir.

25 THE COURT: All right. You can give them

1 instructions that they're welcome to use the phone.
2 Tell them to discontinue deliberations while they're
3 out using the phone. And you give them that
4 information, they can do with it what they may. All
5 right.

6 (WHEREUPON, a recess was taken from the
7 proceedings.)

8 THE COURT: I understand they've reached a
9 verdict. Anything from the State before we receive
10 the verdict?

11 MS. TIMMONS: No, sir, Your Honor.

12 THE COURT: Anything from Defense?

13 MR. MCKENZIE: Nothing from Defendant,
14 Your Honor.

15 THE COURT: Might counsel approach the
16 Bench for a moment.

17 (WHEREUPON, counsel approached the
18 Bench for an off-the-record discussion.)

19 THE COURT: We're ready for the jury.

20 (WHEREUPON, the jury was returned to the
21 courtroom at approximately 4:44 p.m., and
22 the following proceedings commenced in
23 open court.)

24 THE CLERK: Have you reached a verdict?

25 THE FORELADY: Yes.

1 THE CLERK: Is it unanimous?

2 THE FORELADY: Yes.

3 (Verdict form tendered to the Court.)

4 THE COURT: The verdict form is in proper
5 order. I'm gonna ask the Clerk to publish it. I'm
6 gonna ask the defendant to rise.

7 THE CLERK: On indictment number
8 2016-GS-14-98, the State of South Carolina versus
9 Michael James Dinkins. As to the count of criminal
10 sexual conduct with a minor third degree occurring
11 on or about October 27th, we, the jury, find the
12 defendant not guilty. As to the count assault and
13 battery second degree occurring on or about
14 October 27th, we, the jury, find the defendant
15 guilty. On count two as to the count of criminal
16 sexual conduct with a minor third degree occurring
17 on or about October 27th, 2015, we find the
18 defendant not guilty. As to count three of criminal
19 sexual conduct with a minor third degree occurring
20 on or about December 31st, 2015, we, the jury, find
21 the defendant guilty. As to count four, that's
22 criminal sexual conduct with a minor third degree,
23 occurring on or about December 26th, 2015, we, the
24 jury, find the defendant not guilty. As to the
25 count of assault and battery second degree,

1 occurring on or about December 26th, 2015, we find,
2 we, the jury, find the defendant guilty. Signed
3 Dawn M. Still, foreperson, November 7th, 2017.

4 THE COURT: Mr. McKenzie, if you can bring
5 the defendant forward and if I can have the
6 sentencing sheets.

7 Madam Forelady, ladies and gentlemen of
8 the jury, thank you so much for your time and
9 attention to the matter. You have discharged your
10 duty. You do not have to come back for the balance
11 of the week. Everyone remain seated as the jury
12 exits the courtroom.

13 (Jury was excused.)

14 (WHEREUPON, the jury was removed from the
15 courtroom at 4:50 p.m.)

16 THE COURT: Ms. Timmons, you're recognized
17 with regard to sentence.

18 MS. TIMMONS: Your Honor.

19 THE COURT: If you can give me the
20 sentencing sheets.

21 MS. TIMMONS: Your Honor, all the other
22 sentencing -- if I may approach. All the other
23 sentencing sheets that I have filled out state
24 criminal sexual conduct with a minor. Hugh McMillan
25 from our office is working on a blank one so we can

1 have sentencing sheets for assault and battery
2 second.

3 THE COURT: Okay.

4 MS. TIMMONS: Yes. I just want to correct
5 the wrong charge.

6 THE COURT: Okay. Well, we'll, how long
7 do you anticipate that will be?

8 MS. TIMMONS: Five minutes.

9 THE COURT: Okay. We're gonna stand at
10 ease for five minutes and we'll be — I tell you
11 what we're gonna do is, I'm gonna hold the sentence
12 in abeyance until we get the sentencing sheets, but
13 I want to hear from you and anything that you might
14 want to add with regard to sentencing at this time.

15 MS. TIMMONS: Okay. Judge, would you like
16 to hear from Ms. Reed first?

17 THE COURT: This is your presentation on
18 behalf of the State, if you would like to say
19 something yourself or any of the interested parties.
20 I'll be happy to hear from anybody. Yes, ma'am.

21 MS. TIMMONS: Okay.

22 THE COURT: Your full name?

23 MS. REED: Leigh Reed. I just want to
24 thank you.

25 THE COURT: I'll be glad to hear from you.

1 MS. REED: I am ~~the~~ aunt, her mother.
2 This has been very hard these last two years for
3 her, and I just can't tell y'all how much it has
4 affected her and she has been so resilient and has
5 fought this so hard. And it's been made very
6 difficult for her by the defense with the nitpicking
7 and the pulling the wounds open after losing her
8 mother. And I just want to thank y'all, just thank
9 you.

10 THE COURT: Anything further, Ms. Timmons?

11 MS. TIMMONS: Your Honor, the State would
12 like to ask for the maximum punishment if possible.
13 As Ms. Reed stated, this has been a terrible two
14 years for the victim, for *Victim*, for her family
15 and Gigi will have to live for the rest of her life
16 with those -- well, she'll have to deal with the
17 aftermath of what the defendant did to her. I mean,
18 he was supposed to be somebody to take care of her,
19 and he took advantage of her and we would just ask
20 for the maximum punishment.

21 THE COURT: Very good. All right.
22 Anything further from the State?

23 MS. TIMMONS: No, sir, Your Honor.

24 THE COURT: All right. Mr. McKenzie,
25 you're recognized. I'll be glad to hear from you,

1 your client, and anybody who would like to offer
2 mitigation.

3 MR. MCKENZIE: Thank you, Your Honor.
4 Your Honor, my client is 56 years old, a lifelong
5 resident of Clarendon County. I think you heard
6 during the testimony about his military service,
7 United States honorably discharged veteran, a
8 paramedic for 11 years, first responder. Very, very
9 difficult case, Your Honor. He, like I said, he
10 went back to school to help people, became a
11 registered nurse. I think that a lot, well, the
12 majority, I think every allegation that was made
13 against my client is not, certainly not excuse his
14 conduct; but severely intoxication, I think you
15 heard that on Thursday, certainly does not excuse
16 his conduct. A jury of his peers found him guilty.

17 And, Your Honor, the legislature put a
18 range on these offenses, and we would ask that you
19 in your best judgment give him the least amount of
20 time possible. He's not been in trouble before, as
21 I said, no prior criminal history, US veteran, army
22 veteran, and has worked and done extremely well in
23 regards to being a nurse. I could bring a thousand
24 people in here from this community to say what a
25 good person he is. The jury, they found that he

1 wasn't. And I can line them up, like I said,
2 outside the door. I listed a number of witnesses,
3 doctors, friends, relatives, families, members that
4 can come here and say what a good job that Mike does
5 in the community. He saved lives. As I said in my
6 opening statement, he has saved a number of people's
7 lives; and he is the kind of person, Your Honor,
8 that unfortunately found himself in this situation.
9 I do believe that I'd ask the Court for any sentence
10 that you impose that would consider counseling as a
11 part of that sentence and when he gets out that may
12 be part of the probationary part of this. But I'd
13 ask the Court to consider all those factors in
14 mitigation, the lack of a record, the service that
15 he's provided to his country, the service he's
16 provided this community. We understand this is a
17 tragedy to Gigi, and Your Honor, it's just a
18 terrible event for everybody involved. Thank you.

19 THE COURT: Mr. Dinkins, would you like to
20 say anything? It's not necessary that you speak,
21 but if you'd like to I'll be glad to hear from you.

22 THE DEFENDANT: All I would like to say is
23 I repeat what MacArthur said: Duty, Honor, Country,
24 Old soldiers never die, we just fade away.

25 THE COURT: All right. Do we have the

1 sentencing sheet? Anything further from Defense?

2 MR. MCKENZIE: Nothing further, Your
3 Honor. I just want to clarify the verdict count one
4 was not guilty on the CSC, but guilty on the A&B
5 second? Count two is not guilty, period?

6 THE COURT: That's correct.

7 MR. MCKENZIE: Okay. Count three was
8 guilty?

9 THE COURT: That's correct.

10 MR. MCKENZIE: Okay. Count four was not
11 guilty on the CSC, but guilty on the A&B second.

12 THE COURT: That's correct.

13 MR. MCKENZIE: And count three would have
14 been the charge of the alleged kiss, or the kiss. I
15 think that was —

16 THE COURT: Count three is the alleged
17 kiss.

18 MR. MCKENZIE: Okay.

19 THE COURT: Correct. Is he entitled to
20 any credit for time served?

21 MS. TIMMONS: No, Your Honor. He bonded
22 out the same day he was arrested.

23 THE COURT: Mr. Dinkins, one of the things
24 that is so tragic about these events is that when a
25 child is molested — you know, I practiced law for

1 20 years, been on the Bench about 12, and not a
2 stranger to these type cases. And it's always been
3 my experience that when children are abused,
4 particularly the male children are abused, when they
5 grow older they have a tendency to abuse other
6 children. It's a generation thing that goes from
7 one generation to the next. I think that over the
8 thirty something years I've been involved in this, I
9 believe I've only had one case where a female was a
10 sexual predator of any sort. But what happens with
11 females if they don't get appropriate counseling is
12 that they quite often abuse drugs, they act out
13 sexually. It's difficult for them to maintain
14 healthy relationships with their partners so it's a
15 — you know, for those reasons I think it's
16 necessary that you get the sentence that I have set
17 forth.

18 I am taking into consideration that you
19 have no prior criminal history. You know, I do
20 think that had alcohol not been involved in this
21 situation I don't think that you would have, that
22 this would have happened. One of the things, and
23 one of the reasons why I'm not giving the maximum
24 penalty is that for all intents and purposes I
25 anticipate that you'll lose your license to practice

1 nursing.

2 THE DEFENDANT: Yes, sir, I'll never be a
3 nurse again.

4 THE COURT: And you'll be on GPS
5 monitoring for the rest of your life, and you'll be
6 on the sex offender registry which means that there
7 are very few places that you can live. I mean, it's
8 a very onerous situation that you find yourself in.

9 But taking all that into consideration,
10 this is the sentence. On indictment
11 2016-GS-14-0098, criminal sexual conduct with a
12 minor, the sentence of the Court is you be committed
13 to the State Department of Corrections for a period
14 of six years, provided upon the service of three
15 years. The balance is suspended with three years
16 probation, sentence to run concurrent, substance
17 abuse counseling, random drug alcohol testing, sex
18 offender counseling, sex offender registry, GPS
19 monitoring, Addiction Treatment Unit while you're
20 there.

21 On indictment 2016-GS-14-0098, assault and
22 battery second degree, the sentence of the Court is
23 you be committed to the State Department of
24 Corrections for a period of three years, sentence to
25 run concurrent. With regard to indictment

1 2016-GS-14-0098, assault and battery second degree,
2 the sentence of the Court is you're committed to the
3 State Department of Corrections for a period of
4 three years, sentence to run concurrent. Good luck
5 to you.

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7 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
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STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)

GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
16-CP-14-0098

MICHAEL JAMES DINKINS,)

DEFENDANT.)

November 9, 2017
Manning, South Carolina

BEFORE :

THE HONORABLE MICHAEL G. NETTLES, JUDGE;
AND JURY

APPEARANCES:

KATARZYNA K. TIMMONS, ESQ.
Attorney for the State

STEVEN S. MCKENZIE, ESQ.
Attorney for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

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1 THE COURT: I'll be glad to hear from the
2 moving party.

3 MR. MCKENZIE: Your Honor, you had also
4 instructed me to give you some law in regards to
5 appellate bond, and I've got that. I'll hand that
6 up to you also.

7 THE COURT: Very good. Yes, sir.

8 MR. MCKENZIE: Thank you, Your Honor.
9 Your Honor, this is defendant's notice of motion,
10 motion to set aside verdict, directed verdict for
11 new trial pursuant to Rule 29 of South Carolina
12 Rules of Criminal Procedure to vacate and/or
13 reconsider sentence, Your Honor. I have filed
14 basically two count or two portions of my motion,
15 the first one being, Your Honor, you will recall
16 that Mr. Dinkins was found guilty of, I believe this
17 would be count three which was lewd act on a minor,
18 criminal sexual conduct third, lewd act on a minor.
19 And that, I'd like to address that issue first.

20 THE COURT: Okay.

21 MR. MCKENZIE: Your Honor, as I read the
22 law on this particular statute, again, I think we're
23 stuck with the statute as the general assembly has
24 written it. And as I recall, the testimony was that
25 Mr. Dinkins kissed -- if you take it in the light of

1 the testimony most favorable to the State --
2 Mr. Dinkins kissed this child, and his tongue went
3 in the child's mouth either forcibly or went in her
4 mouth, okay. That's the testimony from the child.
5 If you look at the statute, and again, I'm, we're
6 stuck with what the general assembly has given us,
7 the statute is a person guilty of criminal sexual
8 conduct with a minor in the third degree, if the
9 actor is over 14 years of age and the actor
10 willfully and lewdly commits or attempts to commit a
11 lewd and lascivious act upon the body or parts of a
12 child under 16 years of age with the intent of
13 arousing, appealing to, gratifying the lust,
14 passion, sexual desires of the actor or child.

15 THE COURT: Wouldn't you think that intent
16 is a question of fact for the jury?

17 MR. MCKENZIE: Well, it would be, Your
18 Honor, but I think it is also a necessary element of
19 the offense.

20 THE COURT: Well, I agree, but intent is
21 something that unless you wrote him a letter and
22 tell him what your intentions were, it has to be
23 determined by circumstantial evidence and that's a
24 factual issue that the jury needs to resolve.

25 MR. MCKENZIE: But if you have -- I mean,

1 and I agree with Your Honor, and I -- what I would
2 say that if you had some circumstantial evidence of
3 some other act on that day. This was a independent
4 day. This was December 29th. This wasn't the other
5 days that we're alleging happened.

6 THE COURT: There was testimony in the
7 trial that dealt with a number of different
8 improprieties, I would think, maybe six if we added
9 them all up.

10 MR. MCKENZIE: Right.

11 THE COURT: So I think that circumstantial
12 evidence of, you know, all of that is admissible and
13 all of it is a consideration where we can't just
14 parse out one offense and say that the circumstances
15 of their relationship don't apply. Wouldn't you
16 agree?

17 MR. MCKENZIE: Well, I agree to that, to
18 those particular instances that he was indicted for
19 and the jury found him not ---

20 THE COURT: And the prior bad acts.

21 MR. MCKENZIE: And the prior bad acts.
22 And the jury looked at the totality of the
23 circumstances and found him not guilty on one of the
24 CSCs and found two lesser included on the other act
25 which showed that do not require intent, the A and

1 B, don't require intent.

2 THE COURT: What do you think about the
3 basic premise that none of these arguments were
4 advanced during the trial?

5 MR. MCKENZIE: Well, Your Honor, I think
6 that the State has the burden of proving all the
7 elements and that's why the post-trial motion is
8 here. And so if I'm making the post-trial motion
9 based on the fact that the jury received a, received
10 a count and that the State failed to fulfill that,
11 their obligation -- you asked me, you allowed me to
12 have ten days on post-trial motions and that's one
13 of my, this is one of my positions is that, yes, I
14 understand what you're saying, Your Honor, but
15 intent is a specific part of the crime and I
16 actually have the case.

17 THE COURT: How can you French kiss a
18 child and not be intended to be inappropriate?

19 MR. MCKENZIE: And Your Honor, I wrote
20 this in my memo. It may be deplorable conduct, it
21 may be -- but what are we gonna draw and we got,
22 we're asking the jury to decide ---

23 THE COURT: I think the line should be you
24 ought not French kiss a nine year old girl.

25 MR. MCKENZIE: And Your Honor, I agree

1 with you, but is it that the legislature intend for
2 that to be a lewd and lascivious act? They define
3 other things.

4 THE COURT: Right.

5 MR. MCKENZIE: And but, you know, if we're
6 gonna, if we're gonna -- that's the slope that we're
7 sliding down, where do we draw the line. I mean,
8 if, so you go to, for example --

9 THE COURT: Well --

10 MR. MCKENZIE: They actually define body
11 parts in this same general statute. And the body
12 parts they, the buttocks of the male, female, the
13 genital area of the male or female they define, they
14 went out and defined these body parts. They didn't
15 say them out. They did not define that, and that's
16 in -- Your Honor, give me a second. I've got more
17 paperwork than I've got sense sometimes, but I've
18 got it here in front of me. But the legislature
19 actually defined in this code section the body
20 parts, and it said, it says private parts. Means
21 genital area, buttocks of a male or female or the
22 breasts of a female. Now they could have said
23 mouth, okay. Now they define --

24 THE COURT: You think that statute
25 addresses oral sex?

1 MR. MCKENZIE: It does, but that would be
2 CSC second so you have to have a — and they went
3 out and defined that in this statute. So you have
4 private parts are defined, then you have — and
5 that's in the sexual battery part of this.

6 THE COURT: Right.

7 MR. MCKENZIE: So if you look at sexual
8 battery it talks about, it defines as a orifice, any
9 intrusion into the orifice. My client wasn't
10 charged with sexual battery. He was charged with
11 CSC third; and so the question is, is, and again, I
12 think it's, it's not an action that I think is what
13 somebody should be doing, but I don't think the
14 legislature said it's illegal. I don't think they
15 define it as illegal. I understand the Court has a
16 different opinion and I can move on to my next
17 argument but I —

18 THE COURT: What do you, you think that
19 you have an obligation to advance that argument
20 during a trial? There was never a mention to the
21 jury that it's not against the law to French kiss a
22 nine year old girl.

23 MR. MCKENZIE: I understand that, Your
24 Honor, but again ---

25 THE COURT: I think it's purely a question

1 of law.

2 MR. MCKENZIE: It's purely a question of
3 law, whether it's -- and again, somebody is gonna
4 have to tell us whether or not that's illegal under
5 South Carolina law. I don't see anything that says
6 it is. And in fact, I think if the general assembly
7 wanted it to be illegal, they'd have put it in a
8 definition statute or they would have said CSC
9 specifically includes the putting the tongue in the
10 mouth or putting of some orifice of the body, and
11 they didn't do it, they could have. They went to
12 great lengths to define in other areas, and that's
13 the problem that I have with the way this was
14 presented to the jury. It's not, I don't think it's
15 anybody in this room's fault; I think it's the way
16 the statute is written. And we didn't write the
17 statute, and the general assembly in its infinite
18 wisdom did.

19 THE COURT: All right. Let me hear what
20 Ms. Timmons has to say about this particular
21 argument.

22 MS. TIMMONS: Your Honor, I believe our
23 legislature was pretty clear when they wrote this
24 statute. The language of the statute says any part
25 of the child's body. If we start to make an

1 argument that they haven't listed French kissing, so
2 do we need to list everything else. I just believe
3 that the defense argument is ludicrous. Saying that
4 French kissing a nine year old girl is not sexual
5 conduct, it's just beyond imagination. Also, Your
6 Honor, there was a testimony during the trial that
7 defendant touched victim twice, one, I mean, his
8 prior bad acts that he touched victim twice. He was
9 confronted. He was told to not, to not to do it
10 again, that it's very, it's not something that a
11 grown man should do to a child. And then he French
12 kissed victim so I believe there was enough evidence
13 for the jury to infer that he has been doing it with
14 intent to gratify his sexual desires.

15 MR. MCKENZIE: And Your Honor, going back
16 to the gratification issue, I mean, there's no
17 evidence that any -- I mean, I think we had some,
18 you know, a testimony that the child said that the,
19 that Mr. Dinkins said something to her sexually,
20 that there was some other groping. There was
21 something, how do you prove and what was the intent
22 to arouse the desire and the sexual -- the child's
23 testimony was she was grossed out so obviously it
24 didn't arouse her so. And the statute requires
25 either arousal of the child or the arousal of

1 Mr. Dinkins, there's no testimony that Mr. Dinkins
2 was aroused in anyway whatsoever.

3 THE COURT: Ms. Timmons, what do you think
4 about the arousal aspect of it?

5 MS. TIMMONS: Your Honor, Defense made a
6 big deal during the trial about issue whether
7 defendant actually put his tongue in victim's mouth.
8 Since they made that argument, obviously they felt
9 that if he put his tongue in her mouth then it would
10 have been done, this act would have been done in a
11 sexual manner.

12 THE COURT: All right.

13 MR. MCKENZIE: Your Honor, and let me
14 just -- and this is why I think this is such a
15 slippery slope. So is it okay to kiss a child on
16 the lips. And then, is it okay to kiss a child on
17 the forehead. So the question is -- and that's why
18 I think the general assembly said, okay, these are
19 the body parts that we think we have a problem
20 with -- and not what we think, this is the one they
21 said. Private parts means genital area, buttocks of
22 male, female, or breasts of a female. And I think
23 that's what they're indicating. So if we start
24 saying, I agree, it is not good conduct to put it,
25 your tongue in a child's mouth, but is it a sexual

1 offense to do that. And I didn't hear any testimony
2 from that, to that jury that said Mr. Dinkins was
3 aroused, that it was a sexual offense, it was sexual
4 in nature, that he wrote a letter that said this
5 is -- and this is the case law that I was talking
6 about where it said requires specific intent, is
7 South Carolina versus Green. And you know, you've
8 got to -- and in that case, you know, they showed
9 specific intent. The guy had written letters and
10 said, you know, I want to --

11 THE COURT: When you take it in
12 conjunction with the fact that he was, one of the
13 other offenses was humping the nine year old child.

14 MR. MCKENZIE: Humping, yes, sir.

15 THE COURT: So I think when you take all
16 of it and all of it together the circumstances might
17 indicate sexual in nature.

18 MR. MCKENZIE: And Your Honor, I'm not,
19 and I can move on to my next point, but I understand
20 what's the Court reasoning on that. And this is why
21 I will be moving for an appeal bond later because I
22 think there are sufficient -- I think we have to
23 have guidance from ultimately the Supreme Court on
24 all of these issues, and I think this is one of
25 those things that -- and that's the why I will be

1 moving for appeal bond and I'm not gonna sit here
2 and continue to, I understand the way you're
3 thinking. I understand the way that the Court's
4 thinking about this issue.

5 THE COURT: I want to, you know, I just
6 thought it was appropriate for us to have a
7 discussion about it. I want to hear it out fully.

8 MR. MCKENZIE: Yes, sir.

9 THE COURT: I do want to hear what you
10 have to say, but I'm not arguing with you about it.
11 I think it's an important matter that needs to be
12 discussed.

13 MR. MCKENZIE: And Your Honor, I'm not
14 saying you and I arguing. I'm saying just we're
15 throwing the merits of the case out and trying to, I
16 guess, round table this thing to see what we think.
17 But again, in the, I think we're on a slippery slope
18 'cause we're gonna start having -- if we're gonna
19 start charging people for kissing children now,
20 again, I think this conduct is above, it goes a
21 little bit further than moral standard; but the
22 question is, is it illegal under our statute. And
23 if we start putting people in jail for kissing
24 children on the lips, a lot of people do that. And
25 it's, I don't think that's illegal so the question

1 is —

2 THE COURT: You think it would have been
3 different if that would have been the only incident
4 that there would have been incident of kissing and
5 allegations that his tongue went in her mouth?

6 MR. MCKENZIE: I think you would have
7 directed a verdict if that was the only charge; I
8 do.

9 THE COURT: And perhaps the jury would not
10 have convicted him had all these other circumstances
11 not been there.

12 MR. MCKENZIE: Right.

13 THE COURT: Which would indicate lewd and
14 lascivious conduct.

15 MR. MCKENZIE: And Your Honor, I did not
16 put this in my motion, but obviously I have filed a
17 motion in regards to prior bad acts under 404 and
18 you heard that testimony, and I -- part of my brief
19 in that testimony was I thought that the makeup of
20 the Supreme Court now would overturn the Wallace
21 factors. So this may be a case where these prior
22 bad acts the court would have said are not proper
23 now to come in because Wallace is not overturned so
24 there's a lot, this case has a lot of aspects to it
25 legally that need to be addressed on appeal.

1 THE COURT: Very good.

2 MR. MCKENZIE: Okay. Your Honor, the
3 second part.

4 THE COURT: Ms. Timmons, I'd like to hear
5 one at a time. That way we won't -- anything
6 further, Ms. Timmons?

7 MS. TIMMONS: I guess I'd just like to add
8 one thing. Mr. McKenzie is arguing that issue it
9 may come back on appeal which I guess we'll also be
10 arguing an appeal bond. Mr. McKenzie didn't object
11 during the trial for the testimony of prior bad acts
12 to come in so he cannot argue later on appeal that
13 those prior bad acts were introduced. Our, the law
14 required that the issue be raised for the, the issue
15 raised on appeal must have been raised to the trial
16 judge to be preserved for appellate review.

17 THE COURT: I think that is, sometimes
18 appellate entities stick to that rule and sometimes
19 they don't. Obviously we had an in-depth hearing
20 last week; I believe it was on Thursday or Friday
21 maybe. And obviously that was the issue that we
22 addressed there, and he objected to all the prior
23 bad acts. And a number of them were excluded, but
24 these, after consideration of all of the factors set
25 forth in the case law, I allowed to be presented.

1 And I think there might be some merit for the
2 appellate counsel to say that it was not proper to
3 raise at trial, but that's not really for us to
4 consider here today I don't believe.

5 MR. MCKENZIE: And Your Honor, the rules
6 are pretty clear that once you rule on an issue I
7 can argue it. I mean, I can certainly bring it up
8 again, but you already, you had already ruled on
9 that issue.

10 THE COURT: I think the issue she's
11 talking about is the contemporaneous objection.

12 MR. MCMILLAN: Contemporaneous objection,
13 I understand. Your Honor, the next part of my
14 motion is the, which we had a great deal of debate
15 over in the trial, in the question of whether CSC
16 third and second degree assault or A and B second is
17 a lesser included of CSC third. We went back and
18 forth. I remember you even asked me to confer with
19 my client and asked if we wanted that charge; of
20 course, we did.

21 THE COURT: What did I tell you with
22 regard to that charge?

23 MR. MCKENZIE: You said I may be stuck
24 with that, I mean, and obviously I am but the ---

25 THE COURT: No, my specific question is if

1 you ask me not to charge it, I won't.

2 MR. MCKENZIE: Yes, sir.

3 THE COURT: What do we, how do we address
4 that?

5 MR. MCKENZIE: This is, I think this is
6 —

7 THE COURT: It's a mistake on my part and
8 your part?

9 MR. MCKENZIE: I think it's a subject
10 matter jurisdiction issue. We, you and I can't
11 confer subject jurisdiction on the court. I think
12 that it's the charging document is the indictment,
13 and the indictment clear — if A and B second is not
14 a lesser included offense, then it would have to be
15 a separate indictment and that was not presented
16 obviously.

17 THE COURT: As far as appellate issue, can
18 you ask that I do something and then object to it in
19 post-trial motion?

20 MR. MCKENZIE: Your Honor, the way I look
21 at this is, again, subject matter jurisdiction. No
22 matter what happened in this case, whether -- if you
23 didn't, if this court didn't have subject matter
24 jurisdiction to charge that, that law, then neither
25 you, I, or the State can agree to confer subject

1 matter 'jurisdiction upon the court. And that's, and
2 I've looked at this, I looked at this statute all
3 day yesterday.

4 THE COURT: You can't have it both ways
5 because the advantage that you have assault and
6 battery second was that it limited the time to
7 served to three years.

8 MR. MCKENZIE: Yes, sir.

9 THE COURT: And so you got the benefit of
10 that. As a matter of fact, on the number of the
11 offenses they convicted her of that lesser offense,
12 convicted him of a lesser offense and he derived a
13 benefit from that.

14 MR. MCKENZIE: Yes, sir, and no doubt
15 about that, and one count completely exonerated.

16 THE COURT: If you had to do it over again
17 would you do it?

18 MR. MCKENZIE: Yes, sir, I would.

19 THE COURT: You would have done it the
20 same way?

21 MR. MCKENZIE: I would have done it the
22 same way; but again, I had to look at the —
23 because, Your Honor, it was in my client's best
24 interest. That's my job is to do what's in my
25 client's best, and my client's best interest was —

1 THE COURT: Can you have it both ways?
2 Can you ask it on his behalf and then in post-trial
3 motions say I don't want it?

4 MR. MCKENZIE: Your Honor, I'm not saying
5 that I don't want it. I'm saying that after I
6 reviewed the law in depth, I don't think the court
7 had subject matter jurisdiction to even to do it,
8 and I couldn't consent to it. That's what I think
9 the law states. And I wrote that in depth in here,
10 Your Honor, and the problem is with what we have a
11 hangup with is that extra offense that A and B
12 second requires a injury and an injury is not a part
13 of CSC with a minor third offense and that's the
14 problem. It adds that additional, additional
15 offense to the case and, you know, put it all along
16 on subject matter jurisdiction; and it clearly, if
17 you went back and prior to the 2010 amendments to
18 the assault and battery —

19 THE COURT: Subject matter jurisdiction,
20 clearly this Court has the ability to hear criminal
21 offenses.

22 MR. MCKENZIE: But the indictment is the
23 document that gives you the subject matter
24 jurisdiction to hear the case. The indictment would
25 have had to indict him for A and B because it's not

1 a lesser included charge. The lesser included
2 charge, you have subject matter jurisdiction to
3 charge the jury for the lesser included charge.

4 THE COURT: Very good.

5 MR. MCKENZIE: And so, it's -- and Judge,
6 again, I don't think this is anybody in this
7 courtroom's fault of what happened. This is a, we
8 talked about this whenever this is, this assault and
9 battery statute a train wreck. And somebody needs
10 to give -- and there's no case law since this thing
11 came out in 2010 as to what that, what lesser
12 included offenses of A and B first, second, and
13 third would be; but I can tell you that the
14 legislature did define that A and B second is lesser
15 included of A and B first, and A and B third, and so
16 forth. But the problem as I read it -- I went back
17 and read the case law on ABHAN, and I think it was
18 State versus Sprouse that said ABHAN was not a
19 lesser included offense of CSC third. So I have to
20 look now and think, or lewd act on a minor at that
21 time, it wasn't codified as CSC third. But I had
22 to, if you think about that, the legislature would
23 have known that ABHAN was assault and battery high
24 and aggravated nature is no longer, was not a lesser
25 included offense of CSC third at the time they wrote

1 this statute. So they obviously could have written
2 in the statute of CSC third would, or A and B
3 second, third, whatever, was a lesser included
4 offense. They chose not to do that. They would
5 have known the law of State v. Sprouse and they
6 chose not to do that, so I think that is the problem
7 I have. And I understand we derived a benefit from
8 it, but I think that this is a issue that needs to
9 be addressed by the Supreme Court. I know the Court
10 of Appeals will hear it first and I think ultimately
11 the Supreme Court is going to have to clarify this
12 statute.

13 And so, Your Honor, for those reasons I'd
14 ask the Court pursuant to Rule 29 to vacate the
15 judgment, direct a verdict of not guilty, or request
16 of a new trial and/or reconsider the sentence.

17 THE COURT: All right.

18 Yes, ma'am.

19 MS. TIMMONS: Thank you, Judge. First of
20 all, I believe this Court has subject matter
21 jurisdiction to hear any general sessions crime.
22 The Defense argument that assault and battery is not
23 lesser included, and therefore, would have to be a
24 direct presented to the grand jury, defendant always
25 has a right to waive presentment to the grand jury.

1 And, Your Honor, Defense asked for a lesser included
2 charge, the State was opposing that. Defendant
3 cannot complain ---

4 THE COURT: I'm not real sure. Did you
5 oppose that or not?

6 MS. TIMMONS: Yes, Your Honor. Well,
7 initially, and then so we won't have, so we won't
8 have to deal with that issue on appeal we finally, I
9 guess, didn't fight too hard how, we can say...

10 THE COURT: We've got some vacillation
11 going on here.

12 MS. TIMMONS: That's correct. And also,
13 Your Honor, a party cannot complain about an error
14 which they caused themselves, and here I have a case
15 of State v. Carlson, if I may approach.

16 THE COURT: Yes.

17 MS. TIMMONS: And it's page 595, and I
18 think it's a very clear rule that party cannot claim
19 of an error which his own conduct has induced so
20 Defendant cannot complain that you have charged
21 lesser included offense when they specifically
22 requested it. And as ---

23 THE COURT: Not only that, I believe I
24 said I would not charge it if he did not request it.

25 MS. TIMMONS: That's correct, Your Honor,

1 and Defense requested it so they created an error
2 that they -- well, they created what they argued in
3 error so they cannot complain about it now.

4 THE COURT: Let me ask you this, Ms.
5 Timmons, just as an academic matter. I think on the
6 record the defendant himself actually weighed in on
7 that, weighed in on that decision.

8 MS. TIMMONS: That's correct.

9 THE COURT: I think counsel was given the
10 opportunity to discuss it with his lawyer so it
11 wasn't as if his lawyer did it without conferring
12 with his client. They both engaged in the
13 fundamental decision about whether or not to charge
14 it or not charge it.

15 MS. TIMMONS: I think it's especially
16 important because had he not talked to his client
17 about it, I guess maybe they would have --

18 THE COURT: Might be, might have been more
19 strong argument that he might have had as far as
20 ineffectiveness in a subsequent proceeding perhaps.

21 MS. TIMMONS: That's correct. And
22 defendant was advised by his attorney. He, the
23 defendant was advised by the Court, and he still
24 elected to have that lesser included offense charged
25 to the jury.

1 THE COURT: Very good. All right,
2 anything further on these issues?

3 MS. TIMMONS: No, sir, Your Honor.

4 MR. MCKENZIE: Your Honor, there was one
5 other matter you wanted to put on the record and it
6 was about one of the jurors knowing somebody in the
7 Solicitor's Office.

8 THE COURT: Yes, I'm gonna ask Mr.
9 McMillan if he can stand and say and tell what --
10 he's disclosed something to the Court. I want you
11 to put it on the record.

12 MR. MCMILLAN: Yes, Your Honor. After
13 sentencing some of the jurors hung back and were in
14 the courtroom, and I was sitting back where I sat
15 for the entire trial and the forelady of the jury
16 approached me and introduced herself to me and
17 indicated to me that I had gone to high school with
18 her daughter. I had never met -- after she told me
19 who the daughter was I was aware who the daughter
20 was, but I had never met the forelady, never have
21 seen her before, and she just told me that she
22 wanted to say hello.

23 THE COURT: Very good. And you, as I
24 recall, I don't think you took part in the trial of
25 the case.

1 MR. MCMILLAN: That's correct, Your Honor.

2 THE COURT: You didn't examine any
3 witnesses.

4 MR. MCMILLAN: No, Your Honor.

5 THE COURT: You did not give an opening
6 statement or closing statement?

7 MS. TIMMONS: No, your Honor.

8 THE COURT: Or argue any motions.

9 MR. MCMILLAN: No, Your Honor.

10 THE COURT: All right. That's on the
11 record for anybody's, for whatever. I don't think
12 that that rises to the level to disturb the verdict
13 or the sentence. Would you like to be heard on
14 that?

15 MR. MCKENZIE: Yes, sir, Your Honor. And
16 to tell you who that was, that was, she ultimately
17 was the forelady of the jury. My concern about that
18 is had anybody on that side had stood up and said I
19 know anybody or I have any relationship with them,
20 know them, know of him, anybody sitting at that
21 table, I had ten strikes; I used nine. And I would
22 have stricken the forelady had I known that she had
23 any association because, you know, this case, Your
24 Honor, I wanted it to be nobody having association
25 with the Solicitor's office, law enforcement. We

1 particularly asked those questions in voir dire and
2 so that's my concern is that I would have stricken
3 this lady. And she was the forelady of the jury.
4 Your Honor gave her specific instructions, direct.
5 The debate, you told her she had no more than one
6 vote and couldn't influence anybody, that everybody
7 had to get a fair shake. And I would have stricken
8 her had I known that; but again, that's. — I have
9 peremptory challenge on that and strike on that and
10 I would have used that had I known that contact
11 existed.

12 THE COURT: All right.

13 Ms. Timmons.

14 MS. TIMMONS: Your Honor, I believe the
15 questions for the jury, the jury was asked about
16 close relationships, close personal relationship or
17 any association. As Mr. McMillan just stated he —

18 THE COURT: He's never met the forelady.

19 MS. TIMMONS: Yeah, he has never met. I
20 mean, just because somebody heard about Mr. McMillan
21 who was not involved in the case, I mean, yes,
22 that's not, I don't think that's an umbrella.

23 THE COURT: Very good.

24 MR. MCKENZIE: I would note, Your Honor,
25 he did sit with the Solicitor's Office during the

1 entire trial; but again, I understand the Court's
2 ruling on that issue.

3 THE COURT: All right. He sat there and
4 looked very attentive the entire time so.

5 MR. MCKENZIE: And Your Honor,
6 Mr. McMillan can be very intimidating so.

7 THE COURT: That's the story of his life.
8 He doesn't know very many people, but everybody
9 knows him.

10 MR. MCKENZIE: That's correct, Your Honor.

11 THE COURT: All right. Motions with
12 regard to a new trial and motion to set aside the
13 verdict are denied.

14 MR. MCKENZIE: Thank you, Your Honor.
15 Your Honor, the next issue, I have presented to you
16 Rule 246 of South Carolina Rules regarding the
17 pending of the appeal bond for my client. And Your
18 Honor, as I understand it, South Carolina code
19 section 18-180 and 190 dictate this, and it said
20 pending such appeal defendant shall remain in
21 confinement until he's given bail and such sum and
22 the surety that the Court shall deem proper court,
23 meaning you. And so again, if you look at rule 246
24 of the South Carolina Rules of Appellate Procedure
25 it says the service of a notice of appeal, which I

1 have, and I think we can hear the bond, Your Honor,
2 and a condition of the bond was I have to go file a
3 notice of intent to appeal. But I'm ready to do
4 that, prepared to do that. My staff is here, gonna
5 do it downstairs if we need to. But it says,
6 operating the stay of the execution of sentencing
7 until the appeal is finally disposed of provided,
8 however, a sentence of confinement shall not be
9 stayed until the defendant has posted bail under
10 SC(1) or 18-1-80 and 90. Where the sentence exceeds
11 imprisonment for ten years the defendant may only be
12 submitted to bail by appellate court. So that
13 certainly gives you jurisdiction to address the
14 issue. He was sentenced to six suspended to three,
15 so that's definitely within the purview of the Court
16 to determine whether bail is appropriate pending the
17 appeal.

18 And Your Honor, in support of that I have
19 obtained from Mr. Dinkins and from his health care
20 providers information regarding his health and
21 ability to stay in jail, and I would like to hand
22 those up to the Court. And that's Doctor Bill
23 Aldrich and a Doctor Marva Williams. And actually,
24 Doctor Williams is in court today to answer any
25 questions that you may have regarding that. And I

1 think that Mr., I think we have some interesting
2 issues on appeal. I think everybody is wanting some
3 clarification, especially on A and B statute, Your
4 Honor, and I think that the ends of justice, I think
5 the Court can impose whatever conditions on appeal
6 bond. Certainly, it's sufficient surety.

7 Certainly, GPS monitoring if the Court deems that's
8 appropriate and until this issue is decided. But
9 you will see that we have documentation from his
10 treating physician that Mr. Dinkins is not in the
11 best of health and that the imprisonment at this
12 time may be a detriment to his, to his life. In
13 fact, Doctor Williams actually goes on to say it
14 would increase his stress level in terms of
15 aggravating his pre-existing medical condition which
16 can contribute to his demise.

17 THE COURT: One of his concerns is his
18 lung disease and says that being incarcerated does
19 not increase his stress and cause him to smoke. I
20 don't believe you can smoke in prison nowadays, can
21 you?

22 MR. MCKENZIE: Sir? I'm sorry.

23 THE COURT: I don't believe they allow
24 smoking in prison now, do they?

25 MR. MCKENZIE: They do not allow it, no,

1 sir.

2 THE COURT: Okay. All right.

3 MR. MCKENZIE: They do not allow it.

4 THE COURT: To that extent he's better off
5 in prison than out.

6 MR. MCKENZIE: Yes, sir, to that extent he
7 would be. But, Your Honor, I think that, again, we
8 would respectfully ask for an appeal bond. I think
9 these issues are ripe for appeal. And whether or
10 not the State's right or I'm right, I think that the
11 Supreme Court needs to clarify what the law is in
12 regards to these charges and I think that it needs
13 to be heard.

14 THE COURT: Ms. Timmons, what do you have
15 to say about the appeal bond?

16 MS. TIMMONS: Judge, well, I guess to
17 decide whether you want to grant appeals bond there
18 are several factors to consider. One of them is
19 whether the probability of reversal on appeal; and I
20 believe this case, the likelihood is extremely low.
21 As we argued earlier, the likelihood that the Court
22 of Appeals is gonna reverse this Court's ruling
23 charging the jury on lesser included offenses is
24 very low since Defense and defendant himself asked
25 for lesser included offense. They -- if they argue

1 this was an error, they created the error so they
2 cannot complain later on appeal about the error that
3 they created themselves.

4 Also, if the Defense is going to argue
5 about inclusion of prior bad acts as stated on
6 Thursday prior to the trial, we had extensive
7 argument about that issue. You didn't allow some of
8 those prior bad acts. And during the trial the
9 defense attorney didn't make contemporaneous
10 objection so he cannot later, since he didn't raise
11 that issue during the trial, he can't ask later on
12 appeal to, for the Court of Appeals to grant him
13 something. And also, pretty much every single time
14 he objected he, he was granted the relief that he
15 asked from you, Your Honor, so I don't see what ---

16 THE COURT: I did not realize that.

17 MS. TIMMONS: Well ---

18 THE COURT: Did you keep count?

19 MS. TIMMONS: Sometimes when he objected
20 to leading questions his objections was sustained.
21 So Your Honor, I believe ---

22 THE COURT: Properly so, wouldn't you
23 think?

24 MS. TIMMONS: Yes, Your Honor. So the
25 likelihood that this case is going to be reversed on

1 appeal is very low. Also, another factor to
2 consider is the enormity of the charge. The
3 defendant has been convicted of criminal sexual
4 conduct with a minor in the third degree. This is a
5 violent offense. He has also been convicted of two
6 assaults on a child. Well, he was convicted by
7 peers, by the jury of his peers on for three
8 assaults on a minor child that were sexual in nature
9 so I think this charge is really serious. Also, the
10 jury during the sentencing phase, I realize that
11 during the trial the defendant has the right to
12 remain silent; but even during the sentencing the
13 defendant did not deny the allegations. In fact, he
14 admitted that the acts that he committed were caused
15 most likely by his drinking problem and they stated
16 that defendant needs help with addressing his
17 drinking problem, so if he's allowed to stay out on
18 bond, there's nothing to hold him accountable for
19 his drinking problem so there's a chance, very high
20 chance that he, again, might re-offend.

21 And also, Your Honor, I think we should
22 consider the fact that since 2013 that little girl
23 has been, I guess, abused by the defendant. For two
24 years those charges has been pending. We should
25 consider the stress that it had caused her, also the

1 stress of testifying. And I think, I just think we
2 should consider how much stress it may cause to the
3 minor victim to learn that even as a result he was
4 convicted of such heinous crime he's out on bond.

5 THE COURT: Very good. Anything further,
6 Mr. McKenzie?

7 MR. MCKENZIE: Your Honor, I'm looking
8 for, I think that, I think the requirements
9 regarding what Ms. Timmons said in regards to the
10 likelihood of success on appeal, I think that has to
11 deal with post-conviction relief bonds pending
12 post-conviction hearings. I'm looking at 246,
13 stayed criminal cases, does not give you any
14 criteria in regards to that. I think that only,
15 that rule only applies if someone has filed
16 post-conviction relief ---

17 THE COURT: What do you think the elements
18 are that I need to consider?

19 MR. MCKENZIE: I think, Your Honor, ---

20 THE COURT: Danger to the community
21 probably?

22 MR. MCKENZIE: I think so, Your Honor.
23 It's --- I don't see any guidance in this in regards
24 to ---

25 THE COURT: Probably things I would need

1 to consider is the potential danger to the
2 community, any risk of flight.

3 MS. TIMMONS: And Your Honor, if I may.
4 Rule 246 really doesn't state the factors to
5 consider by a judge; however, our court — and in
6 case in re: Michael H, it's 360 S.C. 540, and in
7 Nichols versus Patterson 202 S.C. 352, the court
8 pretty extensively listed the factors for the trial
9 court to consider. I only have one copy if I may
10 show it to you.

11 THE COURT: Well, tell me what they were.

12 MS. TIMMONS: In Nichols versus Patterson
13 the Court decided that probability of reversal on
14 appeal, that enormity of the charge, danger that the
15 likelihood the accused will commit a crime of like
16 character, probability of forfeiture of the bail,
17 and escape, character and reputation of the accused,
18 surrounding circumstances, and I guess recent
19 convictions for similar offense. And in re:
20 Michael, this court pretty much also consider I
21 guess most important factor to consider is
22 probability of reversal, the nature of the crime,
23 and possibility of the escape and character and
24 circumstances of the defendant.

25 THE COURT: Anything further,

1 Mr. McKenzie?

2 MR. MCKENZIE: Your Honor, I do. And as I
3 told you whenever we were doing the sentencing, I
4 could put up 100, 150 in this room to tell you,
5 mitigate or tell you what a great person that
6 Mr. Dinkins is, and we have some of the people
7 seated behind us today. And I -- and one of the
8 factors are, you know, is you know, he has no prior
9 record other than what he's been convicted of today.
10 He's been a life long resident of Clarendon County
11 except for his time when he was in the United States
12 Army. I think the Court could certainly put him on
13 GPS monitoring to alleviate any concerns, put
14 restrictions on any bond that's posted, and put a
15 sufficient surety on there to insure that the
16 defendant does not, is not a flight risk. He's not
17 a flight risk, Your Honor. He does not have a
18 passport. He is, again, he lives in Manning, has
19 always lived in Manning. His family is here, his
20 sister is seated behind us. He's got substantial
21 contacts here in Clarendon County, and I think Your
22 Honor could alleviate all of these concerns with a
23 substantial bond and GPS monitoring. Thank you,
24 Your Honor.

25 And Your Honor, I think procedurally if

1 you grant, I would ask if you grant part of the
2 condition that I have to provide notice for the
3 intent to appeal. Honestly, that's — and I have
4 that ready to go, but there's no need to file it if
5 you're not — I'm gonna file it anyway. I need to
6 file it anyway. I didn't want to divest you of
7 jurisdiction by this case going to the Court of
8 Appeals so that would be a condition if you had,
9 that I also have to file appeal, and then the other
10 conditions be met.

11 THE COURT: Is there anything further? I
12 understand that there's some people here. Do you
13 want to proffer any statements from them or?

14 MR. MCKENZIE: Your Honor, I can, I've
15 handed you the letter from Doctor Williams and from
16 Doctor Aldrich. I think that, you know, obviously
17 there's concerns about my client's medical health
18 and I think you've seen that. You mentioned the
19 smoking, I understand that, that's something he
20 needs to quit himself. But again, I think there's
21 some general concerns about his health. I do have,
22 anybody that you want to talk to I can line them up
23 and they can tell you that they're friends with
24 Mike, that he is a responsible person, that
25 obviously they don't know anything about this

1 offense, but that he has been a sovereign in the
2 community and saved many people's lives in this
3 community. I said in my opening statement to the
4 jury that Michael is a giver, not a taker; and with
5 the exception of what he's been convicted of, Judge,
6 I think that holds true. I think anybody back here
7 will tell you the same thing. Thank you, Your
8 Honor.

9 THE COURT: All right. I'm going to deny
10 the appeal bond. And one of the things that weighs
11 heavily in my decision is that he's been convicted
12 of sexual misconduct with a minor, and I personally
13 believe that there is a low likelihood of reversal
14 on appeal, although you present some very
15 interesting arguments. I do acknowledge that I
16 don't believe that he's a risk of flight. But given
17 the circumstances of this case, the nature of the
18 crime and the fact that he has been convicted of
19 sexual misconduct with a minor, I'm not in a
20 position to do that.

21 I think that, you know, I gave some
22 consideration to GPS monitoring, but GPS monitoring
23 works only as good as the defendant who has it.
24 There's an individual -- I think that was this last
25 term of court in Florence -- was on GPS monitoring

1 and was charged with murder, and he failed and did
2 not charge his GPS monitoring and the day before the
3 trial goes out and shoots another rival gang member.
4 So he was on bond for murder, was on GPS monitoring,
5 and went out and did the exact same thing. And so,
6 of course, in that case he had not been convicted of
7 anything, he was presumed to be innocent. Our
8 situation here is different. He's already been
9 convicted. I understand that it works a hardship.
10 I certainly derive no pleasure in that. I think he
11 received a fair trial. And he's a young man, I know
12 he's got some health difficulties, but I believe
13 that he can serve this sentence and come out on the
14 other side and do better. So your motion for an
15 appeal bond is denied.

16 MR. MCKENZIE: Thank you, Your Honor.

17 THE COURT: Good luck to you.

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19 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CLARENDON COUNTY

Court of General Sessions

Michael G. Nettles, Circuit Court Judge

Case No. 2016-GS-14-0098

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SC Court of Appeals

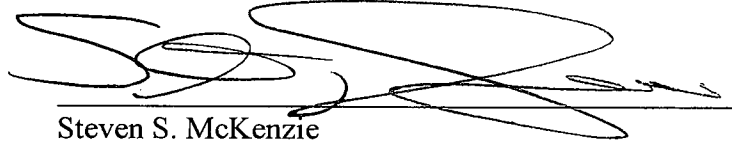
The State.....Respondent,

v.

Michael James Dinkins.....Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that this Initial Brief complies with Rule 208, SCACR. and the Record on Appeal contains nothing that is irrelevant to the Appeal.



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