

ORIGINAL

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Court of General Sessions

SC Court of Appeals

Edward B. Cottingham, Circuit Court Judge

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Case No. 2012-GS-22-560, 561, 587, 588  
Appellate Case No. 2012-213368

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The State,

Respondent,

v.

Michael Lee Cardwell,

Appellant.

---

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETOWN )

|            |   |                |
|------------|---|----------------|
| State,     | ) | 2012-GS-22-560 |
|            | ) | 2012-GS-22-561 |
| Plaintiff, | ) | 2012-GS-22-587 |
|            | ) | 2012-GS-22-588 |

vs.

Michael Lee Cardwell,

Defendant.

|            |   |                |
|------------|---|----------------|
| State,     | ) | 2012-GS-22-558 |
|            | ) | 2012-GS-22-559 |
| Plaintiff, | ) | 2012-GS-22-585 |
|            | ) | 2012-GS-22-586 |

vs.

Sarah Denise Cardwell,

Defendant.

Transcript of Record

Hearing

October 29-31, 2012

## B E F O R E :

Honorable Edward B. Cottingham  
Georgetown County Courthouse  
Georgetown, South Carolina

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VI

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## Motions

1

1 (On the record, October 29, 2012.)

2 THE COURT: Counsel, let me hear your motion to quash  
3 even before we start the jury selection process, and let's go  
4 ahead, I've thought about it, let's go ahead and hear these  
5 other motions now, please, motion to quash first, please.

6 MR. GOUDE: Judge, if it please the Court, there are  
7 four indictments in this case, two are ---

8 THE COURT: Let's see. I have five up here. Is it  
9 four for each person?

10 MR. GOUDE: There's two for each person as I  
11 understand it, Judge, two sex exploitation indictments for  
12 each person and two unlawful conduct with a child indictments.

13 THE COURT: So, we got eight indictments up here.

14 MR. GOUDE: That's the way I understand it.

15 MS. LIVELY: Yes, sir.

16 THE COURT: All right, what is your motion?

17 MR. GOUDE: Judge, our motion is to quash both  
18 indictments and ---

19 THE COURT: When you say both indictments you need to  
20 identify ---

21 MR. GOUDE: All right, sir, I will.

22 THE COURT: --- the indictments, the name and as to  
23 which Defendants for me.

24 MR. GOUDE: And this is a written motion, Judge, which  
25 I am handing up to the Court.

## Motions

2

1 THE COURT: What does it say? Have you served a copy  
2 on Ms. Candice?

3 MR. GOUDE: I have given a copy to the Solicitor right  
4 now, Your Honor.

5 MS. LIVELY: He just handed it to me.

6 THE COURT: I got you. You're saying they are unduly  
7 vague under the, under the constitution.

8 MR. GOUDE: Yes, Judge. These two statutes, the  
9 indictment says for the sex exploitation of a minor, and  
10 basically the Defendants, this is Sarah Cardwell that I  
11 represent. This is Michael Cardwell that Mr. Fox represents.  
12 These parties were boyfriend and girlfriend. They have later  
13 married. Sarah Cardwell had two children by her prior  
14 husband, Minor Child 1 and Minor Child 2 one boy and one girl,  
15 and both Defendants are charged, Sarah Cardwell is charged  
16 with sex exploitation of the boy and the girl and Sarah  
17 Cardwell is charged with unlawful conduct on the boy and the  
18 girl, and Mr. Cardwell, Mr. Cardwell is charged with the same  
19 thing, Judge.

20 THE COURT: Go ahead.

21 MR. GOUDE: Mr. Cardwell is charged with the same  
22 thing which is two counts - each one is charged with four.

23 THE COURT: Let's get this straight. There's a sexual  
24 exploitation of a minor is one of the charges. One minute,  
25 let me get this straight here, up here.

## Motions

3

1 MR. GOUDE: All right, sir.

2 THE COURT: Why are there two sexual exploitations,  
3 two separate incidents?

4 MS. LIVELY: No, Your Honor, one for each child.

5 THE COURT: I got you. All right, go ahead. I got it  
6 straight now. Yes, go ahead.

7 MR. GOUDE: Thank you, Your Honor. Basically the two  
8 indictments ---

9 THE COURT: Go ahead.

10 MR. GOUDE: --- on the sex exploitation basically each  
11 Defendant is charged as to each of the two minor children of  
12 using, employing, inducing, coercing, encouraging,  
13 facilitating, or permitting ---

14 THE COURT: Let me quickly get to the chase here. You  
15 are asking me to override the specific statute of the General  
16 Assembly; aren't you?

17 MR. GOUDE: Well, I think that's been done every time  
18 any charge has ever been quashed or ever been ruled  
19 unconstitutional and we've done that a lot ---

20 THE COURT: Well, let me cut to the - I see what your  
21 position is. What's your reply, Ms. Candice?

22 MS. LIVELY: Your Honor, in regards to the statute and  
23 the - for both unlawful conduct and sexual exploitation of a  
24 minor first degree the elements are very clear. The  
25 legislature was extremely specific in the elements of that

## Motions

4

1 particular charge so that it includes not only a live  
2 performance, material depicting sexual activity, as well as  
3 the fact that they even have a special definition for what  
4 they determine to be sexual activity. I believe that this  
5 statute goes further than many in giving us specifics and  
6 giving the Defendants notice as to what it is that they are  
7 going to have to defend.

8 THE COURT: Mr. Goude, I note your position is clear  
9 for the record, but I just respectfully disagree with you and  
10 conclude that the statute is clear and free of any ambiguity.  
11 Your motion is respectfully denied.

12 MR. FOX: Your Honor ---

13 THE COURT: Yes.

14 MR. FOX: --- I just want, for the record, although  
15 Mr. Goude's written motion he's handed up is captioned State  
16 of South Carolina versus Sarah Cardwell, these motions that  
17 he's making are in fact on behalf of Michael Cardwell as well.

18 THE COURT: The record will reflect that the same  
19 motion is made on behalf of both Defendants and as to both are  
20 respectfully denied.

21 MR. FOX: Thank you, Your Honor.

22 MR. GOUDE: And Judge, we make the same motion to  
23 quash on the other two indictments, the two unlawful conduct  
24 indictments, on the same grounds that we have in our written  
25 motion to quash.

## Motions

5

1 THE COURT: The record will reflect that the motion is  
2 made as to both Defendants as to that issue, on that  
3 indictment, and again, is respectfully denied. My thinking is  
4 that it's clear and free of any ambiguity.

5 MR. GOUDE: Thank you, sir.

6 THE COURT: All right, sir.

7 Let's go ahead and do the housekeeping. Is there any  
8 other motions from the Defendant?

9 MR. GOUDE: Yes, sir. We have other motions, Your  
10 Honor.

11 THE COURT: Let's go ahead and hear them before I pick  
12 a jury.

13 MR. GOUDE: Thank you, sir.

14 THE COURT: Your written motion also says the charge  
15 offers, what is that?

16 MR. GOUDE: It's the charged offenses and statutes  
17 violate the freedom of expression under the First Amendment of  
18 the U.S. Constitution.

19 THE COURT: I'm not clear what your position is there.

20 MR. GOUDE: As far as I can tell this charge that  
21 we're in court for is because a six year old girl and an eight  
22 year old boy jumped around and acted ignorant in their living  
23 room while they were naked and that the Defendant Michael  
24 Cardwell, the boyfriend of my client, the mother of the two  
25 children, was also in the living room and he had no clothes

## Motions

6

1 on. He was standing up and my client, the mother, she took a  
2 digital camera picture in their living room of the two six  
3 year old and eight year old naked kids jumping up and acting  
4 ignorant.

5 THE COURT: I respectfully deny that motion, too.  
6 It's made a part of - your written motion is made a part of  
7 the record. Madam Court Reporter, take this. What's your  
8 next motion?

9 MR. GOUDE: Your Honor, the next motion would be ---

10 THE COURT: Go ahead, please.

11 MR. GOUDE: --- and I'll pass these up. These are  
12 written motions, too, Your Honor.

13 THE COURT: Tell me what they are.

14 MR. GOUDE: The next ---

15 THE COURT: Are these motions as to both Defendants?  
16 What say, Eric?

17 MR. FOX: Yes, Your Honor, they are.

18 THE COURT: All right, I will consider them as being  
19 made by both Defendants. Proceed Mr. - counsel.

20 MR. GOUDE: Your Honor, the next motion would be a  
21 motion to produce any prior statements of the prosecution  
22 witnesses. That would include all of the witnesses, that  
23 would include the two minors, that would include the counselor  
24 ---

25 THE COURT: How about let me cut to the chase, have

## Motions

7

1 you complied with Brady and discovery issues?

2 MS. LIVELY: Yes, sir, Your Honor, and they filed a  
3 motion regarding counselor notes and I did not fight them on  
4 it. We've actually given them all the counselor therapy notes  
5 as well.

6 THE COURT: She says she's got - you've got everything  
7 they had, Mr. Goude.

8 MR. GOUDE: Thank you, Your Honor. Judge, the next  
9 motion is a motion in limine and there are four parts to that.  
10 I think one of the parts we may have talked about it back in  
11 chambers, but anyway, it's four parts to it.

12 THE COURT: Not going to let Lyle in unless it becomes  
13 a matter of cross examination.

14 MR. GOUDE: The first subparagraph of our motion in  
15 limine, Judge, is requesting that the Prosecutor tell us the  
16 criminal records of the two Defendants so we'll know whether  
17 to testify or not.

18 THE COURT: Yes, have you done that, Candice?

19 MS. LIVELY: Your Honor, from what I can see they don't  
20 have prior records.

21 THE COURT: That answers the question. Go ahead.

22 MR. GOUDE: Judge, the second part of our motion in  
23 limine is, as we understand, my client's laptop computer was  
24 taken by the police in Georgetown, the sheriff's office, sent  
25 to the Charleston sheriff or police department for a computer

Motions

8

1 analyst to pour through the computer to see if there was any  
2 videos of the children of my client or Mr. Cardwell or my  
3 client on it. They found the one video on it that's going to  
4 be shown here in court today.

5 THE COURT: Yes, sir.

6 MR. GOUDE: What we would ask the - is that we, the  
7 Defense lawyers, be able to ask the police officer from  
8 Charleston who testifies was there any other video of my  
9 client, Mr. Cardwell, or these two minors naked on that  
10 computer, and when we ask that computer, that question we  
11 anticipate his answer is going to be no because that's all  
12 they have ever given us, and what we want to make sure in this  
13 motion in limine that by asking that one question ---

14 THE COURT: Well, you better find out. You know the  
15 primary rule in examination is don't ask the question if you  
16 don't know the answer. Can't you find out what the answer is  
17 ahead of time?

18 MR. GOUDE: We know the answer. He's going to say no  
19 because that's the only video they have given us. What my  
20 motion is I don't want to open the door to the Prosecutor  
21 being able to say, "Well, was there any other naked people on  
22 the computer or is there any other sex on the computer?"  
23 We've already talked about that in chambers but I do not want  
24 ---

25 THE COURT: I know, but we didn't talk about you

## Motions

9

1 asking the question if you ---

2 MR. GOUDE: No, we didn't. That's why I'm making that  
3 motion.

4 THE COURT: No, I'm telling you no, if you ask the  
5 question, is there any other, then you're opening the door.

6 MR. GOUDE: Well, my question was going to be is there  
7 any other pictures of Sarah Cardwell or Michael Cardwell or  
8 these two children naked on the computer.

9 THE COURT: What's the answer going to be?

10 MR. GOUDE: No.

11 THE COURT: What you say to that, Candice?

12 MS. LIVELY: Well, he's on a slippery slope, Your  
13 Honor.

14 THE COURT: He sure is.

15 MS. LIVELY: Because - he is because what happens is  
16 he's putting in front of the jury the position that I was  
17 afraid of when I was talking back there that they've never  
18 done this to the children before and the children have clearly  
19 said in counseling and been disclosed to the Defendant ---

20 THE COURT: If you - no, sir, you're opening the door  
21 now if you ask that question and he says no, then she's  
22 entitled to say, "Well, what else did you find reference these  
23 children?"

24 MR. GOUDE: Well, that's not what the Prosecutor is  
25 arguing right now. I think what the Prosecutor is arguing is

Motions

10

1 she would then ask the children was there any other video?

2 THE COURT: No, she - no, you - she can ask him if he,  
3 if he, if he looks at the video that you're talking about and  
4 says no, she's entitled to ask him what other videos did he  
5 see on this issue. You just can't cut him off and say there's  
6 none. You don't have to ask the question, but if you do,  
7 she's entitled to ask her question.

8 MR. GOUDE: All right, sir.

9 MS. LIVELY: And, Your Honor ---

10 THE COURT: Let it be clear, if you ask that question,  
11 he says no as to your question, she can say how about some  
12 others because you are opening the door wide open.

13 MS. LIVELY: Your Honor, and this might give some, this  
14 might help simplify things. I'm not planning on calling the  
15 forensic computer analyst unless it's in rebuttal.

16 THE COURT: I understand.

17 MS. LIVELY: And, and so, I don't intend at this point  
18 in time in my case in chief that it's even going to be an  
19 issue and I'm not going to go anywhere near Lyle for that  
20 reason.

21 THE COURT: I said that in chambers.

22 MS. LIVELY: Yes, sir.

23 THE COURT: But if they're opening the door, I've told  
24 you also in chambers that you're going to have a right to  
25 explore it.

## Motions

11

1 MS. LIVELY: Yes, sir.

2 THE COURT: I'm telling Mr. Goude if you ask that  
3 question, that limited question, I'm going to permit her to go  
4 into further testimony.

5 MR. GOUDE: Well, we won't ask the question, Judge.  
6 Thank you.

7 THE COURT: All right, sir.

8 MS. LIVELY: Thank you, Your Honor.

9 THE COURT: Don't, don't do that now because I've told  
10 you I'm going to keep out Lyle unless it becomes a subject of  
11 cross examination by your bringing it up.

12 MR. GOUDE: All right, sir.

13 Judge, the third paragraph under our motion in limine is  
14 sort of like we talked about in chambers which is that we  
15 asked that the counselor, Ms. Muse, and no other witness be  
16 allowed to testify that the children said that there had been  
17 previous movie making or videotaping of them naked and that's  
18 what the Court in chambers said the Court was ordering the  
19 children not testify to that. We just wanted to make it clear  
20 that no counselor like, particularly Ms. Muse who's been  
21 counseling for two years, not be allowed to testify that the  
22 children said there was any prior videotaping other than the  
23 one we got.

24 THE COURT: We've agreed, is Mr. - is that witness  
25 here?

Motions

12

1 MS. LIVELY: She's not, Your Honor, but I'm going to  
2 inform everybody when they come in later this afternoon.

3 THE COURT: Tell her now. You know how they do. They  
4 like to bring in everything and throw in the kitchen sink.  
5 She should not refer to any conversation of the children  
6 involving these prior acts unless they open that door.

7 MS. LIVELY: Yes, sir.

8 THE COURT: And let that be clear. If it comes in  
9 now, I'm going to declare a mistrial.

10 MS. LIVELY: Yes, sir.

11 THE COURT: All right, now, in the same token, not  
12 going to let you open the door and her not have an opportunity  
13 to respond.

14 MR. GOUDE: Yes, sir, we understand.

15 THE COURT: All right, sir.

16 MR. GOUDE: The fourth and last paragraph of our  
17 motion in limine, Judge, is, and this is what we had talked  
18 about in chambers, too, to make it clear it's on the record  
19 and made in a motion form, is we asked the Court to order the  
20 Prosecutor to not ask any witness or any Defendant if there  
21 was any child pornography on the computer or any sex videos on  
22 the computer as those events are not being charged in these  
23 four indictments or eight indictments.

24 THE COURT: That's Lyle, we're clear again, we're not  
25 going into that unless it becomes necessary because you open

## Motions

13

1 the door.

2 MR. GOUDE: Thank you, sir.

3 THE COURT: You can agree with that, Ms. Lively?

4 MS. LIVELY: Absolutely, Your Honor.

5 THE COURT: All right.

6 MR. GOUDE: Judge, the next motion is our motion to  
7 sequester, we ask to sequester ---

8 THE COURT: I will grant sequester other than the  
9 counselor. Who do you want to stay with you in the case, Ms.  
10 Lively?

11 MS. LIVELY: Your Honor, the counselor, and well, the  
12 way it works right now, I wasn't planning on my counselor  
13 coming till tomorrow, so really my chief investigator, Phil  
14 Hanna, could be in here.

15 THE COURT: He's entitled, he's entitled to be here.  
16 That answers that question.

17 MS. LIVELY: Oh, and then, and Mr. Brown with the  
18 Solicitors Office, he's our investigator. He's going to help  
19 with the video equipment. He's really on the list just  
20 because he ended up being ---

21 THE COURT: He can, he's a technician. He can stay.

22 MS. LIVELY: Thank you, Your Honor.

23 THE COURT: They have no witnesses other than the  
24 investigator and the other witness who won't be here till  
25 tomorrow, Mr. Goude.

Motions

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1 MR. GOUDE: Thank you, Your Honor.

2 THE COURT: All right, sir.

3 MR. GOUDE: Judge, our next motion is a motion to  
4 suppress the evidence, to suppress the video, to suppress the  
5 laptop computer. I don't know if the Solicitor's witnesses  
6 are here present for that motion to suppress it or not.

7 THE COURT: What's the basis for suppression?

8 MR. GOUDE: For unlawful search and seizure of the  
9 computer.

10 THE COURT: What you say about that, Ms. Lively?

11 MS. LIVELY: Your Honor, the Defendant Sarah Cardwell  
12 turned over her computer to a technician to have the hard  
13 drive fixed. At that point in time it was no longer in her  
14 possession. She turned it over voluntarily to this technician  
15 who ran across the video.

16 THE COURT: No search and seizure issue. She  
17 voluntarily turned it over to a technician who took it upon  
18 himself to comment on it. I ---

19 MR. GOUDE: Judge, when Sarah Cardwell asked a  
20 technician to repair her computer, Sarah Cardwell did not give  
21 him any permission to disclose ---

22 THE COURT: I think under the law aren't they, aren't  
23 they required to report any suspicious activity?

24 MS. LIVELY: Yes, sir.

25 THE COURT: I think the law requires them to do it.

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1 MR. GOUDE: Judge, we would ask the Court to look at  
2 the Court of Appeals case of State versus Brockman, which  
3 basically it does not specifically deal with a computer, it  
4 deals with a motorcycle where ---

5 THE COURT: No, but you talk about - with these  
6 technicians under the law have to report special activities as  
7 I understand it.

8 MR. GOUDE: They did not report special activities.

9 THE COURT: They reported this ---

10 MR. GOUDE: He didn't report anything. My client, if  
11 you will let me make the motion, you will understand what I'm  
12 trying to tell you, Judge. My client ---

13 THE COURT: No, tell me factually what you say  
14 occurred so I can understand your motion better.

15 MR. GOUDE: Factually, based on the police reports,  
16 Sarah Cardwell's computer wouldn't start up, her laptop. A  
17 computer technician told her he would fix it. She let him fix  
18 it. He was in his shop. The Chief of the Johnsonville Police  
19 Department came to the shop. The Chief of the Johnsonville  
20 Police Department saw a image that the computer technician did  
21 not see flash across the screen on the computer. The chief of  
22 police, a law enforcement officer of Johnsonville, Florence  
23 County, South Carolina, instructed the technician to come back  
24 in there and said, "Open that file. I want to see what's in  
25 that file. I think I saw a nude kid." That was an illegal

Motions

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1 search and seizure right there with no warrant, telling the  
2 technician what to do.

3 THE COURT: I respectfully disagree. When she gave it  
4 to the technician she had no concept to privacy.

5 MR. GOUDE: Well, according to that Court of Appeals  
6 case that I just passed up to the Court, you don't lose your  
7 expectation of privacy by asking somebody to fix something for  
8 you or have it in their possession. It depends ---

9 THE COURT: Ms. Candice, what's your - I got your  
10 position.

11 MR. GOUDE: All right, sir.

12 THE COURT: What you want to say, Ms. Candice?

13 MS. LIVELY: Yes, sir. It would be kind of one of  
14 those situations like the police would go into, into a home  
15 where they've been given consent to come in and there's  
16 something in plain view. Here we have a Defendant who's  
17 turned over her computer willingly for assistance for him to  
18 go through the computer and figure out what's wrong with it  
19 whenever a visual of a naked child pops up on the screen. He  
20 ---

21 THE COURT: What causes, what caused the policeman to  
22 be there looking for it?

23 MS. LIVELY: I will tell you probably divine  
24 intervention, that he was not there - he was there to drop off  
25 some other stuff for this technician to look through for the

## Motions

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1 Johnsonville Police Department. Just by chance he happened to  
2 walk in and this flashed up ---

3 THE COURT: He wasn't investigating the case or  
4 anything?

5 MS. LIVELY: No, sir. He was not investigating this  
6 matter, had no idea what this matter was about.

7 THE COURT: No, sir, I respectfully deny that motion,  
8 but you're protected for the record and I make your case a  
9 part of the record.

10 MR. GOUDE: Judge, we would, we would just state, and  
11 I'd like to make my pro-offer of my argument on the motion ---

12 THE COURT: Go ahead, make it short.

13 MR. GOUDE: -- that the - I will - that the basis for  
14 the motion to suppress the search and the seizure is this, my  
15 client had an expectation of privacy in her laptop computer.  
16 She had a lot of personal pictures on it of her family,  
17 birthdays or whatever. She asked the computer technician to  
18 get her computer so it would start. He was in his office. He  
19 has worked for years in his office in Johnsonville. He was  
20 not in the room where the computer was. The chief of police  
21 in Johnsonville comes in, sees as the computer is flashing  
22 images across the screen, he sees an image which he says in  
23 his statement that seemed to be the nude image of a minor.  
24 So, he instructs, he does not ask or request, the computer  
25 technician does not say, "Oh, please, let me bring you this

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1 nude image because there is some law says I as a computer  
2 technician in another room who never even seen it must come  
3 and give you this nude image." The - he tells the computer  
4 technician, this is in their statements, "Come in here. I  
5 think I saw a nude image flash across the screen. Open the  
6 computer, find me a file. Search for the file with naked  
7 people in it that I think I saw flash across the screen."  
8 That's a search and a seizure right there. The computer  
9 technician ---

10 THE COURT: I disagree. Here's a policeman that goes  
11 in, has no interest in the case. He sees a document which in  
12 his opinion is evidence of a serious child pornography crime.  
13 He has every right to pursue his interest in determining where  
14 the truth lies. It's not a search and, search and he didn't  
15 go in there to search, he didn't go in there to listen. The  
16 computer was playing in plain view. The technician wasn't  
17 even there.

18 MR. GOUDE: That's correct.

19 THE COURT: And he happens to go by and see something  
20 that in his event may be a serious charge.

21 MR. GOUDE: Judge, the balance of my motion if I could  
22 be best because there is another deputy from the Georgetown  
23 County Sheriff's Office that's involved, too. I want to put  
24 all this on the record, so on appeal if we lose, it doesn't  
25 say that Ruben Goude didn't pursue it after ---

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1 THE COURT: I understand, Reuben. You go ahead and  
2 put what you got, but remember and I got - these things should  
3 have been done last week when I asked you, "Do you have any  
4 motions," but go ahead. We keeping the jury waiting.

5 MR. GOUDE: Anyway, the Chief of Police of  
6 Johnsonville instructs the technician to come back into the  
7 room and to open the computer and search for a file that's got  
8 naked images on it. That's searches and seizure there in my  
9 opinion. The computer technician does what the Police Chief  
10 of Johnsonville instructs him to do, opens the computer, finds  
11 this video that's got your two naked children and the naked  
12 Mr. Cardwell on it. The Chief of Police of Johnsonville calls  
13 the Georgetown County Sheriff because the computer technician  
14 says, told the Chief of Police in Florence County,  
15 Johnsonville that Sarah Cardwell lives in Georgetown County.  
16 The police chief in Johnsonville calls the deputy in  
17 Georgetown, has a deputy drive from Georgetown County into  
18 Florence County, not the county that he's a deputy in,  
19 Florence County in Johnsonville. The deputy in Georgetown  
20 then instructs the chief of police and the computer  
21 technician, "Bring me the computer here to the Chief of Police  
22 Office in Johnsonville. Let me see the image that you say is  
23 a illegal naked image." He knows right then he's got a  
24 potential crime. His job is to get a search warrant, not to  
25 just search.

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1 THE COURT: Did the, did the, the computer was in the  
2 custody of the technician. Did he at any time ever object to  
3 this procedure?

4 MR. GOUDE: Well, he did not object when the chief of  
5 police and the deputy said, "Open that computer." I doubt  
6 that he wanted to be charged with naked images on a computer  
7 in his possession.

8 THE COURT: I, I don't see it as search and seizure  
9 incident because at that time the property was in the public  
10 domain ---

11 MR. GOUDE: Judge ---

12 THE COURT: --- to wit, the technician.

13 MR. GOUDE: We respectfully say it was not in the  
14 public domain, that Ms. - my client still had an expectation  
15 of privacy in it and these policemen should have known, and  
16 that's the test that Brockman says, does the policemen -  
17 should the policemen know that the owner of the property has a  
18 reasonable expectation of privacy in it. It's not like she's  
19 taking it to Wal-Mart and broadcasting it on the sidewalk.  
20 Anyway, our motion goes to the deputy from Georgetown County,  
21 Mr. Hanna, who instructs the technician to open the video, to  
22 show him the video, knowing that the police chief thinks it's  
23 an illegal video. So, he is seizing the computer. He's got  
24 no arrest warrant, no search warrant. He takes the computer  
25 and then brings it to Georgetown. So, that is ---

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1 THE COURT: You've elicited fully your position.

2 MR. GOUDE: Thank you, Your Honor.

3 THE COURT: And I understand it, but I respectfully  
4 disagree.

5 MR. GOUDE: Thank you, sir.

6 THE COURT: Ms. Lightsey [sic], do you care to be  
7 heard on that issue for the record?

8 MS. LIVELY: No, Your Honor, I believe that you've  
9 covered it for me. Thank you.

10 MR. GOUDE: Judge, we have another motion to suppress  
11 which is based on the search warrant in this case. The -  
12 after the Georgetown County Deputy took the computer on or  
13 about December the 10<sup>th</sup>, 2010, he held that computer until  
14 about February the 9<sup>th</sup>, 2011, two months. The Georgetown  
15 County Deputy, Mr. Hanna, he then gets a search warrant from  
16 the magistrate, which is dated February the 9<sup>th</sup>, 2011, which  
17 authorizes the Charleston Police forensic computer expert to  
18 search the computer to see if he can find anything on it. On  
19 the search warrant itself, dated February the 9<sup>th</sup>, 2011, signed  
20 by the judge, it says, "This search warrant shall not be valid  
21 for more than ten days from the date of issuance," and it was  
22 dated February the 9<sup>th</sup>. Ten days from February the 9<sup>th</sup> would  
23 be February the 19<sup>th</sup>. The report from the Charleston Police  
24 coming back to the Georgetown County Sheriff's Office is dated  
25 April the 4<sup>th</sup>, 2011, which would be about, about two months --

## Motions

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1 THE COURT: That's the return. When was the  
2 inspection done?

3 MR. GOUDE: Well, the inspection was done ---

4 THE COURT: Was it done within the ten days?

5 MR. GOUDE: It says the inspection was done between  
6 February the 10<sup>th</sup>, 2011, and April the 4<sup>th</sup>, 2011. It's got on  
7 the case summary report date submitted ---

8 THE COURT: When was the subpoena issued, the search  
9 warrant issued, what date?

10 MR. GOUDE: February, February the 9<sup>th</sup>.

11 THE COURT: And that report said it was done February  
12 the 10<sup>th</sup>?

13 MR. GOUDE: It says it was, he received February the  
14 10<sup>th</sup> and the date of this report is April the 4<sup>th</sup>.

15 THE COURT: I think that's substantial compliance with  
16 the subpoena. The subpoena never envisioned that they'd do it  
17 within ten days, just that they start the process and they  
18 did. It was issued on the 9<sup>th</sup> and they started the process  
19 when they received it on the 10<sup>th</sup>.

20 MR. GOUDE: Judge, we would like to offer this search  
21 warrant as an appellate exhibit.

22 THE COURT: You may do so. I accept it for that  
23 purpose. Ms. Lively, you need, probably need to respond to  
24 this motion.

25 MS. LIVELY: Yes, sir, Your Honor, and what he is

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1 referring to in regards to the search warrant issue is what  
2 Jerry Roberts in Charleston was doing in trying to find other  
3 videos and child pornography. I am not going to use that  
4 report of Mr. Roberts. I don't intend to use the other  
5 pornography that was found. I don't see this as even being an  
6 issue at this point.

7 THE COURT: You're not going at this time, unless they  
8 open the door, you are not going to introduce anything found  
9 from that search warrant?

10 MS. LIVELY: Absolutely.

11 THE COURT: Does that take care of your concern, Mr.

12 ---

13 MR. GOUDE: I think that goes to that part of the  
14 motion to suppress about the Charleston Police, Your Honor,  
15 yes, sir.

16 THE COURT: They're not going to use it. So,  
17 obviously it's suppressed.

18 MS. LIVELY: Yes, sir, Your Honor. The only thing that  
19 I'm - I'm not even going forward on the sexual exploitation  
20 third degree charge. That's still pending. That's out there  
21 and he's still working on that, on the hard drive, so.

22 THE COURT: All right, thank you.

23 MS. LIVELY: Thank you, Your Honor.

24 MR. GOUDE: Judge, I think that, I think that  
25 completes the motions I had to make.

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1 THE COURT: All right, thank you. You are protected  
2 on the record for your motions.

3 MR. GOUDE: Thank you, sir.

4 THE COURT: Ms. Lively, you had indicated that you had  
5 some housekeeping motions to deal with.

6 MS. LIVELY: Yes, sir, Your Honor. In regards to the  
7 indictments, there are some amendments that need to be made.  
8 In having this case with so many indictments inevitably I have  
9 made some errors and I wanted to have the Court - first of all  
10 my position would be that these would not be prejudicial  
11 changes to the Defendants. It would not change anything in  
12 regards to the, the way that they would propose a defense in  
13 this case. Everyone knows this is about a video. Everyone  
14 knows it involves two children, Your Honor. So, my motions  
15 are basically in regards to the following indictments that  
16 need to be addressed.

17 In Sarah's case, the one 2012-GS-22-05, I believe it's 8-  
18 5 and 8-6, both of those are for unlawful conduct towards a  
19 child and I noticed that in the, oh, hold on, in 2012-GS-22-  
20 0586, I put the timeline as 2001 through November 2010. That  
21 should be January 2007 through November 2010. Every other  
22 indictment has that timeframe.

23 THE COURT: I don't see how you're prejudiced there,  
24 counsel. What do you say? It's all way - all - both of them  
25 in the indictment in the amendment says through 2010. I'm

## Motions

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1 going to permit that. Are you - you want to change it on the  
2 - before we proceed change it on the face of the indictment?

3 MS. LIVELY: Yes, sir.

4 THE COURT: All right, go ahead with your - the rest  
5 of them first.

6 MS. LIVELY: Yes, sir. In regards to another just  
7 housecleaning matter on an indictment, same thing on 20 - this  
8 is Michael Cardwell, 2012-GS-22-0587. The indictment says the  
9 date January 2007 and November 2012. Obviously that 2012 is  
10 incorrect. We just ask the same timeframe, Your Honor, 2010.

11 THE COURT: I do not discern that that's prejudicial  
12 to the Defendant and will permit it.

13 MS. LIVELY: Yes, sir, and then finally, Your Honor, in  
14 regards to the four sexual exploitation against a minor  
15 charges, whenever the indictments are done in our office it  
16 normally pulls up just certain elements to the crime, and in  
17 pulling up the elements to the crime, when I went back and  
18 reviewed it, it states that, when it goes into the elements,  
19 Minor Child 1 , date of birth - -9 , a minor under  
20 the age of 10 years, to engage in sexual activity, all that's  
21 fine, and it says for a live performance. It should also say  
22 and/or in material depicting a live - depicting sexual  
23 activity. That's a part of what the statute clearly says.

24 THE COURT: I will, I will permit that. There's no  
25 prejudice to the Defendant. They fully know what they are

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1 here to defend.

2 MS. LIVELY: Exactly, it's obviously a video. It's  
3 always been the video and that's what the State is asking in  
4 those other last four indictments, Your Honor, is that we add  
5 that element in there.

6 THE COURT: All right.

7 MR. GOUDE: So, that language would be what? Could  
8 you say that again?

9 THE COURT: Sir?

10 MS. LIVELY: It's the - yes, I'll be glad to.

11 MR. GOUDE: What language?

12 MS. LIVELY: Let me specify the exact language so that  
13 everyone is clear.

14 THE COURT: Go ahead.

15 MS. LIVELY: From the statute it says, here it is,  
16 engage in sexual activity for a live performance or for the  
17 purpose of producing material that contains a visual  
18 representation depicting a sexual activity. So it's basically  
19 saying it can be either a live performance or material  
20 containing visual representation.

21 THE COURT: Everybody knows for months we have been  
22 concerned with the video.

23 MS. LIVELY: Yes, sir.

24 THE COURT: And I do not see any prejudice attached to  
25 the Defendants for permitting this amendment.

## Motions

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1 MR. GOUDE: That would say, that would say for a live  
2 performance or for the purpose of producing material?

3 MS. LIVELY: Correct.

4 THE COURT: The statute says that.

5 MS. LIVELY: It's, yeah, it's in statute section one.

6 THE COURT: It's just a scrivener's error. They just  
7 forgot to do it, but you cannot be prejudiced. You know that  
8 the - your defense - you know you're confronted with allegedly  
9 a live video.

10 MR. GOUDE: Yes, that's fine, Judge.

11 THE COURT: All right.

12 MS. LIVELY: Yes, sir. I just wanted to make sure  
13 that, because my arguments, I didn't want it to be confusing.

14 THE COURT: Okay, how do you want to amend these  
15 various?

16 MS. LIVELY: Well, Your Honor, I'd like to, you know, I  
17 know Your Honor is going to read them out to the jury. So I'd  
18 like to amend them on the face so that way it won't be any  
19 chance ---

20 THE COURT: I'm not going to read the specific  
21 language.

22 MS. LIVELY: Okay, well, if you're not going to read  
23 the specific language then I'm just going to use the way that  
24 the amendments are made. I never bring up the indictment  
25 anyway. I just talk about the elements of the crime. So if

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1 Your Honor is not going to read the specifics out then I'm  
2 fine, as long as the actual dates are changed, because I think  
3 the dates are pretty important.

4 THE COURT: All right, before they go to the jury I'll  
5 permit you to make those changes.

6 MS. LIVELY: Yes, sir, thank you.

7 THE COURT: All right, now, are we now ready for the  
8 select the jury?

9 MS. LIVELY: Yes, sir. The only thing was what we had  
10 talked about in the back in regards to clearing the courtroom  
11 for purposes of the children's testimony which I anticipate  
12 will be tomorrow.

13 THE COURT: All right, is there any spectators here?

14 OFF THE RECORD

15 (On the record. The following takes place outside the  
16 presence of the jury venire.)

17 THE COURT: Yes, ma'am. All right, is there anything  
18 further before we select the jury?

19 MS. LIVELY: No, Your Honor. Everything else has been  
20 addressed and I've - and we're ready to go forward.

21 THE COURT: Bring the jury in.

22 (Whereupon, the following takes place in the presence of  
23 the jury venire.)

24 THE COURT: Gentlemen and ladies, the first juror on  
25 the list was excused by me for medical reasons. He had a

Voir Dire

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1 stroke. If you observed him it was pretty obvious. So, he  
2 will not be on the list.

3 Solicitor, call your case, please.

4 MS. LIVELY: Yes sir, Your Honor. May it please the  
5 Court, State of South Carolina calls the case of Sarah and  
6 Michael Cardwell. There are several indictments, Your Honor,  
7 in the case: against Sarah Pope Cardwell, 2012-GS-22-0585,  
8 unlawful conduct towards a child; 2012-GS-22-0586, unlawful  
9 conduct towards a child; 2012-GS-22-0558, sexual exploitation  
10 of a minor in the first degree; 2012-GS-22-0559, sexual  
11 exploitation of a minor in the first degree. As to Michael  
12 Cardwell we have four indictments, Your Honor: 2012-GS-22-  
13 0587, unlawful conduct towards a child; 2012-GS-22-0588,  
14 unlawful conduct towards a child; 2012-GS-22-0560, sexual  
15 exploitation of a minor in the first degree; 2012-GS-22-0561,  
16 sexual exploitation of a minor in the first degree.

17 THE COURT: Is the Defendants [sic] for both  
18 Defendants ready to proceed to trial?

19 MR. GOUDE: Yes, we are, Your Honor.

20 THE COURT: All right, sir.

21 MR. FOX: Yes, Your Honor.

22 THE COURT: Ladies and gentlemen of the jury panel, I  
23 regret having to keep you up until 12 o'clock today, but we  
24 were involved in other issues and other matters not involving  
25 your services. The State of South Carolina and the Defendants

## Opening Statement by Ms. Lively

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1 Remember now that these Defendants are presumed innocent.  
2 Remember that you are the sole and only finders of the facts.  
3 Remember that you are to consider each indictment separately.  
4 Remember, too, that your verdict, either not guilty or guilty  
5 as to each indictment, must be the unanimous verdict of all 12  
6 of you. It cannot be a majority vote obviously, would not be  
7 the minority.

8 We'll proceed in the following fashion. The State of  
9 South Carolina represented by Ms. Candice Lively as a  
10 solicitor will make an opening statement to you as to the  
11 State's position. This is a guideline to help you follow the  
12 introduction of testimony. Counsel for the two Defendants  
13 will make a statement to you as to their position, again, to  
14 help you follow the introduction of testimony. Remember what  
15 the, what lawyers tell you now or in summation is not  
16 evidence. It's their view of the evidence, but it's not  
17 evidence. Evidence comes from this witness stand and from  
18 such other matters as I may permit to be introduced into the  
19 trial of this case. Ms. Lively, you may proceed.

20 MS. LIVELY: Thank you, Your Honor.

21 Ladies and gentlemen, exactly what Judge Cottingham has  
22 told you is what is going to be expected of you as you review  
23 the evidence that's going to be presented to you in this case.  
24 This is a case of common sense and common decency. What  
25 you're going to see in this case is one of those things that

Opening Statement by Ms. Lively

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1 we don't normally get to present to a jury and that is a  
2 videotape of what the State is claiming is the actual crime  
3 that takes place. You're going to see a videotape, ladies and  
4 gentlemen, that is the entire case from the State of South  
5 Carolina and it's going to take each one of you reviewing this  
6 videotape to make the decision as to whether or not we've met  
7 our burden of proof. So let me give you a little bit of a  
8 background so you'll know what to expect to see.

9 In November of 2010 Sarah Pope, she's now Sarah Cardwell,  
10 went to a friend of hers, asked him to help her with a  
11 computer problem she was having. The evidence will show that  
12 David LeShaun Marsh received this computer and was going to  
13 work on it to assist Sarah. While he was working on this  
14 computer or actually having it downloaded so that he could see  
15 what is on there, what the problem was with the computer,  
16 something popped up that caused concerns. You're going to  
17 hear from David Marsh in regards to that. You're going to  
18 hear from Chief Ron Douglas of the Johnsonville Police  
19 Department about that as well. Sarah has four children,  
20 **Minor Child 1** Minor Child 2 Minor Child 3 and Minor Child 4

21 . The children at issue here are going to be the two  
22 oldest, **Minor Child 1** and Minor Child 2 Ladies and gentlemen, in this  
23 video you will see these two children and it's going to be up  
24 to you to decide what you believe is going on. All I can do  
25 is present the video to you and tell you that in the State of

## Opening Statement by Ms. Lively

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1 South Carolina we have laws that establish what is considered  
2 inappropriate sexual activity. What reaches the element of  
3 sexual activity in our State?

4 Now, anyone who's a parent knows that being a parent is  
5 one of the highest duties that we ever come into in our lives  
6 in caring for a child. A parent has a high duty to make sure  
7 that the best interest of their children are looked after and  
8 I'm going to ask you all to consider that when looking at the  
9 behavior and the information on this video. It may be  
10 shocking to some of you, but you'll need to watch it, dissect  
11 it. You will see the Defendant Michael Cardwell on this  
12 video, and the evidence will show he was nude. The evidence  
13 will show that the two children were nude. The evidence will  
14 also show that Sarah Cardwell was the one videotaping the  
15 events that took place. The State has to prove to you beyond  
16 a reasonable doubt that part of what you're going to see was  
17 some form of sexual activity as defined by our legislature,  
18 which can include simulations of masturbation, and trust me  
19 it's never easy to look at 12, 14 people I've never seen  
20 before and talk to you about this, but I'm telling you what  
21 the law is, ladies and gentlemen, and you have to follow the  
22 law with the facts and the evidence that are provided to you.  
23 I'm going to give you every bit of information you need to  
24 find both Defendants guilty on all eight charges. They are  
25 also charged with unlawful conduct towards a child, which is

Opening Statement by Ms. Lively

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1 more of a broad statute. It's just basically saying as a  
2 parent or guardian of children you have a duty to make sure  
3 these children are not placed in unreasonable risk of harm.  
4 It can be physical and it can be mental harm and the State  
5 will show these children were mentally harmed and you will  
6 hear that and the children will be here to testify as well.  
7 So, ladies and gentlemen, I'm bringing everything to you as  
8 the prosecutor that I'm required to bring. I'm going to give  
9 you every single piece of information and piece to the puzzle  
10 for you to feel firmly convinced that these two Defendants  
11 acted beyond inappropriately, placed those children at an  
12 unreasonable risk of mental harm, that they sexually exploited  
13 these children who trusted and were a part of their family,  
14 and as a result of that, for both of these two children, a  
15 charge on each of these Defendants on all counts, ladies and  
16 gentlemen. Once you see the video and hear from those  
17 children you will be convinced that Sarah and Michael Cardwell  
18 are guilty.

19 Please listen, watch even when it's difficult, listen  
20 even when it gets hard because every bit of it is important to  
21 the Defendants, to the State of South Carolina and most  
22 importantly to **Minor Child 1** and **Minor Child 2** Thank you.

23 THE COURT: Thank you.

24 Gentlemen, for the Defense, which shall go first?  
25 Counsel for the Defense, opening statement, please.

## Opening Statement by Mr. Goude

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1 MR. GOUDE: Ladies and gentlemen, my name is Goude,  
2 Rueben Goude. I'm a lawyer here in Georgetown, live out there  
3 at Carvers Bay. I'm representing Sarah Cardwell. Sarah, if  
4 you will, please stand up.

5 (Complies with request.)

6 MR. GOUDE: Thank you. If you would please, sit down.

7 (Complies with requests.)

8 MR. GOUDE: Sarah is married to Michael Cardwell, who  
9 is seated over there and is represented by Mr. Fox, Eric Fox,  
10 who's a lawyer and has been for years, in Conway, South  
11 Carolina. We represent the two Defendants, Sarah and Michael  
12 Cardwell. What I ask you to do, as the Judge told you just a  
13 while ago, that when we come back either tomorrow or  
14 Wednesday, whenever we get to the closing arguments and to the  
15 end of the case, the Judge will tell you that you are to make  
16 your decisions based on what people say on the witness stand  
17 and how you interpret what they say and what you believe about  
18 what they say and any exhibits we put into evidence, whether  
19 it's the videotape or any other kind of exhibits that come  
20 into evidence. Then I'll come back up here tomorrow or  
21 Wednesday, whenever we make this closing argument, and ask you  
22 and give you the reasons why I'm going to ask you, ask you to  
23 vote not guilty on all of the charges. So, just listen if you  
24 will and keep an open mind. Thank you.

25 THE COURT: Thank you. Mr. Fox.

## Opening Statement by Mr. Fox

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1 MR. FOX: Thank you, Your Honor.

2 Good afternoon, ladies and gentlemen. My name is Eric  
3 Fox and I will be the attorney this week for Michael Cardwell.  
4 Michael, would you stand up?

5 (Complies with request.)

6 MR. FOX: That's Michael. Thank you, you can sit  
7 down.

8 (Complies with request.)

9 MR. FOX: I'll talk to you briefly before we start  
10 about some things I'd like you to keep in mind. At the end of  
11 the case, like Mr. Goude said, I will be back to tell you how  
12 I believe the law that the Judge will give you at the end of  
13 the case should be applied to these facts, and I also, of  
14 course, will be asking you to return a verdict of not guilty  
15 on all four indictments that relate to Michael Cardwell.

16 I would agree with Ms. Lively that this case is about  
17 common sense and common decency. You're gonna' see a video  
18 and it speaks for itself. I think the video shows a lack of  
19 common sense. You may not care for what it says about decency  
20 but it does not depict a crime. It does not depict a criminal  
21 act. You have been chosen as jurors for the very reason that  
22 you don't know anything about this case. You are coming at it  
23 with open minds, with fresh opinions or open opinions about  
24 it. You know nothing about this case other than the Judge has  
25 told you what the charges are and now you know the Defendants.

Opening Statement by Mr. Fox

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1 You're here for your very impartiality. You have no friends  
2 to reward or enemies to punish. It's going to be an emotional  
3 thing. I would say when you see this video you probably ain't  
4 going to like what you see. It is an emotional thing, but  
5 your oath requires you to set that aside and take the law that  
6 you'll be given and say, "All right, I'm not here to judge  
7 whether Michael and Sarah are the best parents in the world.  
8 I'm here to judge whether or not what is on that video is a  
9 violation of the law. I may not like what I see, but is it a  
10 violation of the law," and it just simply isn't.

11 Ladies and gentlemen, forgive me for looking back at my  
12 notes but I tend to be forgetful. The law will establish -  
13 does establish what is inappropriate sexual behavior in this  
14 content and the Judge will tell you exactly what that is.  
15 There are certain things and the Judge will tell you what it  
16 is and I'm just as sure as I can be you'll conclude that it  
17 simply does not.

18 Every duty - every parent, rather, does have a duty. Ms.  
19 Lively said probably the highest duty you have as a human  
20 being, to raise your children in a healthy, appropriate  
21 manner; however, every failure to match that ideal is not  
22 criminal. People fail every day in ways big and small to be  
23 less than ideal parents. That does not make them criminals.  
24 Michael and Sarah certainly fell short of that ideal but they  
25 are not criminals.

## Opening Statement by Mr. Fox

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1 Ladies and gentlemen, Winston Churchill said there are  
2 three great duties that every citizen in a democracy must  
3 fulfill, must take on: answering your country's call in a  
4 time of war, voting, appropriately, and jury duty. It's not  
5 fun, don't want to be here. You all have lives. You'd rather  
6 be somewhere else. This is not, frankly, probably going to be  
7 a real pleasant experience in terms of the things that you've  
8 got to deal with but there's nothing more important; and so, I  
9 thank you for being here. Again, I ask you to set aside any  
10 emotion or prejudice you may have about what you're going to  
11 see and decide it simply based on the facts, and I'm very  
12 convinced when you see everything and apply the law that  
13 you'll return verdicts of not guilty. Thank you.

14 THE COURT: Thank you, Mr. Fox. Ms. Lively, you can  
15 call your first witness, please.

16 MS. LIVELY: Thank you, Your Honor. The State would  
17 call David LeShaun Marsh.

18 Whereupon, David LeShaun Marsh was called to the stand,  
19 duly sworn by the clerk and testified as follows:

20 THE CLERK: Thank you. Please be seated and state  
21 your full name for the record, spelling your first and last  
22 name.

23 MR. MARSH: David LeShaun Marsh, D-A-V-I-D, M-A-R-S-H.

24 MS. LIVELY: If I may proceed, Your Honor?

25 THE COURT: You may.

David Marsh - Direct by Ms. Lively

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1 MS. LIVELY: Thank you.

2 DIRECT EXAMINATION

3 Q Mr. Marsh, where are you currently employed?

4 A Carolina Communications.

5 Q And who do you work for?

6 A I work for Warren Baker and we maintain 911 centers.

7 Q All right, do you have any other type of employment?

8 A Yes, I own an internet company and I do computer work on  
9 the side.

10 Q All right, and how long have you been in the business of  
11 doing computer work?

12 A Since I was 15 working in Radio Shack.

13 Q Okay, and how old are you now?

14 A I'm almost 40.

15 Q All right, and do you continue to do this computer work  
16 on a regular basis?

17 A Yes, yes, I do.

18 Q Tell this jury who some of your employees, or not  
19 employees, but some of your customers are.

20 A Florence Sheriff Department, Johnsonville Police  
21 Department, most rescue squads, fire departments and  
22 businesses like Polyquest, places all over including the  
23 County of Orangeburg.

24 Q Okay, do you ever have an opportunity to be hired  
25 independently from someone like me or someone like ---

David Marsh - Direct by Ms. Lively

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1 A Yes.

2 Q Okay, all right, and whenever you get approached by an  
3 individual what, what do you typically do for them in regards  
4 to computer work?

5 A We take viruses off, restore computers, upgrade, things  
6 of that nature.

7 Q Okay, and do you know Sarah Pope Cardwell?

8 A Yes.

9 Q And how do you know Sarah?

10 A I've known her from the rescue squad many years ago and a  
11 couple of years ago when we went out a couple of times.

12 Q Approximately when was that when you all went out a  
13 couple of times?

14 A That was August of 2010 till the end of November.

15 Q Okay, and whenever you went out with Sarah back in late  
16 2010 was there an opportunity - did an opportunity arise to  
17 you regarding helping her with some computer work?

18 A Yes, she brought - we met at her grandmother's one day  
19 and she brought her computer saying that she needed me to take  
20 a look at it and get it fixed.

21 Q Okay, and let me back up just a minute. In the time  
22 whenever you spent with Sarah did you have an opportunity to  
23 meet her children?

24 A Yes, yes, on many occasions.

25 Q Okay, on many occasions, okay, and could you tell us

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1 their names?

2 A Minor Child 1 Minor Child 2 Minor Child 3 and Minor Child 4

3 Q All right, and if you saw these children would you  
4 recognize them?

5 A Yes, yes, I would.

6 Q Okay, and, now, Mr. Marsh, whenever you said that you  
7 received the computer from Sarah in November of 2010 what was  
8 your understanding of what you were supposed to do with this  
9 computer?

10 A To reload it and put the data back on it.

11 Q Okay, and what did the computer look like?

12 A It was a small laptop computer that had an imprint of a  
13 fist in the keyboard.

14 Q Okay, what color is it?

15 A Pink.

16 Q Pink, and whenever Sarah presented the computer to you  
17 did she tell you whose computer it was?

18 A She said it was hers.

19 Q It was her computer?

20 A Yes.

21 Q Okay, and at the time, tell us one more time what exactly  
22 it was that you were going to be doing with the computer?

23 A I was going to get the data off that was on it,  
24 documents, anything like that, rebuild it if possible and then  
25 put the information back on it.

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1 Q Okay, all right, and when did you actually start that  
2 process?

3 A Probably the first of December. I had a class in Florida  
4 that I had to attend and I didn't do anything until I was  
5 back.

6 Q Okay, all right, so, whenever you got back and began  
7 working on the computer tell the jury what process you go  
8 through in trying to back up data and retrieve items off of a  
9 computer.

10 A If the computer will boot up I try and store everything  
11 on a portable hard drive. If the computer will not boot up I  
12 usually take the hard drive and attach it to my Mac because my  
13 Mac can't get viruses and then I will back all the data up to  
14 a file on my Mac and it'll sit there until I get the computer  
15 finished and then I can just push it back straight across.

16 Q Okay, so, so, if it's not able to boot you then connect  
17 it to your Mac because the Mac won't get a virus; is that  
18 right?

19 A Uh-huh, Mac will not get a virus, no.

20 Q Okay, and in this particular case with Sarah's pink  
21 computer what did you have to do?

22 A I had to take the hard drive out, connect it via USB  
23 cable into my Mac and start the download process.

24 Q Okay, so, was there a problem with you trying to boot  
25 this computer?

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- 1 A The computer would not boot.
- 2 Q It would not boot, okay.
- 3 A It would not boot.
- 4 Q All right, so, whenever you did this - is your - where do  
5 you actually handle that type of a process?
- 6 A It's in my office that's at my house. I have a special  
7 room specifically for that that's right beside my garage.
- 8 Q Okay, and who has access to that information?
- 9 A I'm usually the only one that touches computers in that  
10 house. The only other person who helps me in my business is  
11 my mother and my father and they basically just come in and  
12 take payments and update another computer, not anything I'm  
13 working on.
- 14 Q Who - nothing you're working on?
- 15 A Nothing I'm working on.
- 16 Q So who actually goes into the computer and removes data  
17 or sees the data that's on it?
- 18 A I do.
- 19 Q All right, and is that what happened with the computer,  
20 the pink computer of Sarah Cardwell?
- 21 A Yes. I was downloading that information when my friend  
22 Chief Ron came over delivering me packages that - we're not  
23 open all the time. So, they deliver my packages to the police  
24 department and he brought me some packages while we were  
25 doing, while I was doing the download and when I went to take

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1 the packages in the garage he called me back out wanting to  
2 see something that had just flashed across the screen.

3 Q Okay, and let me just back up because the jury doesn't  
4 know who Chief Ron is.

5 A Oh, okay.

6 Q Could you please tell them who Chief Ron is that you're  
7 referring to?

8 A It's Chief Ron Douglas from Johnsonville Police  
9 Department. He and I have known each other since I was a baby  
10 and he was ten years old.

11 Q Okay, and do you do work for the Johnsonville Police  
12 Department?

13 A Yes, I do work all the time for the Johnsonville Police  
14 Department pulling videos and everything, mostly off of like  
15 convenience store camera systems and stuff.

16 Q Okay, and how far is the Johnsonville Police Department  
17 from where your house is?

18 A Half a block.

19 Q Half a block, okay. So, is it unusual for Chief Ron to  
20 come to your house and just hand deliver these items?

21 A No, it's not unusual. He does that all the time.

22 Q Okay, and, and for the jury's benefit, was there any part  
23 of what you were doing for Sarah Cardwell at the request of  
24 law enforcement?

25 A No.

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1 Q All right, you were doing a friend a favor?

2 A I was doing a friend a favor.

3 Q Okay, and on the day whenever Chief Ron you said came  
4 over to give you some items ---

5 A Uh-huh.

6 Q --- you can continue now and tell the jury what exactly  
7 happened.

8 A When he handed me my packages, I usually take them and  
9 store them in the garage. That's where I keep all my ---

10 MR. GOUDE: Judge, excuse me. We would make a motion  
11 to - that needs to be done out of the presence of the jury if  
12 it pleases the Court.

13 THE COURT: Let you go to the jury room just a moment  
14 and I'll be glad to call you right back.

15 (Whereupon, the following takes place outside the  
16 presence of the jury.)

17 THE COURT: All right, the jury's out. What, what,  
18 Mr. Goude?

19 MR. GOUDE: Thank you, Your Honor, for sending the  
20 jury out. I would renew my motion that we made this morning  
21 before we picked the jury, the motion to suppress the computer  
22 evidence for all the reasons stated. The witness has  
23 testified that he was solely the one that handles the  
24 computers, that Sarah asked him to handle, asked him to handle  
25 the computer, that nobody else bothers them, works on them,

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1 touches them, accesses them, sees anything in them except him,  
2 one person.

3 THE COURT: He was displaying it, running it in open  
4 view while he went back to the back room for anybody to see  
5 it.

6 MR. GOUDE: And so, we ask that the Court suppress  
7 the video that was on the laptop computer, anything that was  
8 on the computer and to suppress the use of the laptop computer  
9 for the illegal searches and seizures by Chief Douglas and by  
10 Deputy Hanna of the Georgetown Sherriff's Department.

11 THE COURT: I decline to do that for the reasons  
12 stated pretrial but thank you for your motion.

13 MR. GOUDE: Thank you, sir.

14 MR. FOX: Thank you, Your Honor.

15 THE COURT: Bring the jury back.

16 MR. FOX: Your Honor, if the record may reflect we  
17 join in Mr. Goude's motion.

18 THE COURT: I understand.

19 MR. FOX: Thank you.

20 THE COURT: Any motion made generally I'm accepting as  
21 made by both of you anyway.

22 MR. GOUDE: Thank you, sir.

23 MR. FOX: Thank you, Your Honor.

24 THE COURT: Next time, to save the trouble, just  
25 object to the testimony subject to the motion previously made

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1 and that saves the jury going in and out.

2 MR. GOUDE: All right, sir.

3 (Whereupon, the following takes place in the presence of  
4 the jury.)

5 THE COURT: Madam Foreman, ladies and gentlemen, from  
6 time to time both lawyers may raise an objection. Do not hold  
7 that against the lawyers. Simply they are calling to my  
8 attention a possible matter that I need to discuss outside  
9 your presence but do not hold that against any lawyer moving  
10 that the jury be dismissed for further consultation. Thank  
11 you. All right, resume your examination.

12 MS. LIVELY: Thank you, Your Honor.

13 BY MS. LIVELY:

14 Q Now, Mr. Marsh, you were saying that Chief Ron had come  
15 over to your home and this is where you had Sarah's computer  
16 and you were actually doing the Mac ---

17 A The download.

18 Q --- the download, okay.

19 A Uh-huh.

20 Q All right, and right before the jury went out, the  
21 question I asked you was what, at that point in time, happened  
22 that caused you some concern?

23 A When I - when he handed me the packages I took them down  
24 into my garage, which is where I store most all my stuff  
25 trying to keep the clutter down, and he was just in there I

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1 guess waiting on me to come back and he called me back in. He  
2 said, "I just saw something go across the screen, can you back  
3 it up?"

4 Q Okay, all right, and at that point in time did you know  
5 anything about what he was talking about?

6 A No, I had no clue.

7 Q Okay, were you aware of it being information off of  
8 Sarah's computer that he was talking about?

9 A No, he just said come back in, and then when I got in  
10 there he said, "Please back that up just a little bit."

11 Q Okay, all right, and, and did you do so?

12 A Yes, I did.

13 Q All right, and at that point in time were you backing up  
14 information that was being downloaded from Sarah's pink  
15 computer?

16 A Yes, I was, uh-huh.

17 Q All right, so, when you backed it up, tell this jury what  
18 it was that you saw.

19 A When we backed up a few files, what we saw was a still  
20 image on the screen of <sup>Minor Child 1</sup> which is the oldest child, in a  
21 pink bra.

22 Q Okay, and what else was <sup>Minor Child 1</sup> wearing?

23 A His hands, I think.

24 Q Okay, I mean, clothing-wise, can you tell me what else he  
25 was wearing clothing-wise?

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1 A No, just a pink bra.

2 Q A pink bra, okay, and when you saw this picture, what if  
3 any concerns did you have about what it portrayed?

4 A Well, when I saw and backed up it was a still image but  
5 it was actually a video. So, it had the play button on top of  
6 the image as a video.

7 Q Okay.

8 A So, that - that's what Ron, Ron said he saw and he wanted  
9 to see. So, we clicked play and we watched just a little bit  
10 before we shut it down and that's when he asked me to put it  
11 under lock and key and he would call me when he wanted it.

12 Q Okay, all right, and what jurisdiction were you in at  
13 that point in time?

14 A I was in Johnsonville.

15 Q In Johnsonville, okay, so, at that point in time, what  
16 did you actually view - how much of the video did you view,  
17 what did you see before you actually shut it down?

18 A We viewed possibly a minute and we saw the children  
19 dancing around naked along with Michael.

20 Q Okay, all right, did you recognize the people in that  
21 video?

22 A Yes, I did.

23 Q Okay, who were the people in the video?

24 A The people in the video were Minor Child 1 and Minor Child 2 and  
25 then Michael.

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- 1 Q All right, what was Michael wearing?
- 2 A Nothing.
- 3 Q What was <sup>Minor Child 2</sup> wearing?
- 4 A Nothing.
- 5 Q Was there any other person or voices that you heard on
- 6 this video?
- 7 A <sup>Minor Child 2</sup>, Sarah's in the background directing.
- 8 Q Okay, what do you mean directing?
- 9 A Saying what to do.
- 10 Q Okay, and are you sure that was her voice?
- 11 A Yes.
- 12 Q Okay, and how are you so sure?
- 13 A Because we spent time together and I know her voice.
- 14 Q Okay, now, do you - you said that you watched about a
- 15 minute of the video?
- 16 A Yes.
- 17 Q Okay, if I showed you some still shots off of the video,
- 18 would you be able to recognize the individuals that were in
- 19 it?
- 20 A Yes, I would.
- 21 Q Okay.
- 22 THE COURT: Has these still shots been exchanged with
- 23 defense counsel?
- 24 MS. LIVELY: Yes, sir, Your Honor.
- 25 THE COURT: May I see the videos please?

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1 MS. LIVELY: The still shots, Your Honor?

2 THE COURT: Yes, ma'am.

3 MS. LIVELY: Yes, sir.

4 THE COURT: Counsel for defense, you've seen these  
5 still shots?

6 MR. GOUDE: Judge, we have another motion to make out  
7 of the presence of the jury regarding the still shots if it  
8 pleases the Court.

9 THE COURT: All right, I'll let you have to go to the  
10 jury room just a moment. I'll be calling you back.

11 (Whereupon, the following takes place outside the  
12 presence of the jury.)

13 THE COURT: Let me see the still shots, please.

14 MS. LIVELY: Yes, sir, Your Honor.

15 THE COURT: Thank you, ma'am.

16 MS. LIVELY: Yes, sir.

17 THE COURT: All right, what's, what's your objection  
18 with regard to these still shots?

19 MR. GOUDE: Your Honor, if it pleases the Court, the  
20 clients are charged with sex exploitation of a minor by taking  
21 a nude video of the children nude. The video lasts about two  
22 minutes. The prosecutor has the video. The video is going  
23 into evidence. These - the clients are not charged with  
24 taking still photographs, which is what those are. The still  
25 photographs are distilled and pulled out of the video, out of

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1 context, would be misleading and prejudicial to the jury.  
2 We've got the video that our clients are charged with taking,  
3 which is supposedly a criminal act. We ask the Court to  
4 disallow these distilled still images that's out of the video.  
5 The video is going to come into evidence since the Court has  
6 ruled that it's not a violation of search and seizure. So, we  
7 say ---

8 THE COURT: No, sir, they are, in showing the video,  
9 they're entitled to stop it at any time that they think  
10 appropriate. These still shots you will agree were taken from  
11 the video, and they are still shots, they are admissible.

12 MR. GOUDE: Well, we would renew our objection, Judge,  
13 because that is not what our clients took. It does not show  
14 what happened right before that still shot and it doesn't show  
15 what happened right after.

16 THE COURT: These, these will be considered in the  
17 totality of the video and I will explain that to the jury.

18 MS. LIVELY: And Your Honor, I know you've ruled in my  
19 favor and I appreciate that and I sure don't want to argue  
20 with you ---

21 THE COURT: I've ruled in favor of the law.

22 MS. LIVELY: That's what I was about to say and I also  
23 wanted the Court to understand I'm not trying to lay it on.  
24 The reason why I did that is because the jury cannot, when  
25 they're going back in deliberations, have the video played

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1 over and over if they need to break down the elements. I have  
2 to show with the law. So, that's why I did it.

3 THE COURT: It's, it's admissible under my  
4 instructions ---

5 MS. LIVELY: Yes, sir.

6 THE COURT: --- that they're to take it in  
7 consideration of the entire video. Bring the jury in.

8 MS. LIVELY: Yes, sir, if I may retrieve them?

9 THE COURT: I note - yes. I note your objection for  
10 the record.

11 MS. LIVELY: Thank you, Your Honor.

12 THE COURT: Let me see that one picture again. Let me  
13 see that again.

14 MS. LIVELY: Yes, sir.

15 MR. GOUDE: Judge, for further ---

16 THE COURT: Wait a minute. Hold the jury up, please.

17 MR. GOUDE: --- we know the Court has ruled and not to  
18 beat the horse to death, but anyway, the video has audio with  
19 it and the video shows the actual things the people did and  
20 the words they were saying. These photographs don't show any  
21 words, they don't have any audio attached to them ---

22 THE COURT: I will explain to the jury they are  
23 entitled to still shots if they want them and they are here,  
24 but they will view these things consistent with the entire  
25 video. Bring the jury in.

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1           (Whereupon, the following takes place in the presence of  
2 the jury.)

3           THE COURT:       The State of South Carolina proposes to  
4 introduce for your consideration as finders of the facts  
5 certain still shots allegedly taken from a video. If you  
6 conclude that these still shots were, in fact, a part of that  
7 video you may consider them in totality with the entire video  
8 and give them such weight as you in your decision think  
9 appropriate, but as you consider the still shots you must  
10 conclude that they were a part of the video prior to further  
11 consideration. You may proceed.

12          MS. LIVELY:     Thank you, Your Honor.

13 BY MS. LIVELY:

14 Q     Now, Mr. Marsh, you said that you did watch some portions  
15 of the video; correct?

16 A     Yes.

17 Q     All right, and, and you've identified the persons that  
18 you actually saw on the video; correct?

19 A     Yes.

20 Q     All right, and, and you also identified a voice that you  
21 heard; correct?

22 A     Correct.

23 Q     Okay, before we get into that, as to the actual people  
24 involved, let me ---

25          MS. LIVELY:     If I may approach, Your Honor ---

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1 THE COURT: Yes.

2 MS. LIVELY: --- I did fail to address this.

3 BY MS. LIVELY:

4 Q The actual computer, could you recognize it if you saw  
5 it?

6 A Yes, I would.

7 Q Okay.

8 THE COURT: Have they had an opportunity to view these  
9 stills prior to today, Ms. Lively?

10 MS. LIVELY: Yes, sir, Your Honor.

11 MR. GOUDE: We viewed them at 2:30 today, Your Honor.

12 MS. LIVELY: I'm sorry, not before today, no. We just  
13 provided them to them before we started the case.

14 THE COURT: That's okay then.

15 MS. LIVELY: Yes, sir.

16 THE COURT: Give them plenty of time to look at them.  
17 They were provided with the video some time ago; were they  
18 not?

19 MS. LIVELY: Yes, sir, they've seen the video quiet  
20 often.

21 THE COURT: Okay.

22 MR. GOUDE: Judge, if this computer's being entered  
23 into evidence we object to it on the basis of the two motions  
24 we've already made in the case.

25 THE COURT: I note that and my ruling thereby will

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- 1 remain the same. Thank you.
- 2 MS. LIVELY: Thank you, Your Honor.
- 3 BY MS. LIVELY:
- 4 Q I'm going to show you what's been marked as State's
- 5 Exhibit Number One. If you'll take a look inside this box and
- 6 tell me if you can identify this item.
- 7 A Yes, I can.
- 8 Q Okay, and what is that?
- 9 A It has a fist print in the middle of the keyboard.
- 10 Q Okay, and what does that mean?
- 11 A That's why it was given to me because it wasn't working
- 12 after Sarah said that Michael had punched it.
- 13 Q Okay, and is that the computer that Sarah Cardwell, at
- 14 the time Sarah Pope, provided you to be worked on?
- 15 A Yes.
- 16 Q Okay, and other than downloading it at the request of Ms.
- 17 Cardwell have you - did you do anything else to that
- 18 particular computer?
- 19 A No, I never got a chance to.
- 20 Q Okay, all right, that computer was handed over to whom?
- 21 A To Mr. Phil Hanna.
- 22 Q Detective Hanna?
- 23 A Detective Hanna, uh-huh.
- 24 Q Okay, all right.
- 25 MS. LIVELY: Your Honor, the State would move to

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1 introduce State's Exhibit Number One into evidence at this  
2 time.

3 THE COURT: Subject to their objection it is admitted.

4 MS. LIVELY: Thank you, Your Honor.

5 (State's Exhibit Number One [Computer] introduced into  
6 evidence and appropriately marked.)

7 THE COURT: And Madam Foreman, matters that I  
8 introduce into evidence will be with you in the jury room, and  
9 I apologize for not being able to see you. This block is in  
10 front of me.

11 MS. LIVELY: Thank you, Your Honor.

12 BY MS. LIVELY:

13 Q Now, Mr. Marsh, you mentioned that you recognized the  
14 individuals in the actual video, is that fair to say?

15 A Yes, yes.

16 Q Okay, I'm going to show you what's been previously marked  
17 as State's Number Three, Four, Five, Six, Seven and Eight. I  
18 need you if you don't mind, and I know you've seen these, to  
19 review them again and ask - and let me know if you can  
20 recognize the images in all of those particular still shots.

21 A Yes, I can.

22 Q Okay, and are those images a fair and accurate  
23 representation of what you saw in the video that came off  
24 Sarah Cardwell's computer?

25 A Yes, they are.

David Marsh - Direct by Ms. Lively

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1 Q Are they - do they involve the people that you mentioned  
2 before as being in the video?

3 A Yes, they do.

4 Q Okay, does it look like those pictures, those still shots  
5 have been altered or manufactured or made to look a particular  
6 way?

7 A No.

8 Q Are they a fair representation then?

9 A They are a fair representation.

10 Q Is that what you saw?

11 A Yes.

12 Q Okay.

13 MS. LIVELY: Your Honor, the State would move to  
14 introduce State's Three through Eight into evidence at this  
15 time.

16 THE COURT: Subject to Defense counsel objections I  
17 permit them to go into evidence.

18 (State's Exhibit Numbers Three through Eight  
19 [Photographs] introduced into evidence and appropriately  
20 marked.)

21 THE COURT: You may publish at this time or they - of  
22 course they'll have them with the jury room. If you care to  
23 publish you may do so.

24 MS. LIVELY: Yes, sir.

25 MR. GOUDE: Judge, we would ask before the pictures

David Marsh - Direct by Ms. Lively

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1 are published that if the Prosecution is going to publish  
2 select shots taken out of the two-minute video that the  
3 Prosecution be ---

4 THE COURT: No, sir, any ---

5 MR. GOUDE: --- that the Prosecution ---

6 THE COURT: No, sir, any - no, sir.

7 MR. GOUDE: --- be required to show the two-minute  
8 video ---

9 THE COURT: Any, any ----

10 MR. GOUDE: --- before these still shots.

11 THE COURT: --- any shot, still shot permitted by me  
12 will be a part of the video or it will not be introduced.

13 MR. GOUDE: Judge, we would ask that the jury be  
14 allowed to see the entire video before they see the selected  
15 portions of it.

16 THE COURT: No, sir, I'm not going to tell the State  
17 how to try their case. I can tell the jury that they will see  
18 the video and they will judge these pictures in the contact of  
19 the totality of the video. You may proceed.

20 MS. LIVELY: Thank you, Your Honor.

21 THE COURT: The question was did you desire to publish  
22 at this time?

23 MS. LIVELY: I do desire to publish at this time.

24 THE COURT: Do so.

25 MS. LIVELY: Thank you, Your Honor.

David Marsh - Direct by Ms. Lively

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1 THE COURT: Madam Foreman, take a look at them and  
2 pass them around, please, and they will be with you during  
3 your deliberations.

4 BY MS. LIVELY:

5 Q Now, Mr. Marsh, after you had Chief Douglas - I'm sorry,  
6 Chief Ron Douglas get in contact with Detective Hanna, what,  
7 if anything, did you have to do with the rest of this case and  
8 the information that was found on Sarah's computer?

9 A Ron, Chief Ron called and told me that someone was coming  
10 up to copy that video onto a DVD to bring it with it - with me  
11 because the computer did not work.

12 Q Okay.

13 A And to bring both pieces up to the police department,  
14 which I did, and since I turned them over to Investigator Phil  
15 I have not had any part or act in the case other than just  
16 waiting on trial I guess.

17 Q Okay, and, and once again when you're talking about using  
18 the Mac and having the download done, was a part of the  
19 problem that you had even with pulling up the computer to have  
20 the disk run or have the movie run the same problem you were  
21 having in having it boot?

22 A Correct.

23 Q Okay, all right, so in regards to that was that the  
24 reason why you made a disk of the video?

25 A I made a disk of the video for Chief Ron as he asked.

David Marsh - Direct by Ms. Lively

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1 Q Okay.

2 A And then everything that was on my Mac was deleted and  
3 including I took the hard drive and it was destroyed.

4 Q Okay.

5 A And was started over.

6 Q All right, all right, and, and with the kind of  
7 information and just based on your experience and what you  
8 were doing, was this a matter where you felt that you had to  
9 report this to law enforcement, even if Chief Douglas hadn't  
10 been there?

11 A Yes, it's required of all PC techs.

12 MR. GOUDE: Objection to any of that stuff.

13 THE COURT: I, I overrule that. She's entitled to ask  
14 the question. He's entitled to answer. Go ahead.

15 Q Okay, now ---

16 THE COURT: The jury is finders of the facts. They  
17 can give it such weight as they think it's entitled to, but  
18 proceed.

19 MS. LIVELY: Yes, sir.

20 BY MS. LIVELY:

21 Q I'm going to show you State's Exhibit Number Two, okay,  
22 and ask you if you recognize this.

23 A May I open?

24 Q Oh, yes.

25 THE COURT: You may do so.

David Marsh - Direct by Ms. Lively

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- 1 Q Yes, you may.
- 2 THE COURT: The record will reflect that you have the
- 3 Court's permission. Thank you.
- 4 A Okay, thank you. Yes.
- 5 Q And what is that, David?
- 6 A It's just a standard writeable CD-R in a little laminate
- 7 case that I order tons of that are around my office.
- 8 Q Is that your disk?
- 9 A Yes, that's my disk and the case that I would have put it
- 10 in.
- 11 Q Okay, and you provided that disk in the case to whom?
- 12 A To Investigator Phil.
- 13 Q Okay, Phil Hanna from the Georgetown County Sheriff's
- 14 Office?
- 15 A Yes, uh-huh.
- 16 Q Okay.
- 17 A It was handed directly to him.
- 18 Q All right, and whenever you put that information on the
- 19 disk was it because it would not play off of the computer?
- 20 A Correct.
- 21 Q All right, now, and is that disk - does it still look in
- 22 the same condition as at the time whenever you downloaded this
- 23 information?
- 24 A Yes, it does.
- 25 Q Okay.

David Marsh - Direct by Ms. Lively

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1 MS. LIVELY: Your Honor, the State would move to  
2 introduce State's Exhibit Number Two into evidence.

3 THE COURT: Subject to objection of counsel it is  
4 admissible.

5 MS. LIVELY: I'm sorry.

6 (State's Exhibit Number Two [CD] introduced into evidence  
7 and appropriately marked.)

8 THE COURT: Madam Foreman, ladies and gentlemen, this  
9 video will be played for you in open court. During your  
10 deliberations, we don't have the procedure to do it back  
11 there. If you and your jury wants to see it or any part of it  
12 let me know and I'll bring you out and we'll show it again out  
13 here, but it will be available if you or your distinguished  
14 jury wants to see all or any part of it. Thank you.

15 BY MS. LIVELY:

16 Q All right, and Mr. Marsh, you stated that was the last  
17 thing that you did in regards to this case other than coming  
18 here and testifying today?

19 A Yes.

20 Q Okay, after this occurred did you have any additional  
21 contact with Sarah?

22 A No.

23 Q No? Okay, did you ever have any contact with Michael  
24 Cardwell?

25 A No.

David Marsh - Cross by Mr. Goude

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1 Q Okay. Thank you. Answer any questions that the Defense  
2 attorneys may have for you.

3 A Thank you.

4 THE COURT: Counsel, you may proceed.

5 MR. GOUDE: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. GOUDE:

8 Q Sir, I'm going to show you what's marked as Defendant's  
9 Exhibit One, which is two pages and ask you if you can tell  
10 the jury what this two-page document is. Go ahead and take it.

11 THE COURT: Have you shown to counsel for the State  
12 that two-page document?

13 MR. GOUDE: I just gave them a copy, Judge.

14 THE COURT: All right.

15 MS. LIVELY: I've got one.

16 A It's calendars.

17 Q Of what years?

18 A '06 through '11.

19 Q Yes, sir, thank you.

20 MR. GOUDE: Judge, we would offer this as our first  
21 exhibit.

22 THE COURT: I will permit it. Take judicial notice  
23 that that is a calendar.

24 MR. GOUDE: Thank you, sir.

25 (Defendant's Exhibit Number One [Calendars] admitted into

David Marsh - Cross by Mr. Goude

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1 evidence and appropriately marked.)

2 BY MR. GOUDE:

3 Q And, sir, did you say that all of your activity was taken  
4 place in Johnsonville, South Carolina?

5 A No, sir. I said I - in Florence and then recent.

6 Q No, where you was viewing this laptop computer ---

7 A Yes, Johnsonville.

8 Q --- and all this, that was in Johnsonville, South  
9 Carolina?

10 A Yes.

11 Q And is that in Florence County, South Carolina?

12 A Yes, it is in Florence County.

13 MR. GOUDE: That's all I have, Judge. Thank you.

14 THE COURT: You may come down.

15 A Thank you.

16 THE COURT: Can this witness be excused or you need to  
17 keep him?

18 MS. LIVELY: No, sir, Your Honor. He may be excused.

19 THE COURT: You are excused from your subpoena and we  
20 thank you for your participation.

21 MR. MARSH: Thank you.

22 THE COURT: Call your next witness.

23 MS. LIVELY: Yes, sir, Your Honor. The State will call  
24 Chief Ron Douglas to the stand.

25 Whereupon, Ron Douglas was called to the stand, duly

Ron Douglas - Direct by Ms. Lively.

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1 sworn by the clerk and testified as follows:

2 THE CLERK: Thank you. Please be seated and state  
3 your full name for the record, spelling your first and last  
4 name.

5 MR. DOUGLAS: Ron Douglas, that's R-O-N, D-O-U-G-L-A-S.

6 DIRECT EXAMINATION

7 BY MS. LIVELY:

8 Q Where are you currently employed?

9 A The City of Johnsonville as ---

10 Q And what are your duties?

11 A I serve as the Chief of Police.

12 Q How long have you been doing that?

13 A For a little over ten years.

14 Q And do you know David Marsh?

15 A I do.

16 Q Do you know Sarah Pope Cardwell?

17 A I had met her and then I do - I am acquainted with her.

18 Q Okay, how about Michael Cardwell?

19 A No, ma'am, I do not.

20 Q All right, now, Chief Douglas, did you have an  
21 opportunity to go to the home of David Marsh in December of  
22 2010?

23 A I did.

24 Q Okay, and tell the jury what you would typically go to  
25 Mr. Marsh's house for.

Ron Douglas - Direct by Ms. Lively

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1 A Of course, as I say, I serve as Chief of Police for the  
2 City of Johnsonville and FedEx and UPS typically drop off  
3 packages for several businesses in town. When they're closed  
4 we accept their packages, kind of a little small town plus,  
5 but I know him as Shaun actually because I've known him since  
6 he was a baby, but anyway, Shaun's home office is just right  
7 down the street from the police department and either he would  
8 come to the police department almost on a daily basis and  
9 retrieve packages or either I would take them over to him or  
10 have one of my officers take the packages over to him.

11 Q Okay, and how long have you used David Shaun Marsh to  
12 assist in computer issues at the Johnsonville Police  
13 Department?

14 A Since day one there, over ten years now he's assisted us.

15 Q Okay, all right, and are you aware he actually handles  
16 stuff for independent people as well?

17 A I am aware of his personal business, yes.

18 Q Okay, all right, and in the capacity of what he was doing  
19 for you, was that for the Johnsonville Police Department and  
20 investigations or is it just IT work?

21 A He just does IT work for us.

22 Q Okay, all right, now, tell the jury then what exactly you  
23 were doing there in December of 2010.

24 A I basically had gone over to drop some packages off at  
25 his office.

Ron Douglas - Direct by Ms. Lively

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1 Q Okay, and where was David at that time?

2 A It's been about two years ago. I think we were in like  
3 the little office. He has an office area in his house, a  
4 little small room toward one end of the house, and typically  
5 that's where we would do the transaction and just stand and  
6 chat for just a minute or two and then that would be it.

7 Q Okay, and while you were there was there anything that  
8 happened or that you saw that got your attention?

9 MR. GOUDE: And Judge, before the witness testifies,  
10 we renew our objection on the grounds of the two motions we've  
11 already made this morning and with the witness Marsh.

12 THE COURT: My ruling will stand as to those  
13 objections. You're noted for the record. You may proceed.

14 Q You can answer the question, Chief.

15 A Thank you. I had seen an image that was - that concerned  
16 me on a computer on a table there. He had like a large  
17 computer table where he worked on things and I'd seen an image  
18 that appeared to be a child, a nude child maybe holding a  
19 ladies' bra up across his chest.

20 Q Okay, and when you saw that image what did you do?

21 A I immediately called that to Shaun's attention and asked  
22 him what was that, and of course he explained that was a  
23 computer he was working on. He told me that the computer -  
24 actually he said the computer belonged to Ms. Pope and that he  
25 was working on it because it sometimes would not start up.

Ron Douglas - Direct by Ms. Lively

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1 The computer would not come on, and of course, obviously it  
2 was on at this point and he said he was backing the computer  
3 up trying to save the files apparently, and I'm not a computer  
4 person, so forgive me for not being real specific, but he said  
5 he was trying to get this computer backed up and fixed so that  
6 it would work properly. At that time I had a concern about if  
7 he shut that computer down that he would lose whatever's on  
8 there, and being a trained investigator, I actually retired  
9 from Florence Police Department about ten years ago as a  
10 lieutenant of investigations and I knew as soon as I saw this,  
11 having worked these type cases before, I knew there was  
12 something that needed to be looked into here. So, at that  
13 time I told him to - instructed him to go ahead and make a  
14 copy of that if he could and then to immediately shut that  
15 computer down and secure it because he had told me the  
16 computer belonged to Ms. Pope who actually lived in another  
17 jurisdiction, not in our jurisdiction. He told me she had  
18 lived - she lived in Georgetown County. So, having no  
19 jurisdiction over any type of activity that was captured on  
20 that computer, I instructed him to try to make a copy before  
21 the computer did shut down and malfunction and then secure the  
22 computer until I could contact someone with Georgetown  
23 Sheriff's Office to see if they would assist with the  
24 investigation and take over that.

25 Q Okay, and Chief Douglas, if you saw that computer again

Ron Douglas - Direct by Ms. Lively

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1 do you believe you would recognize it?

2 A I'll be glad to take a look. It's been two years.

3 Q I understand. I'm going to show you this computer and  
4 just ask you if it looks familiar to you.

5 A I do recall it, it was a pink computer which was a little  
6 unusual because we don't have any pink computers at my work,  
7 and I do recall seeing that there was a pink computer that the  
8 material was on.

9 Q Okay, and Chief Douglas, you said that it wasn't your -  
10 it would have been something that happened not in your  
11 jurisdiction; is that correct from what you understood?

12 A Well, yeah, I didn't really know what it was or where it  
13 happened but, but hearing that the owner of the computer lived  
14 in Georgetown County then I knew obviously I'd have no  
15 jurisdiction should those images have been put on there in  
16 Georgetown County.

17 Q Okay, and, and just to clarify for the jury, why did you  
18 feel it necessary to have that video downloaded to a disk at  
19 that time?

20 A As I recall Shaun had told me that he was having trouble  
21 - the reason he was working on the computer was because it  
22 sometimes would not start up and he had gotten it started  
23 up and that's why he was backing it up, doing a backup file  
24 for fear that maybe it would crash and would never start up  
25 again and he was doing this work for Ms. Pope obviously or

Ron Douglas - Direct by Ms. Lively

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1 whoever had directed him to do it, and so, that's why I told  
2 him to go ahead and make a copy of it so that whatever was on  
3 there would not be lost even if the computer did crash.

4 Q Okay, all right, so, as you stated in your experience as  
5 an investigator as well is one of the things you're concerned  
6 about the preservation of potential evidence in a case?

7 A Definitely, that's exactly why I told him what I did.

8 Q Okay, all right, now, you provided a statement to  
9 Detective Phil Hanna with the Georgetown County Sheriff's  
10 Office; correct?

11 A I did.

12 Q All right, and did you have any other opportunity to  
13 possibly have met these children that were involved in the  
14 video?

15 A I had seen the children a little prior to this I believe.  
16 Shaun I believe had become friends with Ms. Pope and I didn't  
17 realize I knew her until one day she came to the police  
18 department I think selling some doughnuts or something for a  
19 school trip they were doing and she reminded me who she was  
20 and obviously I think we bought some candy from her or  
21 something, but her children during that time, as they were -  
22 had become acquainted, I think her children were with Shaun  
23 spending some overnight visits with him, and we were doing - I  
24 serve a lot of different functions. I'm on a little committee  
25 where we decorate the town for Christmas and do different

Ron Douglas - Direct by Ms. Lively

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1 things and we were, we were in the little local park  
2 decorating, trimming a tree and putting up some lights and  
3 Shaun had these children with him there and had told me that  
4 that was Sarah Pope's children, and that's where I - when I  
5 saw the image on the computer that's where I recognized the  
6 child that I had seen before. So, I knew right away that, you  
7 know, who the child was.

8 Q Okay, all right, so, you - and that was going to be my  
9 question was were you able then to put the image together with  
10 the child that you had actually met before?

11 A I was.

12 Q Okay, all right, thank you. Answer any questions that  
13 the Defense may have for you.

14 THE COURT: Mr. Goude or Mr. Fox. Gentlemen, do you  
15 have any examination?

16 MR. GOUDE: Just one second, Judge, please.

17 THE COURT: All right, sir.

18 MR. GOUDE: No questions, Your Honor.

19 THE COURT: Mr. Fox?

20 MR. FOX: None, Your Honor.

21 THE COURT: Come down, Chief. Thank you.

22 A Thank you, sir.

23 THE COURT: May this witness be excused from his  
24 subpoena?

25 MS. LIVELY: Yes, may he please, Your Honor.

Phillip Hanna - Direct by Ms. Lively

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1 THE COURT: You are excused and we thank you for your  
2 participation.

3 A Thank you, sir.

4 THE COURT: Next witness.

5 MS. LIVELY: Yes, sir. The State would call Detective  
6 Phil Hanna to the stand.

7 Whereupon, Phillip Hanna was called to the stand, duly  
8 sworn by the clerk and testified as follows:

9 THE CLERK: Thank you. Please be seated and state  
10 your full name for the record, spelling your first and last  
11 name.

12 MR. HANNA: First name is Phillip, P-H-I-L-L-I-P, last  
13 name is Hanna, H-A-N-N-A.

14 DIRECT EXAMINATION

15 BY MS. LIVELY:

16 Q Mr. Hanna, where are you currently employed?

17 A Georgetown County Sheriff's Office.

18 Q And how long have you been employed there?

19 A Almost four years.

20 Q What are your duties at the sheriff's office?

21 A I'm an investigator for the sheriff's office to follow up  
22 on criminal activity such as burglaries, homicides, anything  
23 that happens within the county to do follow-up investigations  
24 to try to determine who, who committed a crime.

25 Q Okay, how long have you been in law enforcement?

Phillip Hanna - Direct by Ms. Lively

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1 A 22 and a half years.

2 Q All right, and where were you working before you came to  
3 the Georgetown Sheriff's Office?

4 A I worked, I was an investigator for Florence County  
5 Sheriff's Office for 18 and a half years.

6 Q Okay, do you know Chief Ron Douglas?

7 A Yes.

8 Q Okay, and do you know David Shaun Marsh?

9 A Yes.

10 Q All right, do you know Sarah Pope Cardwell?

11 A Only through this investigation.

12 Q How about Michael Cardwell?

13 A Again, just through the investigation.

14 Q All right, will you please tell this jury when you became  
15 involved in the investigation of these two Defendants?

16 A Yeah, actually I was notified - Chief Douglas had called  
17 our agency asking for help about they had found this image on  
18 a computer and didn't think that it was in his jurisdiction  
19 and felt like it was in our county, and that being in our  
20 jurisdiction and me being familiar with Ron and the area, I  
21 went down there to see if I could assist and that would have  
22 been right at December 10<sup>th</sup>, 2010.

23 Q Okay, and at that time did you have any information about  
24 what it was that you were going to be involved in  
25 investigating?

Phillip Hanna - Direct by Ms. Lively

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1 A Through the phone call I was told that there was some  
2 images of children nude that was seen on a computer and that  
3 they - that was being worked on by David in Johnsonville and  
4 that they wanted me to come and follow up on it to see if they  
5 - if it was, in fact, any kind of illegal pictures or videos.

6 Q Okay, and what was your understanding as to how David  
7 Shaun Marsh came into possession of this particular computer?

8 A After speaking with David I learned that the computer was  
9 sent to him or he had picked the computer up from Ms. Sarah  
10 Pope to do some work on it, and that during it - it was during  
11 the time that he was working on the computer that they - he  
12 and Chief Douglas actually accidentally stumbled across these  
13 images.

14 Q Okay, was it a part of any type of law enforcement  
15 investigation up until that point?

16 A No.

17 Q Okay, now, how are you able to or were you able to  
18 determine that, that this video and these images were located  
19 in your particular jurisdiction?

20 A We went by the, the date, later found out where it is and  
21 I don't know the computer stuff either, but they have a way of  
22 finding the dates that it was actually put on the computer and  
23 we went back with the Sarah and Michael were arrested. It was  
24 later determined after speaking with them that's where it  
25 occurred at and also recognize, other officers at the

Phillip Hanna - Direct by Ms. Lively

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1 sheriff's office recognized the interior of the residence.

2 Q Okay, and where was - the residence that you're referring  
3 to, is this the residence that is actually visible in the  
4 video?

5 A Yes.

6 Q All right, and what is the address of that particular  
7 residence?

8 A That would have been on Road, and I'm sorry, it's -  
9 I don't have the address in - with me at this moment.

10 Q Okay, if I provided you with your case report would that  
11 assist you in regards to the location of the actual video and  
12 where it was taken?

13 THE COURT: You may approach the witness.

14 MS. LIVELY: Thank you, Your Honor.

15 BY MS. LIVELY:

16 Q Here you go.

17 A Yes, and that's - and in fact it was actually the  
18 Road.

19 Q And where is Road located, Detective Hanna?

20 A That's actually in Georgetown County, heading back from  
21 Georgetown toward Andrews.

22 Q Okay, and the Road address that you have, how  
23 are you able to confirm that through your investigation?

24 A That that's where the incident took place?

25 Q Yes, sir.

Phillip Hanna - Direct by Ms. Lively

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1 A Actually through speaking with Ms. Sarah Pope and, and  
2 confirm with other investigators who are familiar with them  
3 and had been - actually been in the residence before.

4 Q Okay, all right, now, after determining that this video  
5 had been done in, in Georgetown County, what was your next  
6 step in regards to your investigation?

7 A Well, had to take it to someone who was qualified and  
8 certified to download these images and save them securely from  
9 this broken computer. I took possession of this computer and  
10 also the CD that they had made and sent the computer to the  
11 Charleston computer lab so that they could download all the  
12 stuff off this computer.

13 Q Okay, and Detective Hanna, when you received this  
14 information and the disk, did you do anything in order to  
15 allow yourself to or allow the forensic lab to go into the  
16 computer and do a search?

17 A Yes, I obtained a search warrant for all the - for  
18 everything on the computer.

19 Q Okay, and is that standard when you see images like  
20 these?

21 A Yes.

22 Q Okay, and Detective Hanna, in regards to the actual  
23 computer did you seize that computer from David Marsh and  
24 Chief Douglas?

25 A Yes.

Phillip Hanna - Direct by Ms. Lively

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1 Q Okay, sorry, it's in my way now, Judge, and is this -  
2 does this look familiar?

3 A Yes.

4 Q Is this the computer that you seized from David Marsh?

5 A Yes, it is and I put it in that box.

6 Q And you put it in this box? Okay.

7 Now I'm going to show you what's in evidence as State's  
8 Exhibit Number Two and ask you - well, actually I see your  
9 name on this particular item. Do you recognize that?

10 A Yes.

11 Q And what is that?

12 A This is the actual CD that Mr. David had made when he -  
13 when I took the possession of the computer. This is the  
14 actual disk that he had made that showed the images.

15 Q Okay, all right. At that time when you got this  
16 information, were you able to identify the individuals that  
17 were involved in this particular video?

18 A Yes, Mr. David was adamant. He, he was familiar with  
19 everyone, every party and he gave me the name of the male  
20 person because I wasn't familiar with him, but he gave me his  
21 name. I then went to DMV, Department of Motor Vehicles, and  
22 pulled his driver's license picture and saw that it was, in  
23 fact, the same person.

24 Q Okay, and at what point in time did you watch or did you  
25 watch the video?

Phillip Hanna - Direct by Ms. Lively

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1 A I watched it there that day at the police department.

2 Q Okay, okay, and in the video itself do you recall about  
3 how long it is?

4 A Seem like it's a little over two minutes.

5 Q Okay, and whenever you watched the video and were able to  
6 identify the people in the video did you have any trouble in  
7 having to replay the video and look at it again?

8 A Yeah, there was some problems with the volume. It would  
9 - the volume would come and go.

10 Q Okay.

11 A So, you'd have to stop it, start it, stop it, so the  
12 volume, you could hear the actual person narrating the video.

13 Q Okay, so, in the video that you actually watched there  
14 was sound included?

15 A Yes.

16 Q All right, okay, and how many people were in the video  
17 that you actually saw?

18 A There was a male, which was Mr. Michael Cardwell, and the  
19 two children.

20 Q Okay, all right, and was there any other voices that  
21 could be heard on the video?

22 A There was a female voice that was actually running the  
23 camcorder or the video.

24 Q Okay, all right, could you ever see this person?

25 A No.

Phillip Hanna - Direct by Ms. Lively

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1 Q All right, now, Detective Hanna, after you've seized  
2 these items and you have this stuff in your possession has  
3 there been anything additional that you've had to do in  
4 regards to this investigation?

5 A Yes, when I viewed the video obviously it concerned me  
6 immediately. I contacted DSS and we made arrangements to - we  
7 took the children from the home.

8 Q Okay, all right, and in regards to the, the actual  
9 charges that were brought against Michael and Sarah Cardwell -  
10 never mind, I'm not going to ask you that question. Just give  
11 me one second, okay, Detective?

12 MS. LIVELY: May it please the Court, Your Honor, just  
13 Court's indulgence one moment?

14 THE COURT: Yes, ma'am.

15 MS. LIVELY: Your Honor, the State is prepared to  
16 publish the video at this time unless we want to go forward  
17 with cross examination first. It does not matter to me how  
18 the Court would like to handle that.

19 THE COURT: Well, I'll ask counsel for the Defense.  
20 You want to have your cross examination and then play the  
21 video or play the video prior to cross examination?

22 MR. GOUDE: I'd say play the video and play it first.

23 THE COURT: All right, sir, we'll do that.

24 MS. LIVELY: And Your Honor, if we could just - just  
25 for the purposes of the jury understanding how this is going

Phillip Hanna - Direct by Ms. Lively

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1 to happen, we'll start the video. Obviously the screen will  
2 reflect what is on the video. It's right directly in front of  
3 you.

4 BY MS. LIVELY:

5 Q And it lasts for about two minutes and 30 seconds; is  
6 that correct, Mr. Hanna?

7 A Yes, sir - yes, ma'am.

8 Q Okay.

9 MS. LIVELY: All right, well we're ready.

10 (Whereupon, State's Exhibit Number Two played in open  
11 court.)

12 MS. LIVELY: That's all.

13 THE COURT: You may examine, Mr. Goude.

14 MR. GOUDE: Judge, I have no questions.

15 THE COURT: Mr. Fox?

16 MR. FOX: No, Your Honor.

17 THE COURT: You may come down.

18 A Thank you, sir.

19 THE COURT: Please remain under your subpoena. All  
20 right, sir, call your next witness.

21 MS. LIVELY: Dianne Nordeen.

22 Whereupon, Dianne Nordeen was called to the stand, duly  
23 sworn by the clerk and testified as follows:

24 THE CLERK: Thank you. Please be seated and state  
25 your full name for the record, spelling your first and last

Minor Child 1

- Direct by Ms. Lively

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1 MS. LIVELY: Thank you, Your Honor.

2 THE COURT: Thank you.

3 MS. LIVELY: Minor Child 1

4 Whereupon, Minor Child 1 is called to the stand,

5 duly sworn by the clerk and testifies as follows:

6 THE CLERK: Thank you. Please be seated and state

7 your full name for the record.

8 THE COURT: Good morning, young man.

9 Minor Child 1 : Morning.

10 THE COURT: Good to see you.

11 Minor Child 1 : Minor Child 1 Minor Child 1

12 DIRECT EXAMINATION

13 BY MS. LIVELY:

14 Q Thank you. Minor Child 1 how old are you?

15 A Twelve.

16 Q And are you in school?

17 A Yes, ma'am.

18 Q Where are you in school?

19 A St. James Middle.

20 Q And what grade are you in?

21 A Seventh.

22 Q When's your birthday?

23 A <sup>th</sup>, 19 .

24 Q Okay, so, you're getting ready to be 13?

25 A Yes, ma'am.

Minor Child 1

- Direct by Ms. Lively

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- 1 Q A teenager. Are you excited?
- 2 A Yes, ma'am.
- 3 Q Okay, now, Minor Child 1 what's your favorite, what's your  
4 favorite subject at school?
- 5 A Math.
- 6 Q Math, all right, and how are your grades?
- 7 A Good.
- 8 Q What are you making?
- 9 A A's.
- 10 Q A's, wonderful, and have you been on honor roll and stuff  
11 like that?
- 12 A Yes, ma'am.
- 13 Q All right, now, Minor Child 1 was there a time whenever  
14 you lived in Georgetown County on Road?
- 15 A Yes, ma'am.
- 16 Q Okay, and who lived there with you? Do you remember?
- 17 A My mom and my step-dad and sometimes my stepsisters and  
18 my younger brother and younger sister and my other younger  
19 sister.
- 20 Q Okay, and just so the jury knows everybody that you're  
21 talking about, your younger sister Minor Child 2 who we just talked  
22 to right?
- 23 A Yes, ma'am; yes, ma'am.
- 24 Q Okay, and then there's Minor Child 3
- 25 A Yes, ma'am.

Minor Child 1 - Direct by Ms. Lively

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- 1 Q And how old is he now?
- 2 A He's six.
- 3 Q He's six and then there's Minor Child 4 right?
- 4 A Yes, ma'am.
- 5 Q And how old is Minor Child 4
- 6 A She's three.
- 7 Q She's three, okay. So, are the four of you all still
- 8 living together?
- 9 A Yes, ma'am.
- 10 Q All right, and where are you all? In Murrells Inlet, is
- 11 that right?
- 12 A Yes, ma'am.
- 13 Q Okay, now, Minor Child 1 whenever you lived back off of
- 14 Road in Georgetown with your mom and your step-dad,
- 15 were they married yet?
- 16 A No, ma'am.
- 17 Q Okay, was Mr. Cardwell living there with you all though?
- 18 A Yes, ma'am.
- 19 Q Okay, and was there ever a time whenever you all were
- 20 living in that home where you did something with your mom and
- 21 your step-dad and your sister that made you feel
- 22 uncomfortable?
- 23 A Yes, ma'am.
- 24 Q And what was that?
- 25 A We made a video.

Minor Child 1

- Direct by Ms. Lively

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- 1 Q You made a video, okay, and whose idea was it to make the  
2 video, Minor Child 1
- 3 A My mom and my step-dad.
- 4 Q How did you feel about that?
- 5 A Upset and embarrassed.
- 6 Q Embarrassed, okay, and Minor Child 1 about how old were  
7 you? Do you remember?
- 8 A About 11 or ten, ten or 11.
- 9 Q Ten or 11, okay, and so, your mom and your step-dad had  
10 the idea to make the video. Whose idea was it for the way  
11 that you all were supposed to be clothed or unclothed?
- 12 A My step-dad.
- 13 Q Your step-dad, okay, and what was the decision about  
14 clothing?
- 15 A That no, none.
- 16 Q None, were you wearing anything at all?
- 17 A No, ma'am.
- 18 Q Do you remember if anybody was wearing a bra in the  
19 video?
- 20 A Yes, ma'am.
- 21 Q Who was?
- 22 A Me.
- 23 Q Who put it on you?
- 24 A My step-dad.
- 25 Q How'd you feel about that?

Minor Child 1

- Direct by Ms. Lively

144

- 1 A I didn't like it.
- 2 Q You didn't like it?
- 3 A No, ma'am.
- 4 Q What was your sister wearing?
- 5 A Nothing.
- 6 Q Now, Minor Child 1 who was videotaping what was going on?
- 7 A My mom.
- 8 Q Your mom, what was she wearing?
- 9 A Nothing.
- 10 Q Nothing. Okay, now, Minor Child 1 there were some things
- 11 going on in the video and the jury has seen that video; okay?
- 12 A Yes, ma'am.
- 13 Q All right, but only the people who were there would you
- 14 agree knew what was going on? Right?
- 15 A Yes, ma'am.
- 16 Q Okay, all right, so, you knew or let me ask you this, who
- 17 told you how to act and what to do in that video?
- 18 A My step-dad.
- 19 Q Your step-dad, okay, so, I'm going to ask you some stuff
- 20 about that, okay, and I'm sorry, but you know I have to ask
- 21 you some of these questions.
- 22 A Yes, ma'am.
- 23 Q Okay, now, Minor Child 1 I'm going to show you State's
- 24 Exhibit Number Six, okay?
- 25 A Yes, ma'am.

Minor Child 1

- Direct by Ms. Lively

145

1 Q All right, and, and the jury's already seen these; okay?

2 A Yes, ma'am.

3 Q In this picture right here, who is in that picture,

4 Minor Child 1

5 A Me.

6 Q That's you, and what are you wearing?

7 A A bra.

8 Q A bra, okay, and what are you doing with your hands?

9 A I'm touching myself.

10 Q Okay, who told you how to touch yourself?

11 A My mom and my step-dad.

12 Q Okay, your mom and your step-dad, all right. Okay,

13 Minor Child 1 do you need any water?

14 A No, ma'am.

15 Q You're good? Okay, now I'm going to show you State's

16 Number Seven and tell me who is in this one?

17 A Me.

18 Q That's you, okay, all right, and I'm going to show you

19 State's Number Eight and ask you who's that?

20 A Me.

21 Q Okay, now, Minor Child 1 in these two pictures here, what

22 parts of your body are you touching?

23 THE COURT: Let the picture speak for itself.

24 Q Okay, and I know it's hard; okay? All right, are you

25 touching your front private part?

Minor Child 1 - Direct by Ms. Lively

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- 1 A Yes, ma'am.
- 2 Q Who told you to do that?
- 3 A My mom and my step-dad.
- 4 Q Okay, did you know why they were having you do that?
- 5 A No, ma'am.
- 6 Q No, okay. When they did that do you know what you were
- 7 doing?
- 8 A No, ma'am.
- 9 Q Okay, whenever you were touching your front private part
- 10 in this video, what does that mean?
- 11 A Masturbation.
- 12 Q Okay, all right, and who taught you that?
- 13 A My mom and my step-dad.
- 14 Q Your mom and your step-dad taught you that that was
- 15 masturbation?
- 16 A Yes, ma'am.
- 17 Q Is that why you did it in this video?
- 18 A Yes, ma'am.
- 19 Q Okay, I'm going to show you State's Number Nine.
- 20 Minor Child 1 do you remember this part of the video?
- 21 A Yes, ma'am.
- 22 Q And who's that?
- 23 A My step-dad.
- 24 Q Okay, all right.
- 25 MS. LIVELY: And, Your Honor, we would move Number Nine

Minor Child 1 - Direct by Ms. Lively

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1 into evidence.

2 THE COURT: What is Number Nine?

3 MS. LIVELY: Number Nine is the full picture of Mr.  
4 Cardwell. It's not in. It's the last photo.

5 THE COURT: Yes, ma'am. I would permit it.

6 MS. LIVELY: Okay, all right.

7 (State's Exhibit Number Nine [Photograph] admitted into  
8 evidence and appropriately marked.)

9 BY MS. LIVELY:

10 Q And was this a ---

11 THE COURT: I would say to the jury again that this is  
12 a still photo, but you will consider it in the context of the  
13 entire video, please. Thank you.

14 Q Okay, and is this a representation of how he was during  
15 that whole video?

16 A Yes, ma'am.

17 Q Okay, all right, Minor Child 1 ---

18 A Yes, ma'am.

19 Q --- after - well, there was one part of it and then I'm  
20 going to move on; okay? There was one part of it where you  
21 hear a female voice and a male voice saying, "Do your grand  
22 finale." Who was that female voice?

23 A My mom.

24 Q Your mom, and the male voice, who was that?

25 A My step-dad.

Minor Child 1

- Direct by Ms. Lively

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- 1 Q What is the grand finale? Do you remember seeing it on  
2 the video?
- 3 A Yes, ma'am.
- 4 Q Okay, was that you that did the grand finale?
- 5 A Yes, ma'am.
- 6 Q Who showed you or told you what the grand finale was?
- 7 A My step-dad.
- 8 Q Okay, did he tell you how to do that?
- 9 A Yes, ma'am.
- 10 Q Okay, I mean, did you ever see that or know that before  
11 he told you?
- 12 A No, ma'am.
- 13 Q Okay, so, he taught you that?
- 14 A Yes, ma'am.
- 15 Q All right, now, after the video was over was there ever a  
16 time whenever you saw the video again on the computer or it  
17 popped up or anything like that?
- 18 A Yes, ma'am.
- 19 Q Okay, tell the jury about that.
- 20 A My stepsister and I we were, we were - it was after her  
21 birthday and we had taken pictures on the camera of like her  
22 presents and stuff and we were looking at the pictures and the  
23 video came on the screen.
- 24 Q Okay, did you know that it was on the computer?
- 25 A No, ma'am.

Minor Child 1

- Direct by Ms. Lively

149

1 Q How did that make you feel?

2 A Upset.

3 Q Upset, okay, has all - has that video and knowing that it  
4 was on the computer, has that kept you upset?

5 A Yes, ma'am.

6 Q How do you feel today about it?

7 A Upset.

8 Q And have you had any type of problems, you know, because  
9 of that video and what's happened?

10 A No, ma'am.

11 Q No, you've done pretty good in school?

12 A Yes, ma'am.

13 Q How about sleeping? Do you ever have any problems  
14 sleeping?

15 A No, ma'am.

16 Q No, have you ever had any problems with - I don't want to  
17 embarrass you, but have you ever had any kind of problems with  
18 wetting the bed?

19 A Once.

20 Q Okay, and was it after this had happened?

21 A Yes.

22 Q Okay, and do you know whose fault this is, this video  
23 being made, is it your fault?

24 A No, ma'am.

25 Q Whose fault is it?

Minor Child 1

- Cross by Mr. Goude

150

1 A My mom and my step-dad.

2 Q Thank you. Answer any questions that the Defense might  
3 have; okay?

4 A Yes, ma'am.

5 Q Thank you, Minor Child 1

6 THE COURT: Mr. Goude?

7 CROSS EXAMINATION

8 BY MR. GOUDE:

9 Q Minor Child 1 is your correct legal name Minor Child 1?

10

11 A Yes, sir.

12 Q And is your date of birth the <sup>th</sup>, 19 ?

13 A Yes, sir.

14 MR. GOUDE: Judge, we would offer Minor Child 1 s birth  
15 certificate as our next exhibit.

16 THE COURT: I will admit it.

17 (Defendant's Exhibit Number Four [Birth Certificate of  
18 Minor Child 1 admitted into evidence and appropriately  
19 marked.]

20 BY MR. GOUDE:

21 Q Minor Child 1 what school did you say you were attending  
22 right now?

23 A St. James Middle School.

24 Q And where is St. James Middle School located? What  
25 section of the county here so is it located?

Minor Child 1

- Cross by Mr. Goude

151

- 1 A Like Horry, in Horry County.
- 2 Q Like Pawleys Island or Murrells Inlet or Myrtle Beach?
- 3 A Yes, sir.
- 4 Q Where, where at?
- 5 A Myrtle Beach I think.
- 6 Q Okay, and you said you were in what grade this year?
- 7 A Seventh.
- 8 Q And last year, the last school year what grade were you
- 9 in then?
- 10 A Sixth.
- 11 Q And what school did you attend last year when you were in
- 12 the sixth grade?
- 13 A Waccamaw Intermediate School.
- 14 Q And the year before that what grade would you have been
- 15 in?
- 16 A Fifth grade.
- 17 Q And what school did you attend when you were in the fifth
- 18 grade?
- 19 A Kensington Elementary.
- 20 Q That's here in Georgetown?
- 21 A Yes, sir.
- 22 Q And the year before the fifth grade you would have been
- 23 in what grade?
- 24 A Fourth.
- 25 Q And what school did you attend when you went to the

Minor Child 1

- Cross by Mr. Goude

152

- 1 fourth grade, when you were in the fourth grade?
- 2 A Sampit.
- 3 Q Sampit?
- 4 A Yes, sir.
- 5 Q And the year before the fourth grade you would have been
- 6 in what grade?
- 7 A Third.
- 8 Q And where did you go to school when you were in the third
- 9 grade?
- 10 A Sampit or Maryville, I can't remember.
- 11 Q Okay, and the year before the third grade what grade were
- 12 you in?
- 13 A Second.
- 14 Q And where did you go to school then?
- 15 A I was in Maryville.
- 16 Q And the year before the second grade you would have been
- 17 in what grade?
- 18 A First.
- 19 Q And where did you go to school when you were in the first
- 20 grade?
- 21 A In first grade I was in Chavis Elementary.
- 22 Q What town is that located in?
- 23 A Hemington - Hemingway.
- 24 Q Okay, now, before you went to the first grade, did you go
- 25 to kindergarten or preschool or any of that stuff?

Minor Child 1 - Cross by Mr. Goude

153

1 A I can't remember.

2 Q Okay.

3 MR. GOUDE: Judge, we would offer Minor Child 1's school  
4 records for the same reason that we offered Minor Child 2's as our  
5 next.

6 THE COURT: I will permit them to come into the record  
7 and tell the jury that they can give such consideration to  
8 those records as they think appropriate as finders of the  
9 facts.

10 (Defendant's Exhibit Number Five [School Records of  
11 Minor Child 1 admitted into evidence and appropriately  
12 marked.]

13 BY MR. GOUDE:

14 Q Minor Child 1 the - this is, this is what month right now  
15 that we're in?

16 A October.

17 Q And what year is this?

18 A 2012.

19 Q And as I understand it you and your brothers and sisters  
20 were taken out of your momma's custody about December 2010.

21 Is that correct?

22 A Yes, sir.

23 Q And that would have been almost two years ago; is that  
24 correct?

25 A Yes, sir.

Minor Child 1

- Cross by Mr. Goude

154

1 Q For the last two years have you been living in the same  
2 house, not your momma's house, but some foster house, in one  
3 foster house or two foster houses or three or how does, how  
4 does that work?

5 MS. LIVELY: Objection as to relevance, Your Honor.  
6 This is - I don't see how this is relevant:

7 THE COURT: This is cross examination. I'll permit  
8 wide latitude. I'll permit it. Go ahead.

9 MS. LIVELY: Okay, thank you, Your Honor.

10 THE COURT: Thank you.

11 A I've been in three foster, foster homes - wait, two  
12 foster homes and two respid - respiratory homes.

13 Q What's a respiratory home?

14 A It's like a temporary.

15 Q The foster home you're in now, how long have you been in  
16 this one that you're in right now?

17 A For about two months.

18 Q And before that the other foster home that you were in,  
19 about how long were you in that home?

20 A About a year and - about a year and a half.

21 Q Okay, and has the - in that almost two years, how many  
22 times have you - is - who is your mother and what is her name?

23 A Sarah.

24 Q Is that Sarah, what's her last name now?

25 A Now her name is Cardwell.

Minor Child 1

- Cross by Mr. Goude

155

1 Q And is that Sarah seated there with the lavender top on  
2 at that table?

3 A Yes, sir.

4 Q How many times have you seen your momma Sarah Cardwell  
5 since December 2010 when you were taken out of the home?

6 A Counting this time, two.

7 Q The other time - the other one time that you saw Sarah in  
8 the last two years did you get to go to Sarah's home to see  
9 her or where were you when you saw her then?

10 A Family Bridges.

11 Q What is that?

12 A It's a - my therapy.

13 Q Your therapy, and who is the person gives you your  
14 therapy?

15 A Melissa Muse.

16 Q And about how many times has you been - have you been  
17 going to see that therapist Melissa Muse since you got taken  
18 out of your home December 2010?

19 A Once every week.

20 Q And that's been going on for almost two years?

21 A Yes, sir.

22 Q And the one time in the last two years that you got to  
23 see your momma at the therapy, Family Bridges place with the  
24 therapist, was the therapist there, too, Ms. Muse?

25 A Yes, sir.

Minor Child 1

- Cross by Mr. Goude

156

1 Q About how long did you get to see your momma that one  
2 time at the family therapy place?

3 A For about a half an hour to 45 minutes.

4 Q Now, has either of the foster parents told you that they  
5 wanted to adopt you and your brothers and sisters?

6 MS. LIVELY: Objection, Your Honor, asks for hearsay  
7 and it's irrelevant.

8 THE COURT: Let me hear that question again.

9 Q Have either one of the foster parents that you're living  
10 with told you that they wanted to adopt you and your brothers  
11 and sisters?

12 THE COURT: I'll permit it.

13 A Yes, sir.

14 THE COURT: Does that conclude your examination?

15 MR. GOUDE: Just if I can confer with my client,  
16 Judge, please?

17 THE COURT: Yes, sir.

18 BY MR. GOUDE:

19 Q Minor Child 1 you say -- did you say you have three brothers and  
20 sisters?

21 A Yes, sir.

22 Q And did you say that you were the oldest?

23 A Yes, sir.

24 Q And you said you were how old?

25 A Twelve.

Minor Child 1

- Cross by Mr. Goude

157

- 1 Q And your - the next child under you, the age of that  
2 child and that child's name is what?
- 3 A Her name is Minor Child 2 and she is in - she is 11.
- 4 Q So, she is how much younger than you?
- 5 A Almost two years.
- 6 Q All right, the next older - oldest child under Minor Child 2 is -  
7 what is that child's name?
- 8 A His name is Minor Child 3
- 9 Q And how old is Minor Child 3
- 10 A He's six years old.
- 11 Q And so, he is how much younger than you?
- 12 A Almost seven years.
- 13 Q Almost seven years, so, when you were eight years old  
14 Minor Child 3 would have been how old?
- 15 A A little over a year old.
- 16 Q Do you know what year Minor Child 3 was born?
- 17 A 2008.
- 18 Q Is it, 2008?
- 19 A Wait, no, 2006.
- 20 Q Okay, because you said he's how old?
- 21 A Six.
- 22 Q So, 2006, and six and his age was six would be 2012; is  
23 that correct?
- 24 A Yes, sir.
- 25 Q And the youngest brother or sister you have is what -

Minor Child 1 - Cross by Mr. Goude

158

- 1 what is that child's name?
- 2 A Her name is Minor Child 4
- 3 Q And how old is Minor Child 4 now?
- 4 A She is almost four.
- 5 Q What year was she born in?
- 6 A 2008.
- 7 Q Do you know about what month she was born?
- 8 A November 17<sup>th</sup>.
- 9 Q And Minor Child 3 the third oldest child, he was born in 2006.
- 10 Do you know about what month he was born?
- 11 A August 28<sup>th</sup>.
- 12 Q In 2006?
- 13 A Yes, sir.
- 14 Q Now, when Minor Child 3 and the youngest child, Minor Child 4 were
- 15 born, did you ever see your daddy or momma changing those two
- 16 children's diapers?
- 17 A Yes, sir.
- 18 Q Did you say yes or no?
- 19 A Yes, sir.
- 20 Q Did you ever see Mr. Cardwell or Sarah, your mother, when
- 21 they were changing either Minor Child 3 or Minor Child 4's diapers say the
- 22 words Hello Dolly and tell them to hold their legs up in the
- 23 air so that they could take the diaper off and clean the doo-
- 24 doo off their butt and put the new diapers on them?
- 25 A No, sir.

Minor Child 1

- Cross by Mr. Goude

159

1 Q You never heard that?

2 THE COURT: Young man, we're going to be through in  
3 just a moment. You all right?

4 Minor Child 1: Yes, sir.

5 THE COURT: Do you need anything?

6 Minor Child 1: No, sir.

7 THE COURT: Thank you. You're doing just fine.

8 MR. GOUDE: Thank you, Judge. We have no other  
9 questions.

10 THE COURT: All right. Mr. Fox, the record will  
11 reflect that you declined to cross examine the last witness.  
12 I offer you the opportunity as to this witness.

13 MR. FOX: No, Your Honor. We've covered that  
14 through Mr. Goude. Thank you.

15 THE COURT: The record will reflect that you have  
16 declined cross examination as to both witnesses. Was there  
17 anything in, anything in reply?

18 MS. LIVELY: No, sir, Your Honor.

19 THE COURT: Young man, come down and thank you so  
20 much. You may call your next witness, Ms. Candice.

21 MS. LIVELY: Melissa Muse.

22 Your Honor, while she's walking in may we approach for  
23 just a second?

24 THE COURT: You may.

25 MS. LIVELY: Thank you.

Sarah Cardwell - Direct by Mr. Goude

224

1 call Sarah Cardwell to the stand.

2 Whereupon, Sarah Cardwell is called to the stand and  
3 testified as follows:

4 MR. GOUDE: Here's that water if you need it. If you  
5 don't need it don't worry about it. Did you all swear her?

6 THE CLERK: She was sworn in earlier. She was sworn  
7 in earlier.

8 THE COURT: Was this witness sworn before lunch?

9 BAILIFF: Yes, sir.

10 THE CLERK: Yes, Your Honor.

11 THE COURT: All right, proceed.

12 DIRECT EXAMINATION

13 BY MR. GOUDE:

14 Q Now, what is your full legal name?

15 A Sarah Denise Cardwell.

16 Q What is your maiden name?

17 A Pope.

18 Q And how old are you today?

19 A Thirty.

20 Q And what's your date of birth?

21 A 6-30, 1982.

22 Q 1982, so, you're exactly 30 this year?

23 A Yes, sir.

24 Q All right, you was born in 1982. Where were you born and  
25 raised?

Sarah Cardwell - Direct by Mr. Goude

232

- 1 Q And what did you all's relationship change to?
- 2 A Boyfriend and girlfriend.
- 3 Q And about when was that? What year was that?
- 4 A It was late of - late 2006.
- 5 Q And at some point after you became boyfriend and
- 6 girlfriend did you and Mr. Cardwell start living together?
- 7 A Yes, we did.
- 8 Q And when you all started living together, at that time
- 9 you had three children; is that correct?
- 10 A Yes, sir.
- 11 Q And what were those children's names and ages?
- 12 A Minor Child 1 was seven, approximately seven.
- 13 Q Because what year is it when you all start staying
- 14 together?
- 15 A 2006. So, Minor Child 1 was seven or had just turnt - was
- 16 turning seven.
- 17 Q Okay.
- 18 A Minor Child 2 would have been five and Minor Child 3 was six weeks old
- 19 when we - when I moved in with Michael.
- 20 Q And Minor Child 2 was born in what year?
- 21 A 2001.
- 22 Q Okay, so, we got seven, five and the third, the third
- 23 child Minor Child 3 was, was six weeks old you said?
- 24 A Yes, six or seven weeks old.
- 25 Q Is that at the end of 2006?

Sarah Cardwell - Direct by Mr. Goude

233

- 1 A Yes, sir.
- 2 Q All right, so, did you all stay together in 2007?
- 3 A Yes, sir.
- 4 Q And at some point did you get a laptop computer?
- 5 A Yes, sir.
- 6 Q And how did you get the laptop computer?
- 7 A I purchased it.
- 8 Q Do you remember where you purchased it from?
- 9 A I think it was Office Depot.
- 10 Q And is the pink computer that's been put into evidence,
- 11 the pink Gateway laptop, is that yours?
- 12 A Yes, sir.
- 13 Q Now, you have seen the video or have you - let me ask you
- 14 the question, have you seen the video that the Prosecutor
- 15 played here in Court either this morning or yesterday
- 16 afternoon, one or the other?
- 17 A Yes, sir. I saw it here and I also saw it with you.
- 18 Q And you saw it with me after these charges came about?
- 19 A Yes, sir.
- 20 Q And after I was to represent you?
- 21 A Yes, sir.
- 22 Q And that was down in the Solicitor's Office here in the
- 23 courthouse?
- 24 A Yes, sir.
- 25 Q Okay, now, this video where was that video taken, what

Sarah Cardwell - Direct by Mr. Goude

234

- 1 location, what premises or what building or whatever?
- 2 A At our home.
- 3 Q Whose home?
- 4 A Mine and Michael's home.
- 5 Q And where was that home located?
- 6 A Road.
- 7 Q All right, in case all of us don't live or know where
- 8 Road is, where is Road in relation to
- 9 this room we're in right now?
- 10 A If you head toward Andrews it's nine miles from
- 11 Georgetown or nine miles from Andrews right past the Nine Mile
- 12 Curve on the Andrews side.
- 13 Q If you going from here toward Andrews and we were going
- 14 to turn off of the main highway from here and Andrews, would
- 15 we turn off right or turn off left?
- 16 A To the right.
- 17 Q And if we turned off to the right off the main highway,
- 18 what is the name of the main highway from here to Andrews?
- 19 A 521.
- 20 Q We turned off this main highway between here and Andrews
- 21 and turned off to the right how far would we go down off that
- 22 ---
- 23 A One mile.
- 24 Q One mile, and what kind of dwelling was it you and Mr.
- 25 Cardwell were living in?

Sarah Cardwell - Direct by Mr. Goude

235

- 1 A A double-wide mobile home.
- 2 Q And how many bedrooms were in the double-wide mobile  
3 home?
- 4 A Four.
- 5 Q How many bathrooms in the double-wide mobile home?
- 6 A Two.
- 7 Q Now, again, you or have you here in the courtroom  
8 yesterday when the video was played, have you seen the video  
9 that was played here? Did you see it yesterday when we were  
10 here in court ---
- 11 A Yes, sir.
- 12 Q --- on that little screen at our desk over yonder?
- 13 A Yes, sir.
- 14 Q All right, so, when you saw the video what room in your  
15 house was the video taken in?
- 16 A The living room.
- 17 Q And what kind of a video taking device was used to tape  
18 the video?
- 19 A A digital camera.
- 20 Q And did the digital camera tape the video in still shots  
21 like was put into evidence and still photographs or was it  
22 just a little or was taken in a moving film?
- 23 A It was taken in a movie form.
- 24 Q And who was in the video that was taken in the moving  
25 form by the digital camera? Who was in that?

Sarah Cardwell - Direct by Mr. Goude

236

- 1 A Minor Child 1 Minor Child 2 and Michael.
- 2 Q And what year was that video taken in?
- 3 A Approximately 2007.
- 4 Q And in 2007 how old is the child Minor Child 1 at that time when
- 5 the video was taken?
- 6 A Seven.
- 7 Q What part - roughly what part of 2007 you think it was
- 8 in?
- 9 A Early 2007.
- 10 Q And at that time of 2007 how old was Minor Child 2 your daughter
- 11 Minor Child 2 at that time of the video?
- 12 A Five or six.
- 13 Q If she was - Minor Child 2 was born in what year did you say?
- 14 A 2001.
- 15 Q All right, that's the two children that was in the video.
- 16 Who is the man that's in the video?
- 17 A Michael.
- 18 Q Michael who?
- 19 A Cardwell.
- 20 Q And you said this was taken on what kind of a instrument
- 21 took the pictures?
- 22 A It was a Kodak digital camera.
- 23 Q And at that time when you took the camera or the picture
- 24 how did the kids get into the living room?
- 25 A It was after bath time and they came through the living

Sarah Cardwell - Direct by Mr. Goude

237

1 room and they used to ---

2 Q Don't tell me what they used to. Just tell me what they  
3 did on this occasion.

4 A They would ---

5 Q Just tell me what they did on this occasion.

6 A They jacked - they jerked Michael's pants down and  
7 hollered, "Ha, ha, I got you," and I picked up the camera and  
8 started videoing it.

9 Q And you said they jerked Michael's pants down. Who is  
10 they?

11 A One of the two children.

12 Q Which what is the names of the two children?

13 A Minor Child 1 or Minor Child 2

14 Q One of Minor Child 1 or Minor Child 2

15 A Yes, sir.

16 Q And you said they did what to Michael?

17 A They jerked his pants down.

18 Q And what kind of pants was he wearing before they jerked  
19 them down?

20 A A pair of gym shorts.

21 Q Now, is that long gym shorts like sweatpants that goes  
22 from your waist to your ankles?

23 A No, sir, just a pair of shorts, a pair of cotton shorts.

24 Q Is that, is that underwear like you would wear under your  
25 pants or is that shorts like you could wear out to jogging on

Sarah Cardwell - Direct by Mr. Goude

251

- 1 A To the computer.
- 2 Q You plug it into this laptop?
- 3 A Uh-huh.
- 4 Q And why would you put, plug your camera into this laptop?
- 5 A Other pictures, Christmas, birthdays, if the camera
- 6 starts getting - if the memory card started getting full I
- 7 would put the pictures on my computer.
- 8 Q All right, and the pictures were shot - the video was
- 9 shot in what year?
- 10 A 2007.
- 11 Q And when was it that you gave the Gateway laptop to the
- 12 computer man from Johnsonville to work on it for you?
- 13 A 2010.
- 14 Q About what part of 2010?
- 15 A October.
- 16 Q And how long is that after you took the film in your
- 17 living room?
- 18 A Three and a half years approximately.
- 19 Q How many?
- 20 A Three and a half years.
- 21 Q And now what was wrong with the laptop computer? Why did
- 22 you ask the computer man to work on it?
- 23 A It wouldn't come on.
- 24 Q How long ---
- 25 A It wouldn't boot up. It wouldn't do anything.

Sarah Cardwell - Direct by Mr. Goude

252

1 Q How long had it been since it would work properly before  
2 you gave it to him and what month did you give it to him to  
3 work on?

4 A October.

5 Q Of what year?

6 A 2010.

7 Q How long had the laptop not been working before you gave  
8 it to him?

9 A About six or eight months.

10 Q And the problem with it was what?

11 A It wouldn't come on.

12 Q Now, at some point after you gave the laptop to the  
13 computer man to work on did the - Mr. Hanna, the police  
14 officer from the sheriff's office, did he contact you like he  
15 testified?

16 A Yes, sir.

17 Q And at some point after Mr. Hanna - do you know about  
18 when Mr. Hanna contacted you?

19 A It was December the 14<sup>th</sup>, 2010.

20 Q And at some point after that and where were you living at  
21 that time?

22 A Road.

23 Q That's the same place you were living when, when you took  
24 the video of your son and daughter and boyfriend - what  
25 relation was Mr., was Mr. Cardwell to you in 2007?

Sarah Cardwell - Direct by Mr. Goude

253

- 1 A Boyfriend.
- 2 Q Have you ever been married to Mr. Cardwell?
- 3 A No, sir.
- 4 Q From the dawn of history till now have you ever been
- 5 married to Mr. Cardwell?
- 6 A Yes, sir.
- 7 Q Were you married to Mr. Cardwell in 2007?
- 8 A No, sir.
- 9 Q Was Mr. Cardwell the father of **Minor Child 1** or **Minor Child 2**
- 10 A No, sir.
- 11 Q When you talked with Mr. Hanna from the sheriff's office
- 12 and did you say that was December the 14<sup>th</sup>, give or take?
- 13 A Yes, sir.
- 14 Q Of 2010?
- 15 A Yes, sir.
- 16 Q When were your children taken away from you?
- 17 A December the 14<sup>th</sup>, 2010.
- 18 Q And what children were taken away from you?
- 19 A **Minor Child 1** **Minor Child 2** and **Minor Child 3** were taken from school and **Minor Child 4**
- 20 was taken from the sheriff's office.
- 21 Q Now, **Minor Child 1** is the boy in the video?
- 22 A Yes, sir.
- 23 Q So, in 2010 he is now how old?
- 24 A He was ten.
- 25 Q He was born in what year?

Michael Cardwell - Direct by Mr. Fox

306

1 MR. CARDWELL: My name is Michael Cardwell, M-I-C-H-A-E-  
2 L, C-A-R-D-W-E-L-L.

3 DIRECT EXAMINATION

4 BY MR. FOX:

5 Q Thank you. Michael, so, you've given your name. Could  
6 you please tell us where you live now?

7 A Now?

8 Q Yeah.

9 A Road, Andrews, South Carolina, 29 - well,  
10 that's it.

11 Q And is this where you're from? Is Georgetown County  
12 where you're from?

13 A No, sir. I was originally born in Prince William County,  
14 Virginia, Manassas.

15 Q Okay, and is that where you grew up?

16 A At five years old we moved to West Virginia and after  
17 West Virginia we moved around a bit, ultimately settling down  
18 here in 1983 at the age of 13.

19 Q Okay, did you go to high school down here?

20 A Yes, sir.

21 Q Finish high school?

22 A No, sir.

23 Q What'd you do after you left high school?

24 A Well, I was in the - in high school I joined the South  
25 Carolina Army National Guard at the age of 17 and I worked at

Michael Cardwell - Direct by Mr. Fox

309

1 So once they released back to the state I took five months off  
2 and reenlisted again.

3 Q Okay, were you based in Georgetown?

4 A When I reenlisted again?

5 Q Yes, sir.

6 A Yes, I started in Hemingway. I stayed there trying to  
7 get out of the medical field, but first sergeant didn't want  
8 that. He brought me back to Georgetown.

9 Q I heard Sarah say she met you when you were, when she was  
10 a volunteer firefighter. How did you come to be involved with  
11 firefighting?

12 A My very first time I was a volunteer firefighter end of  
13 '88 and '89. I dropped out from being a firefighter until  
14 1995. When I went to Station 9 which is located at the  
15 airport, fire department on aviation in 17, I was a volunteer  
16 then. I was working at that time as my full-time job at  
17 Oneida Industries as a machine operator and what they do as a  
18 volunteer fireman they allow you to have - to get schools.  
19 They, they, they need you to be trained in order to fight the  
20 fires, but at the same time you can use that into a, turn that  
21 into a professional career and that's what I did.

22 Q Now, are you still in the military?

23 A No, sir, I've been retired.

24 Q You say you've been retired. Was that your decision?

25 A No, sir.

Michael Cardwell - Direct by Mr. Fox

310

1 Q How'd that decision come about?

2 A I was working active duty this time last year, well  
3 disregard. Sorry, I made a mistake. Little over a year ago I  
4 was working active duty for the National Guard at Fort  
5 Jackson, South Carolina, providing my MOS to the ---

6 Q What's your MOS? We don't know what that is.

7 A Oh, I'm sorry.

8 Q Civilians.

9 A My, my, my, my job in the military is called a MOS and my  
10 MOS is 68 whiskey, which is an identifier combat medic. The  
11 army's got to have its own way of doing things, but these -  
12 basically my commander found out that I was having this issue  
13 in court and wasn't going to give the South Carolina Army  
14 National, National Guard a bad eye, black eye, whether it be  
15 proven innocent or guilty. So, I was asked to step down as a  
16 - wasn't asked to step down. The general basically said your  
17 service is no longer rendered.

18 Q At that point how long had you been in the guard?

19 A Twenty-four years.

20 Q Now, you still work as a firefighter?

21 A No, sir.

22 Q Why not?

23 A In July of '09 I was a lieutenant firefighter paramedic  
24 for the Georgetown County Fire and EMS, various stations. I  
25 mean, I didn't stay in one station, and in '07, July 30<sup>th</sup> I got

Michael Cardwell - Direct by Mr. Fox

311

1 the opportunity to go to active duty National Guard at Fort  
2 Jackson and retain my civilian job as a firefighter paramedic  
3 lieutenant, which is in accordance with the law. Then they -  
4 as time progressed I assisted a few other people in starting  
5 the EMS system that now at the National Guard training site at  
6 McCrady training site, which is on the back side of Fort  
7 Jackson is actually where I physically worked, and as this  
8 thing grew, as I started with the EMS service up there, they  
9 were trying to make it full time. Thank you, sir, and I was  
10 looking at the - looking at the fact that I was holding up a  
11 lieutenant spot in Georgetown County Fire and EMS. I'd much  
12 rather stay in the military realm. It was better for me to be  
13 a military medic than it was a civilian medic, so I retired  
14 out in July of '09.

15 Q Okay, and then that was before your position with the  
16 National Guard was ended; correct?

17 A That's correct.

18 Q Okay, what do you do now?

19 A Well, I work with, I work with a friend of mine with his  
20 company running equipment, but I have recently accepted a job  
21 starting Saturday with Peddinghaus Manufacturing in Andrews.

22 Q Now you met Sarah at that time, Young; is that right?

23 A Affirmative, yes, sir.

24 Q When, when did you meet her?

25 A Say again.

Michael Cardwell - Direct by Mr. Fox

312

- 1 Q When did you meet her?
- 2 A I guess somewhere in the springtime of '06.
- 3 Q Okay, do you remember when you all started dating?
- 4 A We started talking. There never really was an official
- 5 dating time but I would say around October of '06.
- 6 Q Did she have any children at that time?
- 7 A Yes, sir.
- 8 Q And who were those children?
- 9 A **Minor Child 1** **Minor Child 2** and a newborn, **Minor Child 3**
- 10 .
- 11 Q Did you have any children?
- 12 A Yes, sir, I did.
- 13 Q Had you been married before?
- 14 A Yes, sir.
- 15 Q Okay, how many children did you have at that time?
- 16 A I have two.
- 17 Q And how old were they back when you started seeing Sarah?
- 18 A Sorry, I got to do the math. We had one that was five
- 19 and the other one was seven.
- 20 Q Did you have custody of those two? Were they living with
- 21 you?
- 22 A Well, they were - we - I was still married. So, me and
- 23 my, me and my wife had custody I guess.
- 24 Q Okay, did you and Sarah begin to live together at some
- 25 point?

Michael Cardwell - Direct by Mr. Fox

313

- 1 A Yes, sir.
- 2 Q Where did you first live together?
- 3 A At Road, Georgetown.
- 4 Q Where is that?
- 5 A Maryville.
- 6 Q In Georgetown?
- 7 A Yes, sir.
- 8 Q I'm sorry, Maryville?
- 9 A Yes, sir.
- 10 Q Okay, and did you at some point move from that house?
- 11 A Yes, sir.
- 12 Q And where'd you go from there?
- 13 A I went to Road.
- 14 Q Okay, and so, who lived in that house with you and Sarah?
- 15 A Myself, Sarah, my at the time present wife and my
- 16 children, all the children.
- 17 Q Okay, that'd be her children, **Minor Child 1** and **Minor Child 2** and
- 18 **Minor Child 3** correct? And you had two children that would stay with
- 19 you; is that right?
- 20 A That's correct.
- 21 Q Okay, and at some point did you and Sarah have a child
- 22 together?
- 23 A Yes, sir.
- 24 Q And what's that child's name?
- 25 A **Minor Child 4**

Michael Cardwell - Direct by Mr. Fox

314

- 1 Q Michael, you have seen this video that was played in the  
2 courtroom yesterday; have you not?
- 3 A Yes, sir.
- 4 Q And had you seen it before yesterday?
- 5 A No, sir.
- 6 Q Did you and I ever watch that video?
- 7 A Well, I stand, I stand corrected on that. I - sorry, I  
8 saw it, I don't know, two or three months ago.
- 9 Q And where was that?
- 10 A That was in the Solicitor's Office.
- 11 Q Okay, and was I there with you?
- 12 A Yeah, you and Reuben.
- 13 Q And Mr. Goude?
- 14 A Yes, sir.
- 15 Q Speak up, I can't - I don't know if the jury can hear  
16 you. I'm having a hard time hearing you.
- 17 A Oh, I'm sorry.
- 18 Q So Mr. Goude and myself and you were there watching that?  
19 Okay.
- 20 A Yes, sir.
- 21 Q Was that the first time you had seen that video?
- 22 A Yes, sir.
- 23 Q Okay, now, had you seen it any time before the children  
24 were taken in December 2010?
- 25 A No, sir.

Michael Cardwell - Direct by Mr. Fox

315

- 1 Q Okay, do you know whose camera it was that that video was  
2 taken on?
- 3 A I'm assuming Sarah Cardwell.
- 4 Q Well, why do you assume Sarah? Did you have a video  
5 camera at that time?
- 6 A I had a, I had a similar camera to that.
- 7 Q Do you remember, having seen the video now, do you  
8 remember the occasion when that was taken?
- 9 A The occasion? I mean ---
- 10 Q Well, I'll try to - you've seen the video?
- 11 A Yes, sir.
- 12 Q And you can see what's going on in the video; right?
- 13 A Yes, sir.
- 14 Q Can you see who's in the video?
- 15 A Oh, absolutely.
- 16 Q Who's in the video?
- 17 A Myself, Minor Child 1 and Minor Child 2
- 18 Q Okay, can you hear anybody else around?
- 19 A Yeah, I hear the voice of Sarah.
- 20 Q Okay, do you recall whether anybody else was around?
- 21 A No, sir, I don't think there was.
- 22 Q Okay, can you tell from having seen the video now where  
23 that video was taken?
- 24 A Oh, in the living room of the Road house.
- 25 Q Okay, and that's the living room Sarah has described with

Michael Cardwell - Direct by Mr. Fox

316

1 Mr. Goude, the layout of the trailer and everything?

2 A Yes, sir.

3 Q Okay, would you agree with that, her ---

4 A Oh, yeah.

5 Q --- her basic layout, okay. So, what do you remember  
6 about how that video happened?

7 A To the best of my knowledge, we had the children there,  
8 as I thought about that video a lot since we saw it, it was in  
9 the evening time right around bath time. As far as I know the  
10 kids were coming out of the bath. I was sitting - standing  
11 there smoking a cigarette. They started jumping around. I've  
12 heard the term dancing. That's not what, what I saw at all.  
13 It's just youngins' jumping around acting a fool.

14 Q Did you pick up the video camera?

15 A Negative.

16 Q Did you tell anybody else to pick up the video camera?

17 A No, sir.

18 Q Okay, did you see when Sarah picked up the video camera?

19 A Actually, no, sir.

20 Q Were you aware that a video was being made?

21 A Yes, sir. One by the way that, you know, how kids get.  
22 They get really, really excited when a video camera's out, and  
23 at one point I actually I guess you could call it posed for  
24 the camera.

25 Q Okay, well, let's talk about it. So, when the kids came

Michael Cardwell - Direct by Mr. Fox

317

1 out of the bathroom how were you dressed?

2 A Gym shorts, probably my grey cotton shorts.

3 Q Was that kind of typical uniform for you around the  
4 house?

5 A Affirm, yes, sir.

6 Q All right.

7 A When I come home as soon, as soon as I got in good I took  
8 my boots off, took my uniform off and put something  
9 comfortable on.

10 Q Okay, would that usually be with or without a shirt?

11 A Sometimes with, sometimes without.

12 Q Okay, so, in the video and in these still photos that  
13 have been selectively cropped from the video you're not  
14 wearing any shorts are you?

15 A No, sir.

16 Q What happened to your shorts?

17 A One of the children come running up to me and they, they  
18 just pulled them down.

19 Q Okay, did you pull them back up?

20 A No, sir, I did not.

21 Q Why did you not pull your pants back up?

22 A Sir, in a complete and utter act of stupidity I guess I  
23 got caught up in the moment, you know. The kids were excited  
24 and having a good time and act of stupidity.

25 Q Did you do anything to stop this good time?

Michael Cardwell - Direct by Mr. Fox

318

- 1 A No, sir.
- 2 Q Did you tell ---
- 3 A Regretfully enough I did not.
- 4 Q So you didn't tell the kids, "Knock it off"?
- 5 A No, sir, I should have.
- 6 Q Didn't tell them, "Go put some clothes on and quit being  
7 silly"?
- 8 A Yes, sir.
- 9 Q Now, where did <sup>Minor Child 1</sup> get that bra from?
- 10 A To be quite honest, I, I really don't know, but I do know  
11 that at the time we would fold the laundry on the couches.  
12 That was kind of that, well, that is still kind of my domestic  
13 duty if you will.
- 14 Q Is it like my house or is the couch situated in front of  
15 the TV?
- 16 A Oh, yes, sir.
- 17 Q So, if you get stuck with that chore you can watch TV  
18 while you're doing that chore?
- 19 A Well you know that, I mean, yes, sir.
- 20 Q Okay, but you, if I understand, you say you're not sure  
21 when or where he picked that up, the bra?
- 22 A No, sir, I, you know, I can't say that.
- 23 Q Did you hand it to him, you yourself?
- 24 A No, sir.
- 25 Q Did you tell him to get it?

Michael Cardwell - Direct by Mr. Fox

319

- 1 A No, sir.
- 2 Q Did you put it on him?
- 3 A No, sir.
- 4 Q Okay, now, did you tell him to take it off?
- 5 A Once again, regretfully, no.
- 6 Q Okay, now, you've seen these still pictures where Mr.
- 7 Goude puts it quite well, you appear to be still as a statue.
- 8 In the video that you've seen, were you still as a statue?
- 9 A No, sir.
- 10 Q Okay, what were you - what is most of the video that you
- 11 have seen? What do you think most of that video shows?
- 12 A Minor Child 1 jumping around acting silly.
- 13 Q Okay, but you're in it; aren't you?
- 14 A Yes, sir.
- 15 Q Two different times the camera swings over and there you
- 16 are; is that right?
- 17 A Yes, sir.
- 18 Q Naked as a jaybird?
- 19 A Yes, sir.
- 20 Q Okay, not a stitch of clothing?
- 21 A No, sir.
- 22 Q Okay, but you're not just standing there?
- 23 A No, sir.
- 24 Q Okay, now, what do you recall at some point, and there's
- 25 a still photo of you, frontal shot with your genitals hanging

Michael Cardwell - Direct by Mr. Fox

320

1 out, in the video, in the, rather in the photo still as a  
2 statue, what do you see in the video at that point? Are you  
3 moving, doing the - you say not dancing, you're not doing the  
4 twist; are you?

5 A Well, though there was one portion in the video that I  
6 was shaking my body back and forth.

7 Q Okay, so, it was kind of your whole body?

8 A Yes, sir.

9 Q When you shake your whole body what'd your penis do? Did  
10 it stay perfectly still while the rest of your body moved?

11 A No, sir, it was, it flapped back and forth.

12 Q Okay, and then what are you doing in the other part when  
13 they show you? When they - when the camera comes to you, what  
14 are you doing? We've all seen it, but what are you doing?

15 A It appears that I was tweaking my nipples.

16 Q All right, now, one just has to ask, man, what the hell  
17 were you thinking?

18 A At what point?

19 Q At either point, during the whole thing, but how about  
20 specifically when you're tweaking your nipples?

21 A You know, I'd seen it before, thought it was funny, you  
22 know.

23 Q To you at that point in time was there anything sexual  
24 about it?

25 A Negative.

Closing Argument by Mr. Fox

402

1 word I should have used is sexual exploitation. All right,  
2 does that address the concerns?

3 MS. LIVELY: Yes, thank you, Your Honor.

4 THE COURT: All right, Mr. Goude, you may have your  
5 opening statement followed by Mr. Fox and then the State will  
6 conclude. Thank you.

7 MR. FOX: Your Honor, since I won rock paper  
8 scissors with Mr. Goude, if it's okay I will be going first.

9 THE COURT: As long as you all agree to it that's fine  
10 with me.

11 MR. FOX: We do. By the laws of rock, paper,  
12 scissors we agree. May it please the Court.

13 THE COURT: The record will reflect that you began  
14 your remarks promptly at 11 o'clock.

15 MR. FOX: Thank you, Your Honor.

16 Ladies and gentlemen, let me reintroduce myself. It's  
17 been a couple of days and probably at some point, Monday or  
18 Tuesday, you wondered what happened to the lawyer that  
19 introduced himself on Monday or who that silent fellow was  
20 sitting over there between Mr. Goude and Michael. That was  
21 me. That was not a potted plant. There was a good reason I  
22 felt not to inject myself at certain times into this thing.  
23 We've got two lawyers and two Defendants and it seems pretty  
24 clear I think to everybody that their defense is pretty much  
25 one in the same. They are husband and wife now, living

Closing Argument by Mr. Fox

403

1 together at the time this video was made, and it didn't seem  
2 to make much sense to have Mr. Goude stand up and ask a bunch  
3 of questions to a witness and then have me stand up right  
4 after and ask basically the same questions. That just seemed  
5 to be a little bit ridiculous. I don't need to make a point  
6 about how smart I am or what a great lawyer I am or - but I  
7 wouldn't want you to mistake my silence for any kind of lack  
8 of commitment for my client in any way. Same thing with, you  
9 know, a lot of the witnesses went by fast. Detective Hanna  
10 and Chief Douglas from Johnsonville and Shaun Marsh who was  
11 the computer guy, we got no bone to pick with those witnesses.  
12 Those witnesses they did exactly what they should have done  
13 under the circumstances. Mr. Marsh was just doing his job.  
14 Chief Douglas happened to be there and see something that  
15 immediately got his attention as it should have and he said,  
16 "Whoa, whoa, whoa, let me see that thing," and then they  
17 called Detective Hanna because they concluded it more than  
18 likely happened in Georgetown County and he's got authority in  
19 Georgetown County, simple enough. There's no reason to stand  
20 up and go through 30 minutes or 45 minutes of cross  
21 examination of those folks, and the same thing with <sup>Minor Child 2</sup> and  
22 <sup>Minor Child 1</sup> yesterday. They've done nothing wrong. They're  
23 simply children and who, I mean, it, it just, I think, broke  
24 everybody's heart to watch them come in here and go through a  
25 very difficult thing. You would have to be inhuman not to be

Closing Argument by Mr. Fox

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1 touched by that. There's no reason for me to get up and ask a  
2 bunch of questions just to show that I'm smart and can ask  
3 questions and prolong the amount of time that they had to be  
4 in the courtroom.

5       So I was thinking about how to do this. Guess what, I'm  
6 going to ask you to vote not guilty. Surprise, surprise, and  
7 yes, that is my job. It's also how I truly believe this case  
8 should be resolved. I've been doing this a long time and you  
9 got lots of theories of people of how you should present  
10 yourself to a jury and what you should do, even what jurors  
11 you should take. There's a whole industry of people who will  
12 tell you, "Good Lord, don't take a person in a red sweater  
13 because that's a person with a loud, aggressive personality  
14 and you will not be able to persuade them, and so, don't take  
15 a person wearing the red sweater and don't take this kind of  
16 person or a person of that age or a person who has that kind  
17 of occupation," and I always found that kind of silly.  
18 There's a reason why we have jurors selected more or less at  
19 random from the public at large and that's because we have a  
20 very strong belief, and I share that, that your collective  
21 wisdom, even though you are not lawyers and judges and have no  
22 special training in the law or the issues that you're going -  
23 that you heard this week, that you're all intelligent people  
24 with common sense. You have your own life experiences, each  
25 one unique and different, and that collectively that is far

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1 better than any other system. There are very advanced  
2 democracies that have the right to jury trial in Europe that  
3 don't have or I'm sorry, that don't have the right to jury  
4 trial. They have the right to trial, but when you come into  
5 court you have a panel of judges. Well, maybe not on purpose,  
6 but almost everywhere judges tend to come from a particular  
7 group of people. They tend to be educated in similar schools.  
8 They tend to have similar experiences and that doesn't make  
9 them bad judges, but it doesn't make them good jurors either,  
10 and we concluded a long time ago laypeople with their  
11 collective wisdom are much better than any panel of judges,  
12 and I absolutely agree with that.

13 I told you on Monday that this, you would not like this  
14 case. You would not like what you saw. I mean, there's no  
15 question, there's no sense to dodge around that. There's no  
16 sense of me standing up in front of you and acting like the  
17 Wizard of Oz where they get - finally get to Oz and Toto runs  
18 around and pulls the curtain and there's the wizard and the  
19 wizard says, "Pay no attention to the man behind the curtain."  
20 That would just be insulting to your intelligence. So, I  
21 could do that dance and I could say, "Pay no attention to that  
22 video and all of those things," but it's there. You can't  
23 forget it. I would guess that Ms. Lively will play it for you  
24 again in her closing argument and it's certainly available.  
25 It's in evidence. It's available for you to watch again if

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1 you've got any questions or any need to see it again, although  
2 I imagine it's probably pretty vivid in your mind. You won't  
3 easily forget something like that. So, in thinking about how  
4 to address this and trying to convince you all to think my  
5 way, because that's what I'm here for, I said, "How can I  
6 explain that? What's the best way to do it," and stay with me  
7 because there is a point to this. Everybody has verbal ticks  
8 and hiccups and some people say um or they gesture a certain  
9 way with their hands. I have to sometimes tell a little story  
10 to get my mind right. I was watching HBO last weekend and  
11 there was a documentary about Ethel Kennedy, and for those of  
12 who are too young to remember or just forgotten, Ethel Kennedy  
13 was the wife of Robert Kennedy who was President Kennedy's  
14 younger brother. Bobby Kennedy was murdered while he was  
15 running for president, like 1968. Now, what in the world does  
16 that have to do with anything? Well, not directly. What it  
17 has to do with as I watched that I got very curious and then I  
18 went, got the internet and you got YouTube, and I said, "I  
19 don't remember Robert Kennedy. I was too young to remember  
20 him. I am curious about him," and so, I pulled up some  
21 YouTube videos about Robert Kennedy and what struck me was  
22 that was a man, whatever you thought about him and about his  
23 politics, who was very direct and blunt. He did not, was not  
24 afraid to tell you exactly what he thought about a situation.  
25 He was not afraid to go into the ghettos and say, "You people

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1 are crazy to be rioting and burning," like they were doing  
2 back then. Those of you who are old enough to remember, there  
3 were several summers of riots and burning in the streets and  
4 he would not be afraid to go to that audience and say, "That  
5 is ignorant and stupid. What are you doing," and he wasn't  
6 afraid to go to a group of business people the next day and  
7 say, "You have responsibility for some of the conditions in  
8 this country. If we have people that are poor and children  
9 that are starving and things that aren't right, you bear some  
10 responsibility. We all bear responsibility." Now, agree or  
11 disagree, it struck me particularly compared to the way things  
12 are now that he would do that, and I thought that is the  
13 attitude that I hope to bring to you all. So, that was a long  
14 way around my point but my point being I want to be as direct  
15 as I can with you and hopefully this will be a conversation  
16 instead of a lecture with me lecturing at you.

17 I told you Monday and I truly believe nothing has  
18 changed, that video is just awful. I mean, it is awful. I  
19 mean I don't think that, it is awful. It's not right,  
20 shouldn't have been done. I also don't think that it, that it  
21 portrays any criminal act. The Judge has told you you have no  
22 friends to reward or enemies to punish. You do not have to  
23 think highly or well to any degree of Michael and Sarah. A  
24 verdict of not guilty on your part is not an endorsement of  
25 what they did. It is not acceptance of what they did. It is

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1 not approval of what they did in any way. It is simply a  
2 determination that what they did, as bad as it was, does not  
3 fit into any statute, any criminal law that the State  
4 Legislature in South Carolina has passed that's before you,  
5 that being unlawful conduct toward a child, sexual  
6 exploitation of a minor, and the Judge has defined those for  
7 you, and so again, you don't - I don't want you thinking that,  
8 "Well, if we vote not guilty that's somehow condoning what  
9 happened." It just isn't. There's no justification for what  
10 happened. Michael said as much himself yesterday. I would be  
11 insulting to you if I came forward today and tried to justify  
12 in any way that video. I mean that's like the Groucho Marx  
13 line, "Who are you going to believe, me or your own lying  
14 eyes?" Well, I mean, good Lord, we can all see what's there.  
15 So, but what it's not, unfortunately, it's not - well, not  
16 unfortunately, it's just not a criminal act.

17 I am not going to go through and go point by point all  
18 the different things of sexual exploitation. The Judge has  
19 defined that to you. What it boils down to is whether or not  
20 what is on that tape with regard to sexual exploitation,  
21 whether it depicts sexual activity. Now, it's not what you  
22 think sexual activity is in your everyday life; all right?  
23 Sexual activity for your purposes in this courtroom has been  
24 defined. The State Legislature has said this is what sexual  
25 activity is and the Judge gave you that definition, and he

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1 didn't read the entire statute because frankly some things  
2 don't have anything to do with this. Some of the other things  
3 in that statute regard intercourse and things that absolutely  
4 everyone agrees don't apply. What might apply and what the  
5 allegation is is that the - so, it's what we call a term of  
6 art, sexual activity is what we call a term of art. It has a  
7 specific meaning for a specific purpose; all right? It's not  
8 what we think might be sexual in nature, and in this case  
9 that's masturbation, and the Judge has defined masturbation  
10 and the question very simply is is what you saw on that video  
11 does it depict masturbation or any simulation of masturbation?  
12 I mean, that's really it.

13 Now, the Judge gave you a definition of masturbation.  
14 Years ago the United States Supreme Court had to watch a movie  
15 and decide whether it was an obscene pornographic movie, and  
16 one of the justices said, "Well, we've been trying for years.  
17 We cannot give you a definition of obscenity, but I know it  
18 when I see it," and I think most of us kind of agree with  
19 that. We kind of know when something's obscene or not.  
20 Obscenity not an issue here, but I think it's the same thing  
21 with masturbation, you know, we all know what it is and we all  
22 know it when we see it, and in my humble opinion slapping  
23 yourself at whatever age back and forth just isn't it. It's  
24 weird, it's not appropriate, he shouldn't be doing it on  
25 camera, he shouldn't be doing it with his mother and her live-

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1 in boyfriend. You know, none of that should be going on, but  
2 that's a different question from whether that, in fact, is  
3 masturbation. It's just not.

4 Now, you've got from Michael and I'm only interested in  
5 Michael, I don't mean to speak for Reuben Goude. He certainly  
6 doesn't need my help. I'm here for Michael Cardwell. You've  
7 got four indictments for Michael, two for the sexual  
8 exploitation and two for the unlawful conduct. So, with the  
9 sexual exploitation there's one for each child. So, the only,  
10 the only possible depiction of masturbation involves  
11 **Minor Child 1** the boy. He's the one that's naked and he's the  
12 one that's mostly on the video. He's the one that's slapping  
13 himself. So, that's one count and I believe that's just not  
14 sexual activity as it's defined. Now, again, saying that it's  
15 not sexual activity is not the same as saying we approve of  
16 that, we think that was good parenting, we think that was a  
17 smart thing to do, that's not what we're talking about, but  
18 with regard to **Minor Child 2** is very briefly, she is also nude,  
19 she also should not be nude in that situation, but there is  
20 nothing on that tape that shows her doing anything remotely  
21 like masturbating, and the statute I think clearly talks  
22 about, you know, that person doing it, not being present when  
23 someone does it, not being around it, them doing it or them  
24 depicting it, simulating it. **Minor Child 2** she is naked. At one  
25 point she jumps up on - kind of jumps on Michael, kind of

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1 pulls herself up on his shoulders, and you can hear her, but  
2 she's clearly not touching herself. She's clearly not doing  
3 anything that even remotely approaches masturbation. It just  
4 doesn't fit the elements of that crime, sexual exploitation  
5 with a minor. I think it's just very clear that that should  
6 be a not guilty verdict.

7 I'm going to make a small distinction, again, I'm not  
8 going to bore you with all the things of - difference between  
9 first degree and second degree sexual exploitation. They both  
10 though require a finding of some kind of sexual activity.  
11 That's one thing that's in common with both, all right. So,  
12 if you find that what's on that video does not depict sexual  
13 activity, then that's a not guilty on either a first or a  
14 second degree because they both have that element in them of  
15 sexual activity. So, I would say absolutely not guilty on the  
16 sexual exploitation charges.

17 Now, whatever your verdict on those, you've got to come  
18 to a separate determination on the unlawful conduct, alleged  
19 that that violates a whole different statute. So you may say,  
20 it's perfectly within your right to say, "We don't think there  
21 was sexual activity, but maybe we think there was unlawful  
22 conduct." You know, my own opinion is and obviously I'm going  
23 to say not guilty on everything. That determination is yours,  
24 but the unlawful conduct comes down to showing that there was  
25 an unreasonable risk of harm to the children in one of several

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1 ways, one of basically four ways and three of them, everyone  
2 would agree, don't apply. Unreasonable risk of harm affecting  
3 the children's life, as in life endangering, well that's again  
4 whatever is there is not life endangering. Physical health,  
5 physical health not in jeopardy. Safety, mental health,  
6 mental health, the only thing you've heard any evidence about,  
7 that's why Melissa Muse was here, the therapist. That's where  
8 all the evidence was. The others, there's been no testimony  
9 about that, no evidence about it, and again, clearly, their  
10 physical wellbeing is not in jeopardy. Whatever you think  
11 about that tape, their physical health and wellbeing is not in  
12 jeopardy. Their life certainly was not in jeopardy. So, it  
13 comes down to the mental health.

14 So, what about their mental health? Well Melissa Muse,  
15 who's well-trained, obviously very experienced, obviously has  
16 the best interest and welfare of those children at heart,  
17 says, "Yes, that's harmful." Now, what other evidence do you  
18 have? Michael and Sarah both said that during the time from  
19 whenever this video was made until December of 2010, we know  
20 it was over a year, maybe a couple of years, that they saw no  
21 reactions or symptoms in their children. They saw no acting  
22 out, no discipline problems at school, the grades were good  
23 and grades by themselves I would agree that doesn't  
24 necessarily mean anything. You okay?

25 JUROR: I'm sorry.

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1           MR. FOX:           No problem, but none of those symptoms,  
2 none of the sleepwalking, bedwetting, acting out, discipline  
3 at school, grades stayed good, you know that's one thing I  
4 think we all probably kind of know without being therapists.  
5 Sometimes it's not everyone reacts the same way, but quite  
6 often when something bad happens in a child's life one of the  
7 ways you see that and when it sometimes first gets attention  
8 is a drop in grades, drop in attention at school, acting out  
9 at school, those sorts of things. So, we didn't see any of  
10 that from the time whenever this video was made up until  
11 December of 2010, and Melissa Muse, under cross examination,  
12 admitted that, you know, the kids have been in foster care and  
13 she admitted that there tended to be a spike around the time,  
14 like this week, when court cases are going on. There's been  
15 this. It's not your worry what's going on in family court,  
16 but you've heard testimony that there's another separate focus  
17 but another case going on, and so, understandably the  
18 children, good Lord, obviously they did not want to come into  
19 Court and be here. That's got to be anxious. I get nervous  
20 and I'm not anywhere near the situation they are and that's  
21 when they would see kind of a spike in some of the behaviors  
22 that she described, and she I thought said a very interesting  
23 thing right near the end when Mr. Goude was questioning her.  
24 She said really if it weren't for the fact that these cases  
25 have had to, you know, take a while to get resolved that she

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1 would have released them from treatment a long time ago. Now,  
2 can't avoid, not trying to avoid some of the other things.  
3 Melissa Muse has seen these children, oh, what was it 40 some  
4 times. Once a week for a long time and twice, twice a month  
5 for a lot longer, then more recently once a week again, but  
6 it's 40 some times at least over the last couple of years.  
7 Those children were taken out of the home suddenly without  
8 warning. Had to be tough on them, whatever the reason, you  
9 know, that can't be an easy thing to wake up, go to school one  
10 day, kiss your mom goodbye fully expecting at three o'clock  
11 she's going to be there to pick you up or meet you at the bus,  
12 and instead it's a detective and someone from DSS saying, "You  
13 need to come with us, we're taking you to a stranger's house."  
14 I mean, whether that was the right thing to do or not, that's  
15 got to be very, very difficult for the children and now the  
16 mother who in any child's life is probably the single most  
17 influential figure has been replaced in some degree by the  
18 therapist. That's not to say that Melissa Muse is a bad,  
19 mean, manipulative person, not at all, but reading between the  
20 lines I think the fear with this video and the circumstances,  
21 the fear is these children are too young to understand what's  
22 going on. So even if there's not an intent from Michael and  
23 Sarah to sexualize them and to turn themselves on with some  
24 kind of weird, perverted child sexual play, that these  
25 children are too young to judge for themselves, and so, the

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1 concern is because they're young and suggestible and malleable  
2 and you just, you know, let's not expose them. That's the  
3 fear, right, and a justifiable one. So if, in fact, children,  
4 if we agree that children are young and suggestible and  
5 malleable, is it at all possible that in 40 some counseling  
6 sessions of an hour apiece where you're talking with someone  
7 who clearly cares about you, who clearly cares about your  
8 wellbeing or clearly cares about what happens to you, who  
9 perhaps doesn't intentionally take the place of your mother,  
10 but is this warm, caring, authoritative, female figure in your  
11 life who as part of her focus, because her focus is to see  
12 threats. To say, "Okay, my antenna are up because we've got  
13 this video," and they should be up, "My antenna are up. I've  
14 seen this video. This video is not right. So, my antenna are  
15 up to be looking for signs of trauma, signs of problems, signs  
16 of, you know, improper sexualization for their age, that sort  
17 of thing." That's her job. Her job is to see threats. Is it  
18 not at all possible that that gets communicated, even if it's  
19 not directly. I don't have any question that Melissa Muse  
20 stood in there and said, "Your parents are bad, your parents  
21 are evil," I don't think she did that. "You must stay away  
22 from your parents, don't think about your parents," you know,  
23 adverse training, showing them a picture of parents and give  
24 them a smack or something, I don't think that that's at all  
25 what happened, but clearly they're being told, and because she

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1 testified about that, "We have to educate these kids. You  
2 can't - this is not right, you didn't do anything wrong, you  
3 should not blame yourselves, it's not your fault, it's not  
4 your fault the family had to be separated, kids, but that was  
5 bad," and have that repeated over and over again, that was  
6 bad, that was bad, you know. I don't want to pick, I'm not  
7 going to pick a fight with **Minor Child 1** or **Minor Child 2** at all. They  
8 testified. **Minor Child 2** number one because she was younger and  
9 this happened several years ago, and number two because  
10 unquestionably just so nervous and afraid to be in here, she  
11 didn't remember. Her answer to most things was, "I don't  
12 really remember, I'm not sure," and that - number one I think  
13 she probably doesn't remember in particular. Number two, she  
14 doesn't want to remember, and number three, she's just nervous  
15 and scared. I mean that's fine. I don't use that as any kind  
16 of benefit to my case. I mean, she just doesn't remember.  
17 **Minor Child 1** did say, "I remember, and you know, I didn't like  
18 it," and now, I don't have any doubt looking back he doesn't  
19 like it. I don't have any doubt that he's been brought to  
20 that conclusion and I'm not saying that he should like it by  
21 the way. He shouldn't, but - and again, it's not a  
22 justification in any small way at all, but clearly at the time  
23 that video was going on everybody was laughing and thinking it  
24 was funny. That don't make it right. I'm not saying, "Well,  
25 the kids were laughing, and so therefore, it's okay, they were

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1 -no, but clearly at the time that was kind of a hyper little  
2 boy jumping around being silly and goofy, not in a way that it  
3 should ever be done or filmed and not with, you know, Michael  
4 naked there, but I think his conclusion that he didn't like it  
5 is something that's come about later. I'm not saying there's  
6 anything improper with that, but again, he has been told over  
7 and over again about that. So my point is simply, if our fear  
8 about children and being exposed to this thing is at base, at  
9 the bottom that they are suggestible, they can't decide yet  
10 for themselves what's appropriate or not appropriate, it just  
11 to me is common sense that perhaps we should be careful about  
12 how else they might be suggestible, and again, not with any  
13 evil intent by anybody. It's absolutely clear, everybody in  
14 this case, and I would include Michael and Sarah, that want  
15 those kids to be healthy and happy and safe and wants what's  
16 best, whatever the outcome is. I don't think there's any  
17 disagreement in this courtroom about that.

18 Now, you all decide what to make of anybody that  
19 testified. You know, Michael got on the stand and told you,  
20 made no excuses and maybe you all think, "Well, that's just  
21 his lawyer prepping him to be up there," and of course we've  
22 talked, but you know, once you get in that witness chair there  
23 is no one there to protect you or whisper in your ear and the  
24 reason we have open testimony in courtrooms like this is all  
25 witnesses, their kind of true nature tends to come out. No

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1 matter what you've thought about or what you've been told,  
2 when you get up there and someone's asking you questions and  
3 the microphone's in your face and it looks like it's this big,  
4 I've gotten to sit in that chair for different reasons, and  
5 when you're there, I'm telling you, the microphone looks like  
6 it's like this. That's all you see, and so, I think Michael  
7 was very straightforward with you about everything. He did not  
8 try to justify this in any way. He did not try to pass the  
9 buck. The Solicitor tried to bait him and it was very, very  
10 well done, tried to bait him into blaming the kids for  
11 everything. You know, her word was, "Well, it's, it's their  
12 fault, right, that you were naked. So, this video was their  
13 fault," and he said, "No, it's my responsibility, my  
14 responsibility. This was not right, this was inappropriate."  
15 Now inappropriate doesn't begin to approach it, that's the  
16 word he could come up with, but he - I think it's clear what  
17 he means by that is, "I'm not trying to justify anything about  
18 this video. It's not right." He did not try to pass the blame  
19 because, I mean, that would be so narcissistic and cruel to  
20 try to pass the blame off on those children. It would just be  
21 ridiculous. I don't think, aside from his own words, just his  
22 whole body language and his whole demeanor and everything  
23 about himself. So he made no justification for it because  
24 there is none. He told you, you know, it speaks for itself.  
25 He said, "Look, I didn't, you know, put the bra on," some of

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1 watch the tape he just says, you know, Sarah says, you know,  
2 "Grand Finale," and Michael almost immediately says, "Hey,  
3 hello dolly," kind of sing song thing. No one goes over and  
4 shows <sup>Minor Child 1</sup> or tells <sup>Minor Child 1</sup> what to do or demonstrates, you  
5 know, he knows, you know, he immediately kind of does that  
6 thing and rolls and then he rolls over a little farther, but I  
7 mean clearly he knows what that refers to. You know, it's  
8 just clear he's seen that in the house. He's seen his little  
9 sister and Michael's children be changed. I mean, it's, it's  
10 right there. So, you might have wondered what in the world  
11 were they going on about, hello dolly, but you know, there's a  
12 reason for that.

13 Likewise, with, you know, what in the world, and I'll  
14 talk about these still pictures in a minute and I'm almost  
15 done, you know, what in the world are they doing touching  
16 themselves, touching their nipples and Michael offered you an  
17 explanation for that. I don't watch ultimate fighting, cage  
18 fighting. I don't know about that, but Michael said, you  
19 know, "We watch that, <sup>Minor Child 1</sup> watches that, big fans and  
20 that's something we've seen," and he said, "You know, in  
21 preparing for this case I went online and I was able to find  
22 images of just that thing. I mean, I've seen it and I'm  
23 telling you jurors I've seen it, but you know guess what, I  
24 was able to find that." I'm not sure if he would say that if  
25 he hadn't been able to, but you know, decide for yourself

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1 | though whether that even - again, not really a pleasant thing  
2 | to watch, not sure why they were doing that, don't even know  
3 | why the ultimate fighters would do that, but it's not sexual  
4 | activity. It's not masturbation. So, again, you don't have  
5 | to approve or like it or understand it in any way to say that  
6 | just doesn't fit the statute. That's just not a crime, that's  
7 | just not a crime, and I guess that's my, my final point, my  
8 | ultimate point is not everything in life that is unpleasant  
9 | and bad, not everything in life that we disapprove of, not  
10 | everything in life that we would even condemn in our personal  
11 | life is a crime and I think that's what we have here. There  
12 | is absolutely no justification for what you saw. You can't  
13 | explain it away, you can't say, "Well, it's not so bad." I  
14 | don't want you think for a minute that I think this is not so  
15 | bad. I believe that you can tell that Michael doesn't just  
16 | wave it away and say, "Oh, that's no big deal." It was a  
17 | stupid, ignorant thing to do and it was a bad thing to do and  
18 | it has led to very, very serious consequences for everybody.  
19 | First and foremost and most, well, almost only importantly for  
20 | **Minor Child 1** and <sup>Minor Child 2</sup> they did nothing wrong and they have  
21 | now had to go all this time without their mother and that may  
22 | or may not be better in the long run for them. That's not my  
23 | job to decide or yours, but clearly not an easy thing for them  
24 | to endure. What happens in family court is not your worry. I  
25 | don't want you to think that if you vote not guilty that has

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1 any impact. Melissa Muse testified whatever happens here has  
2 no bearing on what happens in family court with DSS. They  
3 will do what they will do whatever that is. I'm not a part of  
4 that, I don't know what they'll do.

5 There have been consequences already for Michael. He was  
6 drummed out of the military and lost that career that he had  
7 had since he was 17 and left high school, 24 years. He has  
8 lost his own biological child and the two children that he had  
9 made a family with, Minor Child 1 and Minor Child 2. Two years, has not  
10 seen them until they walked in this courtroom. It has not  
11 gone - well, there have been consequences. I was always told  
12 actions have consequences and there have absolutely been  
13 consequences already regardless of what happens here today.  
14 So, I just urge you, I won't even ask you to set emotion aside  
15 because that's just not realistic and I would be patronizing  
16 to ask you to do that because it's an emotional thing, but to  
17 not ignore the law and I think if you apply the law to the  
18 facts that you have, as unpleasant as they are, the proper  
19 verdict on all counts is not guilty. Thank you.

20 THE COURT: Mr. Goude.

21 MR. GOUDE: Thank you, Your Honor. When we got  
22 started Monday, and again, I'm Reuben, Reuben Goude. When we  
23 got started Monday and we talked at our little opening  
24 statement we said we were going to listen to the evidence  
25 Monday and then we were going to come back here Tuesday, which

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1 was yesterday, or today, Wednesday, go over the evidence with  
2 you and then tell you what we was going to ask you to vote.  
3 Mr. Fox, like he says while ago, during a lot of the witnesses  
4 we had in the case, and some of them like he said, Chief  
5 Douglas from Johnsonville, Mr. Marsh from Johnsonville,  
6 Investigator Hanna from Georgetown, they were giving their  
7 statements of what happened and there was no need for all of  
8 us to get up here, said he didn't ask the question, Mr. Fox,  
9 because I just asked them, and a lot of the statements for me  
10 to make in my closing argument are similar to what Mr. Fox  
11 just got through saying and just got through going over. As  
12 the Judge is going to tell you or has already told you, we  
13 have got four indictments in this case on Sarah Cardwell whom  
14 I represent and the same four indictments on Michael Cardwell  
15 charged with doing exactly the same thing. As I go through  
16 this thick stack of notes here and pull out my four  
17 indictments, three and all of the Judge's jury charges, two of  
18 the charges as Mr. Fox said and as the Judge has told you is  
19 that Sarah Cardwell engaged in sexual exploitation of the  
20 minor <sup>Minor Child 2</sup> and of the minor **Minor Child 1** and as the Judge  
21 told you and as Mr. Fox stated and as I'm stating, sexual  
22 exploitation the Judge read you is an individual commits the  
23 offense of first degree sexual exploitation of a minor, and  
24 these two kids are minors, if knowing the character or content  
25 of the material or performance he, the adult, Sarah Cardwell,

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1 uses the children, employs them, induces them, coerces them,  
2 forces them, encourages them, facilitates them to engage or  
3 assist others to engage in sexual activity. So they're saying  
4 that Sarah and it also goes on to say or permits the minor to  
5 engage in sexual activity. So they're saying that Sarah  
6 permitted or encouraged the two children, Sarah's two  
7 children, **Minor Child 1** and **Minor Child 2** to engage in sexual activity,  
8 and it's been stated the only thing that you all are concerned  
9 with is was what was on the video because the only thing that  
10 was testified to here in court is what's on the two-minute  
11 video. There's no - nothing said of anything that happened  
12 before that that's a crime or nothing that happened after  
13 that's a crime. What's on the video, my client is being  
14 charged of that is sexual activity, sexual activity.

15 The Judge told you sexual activity means masturbation.  
16 The Judge read you and we all know what masturbation is and  
17 the Judge read you the statute definition or not the statute  
18 definition, but the definition. Masturbate, to induce sexual  
19 self-excitement, sexual self-excitement through manipulating  
20 the genital organs or other erogenous zones which would be the  
21 chest or boobs for a woman or the butt, maybe, can you  
22 masturbate your butt? I didn't see anybody touching their  
23 butt in the video. To perform masturbation on another,  
24 stimulating the genitals or other erogenous zones usually to  
25 orgasm, that's what the Court told you that Sarah is charged

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1 with doing, permitting **Minor Child 1** or <sup>Minor Child 2</sup> to masturbate, to  
2 sexually self induce pleasure in their privates or to do that  
3 to another person. In any of the video did you see the boy  
4 touch the girl and masturbate her? No. Did you see the girl  
5 touch the boy and masturbate him? No. Did you see the girl  
6 masturbate herself? Did you see her take and I'm going to  
7 play the video in just one minute so you can see the  
8 disgusting, gross video, and when I show you the disgusting,  
9 gross video I want you to keep your eyes open. I don't want  
10 you to think or imagine in your head what is on the video. I  
11 don't want you to imagine in your head what you have heard  
12 went on. What I want you to do is watch the video on your  
13 little screens and see if in there you see the girl masturbate  
14 herself, the boy masturbate the girl, the girl masturbate the  
15 boy or the boy masturbate himself. If you don't see any  
16 masturbation that's the only thing charged in sexual activity.  
17 That's the only thing charged in sexual exploitation and the  
18 only difference in sexual exploitation first degree and sexual  
19 exploitation second degree, which the Judge is going to tell  
20 you you vote on the sexual exploitation in the first degree  
21 first because that's the worst and most serious. Like a  
22 Tupperware bowl, you got a big Tupperware bowl, which is first  
23 degree, and then the little Tupperware bowl goes inside the  
24 first Tupperware bowl, so if you take it off and say not  
25 guilty of the first Tupperware bowl, the bigger one, then you

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1 say is he guilty or not guilty or she guilty or not guilty of  
2 the second, the little included Tupperware bowl, which is the  
3 second included offense, second degree exploitation. The only  
4 difference is first degree sex exploitation is that Sarah  
5 permitted or encouraged the kids to do self-induced  
6 masturbating. Second degree, if you say, "Well she didn't  
7 permit it or she didn't encourage it or she didn't let them do  
8 it," second degree is, "Well, she possessed the video that had  
9 the little girl masturbating in it, self-inducing her pleasure  
10 or the little boy masturbating, self-inducing his pleasure in  
11 the video."

12 Now, this is, and the Solicitor said in her opening  
13 statement this is a case about decency. That was what was  
14 said Monday. Well, this is not a case about decency. People  
15 can disagree on what decency means. I remember the churches  
16 in our little Georgetown County if you would go to the  
17 holiness church at Good Hope or at Outland they thought if a  
18 woman wore lipstick to church or a young teenage girl she was  
19 indecent, indecent, not decent. At our little church, Mount  
20 Zion, the girls and the women thought that they were supposed  
21 to make themselves pretty and put on lipstick and try to make  
22 themselves attractive to God to come to church, to not come  
23 plain but to dress up. So the holiness would call us, our  
24 girls indecent. Our girls would call the girls that went to  
25 Outland Church of God indecent. So this is not a case about

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1 indecency because it is a vague term that has no meaning.  
2 What the case is about is did Sarah Cardwell violate this  
3 statute, which says she committed sex exploitation by  
4 permitting Minor Child 1 to manipulate his pee wee, to jack off  
5 his pee wee, to come, to have an orgasm, to shoot semen out of  
6 his pee wee. That's what masturbation is. It's disgusting  
7 what I'm talking about, but it is also very disgusting to go  
8 to the penitentiary for a long time for something you didn't  
9 do. You talk about disgusting. I don't mind somebody saying  
10 masturbation to my face in open court. I'd much rather hear  
11 that than go sit in and eat the turkey necks with the roaches  
12 on them.

13 MS. LIVELY: Objection, Your Honor. He's talking about  
14 the penitentiary. That's not a decision for the jury to make.

15 MR. GOUDE: Okay, no, don't let's talk about that.

16 THE COURT: Sustained.

17 MR. GOUDE: Let's talk about what is disgusting. Yes,  
18 to me if you take a picture or if you - forget about the  
19 picture. If you're a parent and you got the five or six year  
20 old girl, daughter <sup>Minor Child 2</sup> and you got the eight or ten or  
21 eleven, when it actually occurred the prosecutor's - the exact  
22 date like July the 1<sup>st</sup>, 2008, September the 2<sup>nd</sup>, 2009, February  
23 the 1<sup>st</sup>, 2007, well the prosecutors, the police, the DSS, the  
24 counselors, the children, they don't know because the  
25 indictment that the Judge is going to give you says between

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1 January 2007 and November 2010, four years later, 2007, 2008,  
2 2009, 2010, four years, sometime in that four years that's  
3 what the indictment charges. That's what we're charged with.  
4 They don't know when it occurred and I think my client Ms.  
5 Cardwell don't know exactly when it occurred. I think my  
6 client said she thought it happened in 2007, which is in part  
7 of the time period that the Solicitor's, Prosecutor said it  
8 occurred and seem like the Prosecutor when Mr. Cardwell was on  
9 the stand played a little audio, which I had never heard  
10 because we don't have the tape. I think Mr. Cardwell and  
11 Sarah said that the Solicitor's Office has the tape and they  
12 let us come down and listen to it, but I had never heard or  
13 picked out the word <sup>Minor Child 4</sup> on there, which is the fourth  
14 little child. Now seem like the Solicitor played that when  
15 Mr. Cardwell was on the stand and said something like, <sup>Minor Child 4</sup>  
16 likes that shit," or, <sup>Minor Child 4</sup> does that when she shits," or  
17 whatever she said. All I could hear I thought was the word  
18 <sup>Minor Child 4</sup> Maybe we'll hear it when we play it again in a  
19 minute, but the point is like it was brought out with Mr.  
20 Cardwell, seemed like <sup>Minor Child 4</sup> was born in November '08. That's  
21 the youngest, the fourth one that is Mr. Cardwell's daughter.  
22 So if <sup>Minor Child 4</sup> was born in November '08, well then naturally he  
23 had to be cleaning her diaper and making her do the hello  
24 dolly that he got out of the army, lifting her legs so when he  
25 puts her on the bed or the counter or wherever he puts her and

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1 tells her to hello dolly she lifts her little legs instead of  
2 kicking him in the eyes or holding them down or holding her  
3 legs together so he can clean her butt or wipe her privates if  
4 she pees or doo-doo's, and Minor Child 1 is right there in the  
5 room and sees it and Minor Child 2 or the trailer is right there in  
6 the room or the trailer and sees it. So as Mr. Fox pointed  
7 out, as soon as, and we'll see on the video, I can't remember  
8 if Mr. Cardwell said hello dolly and then the boy got down on  
9 the floor and spread his legs like he was having his diaper  
10 cleaned or the boy was getting down on the floor and Mr.  
11 Cardwell said hello dolly and then the boy went ahead and did  
12 the tumersault [sic], but we'll see that in just a minute, but  
13 I think Mr. Fox pointed out that if he, if Mr. Cardwell said  
14 hello dolly before the boy got down on the floor, well the boy  
15 knew to do exactly like his little brothers and sisters were  
16 doing when they were having their diaper changed. What is the  
17 point of all this because is that sexual activity? If the boy  
18 gets down on the floor, spreads his legs, shows you his butt  
19 or not, is that masturbating? No, it's not got anything to do  
20 with the charge, but I think all of this statute remember is  
21 sexual exploitation. It is not indecent exploitation, it is  
22 not being ignorant exploitation, it is not crude exploitation,  
23 it is not tasteless exploitation, it is sexual exploitation.  
24 Now is it true that Sarah and Michael, and he was the  
25 boyfriend, he was not the daddy. I think Sarah testified they

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1 got married after the DSS took the children in December 2010.  
2 So all of this time he is the boyfriend. In '07 they just met  
3 and just started staying together. Is it true that if the  
4 kids, if it happened in '07 like the Solicitor's, Prosecutor's  
5 indictment says the beginning time period January '07, the boy  
6 testified and Sarah did that the boy was born in 1999. So he  
7 would have been, well, in 2006, the boy would have been seven  
8 to eight years old in 2007, and the Solicitor said their time  
9 period ended when Sarah gave the computer to the man to repair  
10 in November of 2010. Of course Mr. Cardwell said, well, this  
11 video was taken a year or more before that. So that would  
12 have been sometime in 2009. So, the boy was either - if it  
13 started or could have began as early as 2007 or could have  
14 been taken as early as 2007, the boy was born in '99. So he is  
15 either seven to eight or nine, and if it happened in 2009, a  
16 year before Mr. Marsh got the video, if it happened in 2009  
17 the boy born in - he could have been ten, somewhere between  
18 seven and ten years old. The girl said she was born in 2001.  
19 If it happened in 2007 as the Prosecutors pointed out in their  
20 indictment January of 2007 and she wasn't born till later in  
21 the year, she was born in 2001. So from 2001 to 2006 she would  
22 have been somewhere between five and then in 2009 she would  
23 have turned eight. So she was between five and eight and the  
24 boy was between seven and ten, somewhere in there. What is  
25 the point, what - who cares? Well, what we want you to do,

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1 the Bible says you got to be wise like serpents and you got to  
2 be wise in this case. The easy way for you all to do is to  
3 say, "This is disgusting, these people are gross, I have never  
4 photographed my five and seven year old children in my living  
5 room of my house naked. If they had run out in my living room  
6 of my house, my children I would have whipped their asses with  
7 a belt in like two seconds. I would have said, 'Have you kids  
8 got any sense? Get back in the bathroom and put your clothes  
9 on and if I ever see you come back out here in that living  
10 room again naked I'm going to tear your asses up,' and then  
11 tore their asses up," and then if the DSS or Ms. Muse wanted  
12 to take the kids when they went to school the next day and  
13 said, "My ass is tore up because I was running naked in the  
14 living room," then the DSS could of had them, Melissa Muse  
15 could have raised them. That's what they had an episode on  
16 Sex and the City, Coulda, woulda shoulda, which my assistants  
17 that I have at my office, anytime we say the word should, we  
18 always tell each other there is no such word as should because  
19 it is a totally useless word because you don't - it means  
20 nothing. Anyway, was it very gross and stupid and ignorant,  
21 hillbilly, inbred, Appalachian, redneck, southern stupidity by  
22 my client, Sarah Cardwell, and by Mr. Fox's client Michael, to  
23 let the kids come into the living room like that naked,  
24 they're a boy and a girl, they're not the same sex, do I  
25 believe that seven years old to nine years old or five years

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1 old to eight years old brothers and sisters see each other  
2 naked in their house? Yes, I do. Do I believe that mommas  
3 walk into the bathroom when the kid is doo-dooing on the  
4 toilet naked and the momma take her clothes off and get into  
5 the bathroom, the shower, I believe some women do that. Do I  
6 believe that some men go into the bathroom when their boy or  
7 girl is naked, five years old to eight years old doo-dooing on  
8 the toilet naked, the man takes his clothes off and get into  
9 the shower and take a shower naked and that they see each  
10 other? Yes, I believe that that happens. Do I believe that  
11 some men in Georgetown County are using the bathroom and the  
12 kid five to eight years old wants to take a bath and comes in  
13 and takes off the clothes and gets into the bathtub or either  
14 the kid is in the bathtub or the shower taking a bath or a  
15 shower and the man comes in and uses the toilet in the  
16 bathroom when the kid is in the bathroom taking a shower and  
17 then the kid gets out of the shower naked and the man sees the  
18 naked child? Yes, I believe that. Do I believe that children  
19 run into their momma's bedroom when she's getting dressed and  
20 she's naked or got a bra on or her panties and they taking  
21 them off and putting them on and sees his mom taking his bra  
22 off or her bra off and her panties on and her dress on or her  
23 slip on or her nightgown on or whatever or bathing suit or  
24 wherever we're changing to go to the beach or Pawley's Island  
25 in the car, yes, I believe that they have seen them naked.

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1 Does that excuse or condone or make decent or make classy or  
2 make good morals or make tasteful letting your kids jump  
3 around and acting like fools like Mr. Cardwell said the boy  
4 was doing and they were acting like fools. I have acted like  
5 a fool myself. I have not acted that foolish. I have never  
6 had my picture taken naked when I was five to eight years old  
7 by my parents. So, yes, they are very tasteless. I know the  
8 Prosecutor was trying to ask Sarah and Mr. Cardwell, "Well,  
9 who is wrong? Who is at fault? Who is at fault in the kid  
10 having the bra on, the boy having the bra on? Who, who is  
11 wrong or at fault for your" - when you use those kind of words  
12 fault, wrong, was it appropriate or inappropriate then? These  
13 people are not lawyers. The Prosecutor is a lawyer. When you  
14 use those kind of words does that mean if you say yes, it's,  
15 yes, it's inappropriate, does that mean I am convicting myself  
16 of a crime? If it's inappropriate does that mean it's a  
17 crime? They don't know, my God. My client didn't even  
18 graduate high school. She said she quit school in the tenth  
19 grade. Is it appropriate to take the picture of them naked,  
20 appropriate? Is it wrong, whose fault was it that the boy has  
21 got a bra on? Fault. Is putting a bra on, is that  
22 masturbation? That's what we're charged with, masturbation.  
23 Why not just ask the question, "Did you put the bra on the  
24 boy?" Then the witness can answer the question. "No, I did  
25 not put the bra on the boy." You ain't got to say is it

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1 inappropriate to put it on him or appropriate or fault or  
2 wrong.

3 Did the kids pull down Mr. Cardwell's shorts that he's  
4 wearing with no underwear on them and no shirt and show him  
5 naked there in the living room? Why ask was the kids at fault  
6 for pulling his shorts down or was it appropriate for the kids  
7 to pull his shorts down? Was it inappropriate for the kids to  
8 pull the short down? Just ask, "Did the boy pull Mr.  
9 Cardwell's shorts down? Did Mr. Cardwell pull his own shorts  
10 down? Did the girl, <sup>Minor Child 2</sup> pull his shorts down? Is it - whose  
11 fault is it that you videotaped the kids? Is it appropriate  
12 or inappropriate that you videotaped the kids?" Why not just  
13 say, "Did you videotape the kids?" "I did videotape the kids,  
14 me, Sarah Cardwell. I did videotape the kids."

15 Mr. Fox said that like the counselor said she's been  
16 counseling the kids 50 times apiece for the last two years in  
17 January of 2011 making \$70 an hour, \$7,000. It seemed like I  
18 wrote down that she said that she - "they would have been  
19 dismissed after 10 or 12 treatments back in January or  
20 February of 2011, but we had all these court cases going on,  
21 the family court terminating the parental rights case going  
22 on, this criminal case going on. So instead of having 50  
23 sessions, I should have just had 10 sessions." What  
24 difference does that make if they had 10 or 10,000? Well, the  
25 first set of charges, if you will use your brain and be honest

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1 and do your job as a juror, not because I say it because you  
2 can see the video. The boy is not jacking off his pee wee. Is  
3 it not common knowledge how you jack off a pee wee? There is  
4 your pee wee. You take your hand and you put on the pee wee  
5 and you jerk it up and down with friction so that the pee wee  
6 gets big and the cum or the semen comes out of the pee wee and  
7 you shoot off, jacking off. Probably every male in the  
8 courtroom has jacked off when he was a minor, a teenager. Now  
9 did you jack off when you're seven years old or eight or nine?  
10 The boy said in his statement, Prosecutor showed him Exhibit  
11 Seven said where he is touching his pee wee, and if you look  
12 on the video his pee wee seems to be between a quarter of an  
13 inch and a half inch long. That's the size of the seven to  
14 nine year old boy's pee wee it appears to me in the video.  
15 The boy says, the Solicitor says, the Prosecutor says, "Why  
16 are you touching your pee wee in the video," and remember  
17 these are the worst shots taken out of the - the Prosecutor's  
18 got her job to do which is to convict our clients and put them  
19 in the penitentiary. So naturally they took the worst possible  
20 shots out of the video. They don't take the shot where the  
21 boy is jumping up and down saying, "Nah, nah, nah, nah, nah,  
22 nah, nah, nah." They don't take that shot. The Prosecutor  
23 shows the boy this video that they distill with the millions  
24 of dollars they got available to distill this stuff, I got my  
25 little book and my yellow legal pad, that's what I got. They

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1 distill this photograph out of the video and ask the boy, "Why  
2 are you touching your private part in this video?" What does  
3 he say? "I don't know why I'm touching my private part."  
4 Does he say, "I am, I am masturbating my private part?" Does  
5 he say, "I am stimulating I'm masturbating my private part?"  
6 Does he say, "I am jacking off my private part? I am beating  
7 off my private part. I am self-inducing myself with  
8 pleasure." No, what does he say? "I don't know why." Well,  
9 if he don't know why, can you say why? Don't you think if  
10 he's masturbating he knows he's masturbating. How can you  
11 masturbate and not know you are masturbating? He didn't know  
12 what masturbating was. As Mr. Fox pointed out he has learned  
13 what masturbation is by the last two years, 50 one-hour  
14 sessions with the counselor who said, "Now, why are you  
15 touching your private parts?" "I don't know why I'm touching  
16 my private parts. I'm just jumping up and down. Why am I  
17 raising my arms?" "Well, you know when you touch your private  
18 parts that's masturbating." "Is that what masturbating it?"  
19 "Yes, sir, that's masturbating." "Well, is that good or bad?"  
20 "That is very bad. Masturbating is very bad in public."  
21 "Okay, you mighty right, that's very bad." "Remember now we  
22 go into court next week, child. I am the DSS counselor, I am  
23 the therapist, I am the Prosecutor. We go into court next  
24 week. Is that masturbating what you're doing touching your  
25 privates? And remember the foster momma is giving you these

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1 cookies when you come home from school, wants to adopt you.  
2 You've been gone two years. You've seen your momma one time  
3 in a counselor's office in the last two years. Your foster  
4 momma, the new one with the little red bicycle out there, she  
5 wants to adopt you, and if you're masturbating there, well,  
6 she can adopt you."

7       Why does it - why did we want the video for you all to  
8 see the video and that's what I want you all to watch. When  
9 you all go back in the jury room, yes, these have been  
10 admitted over our objection. Why do we object? We object  
11 because that is not the picture that Sarah Cardwell took. She  
12 took a video. She had her little camera and ran it for two  
13 minutes. The kids were doing whatever they wanted to do. I  
14 think the boy or somebody said on the stand, "Well, we was  
15 being directed." Well, did you - listen to the video, see if  
16 you hear any directions. I know, they had a, they had a  
17 little rehearsal before the video and Mr. Cardwell and Sarah  
18 they just told them what to do. They said, "Now, you all come  
19 out there and jump up and down and say nah, nah, nah, nah and  
20 then you - we're going to touch our chest and then at the end  
21 when we say grand finale I won't have to say hello dolly.  
22 You'll know that that means to do a backwards somersault,"  
23 and if he did a backward somersaults or not, is that  
24 masturbation? No. But the reason we objected to taking the  
25 little pictures out of the video is because we want you to see

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1 the whole thing. What is - how - and if I'm the Prosecutor I  
2 say, "Well, how can that be out of context? This came right  
3 off the video. That's got to be a very honest and accurate  
4 portrayal because it was on the video. How can that be an  
5 honest - not be an honest and accurate portrayal because it's  
6 on the video?" He said that, they said - they did that.

7       Okay, let's say Obama or Romney is running for president  
8 next Tuesday and either Obama or Romney, either one, pick what  
9 you want, he gets on - he tells the reporter, he says, "My  
10 opponent, my opponent says I hate people. Well, that is  
11 false, ladies and gentlemen. I love people. I love you.  
12 That is false. I love you. I love all people. I love  
13 everybody." Okay, now, let's take it out of context. That's  
14 the video. That's the two minute video. Let's take one of  
15 the little snippets out of the video and let's play it on -  
16 for our ad commercial. Let's just take a little snippet out  
17 of the video. We going to take - we going to delete the part  
18 about my opponent says it and that is false because I love  
19 people and we just going to play what Obama or Romney said  
20 because they did say that, "I hate people." Now if I'm the  
21 opponent, I'm going to play this little snippet. Now how can  
22 you say I am misrepresenting what that person said? He  
23 actually said that, said he hated people. It was totally out  
24 of the context of what the truth was. So, what I ask you to  
25 do - the Judge will tell you that you can take your exhibits

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1 back and you can look at them. If you want to look at the  
2 video again, you can look at the video again, but when you all  
3 take these things back in there in your room I ask you to turn  
4 them over and I ask you if you all think about picking them up  
5 and look at them, think first in your head, "I hate people. I  
6 want, I want to look at this shot and before I look at it I  
7 want to say to myself I hate people. I just want to remember  
8 what Ruben Goude wrote on this board, I hate people, and I  
9 want this to be just as accurate as what Romney or Obama said  
10 when they said my opponent said I hate people, but really I  
11 love all people. He said I love people, but now the other  
12 side's playing the video or the audio where he says I hate  
13 people." So that's what this is.

14 Now, the video, look at it, because we're going to play  
15 it right now, that takes care of the sex exploitation. We  
16 just ask you to vote not guilty because there's no  
17 masturbation. If there's no masturbation it's not guilty of  
18 all the sex exploitation charge. That's it, that's it. That  
19 is it and the - that is it.

20 The other charge is unlawful conduct, unlawful conduct,  
21 and the Judge is going to tell you on that one or he's already  
22 told you that you had several little elements in that that can  
23 be unreasonable, it says unreasonable risk of harm, that Sarah  
24 places <sup>Minor Child 1</sup> or <sup>Minor Child 2</sup> at an unreasonable risk of harm  
25 affecting the child's life. Mr. Fox pointed out, nothing

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1 harming their lives, that's gone, not guilty so far.

2 Physical health, physical health, there was not one speck  
3 of evidence on any kind of physical health harm. So that's  
4 not guilty. So far we can strike that one out.

5 Safety, there was not anything presented that shows the  
6 kids were unsafe while this is going on. Strike that one out,  
7 that's not guilty. Unlawfully or maliciously did any bodily  
8 harm, that's beating them with an ax handle, cutting their  
9 hands off, burning them with the cigarettes, bodily harm. Was  
10 there any one speck of bodily harm? Not a speck. So, you'll  
11 strike that one out and that's not guilty.

12 Did they place the child at an unreasonable risk of harm  
13 affecting the child's mental health? This is the only one and  
14 the last one, mental health, mental health. Mental, what is  
15 that? That's your brain, that's not your toenail, that's not  
16 your elbow. That's your mind, the brain. Now, the counselor,  
17 the woman that counseled them, she says some kids that have  
18 problems they still make good in school. Some kids that have  
19 problems they don't make good in school. Well, you've got the  
20 kids' school records in evidence. Please look at them, first  
21 grade through now. This one is **Minor Child 1**

22 THE COURT: Mr. Goude, you've been speaking for 37  
23 minutes. Your time is ending.

24 MR. GOUDE: Thank you, thank you, Judge, thank you,  
25 Judge.

## Closing Argument by Mr. Goude

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1       Minor Child 1 in 2007 all his grades are good. "He's a  
2 smart precious child. I've enjoyed teaching him this year."  
3 This is '06 to '07, the beginning of the indictment. "Smart,  
4 precious child. I've enjoyed teaching him. He's done a great  
5 job in first grade. Be sure he continues to read as much as  
6 possible," etcetera. 2008, <sup>Minor Child 1</sup> has worked hard in the  
7 second grade. He has mastered the necessary objectives,  
8 promotions to the third grade." 2009 grades: B, B, A, B.  
9 These national standards when he was at Sampit, 1999, he met  
10 all the performance levels and two of the categories - in two  
11 of the categories he was exemplary, in the highest category,  
12 exemplary, exemplary, exemplary. English language,  
13 mathematics, social studies, he met the categories. The first  
14 semester, <sup>Minor Child 1</sup>, honor roll, Sampit Elementary, honor  
15 roll, media center award, social studies award, perfect  
16 attendance award, student progress report 95, 94, 92, 95.  
17 This is in May 2010, the spring right before he was taken away  
18 that December from his ma and daddy, 95, 94, 92, 95, media  
19 center, social studies, perfect attendance, honor roll,  
20 student progress. 2010 to 2011 after he's taken away, the  
21 first quarter, that August through December of 2010 when he  
22 was living with his daddy and his momma, 96, 90 - well, his  
23 momma and Mr. Cardwell, 96, 93, 95, 93, spelling award, great,  
24 national standards. After he's taken away exemplary English,  
25 exemplary mathematics, <sup>Minor Child 2</sup> is pretty much the same thing.

Closing Argument by Mr. Goude

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1 You will have the school records, you'll have more time.

2 The Judge is telling me he's not - I'm not going to have  
3 as much time as you're going to have. You can take all the  
4 time you want. Now what we ask you to do and the counselor  
5 said, "Well, this treatment would have been ended in ten or 12  
6 sessions, February or March of last year, but we had all this  
7 court we had to keep going to." She said, "Well, he's  
8 anxious." Well, wonder if Obama and Romney's anxious on who's  
9 going to win the election. "He's depressed." If somebody  
10 took me out of my ma and daddy's home would I be depressed?  
11 "He's angered." If somebody took me out of my ma's home would  
12 I be angry, and I keep saying daddy. Mr. Cardwell is not the  
13 daddy. They later got married, and so after December 2010 he  
14 became the step-daddy. So he's the daddy then. When all this  
15 is going on he is not the daddy. So we say there is no risk  
16 of harm, there was no risk of harm, there is no injury. You  
17 saw him on the stand. He acted like a perfect little  
18 gentleman. Did he display any anxiety? Now, I know that Mr.  
19 Fox said the kid said they didn't like it. Well, they was  
20 jumping up and down and acting happy as jay - as blue jays to  
21 me on the thing when it happened. So we tell you that there's  
22 no risk of harm, no mental health problems. So, you vote not  
23 guilty on the unlawful conduct charges.

24 THE COURT: Five minutes remaining, sir.

25 MR. GOUDE: Thank you.

1 I brought my little digital camera. This is a digital  
2 camera. It's in the living room over - I think the fireplace  
3 is over here at the mounting boards. "Kids, there's a bathroom  
4 over yonder and there's a bathroom here." Kids run in here,  
5 Mr. Cardwell is wearing shorts. The kids yank his shorts  
6 down. He's happy. He's down from Fort Jackson where he's  
7 trying to save the - because he's a medic, the stricken  
8 gamecock veterans after a ballgame I guess from Columbia. He  
9 comes home here and the kids pull his pants down. He's happy,  
10 got a little home, got a little woman he's living with, they  
11 not married, but he's living with her happy. Got the two  
12 little kids, they come out, they happy. They're jumping  
13 around and they're acting ignorant. They've got the laundry,  
14 the boy grabs his ma. He's seen her put the bra on and take  
15 it off ten million times since he's lived with his mother. He  
16 puts the bra on. The boy puts his own bra on. They do the  
17 worldwide wrestling stuff that he testified to and he could  
18 have - Mr. Cardwell could have said, "We did the nipple thing  
19 because I like to do nipples before I have sex." That still  
20 would have not have been masturbation. It's still not guilty  
21 of the sexual exploitation charges. He did not tell you that.  
22 He told you exactly the truth where he got that from and where  
23 little <sup>Minor Child 1</sup> got it from doing it on his bra was watching the  
24 worldwide or the mixed martial arts Ultimate Fighting  
25 Championship stuff on television and he said that they had

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1 went back for this trial and we have made a video of the same  
2 kind of stuff he'd been watching showing the rest of the  
3 boxers, the Ultimate Fighting Championship boxers getting in  
4 the ring wearing their boxing or kickboxing shorts and would  
5 do their - lick their tongue with their fingers and put it on  
6 their nipples in the ring that he said he had copied off the  
7 internet stuff he'd been watching before the video ever  
8 happened years ago, seven, eight, six, and brought it to  
9 court.

10 MS. LIVELY: Objection, Your Honor. He's getting into  
11 evidence that's not before the jury.

12 MR. GOUDE: I'm not saying he put it into evidence.  
13 I'm saying he said that on the stand. That's what he said and  
14 we offered it and it wasn't admitted in court. So, you ain't  
15 seen it.

16 THE COURT: Please, please now, conclude your remarks.

17 MR. GOUDE: Thank you, sir. So I'm not going to have  
18 time to show you the video. Maybe the Prosecutor will show  
19 you the video of the children. When you watch it, just watch,  
20 see if you see the boy jacking off his pee wee. He does  
21 flap it and the reason he flaps it is Mr. Cardwell is standing  
22 over there naked with a cigarette in his hand and he twists  
23 his body like this and watch the little boy and Mr. Cardwell  
24 is a little heavy. He's got excess meat and fat, so his whole  
25 body swings. His pee wee swings because it's - there's no

## Closing Argument by Mr. Goude

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1 bone in a pee wee and it's meat. So it swings with the rest  
2 of the body. It's not like he's standing there and moves his  
3 pee wee back and forth. His pee wee is not erect, it's not  
4 hard. It's hanging down. Every erect pee wee I ever seen  
5 stood up. His is loose, hanging flat down. So he swings his  
6 body and his little pee wee swings. The little boy is seven  
7 or eight years old, skinny as a rail, he has no fat on his  
8 little body. Watch him, he tries to swing and he says, "Daddy  
9 I can't do it," and he does call him daddy even though he's  
10 not his daddy. "I can't do it." So he flaps his pee wee  
11 trying to make it go from side to side like Mr. Cardwell's is  
12 going side to side, and Mr. Cardwell says, "It will come in  
13 time," meaning you going to get fat as a hog one of these days  
14 and you're going to have meat, and when you flap back and  
15 forth your whole belly and your pee wee is going to flap back  
16 and forth, and when you get to be a grown man it'll flap back  
17 and forth. Nothing sexual about it, nothing masturbating  
18 about it. When you watch the video in a minute ask yourself  
19 as reasonable jurors are you getting sexually turned on  
20 watching the moron activities on the video? It's, it's a sex  
21 charge is what we're charged with doing, sex, not, not  
22 ignorance, not stupidity, not disgusting, not un-classy.  
23 We're charged with sex acts. Ask you if you get sexually  
24 turned on in any way by watching Michael Cardwell or the kid  
25 Minor Child 2 or the kid Minor Child 1 Well, if you don't, they wouldn't.

## Closing Argument by Mr. Goude

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1 It wasn't sexual.

2 THE COURT: Counsel, are you trying to wrap up your  
3 remarks now? I'm getting ready to sit you down and send this  
4 jury out.

5 MR. GOUDE: So that's what I - yes, thank you, Judge.  
6 I'm through.

7 THE COURT: I want you, I want you to wrap up your  
8 remarks. I want to be courteous to you, but this jury has  
9 been sitting there listening to you for an hour, both of you  
10 together for an hour and a half and that's sufficient.

11 MR. GOUDE: Thank you all. I ask you to vote not  
12 guilty of the charges and please don't bring back a compromise  
13 verdict. Please don't go back there and say, "Well, we've  
14 been in here 30 minutes or one hour or two hours, and so why  
15 don't we just toss a coin or vote guilty on some and not  
16 guilty," please don't do that. Take every charge, look at it  
17 and use your brain, watch that video, don't watch those little  
18 snippets, come back out here if you want to see the video  
19 again. Watch it, see if you see any masturbating. You've  
20 heard the kids, you see the school records. There's no mental  
21 health harm to the kids. We ask you to vote not guilty of all  
22 the charges. Thank you.

23 THE COURT: Madam Foreman, ladies and gentlemen,  
24 you've been out very patiently for the last hour and a half.  
25 I'm going to let you go to the jury room for a few minutes to

## Closing Argument by Mr. Goude

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1 relax. When you return we'll have only final remarks of the  
2 Solicitor and I'll give you the case for your deliberations.  
3 I've called Ms. Alma up and I'm going to make some type of  
4 arrangements for lunch. Please go to the jury room. Let me  
5 know when your jury is ready to come out. I know you're tired  
6 and I certainly respect that.

7 (Whereupon, the following takes place outside the  
8 presence of the jury.)

9 THE COURT: All right, we are in recess for at least  
10 15 minutes.

11 OFF THE RECORD

12 (On the record.)

13 (Whereupon, the following takes place outside the  
14 presence of the jury.)

15 THE COURT: Ms. Candice, are you ready for your 45?

16 MS. LIVELY: Yes, sir, I'm ready for my 45 minutes.

17 Thank you.

18 THE COURT: I'm going to hold you to it as I did  
19 Defense counsel.

20 MS. LIVELY: I want you to, Judge.

21 THE COURT: All right.

22 MS. LIVELY: I think this jury's tired.

23 THE COURT: Is everybody here for the Defense?

24 MR. FOX: Yes, sir.

25 THE COURT: All right, we ready to proceed?

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1 MS. LIVELY: Yes, sir.

2 THE COURT: Defense?

3 MR. FOX: Yes, sir.

4 MR. GOUDE: Yes, sir.

5 THE COURT: Bring the jury in.

6 (Whereupon, the following takes place in the presence of  
7 the jury.)

8 THE COURT: Madam Foreman, ladies and gentlemen,  
9 you've been very patient this morning and I appreciate it. We  
10 have one final summation by distinguished counsel for the  
11 State after which you will be given the case for your  
12 deliberation and all matters that I have been - introduced  
13 into evidence will be with you, and of course if you need the  
14 video we'll bring you back out and see it.

15 Ms. Alma has ordered lunch for you and she tells me she  
16 got it worked out where we're going to have some home cooking,  
17 and we'll look forward to that. Now, when the lunch comes, I  
18 leave it to you as foreman to deliberate while they're having  
19 lunch or stop, deliberate later. You decide how you want to  
20 handle that, Ms. Foreman. Okay? We are now ready - we've  
21 had the - ready for the final summation of the State.  
22 Proceed.

23 MS. LIVELY: Thank you, Your Honor. Ladies and  
24 gentlemen, usually whenever I get started with a closing  
25 statement one of the things that I try to make sure that I

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1 don't do is harp too much on what the Defense has tried to use  
2 to show their side of the story, okay, but there's a couple of  
3 things that I do think I need to address with you before I get  
4 into what I normally would talk to you about and that is  
5 obviously that the facts of this case clearly fit the statutes  
6 and the criminal laws that these Defendants are charged with,  
7 but there's some things that I, I want to just touch on real  
8 quick because I want you to be thinking about it whenever I'm  
9 going through the elements of each charge and the activities  
10 that you saw on that videotape, okay. One of the things that  
11 I told you when I first started this week was that this is a  
12 case that involved common sense and decency. Now I'm not  
13 putting decency on trial here. Trust me, if you want to take  
14 pictures of your, you know, children or grandchildren running  
15 around naked and, you know, doing cute things, you know, I  
16 think we've all got those naked kid pictures that your parents  
17 might throw up during your, I don't know, rehearsal dinner. I  
18 know that you know the horrifying, "Oh, my gosh. I can't  
19 believe my mom put that picture up there." You know that is  
20 not what we're here about and you guys have got the common  
21 sense to understand that, and so, I don't want to make a joke  
22 out of it in any way, shape or form and that video was not a  
23 joke, and it was not fun for those children, and clearly you  
24 have the opportunity having seen those children testify and  
25 having gone through what they've gone through because of the

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1 video that was made by their own biological mother, that's why  
2 we're here. That's it, and one thing I will agree with the  
3 Defense is that video is the case. Clearly it is. That video  
4 along with the testimony of those children that lived through  
5 that video is the entire case. So it's simple. So let's get  
6 down to the couple things that I wanted to mention with the  
7 Defense.

8 First of all, Mr. Fox had mentioned to you, you know,  
9 obviously I agree this is not a case about decency, even  
10 though that's how I started it because I wanted you to get  
11 your minds kind of right about what you're going to be seeing.  
12 There's no way you can prepare people for something like that.  
13 So I tried to let you know, "We're going there, ladies and  
14 gentlemen. Please bear with us and, and use your common  
15 sense."

16 One of the things that Mr. Fox mentioned to you was the  
17 fact that the video itself was tasteless and that it was done  
18 in such a way that, you know, maybe they were bad parents or  
19 parent, boyfriend, but it didn't rise to the level of sexual  
20 activity, okay, and you know, that is the crux of the case, is  
21 there sexual activity going on on this video? Okay, so, let's  
22 see what the Defense does.

23 One of the things that, and Mr. Goude do, is he breaks  
24 down, "Well, if you take it out of context, then like the  
25 pictures that you've seen, if you take it out of context then,

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1 of course, you know it looks bad, you know, a snapshot of  
2 what's going on with this video." (Ladies and gentlemen, that  
3 video lasted for two minutes and 30 seconds. In two minutes  
4 and 30 seconds I was able to pull off still shots showing  
5 nipple stimulation, which is not a part of what the statute  
6 calls for, and a child who is either seven or eight years old  
7 touching himself in such a manner that all of you can look at  
8 and determine whether or not you believe that he came up with  
9 that himself at that age or you can believe what he told you  
10 from that stand, and that is, "My daddy," because he  
11 considered Mr. Cardwell at that time his daddy, "showed me how  
12 to do this. He told me what to do." So, you either believe  
13 **Minor Child 1** or you believe Mr. Cardwell. That's it. If you  
14 believe **Minor Child 1** he was a seven or eight year old little  
15 boy who had been shown what to do, told what to do and did it.  
16 It is that simple. So remember that whenever you're going  
17 through it. It's not just about bad taste. It's clearly  
18 sexual activity.

19 Now, one of the things that's interesting is that  
20 whenever the children are on there, they're playing, they're,  
21 they're jumping around, they're laughing, they don't look  
22 embarrassed in the video. They're in front of their parents  
23 and - but this is the interesting thing, too, and then I'm  
24 going to move on to what I want to talk to you guys about.  
25 They talk about the harm to the children and about, you know,

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1 maybe they got the idea of this whole masturbation thing from  
2 Melissa Muse because they've had all of these counseling  
3 sessions and all of these things going on that's been put in  
4 their face. Said, "You know what you were doing there that  
5 was bad. You shouldn't have been doing that. That is  
6 inappropriate. You know what that is? That's called  
7 masturbation." Okay? Well, that's an interesting concept but  
8 here's the problem with that concept, when these children were  
9 first interviewed at the forensic center, the Children's  
10 Recovery Center, by Dianne Nordeen, you remember her, the  
11 dark-haired lady who sat up here. You know, she was talking  
12 to you about her job is to ask questions like, "Name your body  
13 parts, you know, so we can make sure when you say something  
14 about my front private I know you're talking about a  
15 particular part of your body." That's what they do, and  
16 Melissa Muse hasn't got involved yet, never met the kids,  
17 never talked to them. No one else had interviewed the  
18 children at that time. These kids, in a child friendly  
19 environment with a forensic interviewer who is trained to talk  
20 to them and make them feel comfortable, let the children lead  
21 the interview, when she said, "Well, can you tell me about  
22 some video? I heard there was a video of you dancing around  
23 naked." Here's the moment of truth. "Oh my gosh, I'm so  
24 embarrassed. Did you see that? I was kidding, you know, we  
25 watch the UFC fights, and oh, did you see that video? Yeah,

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1 because I saw it actually pop up on mom's computer about a  
2 year later and I didn't even know it was still on there.  
3 Gosh, I'm embarrassed. Did it still show me wearing her bra?  
4 That's a child who's laughing, not embarrassed, doesn't think  
5 anything's wrong, honest to somebody who's asking them a  
6 question or it's a child who knows that they've been sexually  
7 exploited, who has been told to rub their private part while  
8 being videotaped, who has been told, "This is what you do,  
9 grand finale." He looks in the camera, "What, you know what,  
10 hello dolly, do the hello dolly." Okay? That's what's going  
11 on, ladies and gentlemen, and Minor Child 1 knew it.  
12 Minor Child 1 knew what to do. Minor Child 1 had been told what  
13 to do. He told you and Minor Child 2 told you, as hesitant as Minor Child 2  
14 was, she's younger, she's, as Ms. Muse told you, these kids  
15 feel a lot of guilt. They feel a lot of shame, but they stood  
16 - they came in here, told you what happened, had no reason to  
17 tell you anything other than the truth, which is what the  
18 Judge asked them to do in front of all of you, 12, 13  
19 strangers they have never met before in their lives, knowing  
20 at this point in time obviously that telling what they told  
21 was going to have consequences. These children at any point  
22 in time could have backed out and said, "You know what, I was  
23 mimicking the UFC fights and didn't do it."

24 So, yeah, I'm not asking you to take things out of  
25 context. I'm asking you to put it in context. I'm not

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1 telling you to look at these individual pictures and make your  
2 decision. I'm saying look at the entire video and use your  
3 common sense because the video as a whole is what makes it  
4 sexual. The video as a whole is what's going to make you all  
5 agree beyond a reasonable doubt that these parents, step-dad  
6 and mom, made a conscious, intentional, maybe reckless  
7 decision to videotape those children in a performance that  
8 includes sexual activity, and that's what you have to do as  
9 jurors. You've got to look at it for what it is, and here's  
10 another thing, the Defense has the same opportunity to ask as  
11 many questions as they want of every witness that gets on the  
12 stand. So, let me talk to you about one thing, too. Who in  
13 your mind, from watching this entire process, had the more  
14 difficult, probing questions for these children? Who has the  
15 burden of proof under our law beyond a reasonable doubt to  
16 bring to you the evidence that I have to show to meet the  
17 statute. The last thing I want to do is ask a little boy  
18 about masturbation, but the law requires me to show to all of  
19 you that that is what was going on. It gives me absolutely no  
20 pleasure in doing that. I'm not going to simulate it for you,  
21 I'm not going to get into it with you, I'm going to tell you  
22 that's what **Minor Child 1** told you he was doing. That's what  
23 **Minor Child 1** was told to do and that's what **Minor Child 1** did,  
24 and here's another interesting thing, the statute clearly says  
25 sexual activity or any simulation of sexual activity,

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1 simulate. When you simulate something you act it out. It  
2 doesn't mean you're actually doing it, and as Mr. Goude very  
3 vividly tried to convince you that you would have to see some  
4 form of, excuse me, erection and ejaculation, that is not an  
5 element in the crime. Simulation of sexual activity, the  
6 performance was videotaped, the material was saved to a  
7 computer. So consider that. Clearly it meets the standards  
8 of sexual exploitation, first degree.

9 Now, whenever you think about the fact that these kids  
10 could have been the reason for Mr. Cardwell having his pants  
11 down, okay, that might happen and I will tell you, once again,  
12 use your common sense, if that were to happen to you or to  
13 someone you know and maybe you were to see it out in public,  
14 "Oh, gosh, somebody pulled their bathing suit bottom down or  
15 something." What's the first thing, first reaction that you  
16 would think of? "I hope nobody saw that, okay." This wasn't  
17 even the child whose pants were being pulled down, if you  
18 believe that's what happened, because if you believe <sup>Minor Child 2</sup> and  
19 **Minor Child 1** everybody was naked. They were already naked  
20 when the video started, and no one, they never said, "We  
21 pulled down daddy's pants," never.

22 So, his pants, if you believe it, are down around his  
23 ankles. Pull them up. Do you then step to the next thing, i  
24 we're going to break it down like the Defense says and start  
25 simulating some type of UFC fight? Are you then going to tak

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1 the next step and let your little five or six year old  
2 stepdaughter jump on you naked? Are you then going to take  
3 the next step and have your stepson with a bra, he - that bra  
4 clearly, ladies and gentlemen, and I'm going to show you the  
5 video because that's what this case is about, look at it when  
6 he's twirling around. It's not hooked. It is tied to that  
7 little scrawny, meatless child's body, tied, not hooked.  
8 Either Sarah or Michael tied that bra around that child,  
9 another part of the performance. Look for yourselves. It's  
10 up to you.

11 So then you take the next step, he's in there jumping  
12 around with a bra on and he's rubbing his nipples, still not a  
13 part of the statute. So why have we spent so much time on  
14 simulation and masturbation in this case? Why did I ask that  
15 question? Because it is the law, it is the bottom line  
16 standard that our legislature said, "You know what, we're not  
17 even going to prosecute you for rubbing your nipples, we're  
18 not even going to prosecute you for jumping around with your  
19 naked stepdaughter and your naked stepson, we're not going to  
20 prosecute you for flopping your penis back and forth, we're  
21 not going to prosecute you for that, but if you go that next  
22 step, if you go right here and you videotape your child doing  
23 something that that child is having to simulate a sexual act,  
24 you've gone too far." Isn't that too far, ladies and  
25 gentlemen? Is that where - can we get to that point that that

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1 is too far? Okay? If they were jumping around naked, if he  
2 had walked into the bathroom and took a picture of the little  
3 girl on the toilet and then he went in there and jumped in the  
4 shower and got back out the shower, then the little boy's  
5 running around and he's coming in saying, "Oh, I got to pee  
6 pee, too." I'm not prosecuting that. I don't have that kind  
7 of time. Live your lives. You're entitled to it, but don't  
8 endanger the health, mental, physical or whatever. It's an  
9 or. It's not physical and mental and, it is or. Do not  
10 endanger the precious children that you are required as  
11 parents and/or guardians or caretakers of those children to  
12 watch over, nurture and put in society and present to them the  
13 kind of people that they need to be. Yes, it was  
14 inappropriate, fine. Let DSS deal with it. Yes, it was  
15 tacky, fine. Let DSS deal with it. Was it criminal?  
16 Absolutely it was criminal. Those children told you it was  
17 criminal. You know it was criminal. You can see it for  
18 yourselves. You know those children were harmed. You mean to  
19 say that these children just because they kept good grades  
20 throughout it, thank goodness, that is an amazing testament to  
21 the resilience of children, and they're going to get over  
22 this, too. They're going to thrive and they're going to be  
23 fine because children bounce back. They can get on the stand  
24 in front of people they don't know and tell what happened to  
25 them. They can bounce back. When they think about having to

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1 come to court, do they have bedwetting? Do they have  
2 nightmares? Yeah. So I'm going to use the word fault again.  
3 Whose fault is that? It's because these children were put in  
4 a video and required to do or be exposed to sexual activity.  
5 So just because <sup>Minor Child 2</sup> wasn't touching herself, masturbating  
6 herself, touching her brother, masturbating her brother, it  
7 doesn't matter. They're all a part of the performance. She  
8 witnesses it. She's standing there. Nobody says <sup>Minor Child 2</sup> left  
9 and never came back. You can still hear her in the  
10 background; she is still in the video. She is still there  
11 witnessing the sexual activity of her brother, and here's  
12 another thing, I'm going to get a little bit graphic, but I  
13 think even me being graphic's probably not going to get as far  
14 as we've gotten in this case. This is what I'm going to tell  
15 you to do because Mr. Goude was very clear in masturbation and  
16 what it includes. When you look at the boy and he, he's - he  
17 does this at first and he says, "Daddy, I can't do it," and he  
18 says, "Don't worry about it, son, it'll come." Okay, that's  
19 when he's talking about flapping, all right, and that's  
20 because, you know, he's seeing the Defendant do this, all  
21 right. So he's mimicking what he has seen and learned, okay?  
22 Here's the thing, then he starts to, he starts to in seven and  
23 eight touch himself. It's not slapping, it's not flapping  
24 back and forth. This is what the State is showing you and  
25 telling you is simulated masturbation. Now, yeah, it is a

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1 snapshot. I'm going tell you the snapshot doesn't do it  
2 justice. When you watch the video and I'm going to have to  
3 say it, when he's doing this at some point he stops and he  
4 does this little face and falls over. Where do you think tha  
5 he's seen that face before or who's told him? "You got to  
6 have your moment, son. You got to have your moment because  
7 that's the orgasm," because it's not just an innocent - it's  
8 interesting, you know, because if you look at it it fits, and  
9 that's where I'm asking you all to use your common sense. Yo  
10 know, I didn't give you the, the snapshot of that because  
11 that's something you've got to see in the context of  
12 everything, and that's the whole point. They actually break  
13 it down to the hello dolly. The Defense broke it down to it'  
14 a UFC fight. That is what they do. They take it apart so it  
15 becomes something they can make fit. Tacky, oh my gosh, the  
16 UFC fight, they could have asked the simple question of  
17 **Minor Child 1** when he was on the stand. I asked the hard  
18 questions. "What was that **Minor Child 1** "I don't know."  
19 "Tell me what it means." I did, I did not want to have to as  
20 him, but I have to show that in order to prove my burden,  
21 which we've done. The one question they could have asked  
22 **Minor Child 1** which would have been the easiest, nicest, "You  
23 like UFC wrestling; don't you?" Didn't even have to say, "Yo  
24 got the nipple tweaking and this and that from the UFC  
25 wrestling," didn't even have to say that. Just have him

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1 acknowledge, "You watch UFC wrestling; don't you?" I'll tell  
2 you why they didn't ask that question, it is the number one  
3 rule in the book of liars. Don't ask a question you don't  
4 know the answer to because if that child had said, "No, I  
5 don't watch UFC wrestling," they'd have nothing. There'd be  
6 no explanation.

7 Let's talk about the hello dolly. Ladies and gentlemen,  
8 when you listen to the video after all these things have  
9 happened, at the very what we know to be the end, momma says,  
10 "Do your grand finale." That's before the hello dolly's  
11 mentioned and let me tell you why the timing of that is so  
12 important. It's because mom and dad didn't arrange for  
13 exactly what was going to happen next. If so she would have  
14 said, "Do your hello dolly, do the hello dolly." No, because  
15 this is a performance. "We're ready for the grand finale.  
16 Okay, okay, you know," and then he chimes in hello dolly, his  
17 cue. "Oh, yeah, I'm supposed to roll backwards and spread my  
18 legs open." Do you see how this is a performance? Do you see  
19 how these children have been orchestrated to do this? This  
20 wasn't random, "We're running out of the bathroom, woo, we're  
21 all naked. This is funny. I'm pulling daddy's pants down,  
22 ha, ha." If it was that random, if it was that not  
23 orchestrated and it was not a performance, there's no way  
24 these things could have come together like they did. These  
25 kids didn't know. They were five, six or seven years old,

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1 | however old they were. We know they were minors. There's no  
2 | way that it could have come together like that, or maybe so,  
3 | believe them. Maybe it was piecemeal. "Well, we were  
4 | thinking about the UFC fight, then we were thinking about  
5 | diaper changing, then we were doing this, then he was just  
6 | slapping his penis back and forth, you know." Yeah, you can  
7 | break it down like that but what makes sense? What makes  
8 | sense is when you take it as a whole, when you look at the  
9 | complete picture, when you hear those children say what they  
10 | were instructed to do, the lack of there being any indication  
11 | that they were doing it because it was a UFC fight or some  
12 | type of wrestling move, then there's only one conclusion. Is  
13 | that unlawful conduct? Getting out of the sexual  
14 | exploitation. Unlawful conduct's very broad. It's just as  
15 | parents don't put your children in a situation where they can  
16 | have harm, unreasonable risk of mental harm. That is common  
17 | sense, ladies and gentlemen, and here's another thing, intent  
18 | The Judge has told you about intent. Let me show you how you  
19 | know where the intent is with Cardwell, Michael and Sarah.

20 |       Do you remember whenever I was asking Sarah Cardwell  
21 | about the fact that she was talking about the bathtubs and  
22 | where the children go to take a bath? The boys go in one  
23 | bathroom and the girls go in another, and you know that's  
24 | pretty normal for parents. Once children get to a certain  
25 | age, you know, they want them to kind of be separated because

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1 they start asking questions. You know, they start noticing  
2 their private parts and stuff like that. It shows that she  
3 knows. At that point in time she was already making a  
4 conscious decision to separate her children, boys and girls,  
5 whenever they're taking a bath. The most common, normal thing  
6 that a parent does. So you mean to tell me that she thinks  
7 that that's the appropriate thing to do, but then when this  
8 situation on this video happens, "I don't see anything wrong  
9 with that." You've got a grown, naked man in a video with  
10 your naked children, a boy and a girl, and that's okay?  
11 That's not sexual? Let's don't take a chance. Don't do it.  
12 Be smart. Here's another thing, she downloaded it and kept  
13 it. The children even said, "Yeah, it popped up later. I saw  
14 it on the computer." What are you keeping that around for?  
15 Why is that video still on that computer a year or two years  
16 down the road with those children jumping around and  
17 **Minor Child 1** with the bra on and touching himself, why do you  
18 keep that? That's an answer I can't give for you, and you  
19 know, and it's something I don't have to give you, but it  
20 still goes towards the intent of these parties. It was not  
21 accidental, it was not fun. They kept it on their camera.  
22 You can't tell me just by chance that camera was sitting there  
23 and was like, "Oh, this is funny, we're going to record this  
24 for posterity," and pick up a camera and all of a sudden just  
25 magically all these things happen at that very moment? It was

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1 orchestrated, it was a performance, it was a plan and they  
2 were all in on it, and the children had been told what to do,  
3 just like they told you they had been told what to do, and  
4 that's it. It's as simple as that.

5 Now I want to, and I've kind of gone through it, and wha  
6 I've done is I've actually got a PowerPoint that I want to do  
7 that will kind of bring it all together and I know sometimes  
8 visual kind of helps you also because I've been talking and  
9 walking all over the place, but, but this is what I want to  
10 do. I want to make sure that you guys see where I've gone in  
11 trying to deal with this case, and in starting off, I like to  
12 always stick with what I start with and that is the common  
13 sense and decency. I mean, that is at the bottom - that is  
14 the bare minimum that we're starting off here with, okay, but  
15 I've got to prove more to you, beyond a reasonable doubt.

16 So, one of the charges that we're looking at, the  
17 unlawful conduct towards a child, as I said before, if you  
18 look in section one it says place the child at unreasonable  
19 risk of harm affecting the child's life, physical or mental  
20 health. I don't have to show you all of those. I have to  
21 prove one. Melissa Muse clearly provided you with more than  
22 enough evidence of how this has affected the mental health of  
23 these children. They don't have to be psychotic, they don't  
24 have to be hallucinating, they don't have to be crazy.  
25 They're harmed.

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1 Sexual exploitation of a minor first degree, bottom line  
2 under number one, they use, induce or facilitate a minor,  
3 which we obviously have minors, to engage in or assist others  
4 to engage in sexual activity, the simulation of masturbation,  
5 ladies and gentlemen, and they did produce material.  
6 Obviously the material was produced, it's on the computer.  
7 They've even admitted that. So that's clearly something we  
8 can all agree on. The question is going to be exactly as Mr.  
9 Goude and Mr. Fox said the sexual activity. Permitting a  
10 minor under his custody or control to engage in sexual  
11 activity, that's how it meets with Sarah as well because these  
12 are her children. She's permitting these children to engage  
13 in this activity. So both Cardwells meet under that number  
14 two section and the material was produced. Clearly we have  
15 that.

16 Sexual activity according to South Carolina law,  
17 following acts or simulations thereof, I did not have to show  
18 the end of that process. Masturbation, when done alone or  
19 with another human or animal, they didn't have to masturbate  
20 each other. It had to be simulation or the actual act by  
21 **Minor Child I** which he told you it was, which he clearly told  
22 you his dad told him to do it.

23 Material, I think that's the easiest one. It's a video  
24 recording. It was downloaded; we all got to see it. If it  
25 wasn't material it wouldn't be here. None of us would be

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1 here.

2 So, do we meet our burden? **Minor Child 1** a minor, **Minor Child 2**  
3 a minor, Michael Cardwell nude, performing while inducing,  
4 encouraging minors, produced material, yes, what I've just  
5 told you video, visual. Minors engaged in sexual activity,  
6 **Minor Child 1** simulating masturbation, which is what he told  
7 you, and **Minor Child 2** was a part of and participated in the  
8 performance. She was there the whole time. No one ever said  
9 she had left while **Minor Child 1** was doing that part of the  
10 video. You can hear her voice and you will hear it in a  
11 minute through the entire video. She never left, she was a  
12 part of the entire thing. She was a part of the sexual  
13 activity that was recorded, and Sarah, exactly the same thing  
14 the only thing with her is a little bit more. Not only did  
15 she induce them; not only was the sexual activity taking  
16 place, she also permitted it to take place. She permitted  
17 this boyfriend to come in who lived with her children to act  
18 in such a fashion.

19 Now, our witnesses, I agree with Goude and Fox, that's  
20 true, our first, the investigators, Ron Douglas, Phil Hanna,  
21 David Marsh, they were doing their jobs. They were collectir  
22 evidence, okay? That's what they had to do. So then we get  
23 to what was going on in the minds of these children.

24 Dianne Nordeen, "They shut down, wouldn't talk to me,  
25 wouldn't say anything." It's because they knew what had

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1 happened was wrong. They knew it wasn't some funny little  
2 video. Those children knew. They were protecting their  
3 parents, this is before Melissa Muse got involved, and they  
4 were embarrassed.

5 Then you've got **Minor Child 1** who told you, "My daddy told  
6 me what to do." "Who put the bra on you?" "My daddy." "Who  
7 told you to touch yourself?" "My daddy." "Do you know what  
8 that is?" Didn't want to say it. "What is it **Minor Child 1**  
9 You know what he said. **Minor Child 2** more shut down, she's still  
10 shut down, but she told you. "Who told you to do this **Minor Child 2**  
11 "My mom and my dad." "Who was naked?" "My mom," which she  
12 denies, "my dad, me, and **Minor Child 1** and Melissa Muse,  
13 advanced sexual knowledge that these children have, we can  
14 never take that back. They had that the first day she met  
15 with them, and you saw Mr. Goude go through every single one  
16 of their counseling sessions. If there had been one mention  
17 of, you know, masturbation or, "Didn't you know what you were  
18 doing was masturbation?" "That's wrong," it would have been  
19 in those notes that he was reading to you. You had every  
20 single one of them. It was flipping through them. Not in  
21 there one time did it say, "I had to talk to these kids about  
22 masturbation and tell them it was wrong." He could have asked  
23 her that and he didn't because don't ask the question you're  
24 not sure of the answer to.

25 So, we've got undisputed facts, minors, videotaped,

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1 performance. Everybody said it was a performance. They say  
2 it's a tacky performance, I say it's a sexual performance. It  
3 was on Sarah Cardwell's computer, obviously. Michael  
4 Cardwell, you can see it, nude in the video, children were  
5 nude and Sarah's voice is on the video. I think those are  
6 things we can all agree on.

7       So, two, the two issues, was it sexual, and the reason  
8 why I broke it down like with the word fault is because I  
9 don't know any other way to put it than how the Defendants  
10 presented it whenever they talked about why he was naked.  
11 "They pulled my pants down. It was Minor Child 1's idea to put  
12 on the bra. He'd seen his mom do it a hundred times. He's  
13 the one that did it." "How'd he know to tie it on his back?"  
14 "Well, he'd seen me hook it before." It wasn't hooked.  
15 "Minor Child 1 got the idea from wrestling," Minor Child 1's idea.  
16 "Minor Child 1 exposed his buttocks in the air because he  
17 learned that from his younger siblings getting a diaper  
18 change. Sarah just happened to have the camera sitting there  
19 for her to videotape the kids being silly and she just  
20 happened to download it on her computer." If you believe all  
21 of those things are reasonable, if you believe all of those  
22 things are what happened in this case then, of course, they're  
23 not guilty. But is that reasonable? I don't have to prove to  
24 you beyond every doubt. I just have to prove to you beyond a  
25 reasonable doubt. Have I touched on everything to make you see

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1 what is reasonable here, what is common sense and what really  
2 happened? If I have and you're firmly convinced, then they're  
3 guilty, and this is just what I'm telling you again, and I'm  
4 repeating myself some, but remember the age of these children.  
5 They were between eight and nine. They didn't like being in  
6 the video, they were embarrassed, they were sad. **Minor Child 1**  
7 and **Minor Child 2** are pretty resilient and they're probably glad that  
8 this is all over with. The idea that any part of this was fun  
9 for them, well, I'll leave that up to you.

10 The harm issue, all of those things were shown to you by  
11 Melissa Muse who said, also, yeah, I brought her in because  
12 she's a counselor. Trust me, she hasn't made, I don't think  
13 she's driving a Lexus. I don't know she might be or something  
14 with that \$7000 she made over two years, but I can tell you  
15 this, she did her job in being there for those kids. I don't  
16 think anybody doubts that, and one of the things that she told  
17 you was that sexual abuse includes non-contact. I mean, you  
18 don't have to - I mean, Mr. Goude was saying, "Did you take  
19 the kids later on and have sex with them, did you do this, did  
20 you do that," well, thank goodness, not only that, they'd be  
21 charged with something else. That's not what we're talking  
22 about, but clearly what she told you as an expert she told  
23 you, bottom line, that non-contact sexual abuse is sexual  
24 abuse. It is. It affects children, it harms children and it  
25 has harmed **Minor Child 1** and **Minor Child 2** and you can go ahead

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1 forward, I was just talking about that.

2 So, here's what the State's asking you to do is find the  
3 guilty on the sexual exploitation and on the unlawful conduct  
4 The State has a burden of beyond a reasonable doubt and that'  
5 all I'm asking all of you to do is use your common sense and  
6 be reasonable. That is it. Consider what the children have  
7 told you, consider what makes sense. Look at the video, and  
8 I'm going to show it to you again, look at the video and I'm  
9 going to show it to you again because it is the case. You ca  
10 come back out and see it again if you need to. If there's an  
11 testimony of either the children or Mr. and Mrs. Cardwell tha  
12 you want to hear, Dianne Nordeen or anybody, as jurors you  
13 have a right to say, "Judge, we need to hear something again  
14 because we want to be sure." I want you all to be sure  
15 because it takes all of you to make this decision, and I want  
16 you to have every bit of information you need to make that  
17 decision. So, I'm going to show you the video again because  
18 you need to see it. We've broken it down so much from both  
19 the Defense and the Prosecution that I think that it is the  
20 right thing to do and that you need to see it. Take it back  
21 with you. These pictures, the reason why it's broke down is  
22 because I have elements I have to prove to you beyond a  
23 reasonable doubt. If you need the Judge to tell you the law  
24 again, if I haven't hammered it enough and the Defense  
25 attorneys haven't hammered it enough you can come back out ar

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1 he can tell you if you have a question, but you'll have these  
2 back there with you. Look at the context of the video. Look  
3 at Minor Child 1's face whenever, after he tries to mimic Mr.  
4 Cardwell with going back and forth what he starts to do. Look  
5 at how uncomfortable his face is. Look at the moment  
6 whenever, if you go with what Mr. Goude's saying in talking  
7 about ejaculation and that moment of having orgasm, look at  
8 the child's face and just wonder or don't wonder, know what  
9 he's doing because it is what it is, ladies and gentlemen. It  
10 is what it is. This will be back there with you. The video  
11 will be here but will be ready for you to review at any time.

12 THE COURT: Ms. Candice, you have five minutes  
13 remaining.

14 MS. LIVELY: Yes, sir, Your Honor, thank you. Actually  
15 at this point in time, ladies and gentlemen, I think you've  
16 heard everything you need to hear. Now it's time to see the  
17 video again. I'm going to leave you and tell you once again I  
18 know this has been a lot of uncomfortable information at  
19 times, but it's important. It's stuff that I had to show you  
20 to show you why this is criminal and why this behavior, this  
21 activity with minors is illegal, period. Thank you very much.  
22 If you would, please, Mr. Brown, the video.

23 (State's Exhibit Number Two played in open court.)

24 THE COURT: Madam Foreman, ladies and gentlemen, you  
25 have now heard all of the testimony in the trial of this case.

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1 you.

2 OFF THE RECORD

3 (On the record. Question from jury at 3:00 p.m. The  
4 following takes place outside the presence of the jury.)

5 THE COURT: One minute, I understand that two jurors  
6 want a smoke break. That's fine, but tell the jurors to stop  
7 deliberation until they return, be sure as to that.

8 OFF THE RECORD

9 (On the record. Verdict reached at 3:27 p.m. The following  
10 takes place outside the presence of the jury.)

11 THE COURT: All right, I understand we have a verdict.  
12 all the parties are present. Bring the jury in. I am  
13 permitting the alternate to come back to sit with the jury.  
14 They have - she, of course, has not participated in any  
15 deliberations.

16 (Whereupon, the following takes place in the presence of  
17 the jury.)

18 THE COURT: Madam Foreman, I understand that your jury  
19 has reached a unanimous verdict; is that true?

20 FOREPERSON: Yes, we have, Your Honor.

21 THE COURT: If these be unanimous verdicts, so signify  
22 by raising your right hand, please. Raise your right hand if  
23 this is a unanimous verdict.

24 (All jurors raise right hand.)

25 THE COURT: The jury has so signified. Madam Bailiff,

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1 accept the verdicts and hand them to me.

2 (Complies with request. Court reviews.)

3 THE COURT: Now, ladies and gentlemen, I'm going to  
4 have the clerk publish the jury verdicts and I want it  
5 abundantly clear that I will permit no remark, no outbursts of  
6 any kind. If that should occur, you are going to spend  
7 tonight in jail. I just do not permit that sort of conduct in  
8 my court and the jury is not entitled to that sort of stuff.  
9 Who reads the verdict here? Ma'am?

10 THE CLERK: I do.

11 THE COURT: Okay, come forward. First, I want you to  
12 read the verdicts regarding the State versus Michael Lee  
13 Cardwell, there being four in number.

14 THE CLERK: As to indictment number 2012-GS-22-560 for  
15 sexual exploitation of a minor first degree, we the jury  
16 unanimously find the Defendant Michael Lee Cardwell guilty of  
17 sexual exploitation of a minor first degree as to **Minor Child 1**  
18 Y. As to indictment 2012-GS-22-561, sexual exploitation of a  
19 minor first degree we the jury unanimously find the Defendant  
20 Michael Lee Cardwell guilty of sexual exploitation of a minor  
21 first degree as to <sup>Minor Child 2</sup> Y. As to indictment number 2012-GS-  
22 22-587 unlawful conduct towards a child we the jury  
23 unanimously find the Defendant Michael Lee Cardwell guilty of  
24 unlawful conduct towards a child as to <sup>Minor Child 2</sup> Y. As to  
25 indictment 2012-GS-22-588 as to unlawful conduct towards a

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1 child we the jury unanimously find the Defendant Michael Lee  
2 Cardwell guilty of unlawful conduct towards a child as to  
3 Minor Child 1 Y.

4 THE COURT: And these are the four verdicts as to  
5 Sarah Denise Cardwell. Please publish.

6 THE CLERK: As to indictment number 2012-GS-22-558  
7 sexual exploitation of a minor first degree we the jury  
8 unanimously find the Defendant Sarah Denise Cardwell guilty of  
9 sexual exploitation of a minor first degree as to Minor Child 1  
10 Y. As to indictment 2012-GS-22-559 sexual exploitation of a  
11 minor first degree we the jury unanimously find the Defendant  
12 Sarah Denise Cardwell guilty of sexual exploitation of a minor  
13 first degree as to Minor Child 2 Y. As to indictment number 2012-GS-  
14 22-585 unlawful conduct towards a child we the jury  
15 unanimously find the Defendant Sarah Denise Cardwell guilty of  
16 unlawful conduct towards a child as to Minor Child 2 Y. As to  
17 indictment number 2012-GS-22-586 unlawful conduct towards a  
18 child we the jury by unanimous consent find the Defendant  
19 Sarah Denise Cardwell guilty of unlawful conduct towards a  
20 child as to Minor Child 1 Y.

21 THE COURT: Let's see. All right, all right, Madam  
22 foreman and ladies and gentlemen, none of you asked to come to  
23 court this week and none of you surely asked to serve on this  
24 jury, and I personally regret as trial judge that this  
25 distinguished group of people of Georgetown County had to

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1 endure that photo document. It was something that we are  
2 beginning to see more regularly in this state, but the State  
3 of South Carolina in their job of proof beyond a reasonable  
4 doubt had to present it to you, and I personally regret that  
5 you had to endure it, but you did and you did it faithfully,  
6 truthfully and honestly, and I was so impressed with the, with  
7 the way that you handled this unsavory material at its best.  
8 When I went on the bench 29 years ago, we didn't have this  
9 sort of conduct because we didn't have all the internet and  
10 the iPhones and this, that and the other, but unfortunately in  
11 the last five years really there's been a proliferation of  
12 this sort of unsavory conduct. Mr. Wilson, your Attorney  
13 General, pursues these things very vigorously, got a special  
14 task force to deal with it and we see people on the internet  
15 using these vivid portrayals of children in all kinds of acts  
16 from all over the world and it's sad.

17 I have no comments to make on this case except to say  
18 that the evidence clearly, clearly supports your conviction of  
19 guilty as to each charge. Having said that, you were the  
20 finders of the facts, you were the decision maker, but I can  
21 say as the trial judge that, and ruled on that, that there was  
22 sufficient evidence as to all charges to give to you 12 good  
23 folks of Georgetown County to make the decision of whether or  
24 not the State of South Carolina has proved it beyond a  
25 reasonable doubt. I want to thank Ms. Candice and the

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1 Solicitor's Office for bringing this case to the attention of  
2 the voters of Georgetown County in the 15<sup>th</sup> Circuit. You do  
3 our communities and the children great service in pursuing  
4 this.

5 Additionally, I want to thank the attorneys for the  
6 Defendants who were appointed to represent them and you gave  
7 the very best.

8 MR. GOUDE: Thank you, Judge.

9 THE COURT: I will hear any arguments after I  
10 discharge the jury.

11 MR. GOUDE: Yes, sir. I was just thanking you for the  
12 compliments, Judge.

13 THE COURT: Well, thank you, but I've often said when  
14 I see wonderful defenses at no cost to the Defendant  
15 themselves, paid for by the taxpayers of South Carolina, I'm  
16 proud of our judicial system that provides such services, and  
17 I thank Mr. Goude and Mr. Fox for their services in the case.  
18 This case was excellently tried by the Solicitor and by both  
19 attorneys and by your efforts you helped this jury reach the  
20 verdicts that they did.

21 I am now in a position to excuse you for the day and for  
22 the rest of the week, and I will impose sentence in just a  
23 moment. You may leave at this time if you care to or you may  
24 remain in the courtroom for further proceedings, but if you  
25 care to leave you do so - anybody care to leave do so at this

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1 time.

2 Madam Foreman, come forward, please. Let's take a short  
3 break. Counsel for the State and the Defense, join me in  
4 chambers a moment.

5 MS. LIVELY: Yes, sir.

6 THE COURT: And I'll hear any motions regarding the  
7 case as soon as we get back.

8 OFF THE RECORD

9 (On the record.)

10 THE COURT: Gentlemen for the Defendants in the  
11 previous case, prior to sentencing I'll be glad to hear any  
12 motions at this time, no need to wait ten days. I'll never be  
13 more familiar with the facts than I am now. What says you for  
14 the Defendant, Michael, please?

15 MR. GOUDE: Judge, if it's fine with the Court, I'll  
16 go first.

17 THE COURT: Yes, sir.

18 MR. GOUDE: On Sarah Cardwell, Judge, we would make a  
19 motion for a new trial and I've got about nine different  
20 reasons, Judge. The first reason is the Court and I want to  
21 make - ask Grace, the court reporter, if she has as a Court  
22 Exhibit our - the Defendant's request to charge number three?  
23 Judge, I would offer these.

24 THE COURT: What was that request to charge?

25 MR. GOUDE: That was the one about asking the Court to

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1 charge that without more it's not a crime to be nude or naked  
2 in your own home. We had requested that one and the Court ---

3 THE COURT: I declined to do that.

4 MR. GOUDE: We would ask the Court to mark that as an  
5 appellate exhibit so it will be in the record.

6 Judge, and so, our first motion for a new trial is that  
7 we had requested that the Court charge that as a jury charge  
8 and the Court has declined or denied the charge, so we list  
9 that as a grounds for a new trial.

10 THE COURT: I understand. Denied. Go ahead.

11 MR. GOUDE: Judge, the second ground for the new trial  
12 would be that we had requested the Court charge South Carolina  
13 code 16-15-130 the indecent exposure statute which basically  
14 said that it was illegal to be naked in public. Therefore, we  
15 were going to argue it was not illegal to be nude in ---

16 THE COURT: I denied that. Your motion there is  
17 respectfully denied.

18 MR. GOUDE: Judge, we have attached that statute as a  
19 Court Exhibit so that will be part of the record.

20 THE COURT: Well, several reasons I denied it. It  
21 did not contain - this case never contained the elements of  
22 indecent exposure, which is by definition exposure in a public  
23 place. This was not a public place.

24 MR. GOUDE: Thank you, Judge, and Judge, our next  
25 grounds for our motion for a new trial is that we had

Motions

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1 requested that the Court read the entire statute 16-15-395,  
2 which was the sex exploitation in the first degree, which we  
3 were convicted of. We had requested the Court read all of  
4 paragraph A, which had one, two, three, four different types  
5 of ---

6 THE COURT: And the record will reflect that the  
7 Solicitor clearly said that she was not relying on any of them  
8 and relying as to that section on masturbation.

9 MR. GOUDE: Thank you, Judge. Judge ---

10 THE COURT: And I declined to do the other on the  
11 grounds it would simply confuse the jury because they were  
12 relying on the one element of masturbation and whatever,  
13 whatever's involved in sexual activity that our Court may  
14 determine.

15 MR. GOUDE: Thank you, Judge.

16 THE COURT: I frankly don't, I frankly think that as  
17 to those definitions that does not exclude other possible  
18 definitions of sexual activity; however, in this case, however  
19 slight, there was some evidence of masturbation, but I would  
20 conclude that our courts might clearly say that there's other  
21 forms of sexual activity that could involve children not  
22 involving those further definitions in the statute, but I, I  
23 respectfully decline to do that because the Solicitor clearly  
24 said we were concerned with masturbation only. Proceed, and I  
25 charged them that.

## Motions

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1 MR. GOUDE: Thank you, thank you, Judge, and that is  
2 our next grounds for the motion for the new trial which is  
3 that the Defense had requested that the Court read the entire  
4 statute 16-15-375-5 which defines sexual activity, and as the  
5 Court just stated it had one, two, three, four, five, six, six  
6 types of sexual activity were illegal. We were asking that  
7 the Court charge that as we explained before so the jury would  
8 know the gist of the type of acts that the legislature had  
9 prohibited and the Court had declined to charge all those  
10 other elements other than, A, the masturbation, and that's our  
11 ground for the motion for the new trial.

12 THE COURT: This is as to the exploitation case?

13 MR. GOUDE: Yes, sir.

14 THE COURT: Yes, sir. There's no sexual activity  
15 language in the other charge.

16 MR. GOUDE: Thank you, Judge. Judge, our next motion  
17 for the new trial was the Defense had made a motion to  
18 suppress the video and the computer on the basis of the  
19 illegal search and seizure and the Court had denied our motion  
20 and we ask for a new trial on the grounds that we stated in  
21 our motion for - in our motion to suppress at the beginning of  
22 the case.

23 THE COURT: I denied that because the evidence showed  
24 that that computer was being shown in full view and the  
25 officer - police who happened to see it, just happened to

Motions

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1 stumble across it and saw it in plain view. There's no search  
2 and seizure necessary when an officer sees something in plain  
3 view that he and everybody else passing by could see. It was  
4 open to whoever entered that door.

5 MR. GOUDE: Thank you, Judge.

6 THE COURT: Yes, sir. I deny that motion.

7 MR. GOUDE: Judge, our next motion was the defense had  
8 objected to the admission of the still photographs, the  
9 Prosecution's exhibits which were taken from the video. We  
10 objected that they were misleading and not in context, and the  
11 Court had admitted those photographs into evidence over the  
12 Defense objection and we list that as a grounds for a motion  
13 for a new trial.

14 THE COURT: The record will reflect that in admitting  
15 that still photograph, I charged the jury that they would  
16 consider it in the context of the entire video. That being  
17 what was said, I respectfully deny that.

18 MR. GOUDE: Your Honor, thank you, sir. We had - also  
19 we had made a motion in limine during the case asking that the  
20 Defendants be allowed to testify to a number of photographs  
21 that we think are made Court Exhibits and I'll clarify that  
22 with Grace, one set of photographs being the photographs of  
23 Sarah's family from the birth of the children up to the time  
24 the DSS took the children, another set of photographs being  
25 photographs of children and families naked that were taken out

## Motions

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1 of Georgetown County library books that we were going to offer  
2 to show that it's not illegal to be nude, it's not illegal for  
3 children and families to be nude ---

4 THE COURT: Well, those pictures that you proposed to  
5 introduce were taken in a situation not included in the facts  
6 in this case, and therefore, in my view, were totally  
7 irrelevant. Most of those pictures were probably - I don't  
8 know where they were, but I, had no bearing in this case.

9 MR. GOUDE: Thank you, Your Honor. We've got two  
10 left, Judge, two grounds. The next ground is that in the  
11 video that was put into evidence of which the client was  
12 convicted of the sexual exploitation and the unlawful conduct,  
13 it showed the Defendant Michael Cardwell and the child <sup>Minor Child 1</sup>

14 grabbing their nipples. We had offered a video taken on  
15 televised, television shows that were on the internet and had  
16 put a video offered in that Mr. Cardwell had testified that  
17 that's where he and the child <sup>Minor Child 1</sup> had seen ultimate fighting  
18 championship boxers in the ring grabbing their nipples and  
19 that's where the tweaking of the nipples came from, and the  
20 Court had denied to let that into evidence. So, we ask that  
21 that be a basis for the motion for the new trial.

22 THE COURT: No, sir. The contents on some  
23 professional wrestling team showing their nipples clearly is  
24 not consistent with the testimony in this case where that  
25 occurred with two naked children, naked man and a naked woman,

Motions

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1 totally different, no relation.

2 MR. GOUDE: Judge, I just - I would just add to that  
3 something that - I wasn't able to add before because it didn't  
4 have it until closing argument. I note that the Prosecutor in  
5 closing argument referred to the nipple tweaking and Mr.  
6 Cardwell essentially being a falsehood a dozen times or more,  
7 which if we'd have put that video into evidence or been  
8 allowed to that that ---

9 THE COURT: I would suggest to you that anybody heard  
10 his testimony would - could conclude that it was ridiculous.  
11 When he, was he - when he - it's for the jury to determine,  
12 not me, but I don't believe many of them believed that he -  
13 that a child pulled his pants off.

14 MR. GOUDE: Thank you, Your Honor. Judge, the last  
15 motion ---

16 THE COURT: That was for the jury to determine, but I  
17 ---

18 MR. GOUDE: The last motion, the last motion that we  
19 have is the Prosecution had put in the still photographs that  
20 were taken from the video which the Defense said was out of  
21 context and the Defense requested that the Court not allow the  
22 still photographs to go to the jury without also letting the  
23 actual video that my client was charged with taking go to the  
24 jury, and the Court declined that and did let the still  
25 photographs go to the jury and the video was not allowed to go

## Motions

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1 into the jury room even though they did see it later.

2 THE COURT: No, sir, the video was allowed to go in  
3 the jury room, except that not having the facility to show it,  
4 we told the jury that it was in evidence and if they wanted to  
5 see it they could come out here and listen to it. That video  
6 was before the jury for their consideration because they sent  
7 word to me that they wanted to see it again and I showed it to  
8 them in your presence.

9 MR. GOUDE: That's correct, Your Honor.

10 THE COURT: So, don't tell me it wasn't before them.  
11 It was.

12 MR. GOUDE: I was just saying it did not go back to  
13 the jury room with them, but anyway, Judge, those are our  
14 motions for a new trial.

15 THE COURT: All right, sir. Denied, but I'll be glad  
16 - for the record let me hear from you, ma'am. Ms. Candice?

17 MS. LIVELY: Your Honor, I just believe that this jury  
18 by reviewing the video on their own as well as through the  
19 trial of the case as well as all the evidence they obviously  
20 considered everything, took everybody's testimony into  
21 consideration, thought about it for a couple of hours in  
22 coming back with their verdict. I completely stand behind  
23 their verdict and believe that it's fair and I have, I agree  
24 with Your Honor's rulings on these issues and will not argue  
25 at all, and just ask at this time that we move forward with

## Motions

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1 sentencing. Thank you, Your Honor.

2 THE COURT: My view is, having seen it, and I had no  
3 view till I saw it, and still that's the jury's consideration,  
4 I don't believe there's a jury in South Carolina that could  
5 look at that video and do differently from what this jury did.  
6 It was simply and absolutely appalling, and the jury by their  
7 verdict concluded so, but it was the jury's verdict, not mine.  
8 All right.

9 MR. FOX: Your Honor.

10 THE COURT: Yes, sir?

11 MR. FOX: I need to put my motions on the record, also.

12 THE COURT: All right, sir.

13 MR. FOX: On behalf of Mr. Cardwell. Your Honor, I  
14 would simply on behalf of Michael Cardwell renew - make a  
15 request for a new trial. I would renew the objections that we  
16 were, we made during the trial and those were precisely the  
17 same ones that Mr. Goude just placed on the record. We would  
18 adopt each of those objections and Mr. Goude's arguments as  
19 part of our motion with the very small addition that with  
20 regard to the video that we attempted to introduce where Mr.  
21 Cardwell testified about touching his nipples and the fighting  
22 on TV and all that, that I would like there - I think it was  
23 part of my objection during the trial that we felt it was  
24 error for Your Honor, understanding your ruling, but not to  
25 even look at the video before - look at our proffer before

## Sentencing

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1 making your ruling. We believe that it was self-explanatory  
2 and would have in fact been relevant and supported our  
3 argument on that point, but for all of the reasons we've  
4 articulated ---

5 THE COURT: My statement, my statement will stand as  
6 my statement today in denying that, but you're protected on  
7 the record.

8 MR. FOX: Yes, sir. Thank you, Your Honor.

9 THE COURT: All right, sir. I need some sentencing  
10 sheets.

11 I have before me the indictment of unlawful conduct  
12 towards a child wherein the jury found the Defendant Michael  
13 Cardwell guilty involving the child Minor Child 1 and to this  
14 indictment it is the judgment and sentence of the Court that  
15 Michael Lee Cardwell be sentenced to a period of two years. I  
16 have before me indictment ending in 588 - 587 involving  
17 Michael Lee Cardwell upon the charge of unlawful conduct to a  
18 child, the victim in this indictment being Minor Child 2 be the  
19 sentence and judgment of the Court that this Defendant as to  
20 this indictment be sentenced to a period of two years  
21 concurrent with the previous indictment and you have that  
22 number, concurrent to 588. Okay, I'm dealing with an  
23 indictment ending in 560, which again is the State versus  
24 Michael Lee Cardwell involving the jury's finding of guilt as  
25 to sexual exploitation of a minor in the first degree. As is

Sentencing

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1 made and provided by the statute, it is the sentence and  
2 judgment of the Court that the Defendant Michael Cardwell be  
3 sentenced to a period of incarceration of three years  
4 consecutive to the indictment ending in 588, it be my purpose  
5 in that Michael Cardwell shall serve a total of five years.  
6 In addition to this sentence, which is mandatory, that section  
7 also provides that you, Michael Cardwell, will sign as a  
8 sexual offender and does it provide the other?

9 MS. LIVELY: It does, Your Honor, both unlawful conduct  
10 and sexual exploitation require central registry. There's a  
11 box on the sentence sheet for that.

12 THE COURT: Central registry.

13 MS. LIVELY: Yes, sir.

14 THE COURT: But the - this particular charge involves  
15 sexual registry?

16 MS. LIVELY: Yes, sir, lifetime sex offender registry  
17 on the exploitation.

18 THE COURT: Is, is that on the, on the - is there a  
19 box on the form for that?

20 MS. LIVELY: Not for that, Your Honor. It's, it's  
21 automatic in the statute. It's one of those sexually violent  
22 offenses.

23 THE COURT: But I, I want my - my sentence is going to  
24 also show it.

25 MS. LIVELY: Yes, sir. Thank you.

## Sentencing

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1 THE COURT: The next indictment still involves Michael  
2 Lee Cardwell where the jury found him guilty of sexual  
3 exploitation of a minor first degree ending in 561. It is the  
4 judgment and sentence of the Court that he be confined as  
5 provided by statute as to this charge for a period of three  
6 years. That is concurrent to 560 wherein I gave him three  
7 years. It's clear now that I've given him two years on the  
8 earlier charge and three on the other for a total of five  
9 years. The other charges are to run concurrent and he will  
10 register as a sexual offender and will - what is the  
11 definition of the other, other?

12 MS. LIVELY: It's the central registry for abuse  
13 through DSS, Your Honor.

14 THE COURT: And that's on, on the sentence sheet?

15 MS. LIVELY: Yes, sir.

16 THE COURT: All right, let's go through the other. I  
17 want to congratulate my law clerk in keeping me straight  
18 dealing with eight separate indictments.

19 I now have before me the four indictments involving Sarah  
20 Denise Cardwell and this indictment number is 586. The jury  
21 having found him or her guilty it is the judgment and sentence  
22 of this Court that she be confined upon this indictment for a  
23 period of two years.

24 I now have before me an indictment ending in 585, the  
25 State versus Sarah Cardwell, again involving the jury's

Sentencing

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1 finding of unlawful conduct to a child. It is the judgment  
2 and sentence of this Court that Ms. Cardwell be confined for a  
3 period of two years which is concurrent to the previous  
4 indictment 586. I'm now dealing with sexual exploitation 558,  
5 the State versus Ms. Cardwell where the jury found her guilty  
6 of sexual exploitation of a minor. It is the judgment of this  
7 Court that in accordance with such section, statute made and  
8 provided that she be confined for a period of three years  
9 consecutive to the previous indictment of two years, and she  
10 is required to register as a sexual offender. It's  
11 consecutive to the two years given on 586, all right, also  
12 attend the registry.

13 Now, I now have before me indictment 559 Sarah Cardwell  
14 sexual exploitation of a minor first degree. In accordance  
15 with such section made and provided I am going to sentence her  
16 to three years and that is concurrent to 558, which is the  
17 previous indictment for sexual exploitation. Again, it is my  
18 purpose as to each Defendant to serve two years on one charge  
19 and three years on the other for a total of five years. Any  
20 questions about that? What say the State?

21 MS. LIVELY: None, Your Honor.

22 THE COURT: What say the Defense?

23 MR. GOUDE: No questions, Your Honor.

24 MR. FOX: None, Your Honor.

25 THE COURT: All right, now, I'm fully aware and I want

## Sentencing

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1 the record to reflect that the statutes provide that as to th  
2 most serious charge it shall be consecutive to any other  
3 charge, and I have made it consecutive as the statute  
4 provides, permitting the other charge to run concurrent, but  
5 there is a consecutive sentence imposed so that the appellate  
6 court will understand what we're doing. All right, thank you.  
7 gentlemen.

8 MR. GOUDE: Thank you, Your Honor.

9 MR. FOX: Thank you, Your Honor.

10 THE COURT: The case was well and professionally tried  
11 by all concerned.

12 MR. GOUDE: Thank you, sir.

13 (Adjourned.)

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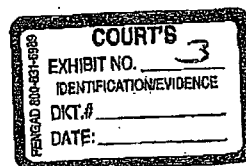
23

24

State of South Carolina

County of GEORGETOWN

SEARCH WARRANT



OFFICER: Inv. PHILLIP HANNA  
DATE: 2-9-2011

STATE OF SOUTH CAROLINA } AFFIDAVIT

COUNTY OF GEORGETOWN

Personally appeared before me, one Investigator PHILLIP HANNA

Who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

IMAGES DEPICTING MINORS ENGAGED IN SEXUAL ACTIVITY AND/OR IMAGES OF MINORS DEPICTED IN LEWD AND LASCIVIOUS MANNER. AS A RESULT OF THE EXECUTION OF THIS SEARCH WARRANT, A SEARCH FOR ANY AND ALL SAVED, ARCHIVED OR DELETED DATA INCLUDING BUT NOT LIMITED TO VIDEO, E-MAILS, LEDGERS, LISTS, RECORDS, DOCUMENTS OR PHOTOGRAPHS TAKEN FROM, DERIVED FROM OR CONTAINED IN THE HARD DRIVE COMPONENTS AND STORAGE MEDIA DESCRIBED IN THE ABOVE LISTED SYSTEM PERTAINING TO THIS INVESTIGATION, CHILD PORNOGRAPHY.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)  
TO BE SEARCHED

A PINK GATEWAY LAPTOP COMPUTER MODEL SA6 SERIAL NUMBER LXW220X003835138C92500. AS A RESULT OF THE EXECUTION OF THIS SEARCH WARRANT, A SEARCH FOR ANY AND ALL SAVED, ARCHIVED OR DELETED DATA INCLUDING BUT NOT LIMITED TO VIDEOS, E-MAILS, LEDGERS, LISTS, RECORDS, DOCUMENTS OR PHOTOGRAPHS TAKEN FROM, DERIVED FROM OR CONTAINED IN THE HARD DRIVE COMPONENTS AND STORAGE MEDIA DESCRIBED IN THE ABOVE LISTED SYSTEM PERTAINING TO THIS INVESTIGATION, CHILD PORNOGRAPHY. THE COMPUTER IS CURRENTLY IN THE POSSESSION OF THE EVIDENCE CUSTODIAN WITH THE GEORGETOWN COUNTY SHERIFF'S OFFICE, LOCATED AT 430 N. FRASER STREET, GEORGETOWN SC 29440. THE COMPUTER WAS SEIZED BY INV. PHILLIP HANNA, AN EMPLOYEE OF THE GEORGETOWN COUNTY SHERIFF'S OFFICE.

REASON FOR AFFIANT'S BELIEF THAT THE  
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

SEE ATTACHED AFFIDAVIT.

Sworn to and Subscribed before me

This 9 day of Feb, 2011

Signature of Judge

(L.S.)

Affiant

Address 430 N Fraser St  
Georgetown, SC  
843-546-5102

STATE OF SOUTH CAROLINA

## SEARCH WARRANT

COUNTY OF GEORGETOWN

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY  
OF GEORGETOWN

It is appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)  
To be searched

A PINK GATEWAY LAPTOP COMPUTER MODEL SA6 SERIAL NUMBER LXW220X003835138C92500. AS A RESULT OF THE EXECUTION OF THIS SEARCH WARRANT, A SEARCH FOR ANY AND ALL SAVED, ARCHIVED OR DELETED DATA INCLUDING BUT NOT LIMITED TO VIDEOS, E-MAILS, LEDGERS, LISTS, RECORDS, DOCUMENTS OR PHOTOGRAPHS TAKEN FROM, DERIVED FROM OR CONTAINED IN THE HARD DRIVE COMPONENTS AND STORAGE MEDIA DESCRIBED IN THE ABOVE LISTED SYSTEM PERTAINING TO THIS INVESTIGATION, CHILD PORNOGRAPHY. THE COMPUTER IS CURRENTLY IN THE POSSESSION OF THE EVIDENCE CUSTODIAN WITH THE GEORGETOWN COUNTY SHERIFF'S OFFICE, LOCATED AT 430 N. FRASER STREET, GEORGETOWN SC 29440. THE COMPUTER WAS SEIZED BY INV. PHILLIP HANNA, AN EMPLOYEE OF THE GEORGETOWN COUNTY SHERIFF'S OFFICE.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

## DESCRIPTION OF PROPERTY SOUGHT

IMAGES DEPICTING MINORS ENGAGED IN SEXUAL ACTIVITY AND/OR IMAGES OF MINORS DEPICTED IN LEWD AND LASCIVIOUS MANNER. AS A RESULT OF THE EXECUTION OF THIS SEARCH WARRANT, A SEARCH FOR ANY AND ALL SAVED, ARCHIVED OR DELETED DATA INCLUDING BUT NOT LIMITED TO VIDEO, E-MAILS, LEDGERS, LISTS, RECORDS, DOCUMENTS OR PHOTOGRAPHS TAKEN FROM, DERIVED FROM OR CONTAINED IN THE HARD DRIVE COMPONENTS AND STORAGE MEDIA DESCRIBED IN THE ABOVE LISTED SYSTEM PERTAINING TO THIS INVESTIGATION, CHILD PORNOGRAPHY.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

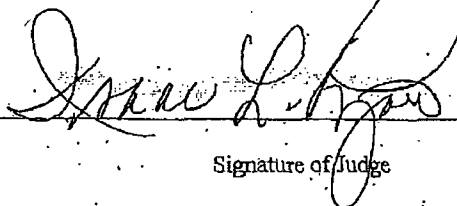
A written inventory of all property seized pursuant to this Search Warrant shall be made to

Within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Georgetown, S.C.

Feb 9 2011



(L.S.)

Signature of Judge

## RETURN

I received the attached Search Warrant Feb 9, 2011 and have executed it as follows:

On Feb 10, 2011 at 11:05 o'clock A M, I searched

(the person) described in the warrant and (the premises)

I left a copy of the warrant with Laptop Computer

Name of person searched or "at the place of search" with

Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Due to the intense nature and exhaustive amount of information that may be stored in the device and the necessary amount of time required to complete the analysis of this information, an amended Return copy of the Search Warrant will be forwarded to the issuing judge as soon as possible with regard to the results of the analysis.

This inventory was made in the presence of

AND

Jerry Roberts (Charleston PD)  
Phillip Hanna

I swear that this inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this

Day of \_\_\_\_\_, 20\_\_\_\_

Phil Hanna

(Signature of Officer Executing Warrant)

(L. S.)

Signature of Judge

## AFFIDAVIT

On 12/10/2010 I met with Chief Ron Douglas at the Johnsonville PD in reference to an illegal video found on a laptop computer. Upon my arrival Chief Douglas informed me that he had seen a home made video on a laptop computer that was being worked on at David Marsh's shop Wed. 12/01/2010. Chief Douglas stated that the home made video showed illegal nude images of a young female child and a young male child. Chief Douglas informed me that he believes the incident occurred in Georgetown County and that's why he requested for our assistance. I advised Chief Douglas that I would need to speak with the person who had the computer and examine the images to confirm they were illegal. Chief Douglas advised he would have Mr. Marsh come to the PD to speak with me about this incident.

David Marsh met with Chief Douglas and I at the PD. Mr. Marsh also delivered to me the computer in which the illegal video was stored on. Mr. Marsh stated that back during the beginning on November 2010 he met with Sarah Pope at her mother's residence in Georgetown County to pick up her laptop computer so that he could fix it. According to Mr. Marsh he had been seeing Pope since around October 2010 and knew she had children and thought that she had stopped seeing her boyfriend Michael Cardwell. Mr. Marsh stated that Pope's computer had been at his shop since NOV. until Dec. 1, 2010 when he began working on it. Mr. Marsh stated that Chief Douglas just happen to be there because he (Marsh) does a lot of work for law enforcement as well. Mr. MARSH stated after he got Pope's laptop powered up he found in a stored file section several pictures of Popes children. Mr. Marsh also stated he found a video that showed Pope's son C. Y. and daughter A. Y. dancing around nude. According to Mr. Marsh the video was being recorded by Sarah Pope because he recognized her voice and Michael Cardwell was also in the video dancing around nude with the children. Mr. Marsh informed me that he had made a copy of the video for us because of the computer not working properly. This video was also turned over to me for evidence. While still at the Johnsonville PD I viewed the copy of the video. The video clearly showed a young male and female child dancing around nude along with a w/ri adult dancing around nude with them. Mr. Marsh stated he recognized the male adult as definitely being Michael Cardwell and Marsh claims the female voice heard during the video coming from the person doing the recording is Sarah Pope. Mr. Marsh stated he couldn't tell me where the video was recorded at but believes it could have been at the residence where Sarah lived located on \_\_\_\_\_ Rd in Georgetown County. The recovered laptop was a pink Gateway model SA6 serial #LXW220X003835138C92500. The copy of the video was provided to me on a FUJIFILM CD-R. I feel that there could possibly be more nude images of these children stored on this computer.

*Phillip Hanna 2/2/2011*  
Investigator Phillip Hanna

Georgetown county sheriff's office

## AMENDED SEARCH WARRANT RETURN

DATE: 02/22/2011

TIME: 10:50AM

FROM: CHARLESTON POLICE DEPARTMENT DIGITAL  
EVIDENCE UNIT

OFFICER: JERRY ROBERTS

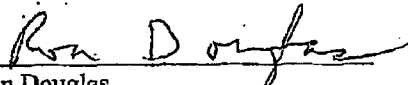
RECOVERED ITEM(S): A FORENSIC IMAGE OF ONE  
GATEWAY LAPTOP COMPUTER SERIAL NUMBER  
#LXW220X003835138C92500

#12101240

December 13, 2010

On 12-8-2010 at approximately 8:00pm I delivered some packages to Shaun Marsh at his office that were delivered to the police department by FedEx. While there, I noticed a photo on a computer screen that he was working on that appeared to be a male child with nothing on but an adult ladies' bra. I then asked Shaun about what I had seen and he stated he was backing up the hard drive on a laptop that he was working on. I then asked to see the file that had just been backed up and he searched until finding it and played it for me. I saw a male and female child dancing nude and recognized them as two children that I had seen with Shaun in the City Park recently as he was assisting with decorating a large Christmas Tree. Shaun had told me on that day that the children belonged to his girlfriend and they were staying with him for the day. Also dancing nude on the video was a white male in his forties that I did not know. When questioned, Shaun stated that the male was the father of another child with his friend, Sarah Pope, who owned the computer containing the images. Shaun further stated that Sarah, the children and the male in the video all live in Georgetown County.

Being very disturbed by what I had seen and knowing Shaun since he was a baby, I instructed him to secure the computer until I could contact someone with Georgetown Sheriff's Office to request assistance with this matter. The following day I contacted Georgetown Sheriff's Office and discussed the matter with Captain Owens who agreed to have an Investigator meet with Shaun and me on the following day (Friday, December 10<sup>th</sup>). I also instructed Shaun to make a copy of the video since the computer would sometimes not start up. At 3pm, Investigator Phil Hanna arrived and interviewed Shaun before viewing only a small portion of the video in question. At that point, he stated he had seen enough and gave Shaun a receipt for the computer which he took possession of. Investigator Hanna stated he would conduct an investigation and requested that I write a statement outlining my knowledge of this incident.

  
Ron Douglas  
Chief of Police  
City of Johnsonville  
(843) 386-3500

# 225 12/10/10

12/13/2010

On 12/08/2010 I, David LeShaun Marsh, was working on some computers in my office. Chief Ron came over to drop off some packages left at the Police Dept. for me. While I was storing packages in the garage, Ron called me back in to the office and said for me to look at one of the computers. It was a computer I was backing up because it had problems running and I was trying to save the files. Ron said he saw a file come across the screen that caught his attention. He asked me whose computer it was. It belongs to the girl I was trying to date, Sarah Pope. He asked if I would look at one of the last files backed-up, and we saw it was a video. Upon request of Ron, We watched the video. I saw Sarah's 2 oldest children, her current boyfriend Michael nude and I heard Sarah in the background directing actions in front of the camera. I know Michael from seeing him on Sarah's Facebook page holding their youngest daughter, R[REDACTED]. Ron asked me to secure and store it for him. I shut it down, and secured it in the cabinet as he asked. Then Ron called me on Friday(12/10/2010) to bring the computer and a copy of the video on DVD, to the Johnsonville Police Dept. I met Investigator Phillip Hanna from Georgetown Sheriff's Office at the Johnsonville PD. He then interviewed me, lastly he saw some of the video, and then requested to take the computer and video with him.

David LeShaun Marsh

David LeShaun Marsh Date 12/13/2010

## Georgetown County Sheriff's Department

## RECEIPT FOR PROPERTY

Date 12-10-2010Case No. 12101900Time 1545 HRSPhysical Evidence ☒Personal Property ☐Recovered Property ☐Found Property ☐Name: DAVID LESHAW MARSH Address: 212 E. Highway St. Jacksonville S.C.

| QUANTITY | NAME OF ARTICLE AND DESCRIPTION | SERIAL NO.         |
|----------|---------------------------------|--------------------|
| 1        | GATWAY PINK Hummer model SAC    | #LXW220X00303      |
|          | <del>DAVID LESHAW MARSH</del>   | <del>9192500</del> |
|          |                                 |                    |
|          |                                 |                    |
|          |                                 |                    |

Circumstance of release Recovered For EvidenceRelease to Phil HannaAddress 420 N. Fraser St. Georgetown S.C.Released by [Signature]

Rank

Approved by

Rank

All recovered property and/or personal property turned over to this department not picked up within sixty days, becomes the property of this department. This does not include items taken as evidence of a crime.

## RECEIVED THE ABOVE DESCRIBED PROPERTY

Signed [Signature]Phone 843-503-6528Date 12-10-2010

(TYPE OR PRINT ONLY)



**CHARLESTON POLICE DEPARTMENT**

## Digital Evidence Unit

1023 Wappoo Road, A-15, Charleston, SC 29407 Phone (843) 769-8240 Fax (843) 769-8242



## Case Summary Report

**TO (Agency Name and Address):**

Investigator Hanna  
Georgetown County Sheriff Office  
430 N. Fraser St  
Georgetown, SC 29442

DATE: 04-04-2011

DEU LAB NO.: 2011-012

AGENCY CASE NO: GCSO12101900

EXAMINED BY: J. Roberts

SUBMITTED BY: P. Hanna

**TYPE OF CASE:** Child Pornography

**DATE SUBMITTED: 02-10-2011**

|             |                      |
|-------------|----------------------|
| SUBJECT(S): | Michael Lee Cardwell |
|-------------|----------------------|

**TYPE OF SERVICE REQUESTED:** Media examination

**ITEMS PROCESSED:**

[illegible]

**ITEMS NOT PROCESSED:**

| Item Number | Item Identifier | Item Description (include system ID if removed from computer or digital evidence item) | Reason |
|-------------|-----------------|----------------------------------------------------------------------------------------|--------|
|             |                 |                                                                                        |        |
|             |                 |                                                                                        |        |
|             |                 |                                                                                        |        |
|             |                 |                                                                                        |        |

**DIGITAL FINAL REPORT PROVIDED?** Yes ☒ No ☐ (If No, explain in Summary Results)

**SUBMITTED MEDIA ARCHIVED?** Yes ☐ No ☒ (If No, explain in Summary Results)

Medium ☐ CD/DVD ☐ Hard Drive DEU/SN:

**COPIES TO:**

**THIS REPORT IS TO BE USED ONLY IN CONNECTION WITH AN OFFICIAL CRIMINAL INVESTIGATION.**

This report represents a true and accurate result of my analysis on the item(s) described.

Analyst Name

Analyst Signature



**Case Summary Report Continued**

DEU LAB NO.: 2011-012  
AGENCY CASE NO.: GCSO12101900

**RESULTS OF SERVICE REQUEST:**

**Acquisition Software Used:**  
Access Data Imager v3.0

**Date:**  
02/18/2010

**Results:**  
Ex files

**Analysis Software Used:**  
Access Data Forensic Toolkit v1.8.1.6

**Date(s) of Analysis:** 02-10-2011 to 4-1-2011

**Summary Results:**

On 02/10/2011 analysis began on DEU 2011-012.

Item number 1 was submitted to the DEU Lab for analysis. Item number 1 was acquired using a tableau forensic SATA Bridge IEBB write blocker DEU X110, preventing drive writes to the original drive.

The following results were noted:

Item 1:

2 files of interest

1949 images of interest

1 KFF file (file identified by FTK to be "know" child pornography)

71 mov files

31 other files of interest

1 video observed by PC tech

No archiving of item 1 as the customer did not provide media and was advised. Investigator Hanna was scheduled for case pickup.

Nothing follows

## Bookmark

---

3/31/2011

Report file time zone: America/New\_York

### Name: KFF file from AccessData

Comment:

File Count: 1

---

**File: 12 year old having hard sex reelkiddymov ddoggprn child kid porn fuck kiddie.mpeg**

Extension: mpeg

File Type: MPEG 2

Category: Multimedia

Created: 3/18/2009 7:34:31 PM

Modified: 3/18/2009 7:36:20 PM

Accessed: 3/18/2009 7:34:31 PM

Logical Size: 5,902,150

Physical Size: 5,902,336

Recycled:

Carved:

Indexed: Name only (disregardable file type)

MD5: ECF33F48909CEC8788D07ACB01CBA3FF

Exported as: 259671.mpeg

---

AccessData Forensic Toolkit®

## Bookmark

---

3/31/2011

Report file time zone: America/New\_York

**Name: video observed by pc tech**

Comment:

File Count: 1

---

**File: sara's camera 025.MOV**

Extension: MOV

File Type: Apple Quicktime File

Category: Multimedia

Created: 1/18/2007 9:04:00 AM

Modified: 1/18/2007 9:04:00 AM

Accessed: 1/18/2007 9:04:00 AM

Logical Size: 89,455,862

Physical Size: 89,456,640

Recycled:

Carved:

Indexed: Full

MD5: 2EBBE0CBFCAB97EBE1E638150E8341E0

Exported as: 208125.MOV

---

AccessData Forensic Toolkit®

WITNESSES

Georgetown County Sheriff's Office

23

ARREST WARRANT NUMBER

2012GS2200587

CDR: 2481 §63-05-0070

DOI: 1/18/2007

ACTION OF GRAND JURY

TRUE BILL

*C. Anderson*

Foreperson of Grand Jury

Date: 8/22/12

VERDICT

*Guilty*

Foreperson of Petit Jury

Date:

10/31/2012

DOCKET NO. 2012GS2200587

The State of South Carolina

County of Georgetown

Candice Lively

11G00377

COURT OF GENERAL SESSIONS

AUGUST, 2012 TERM

THE STATE

vs.

MICHAEL LEE CARDWELL

RD.

GEORGETOWN, SC 29440

DOB:

SSN:

W / M

ATTORNEY: Fox, J. Eric

Indictment for

UNLAWFUL CONDUCT TOWARDS A  
CHILD

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

## INDICTMENT

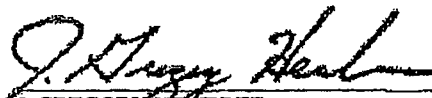
At a Court of General Sessions, convened on August 22, 2012, the Grand Jurors of Georgetown County present upon their oath:

UNLAWFUL CONDUCT TOWARDS A CHILD

CDR: 2481 63-5-0070

That Michael Lee Cardwell did in Georgetown County between January 2007 and November <sup>2010</sup>~~2012~~, while having charge or custody, or being the parent or guardian, or being responsible for the welfare of the minor child, <sup>Minor Child</sup> Y., date of birth [REDACTED], place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety; or did unlawfully or maliciously cause or cause to be done bodily harm to the child so that the life or health of the child was endangered or was likely to be endangered; or did willfully abandon the child, in violation of Section 63-5-70, 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.

  
J. GREGORY HEMBREE  
FIFTEENTH CIRCUIT SOLICITOR

COUNTY OF Georgetown  
STATE VS.Michael Lee Cardwell

AKA:

Race: WHITE Sex: M Age: 42DOB: SS#:Address: PO Box 2042City, State, Zip: Georgetown, SC 29442DL#: 008702236 SID#:\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was  
TO: Children / Legal custodian, unlawful neglect of child or helpless personINDICTMENT/CASE#: 2012GS2200587A/W#: 2012GS2200587Date of Offense: 1/1/2007S.C. Code §: 63-05-0070CDR Code #: 2481

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Prosecution to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lively, Candice

SCB12123

SC Bar#

Defendant

Attorney for Defendant

15123

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 2 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment

of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012GS2200588☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/en \$

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ 20.00 beginning 1 mo after release

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

204110/31/12

WITNESSES

284 Georgetown County Sheriff's Office

DOCKET NO. 2012GS2200588

The State of South Carolina

County of Georgetown

Candice Lively

11G00377

COURT OF GENERAL SESSIONS

AUGUST, 2012 TERM

ARREST WARRANT NUMBER

2012GS2200588

CDR: 2481 §63-05-0070

DOI: 1/18/2007

THE STATE

vs.

MICHAEL LEE CARDWELL

RD.

GEORGETOWN, SC 29440

DOB:

SSN:

W / M

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Fox, J. Eric

Indictment for

UNLAWFUL CONDUCT TOWARDS A  
CHILD

VERDICT.

Guilty

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

10/31/2012

Janille Fowler Feeney

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

## INDICTMENT

At a Court of General Sessions, convened on August 22, 2012, the Grand Jurors of Georgetown County present upon their oath:

UNLAWFUL CONDUCT TOWARDS A CHILD

CDR: 2481 63-5-0070

That Michael Lee Cardwell did in Georgetown County between January 2007 and November 2010, while having charge or custody, or being the parent or guardian, or being responsible for the welfare of the minor child, Minor Child 1 Y., date of birth [REDACTED] place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety; or did unlawfully or maliciously cause or cause to be done bodily harm to the child so that the life or health of the child was endangered or was likely to be endangered; or did willfully abandon the child, in violation of Section 63-5-70, 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.

  
J. GREGORY HEMBREE  
FIFTEENTH CIRCUIT SOLICITOR

## STATE OF SOUTH CAROLINA

## IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown  
STATE VS.

Michael Lee Cardwell

AKA:

Race: WHITE Sex: M Age: 42

DOB: SS#:

Address: PO Box 2042

City, State, Zip: Georgetown, SC 29442

DL#: 008702236 SID#:

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was  
TO: Children / Legal custodian, unlawful neglect of child or helpless person

INDICTMENT/CASE#: 2012GS2200588

A/W#: 2012GS2200588

Date of Offense: 1/1/2007

S.C. Code § : 63-05-0070

CDR Code #: 2481

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 63-05-0070

of the S.C. Code of Laws, bearing CDR Code # 2481

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lively Candice SCB12123 Defendant J. S. Fox 15123  
SC Bar# SC Bar# Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 2 days/months/years or ☐ under the Youthful Offender Act not to exceed years  
and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment  
of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine:

|                                        |         |           |
|----------------------------------------|---------|-----------|
| § 14-1-206 (Assessments 107.5 %)       | \$      | \$        |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$        |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$        |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$        |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$        |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25.00  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$        |
| § 50-21-114 (BUI Breath Test Fee)      | \$50    | \$        |
| § 56-5-2942(I) (Vehicle Assessment)    | \$40/ea | \$        |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$ 5.00   |
| 3% to County (if paid in installments) | \$      | \$ 3.90   |
| TOTAL                                  | \$      | \$ 133.90 |

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ 20.00 beginning 1 mo after release

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2041

10/31/12

WITNESSES

Georgetown County Sheriff's Office

23

ARREST WARRANT NUMBER

2012GS2200561

CDR: 0379 §16-15-0395(D)

DOI: 1/18/2007

ACTION OF GRAND JURY

TRUE BILL

*C. Anderson*  
Foreperson of Grand Jury

Date: 8/22/12

VERDICT

*Guilty*

Foreperson of Petit Jury

Date: 10/31/2012

DOCKET NO. 2012GS2200561

The State of South Carolina

County of Georgetown

Candice Lively

11G00377

COURT OF GENERAL SESSIONS

AUGUST, 2012 TERM

THE STATE

VS.

MICHAEL LEE CARDWELL

1096 INDIAN HUT RD.

GEORGETOWN, SC 29440

DOB: 1/19

SSN: - -

W / M

ATTORNEY: Fox, J. Eric

Indictment for

SEXUAL EXPLOITATION OF A MINOR,  
FIRST DEGREE

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

## INDICTMENT

At a Court of General Sessions, convened on August 22, 2012, the Grand Jurors of Georgetown County present upon their oath:

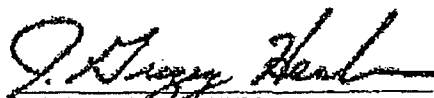
SEXUAL EXPLOITATION OF A MINOR, FIRST DEGREE

CDR: 0379 16-15-0395(D)

That Michael Lee Cardwell did in Georgetown County during the period of January 2007, through November 2010, use, employ, induce, coerce, encourage, facilitate or permit <sup>Minor Child:</sup> Y., date of birth [REDACTED], a minor under the age of ten (10) years, to engage in sexual activity for a live performance, in violation of Section 16-15-0395(D), S. C. Code of Laws, 1976, as amended.

↓  
or for the purpose of producing material containing a visual representation of sexual activity

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

  
J. GREGORY HEMBREE  
FIFTEENTH CIRCUIT SOLICITOR

COUNTY OF Georgetown  
STATE VS.Michael Lee Cardwell

AKA:

Race: WHITE Sex: M Age: 42DOB: -19 SS#: Address: PO Box 2042City, State, Zip: Georgetown, SC 29442DL#: 008702236 SID#: \*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was  
TO: Sex / Sexual exploitation of a minor, First degreeINDICTMENT/CASE#: 2012GS2200561A/W#: 2012GS2200561Date of Offense: 1/1/2007S.C. Code § : 16-15-0395(D)CDR Code #: 0379

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-15-0395(D) of the S.C. Code of Laws, bearing CDR Code # 0379☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lively, SandiceSCB12123  
SC Bar#DefendantAttorney for Defendant15123  
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed  years  
and/or to pay a fine of \$ ; provided that upon the service of  days/months/years and/or payment  
of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012GS2200560  
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.  
☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$  plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: 

\*Fine:

|                                        |         |                  |
|----------------------------------------|---------|------------------|
| § 14-1-206 (Assessments 107.5 %)       | \$      |                  |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ <u>100.00</u> |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$ <u></u>       |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$ <u></u>       |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$ <u></u>       |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$ <u></u>       |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ <u>25.00</u>  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$ <u></u>       |
| § 50-21-114(BUI Breath Test Fee)       | \$50    | \$ <u></u>       |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$ <u></u>       |
| Proviso 90.5 (SCCA Surcharge)          | \$5     | \$ <u>5.00</u>   |
| 3% to County (if paid in installments) | \$      | \$ <u>3.90</u>   |
| TOTAL                                  | \$      | \$ <u>133.90</u> |

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ 20.00 beginning 1mo after release  
\$  paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.Clerk of Court/ Deputy Clerk Jenice M. SmithCourt Reporter: Patricia J. Hurley

SCCA/217 (03/2011)

Presiding Judge [Signature]Judge Code: 6601Sentence Date: 10/31/12

WITNESSES

Georgetown County Sheriff's Office

24

ARREST WARRANT NUMBER

2012GS2200560

CDR: 0379 §16-15-0395(D)

DOI: 1/18/2007

ACTION OF GRAND JURY

TRUE BILL

*C. Anderson*  
Foreperson of Grand Jury

Date: 8/22/12

VERDICT

*Guilty*

Foreperson of Petit Jury

Date: *Michelle Fowler Feeney*  
10/31/2012

DOCKET NO. 2012GS2200560

The State of South Carolina

County of Georgetown

Candice Lively

11G00377

COURT OF GENERAL SESSIONS

AUGUST, 2012 TERM

THE STATE

VS.

MICHAEL LEE CARDWELL

RD.

GEORGETOWN, SC 29440

DOB: 1/19

SSN: -

W / M

ATTORNEY: Fox, J. Eric

Indictment for

SEXUAL EXPLOITATION OF A MINOR,  
FIRST DEGREE

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

## INDICTMENT

At a Court of General Sessions, convened on August 22, 2012, the Grand Jurors of Georgetown County present upon their oath:

SEXUAL EXPLOITATION OF A MINOR, FIRST DEGREE

CDR: 0379 16-15-0395(D)

That Michael Lee Cardwell did in Georgetown County during the period of January 2007 through November 2010, use, employ, induce, coerce, encourage, facilitate or permit Minor Child 1 Y., date of birth [REDACTED] a minor under the age of ten (10) years, to engage in sexual activity for a live performance, in violation of Section 16-15-0395(D), S. C. Code of Laws, 1976, as amended.

↓  
or for the purpose of producing  
material containing a visual  
representation of sexual activity

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

  
J. GREGORY HEMBREE  
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown  
STATE VS.Michael Lee Cardwell

AKA:

Race: WHITE Sex: M Age: 42DOB: SS#:Address: PO Box 2042City, State, Zip: Georgetown, SC 29442DL#: 008702236 SID#: \*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Sexual exploitation of a minor, First degree

INDICTMENT/CASE#: 2012GS2200560A/W#: 2012GS2200560Date of Offense: 1/1/2007S.C. Code §: 16-15-0395(D)CDR Code #: 0379

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSIn violation of § 16-15-0395(D) of the S.C. Code of Laws, bearing CDR Code # 0379☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45  
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Lively, CandiceSCB12123SC Bar#DefendantAttorney for Defendant15123SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed  yearsand/or to pay a fine of \$ ; provided that upon the service of  days/months/years and/or paymentof \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for 

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2012GS2200588☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$  plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: 

\*Fine:

|                                        |         |                  |
|----------------------------------------|---------|------------------|
| § 14-1-206 (Assessments 107.5 %)       | \$      | \$               |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ <u>100.00</u> |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$               |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$               |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$               |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$               |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ <u>25.00</u>  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$               |
| § 50-21-114 (BUI Breath Test Fee)      | \$50    | \$               |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$               |
| Proviso 90.5 (SCCA Surcharge)          | \$5     | \$ <u>5.00</u>   |
| 3% to County (if paid in installments) |         | \$ <u>390</u>    |
| TOTAL                                  |         | \$ <u>133.90</u> |

Clerk of Court/ Deputy Clerk

Court Reporter: Grace L. Hurley

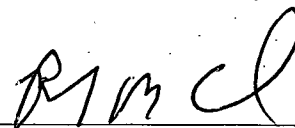
SCCA/217 (03/2011)

Presiding Judge [Signature]Judge Code: 2041Sentence Date: 10/31/12

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that his Record on Appeal complies to the best of my ability with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

march 26<sup>th</sup>, 2014



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**RECEIVED**

MAR 26 2014

**SC Court of Appeals**