

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Marion County

Honorable Michael G. Nettles, Circuit Court Judge

DANIEL OWENS, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001826

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

SAMUEL KEY
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

RECEIVED
MAY 28 2019
S.C. SUPREME COURT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED AUGUST 12-14, 2013	1
APPLICATION FOR POST-CONVICTION RELIEF	399
RETURN AND MOTION FOR A MORE DEFINITE STATEMENT	409
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED NOVEMBER 15, 2017	414
ORDER OF DISMISSAL	467
INDICTMENT	475
SENTENCE SHEETS	477

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	CASE NO. 2010-GS-33-00050

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	

-vs-

TRANSCRIPT OF RECORD

DANIEL OWENS, JR.,	)	
	)	
Defendant.	)	

August 12-14, 2013
Florence, South Carolina

B E F O R E:

THE HONORABLE STEVEN H. JOHN, Judge; and a jury

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

FITZLEE MCEACHIN, Assistant Solicitor
Attorney for the Plaintiff

THURMOND BROOKER, Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

<u>I N D E X</u>	
WITNESS/DESCRIPTION	PAGE NUMBER
Jury Voir Dire.....	7
Jury Seated.....	24
Batson Motion.....	35
Pre-Trial Motions.....	52
Jury Sworn.....	69
Opening Statements	
Mr. McEachin.....	74
Mr. Brooker.....	78
Minor 1	
Direct Examination by Mr. McEachin.....	86
Cross Examination by Mr. Brooker.....	98
Redirect Examination by Mr. McEachin.....	123
Minor 2	
Direct Examination by Mr. McEachin.....	132
Cross Examination by Mr. Brooker.....	145
Redirect Examination by Mr. McEachin.....	171
J.A.G.	
Direct Examination by Mr. McEachin.....	176
Cross Examination by Mr. Brooker.....	185
Redirect Examination by Mr. McEachin.....	190
Danna Collins	
Direct Examination by Mr. McEachin.....	191
(CONTINUED ON THE NEXT PAGE)	

	WITNESS/DESCRIPTION	PAGE NUMBER
1	Investigator Charlie Watson	
2		
3	Direct Examination by Mr. McEachin.....	197
4	Cross Examination by Mr. Brooker.....	200
5	Redirect Examination by Mr. McEachin.....	220
6	Recross Examination by Mr. Brooker.....	223
7	State Rests.....	224
8	Motion for Directed Verdict.....	226
9	Deputy John Israel	
10	Direct Examination by Mr. Brooker.....	228
11	Margaret Grover	
12	Direct Examination by Mr. Brooker.....	237
13	Cross Examination by Mr. McEachin.....	243
14	Dr. Der Sun "Donald" Wu - by deposition	
15	Direct Examination by Mr. Brooker.....	249
16	Cross Examination by Mr. McEachin.....	272
17	Redirect Examination by Mr. Brooker.....	275
18	Kathy Saunders	
19	Direct Examination by Mr. Brooker.....	282
20	Examination re: Qualifications by Mr. McEachin.....	284
21	Continued Direct Examination by Mr. Brooker.....	285
22	Cross Examination by Mr. McEachin.....	299
23	Sandra Michelle Plumber	
24	Direct Examination by Mr. Brooker.....	311
25	(CONTINUED ON THE NEXT PAGE)	

1	WITNESS/DESCRIPTION	PAGE NUMBER
2	Questioning of Defendant re: Testifying.....	313
3	Defense Rests.....	317
4	Motion for Directed Verdict.....	317
5	Charge Conference.....	322
6	Defense Rests Before Jury.....	329
7	Closing Arguments	
8	Mr. Brooker.....	330
9	Mr. McEachin.....	363
10	Charge on the Law by the Court.....	370
11	Verdict of the Jury.....	384
12	Polling of the Jury.....	385
13	Motions.....	389
14	Sentence of the Court.....	396
15	Court Reporter Certification.....	398
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	D-1	Medical Records - 5 pages		257
4	D-2	Medical Records - 2 pages		267
5	C-1	Jury Questionnaires		68
6	C-2	Deposition of Dr. Wu		276
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 AUGUST 12 , 2013

2 (WHEREAS this matter was scheduled for a trial, the
3 defendant appeared along with his counsel of record. The
4 trial begins at 11:16 a.m. following general jury
5 qualification.)

6 THE COURT: All right. Ladies and gentlemen, what we're
7 going to do now is we are going to go over the questions that
8 are more particularized to the case at hand. Now, in this
9 particular matter, the State of South Carolina has charged the
10 defendant in this case, the defendant being Daniel Owens, Jr.,
11 with two crimes. One of those crimes is criminal sexual
12 conduct with a minor in the first degree and the second crime
13 is committing or attempting a lewd act on a minor.

14 Now, regarding this, what I'm going to do is read you
15 some general information now that comes from the indictment.
16 First, the indictment is the charging document, the document
17 which brings the matter to court. It is not evidence. It
18 cannot be considered by anybody as evidence in the case. The
19 only reason that I would read anything to you from the
20 charging document is to see if you happen to know anything
21 about this particular case or there is some matter that you
22 need to bring to the Court's attention at this time and that's
23 the only purpose of reading to you the charging document, the
24 document that brings the matter to court.

25 The State of South Carolina alleges that Daniel Owens,

1 Jr., did in Marion County on or about July 2007 willfully and
2 unlawfully commit the crime of criminal sexual conduct with a
3 minor in the first degree by engaging in a sexual battery with
4 a minor who at that time was less than eleven years of age,
5 whose date of birth at the time was [REDACTED] 1997, in
6 violation of the Code of Laws of the State of South Carolina,
7 1976, as amended.

8 The second matter, committing or attempting a lewd act on
9 a minor. That Daniel Owens, Jr., being over fourteen years of
10 age, did in Marion County on or about June of 2004 willfully
11 and lewdly commit a lewd or lascivious act upon or with a
12 child less than sixteen years of age with the intent of
13 arousing, appealing to or gratifying the lust and passions or
14 sexual desires of the defendant or of the victim in violation
15 of the Code of Laws of the State of South Carolina, 1976, as
16 amended.

17 So the victims' names in this matter are -- that the
18 State alleges are Minor 1 and Minor 2 . Is there
19 any member of the jury panel that knows anything about this
20 particular case or has any information about the case? If
21 there's anything that you need to bring to the Court's
22 attention at this time regarding this matter that might impact
23 upon you being a fair and impartial juror in this particular
24 case, if so, please stand.

25 (Whereupon, one person stands.)

1 THE COURT: Yes, ma'am. What is your name, please?

2 THE POTENTIAL JUROR: My name is Wanda Lane.

3 THE COURT: Wanda Lane? All right, ma'am. Now, first

4 ---

5 THE POTENTIAL JUROR: Number 89.

6 THE COURT: I'm sorry, ma'am?

7 THE POTENTIAL JUROR: Number 89.

8 THE COURT: Number 89. All right. Very good. Now, I
9 will get to the written questions that we asked every juror to
10 fill out in just a minute, but this doesn't have anything to
11 do with those questions; right?

12 THE POTENTIAL JUROR: That's true.

13 THE COURT: All right. Very good. Could you come down
14 and talk to me with counsel? Y'all can come around. Thank
15 you, ma'am.

16 (Whereupon, a bench conference is held with counsel and
17 the potential juror off the record and out of the hearing
18 of the court reporter. Juror Number 89 is set aside for
19 this case.)

20 THE COURT: All right. Now, the State and the defense
21 have potential witnesses that they may call and what I'm going
22 to do is go over those potential or possible witnesses. Now,
23 just because I call out these names does not necessarily mean
24 that person is actually going to testify in this particular
25 matter, but the possibility and the potential is that they

1 could testify.

2 So the possible and potential witnesses in this case are:

3 Minor 1 ; Minor 2 ; J.A.G. ; Margaret, M-
4 A-R-G-R-E-T-T-E [sic], Grover; Danna Collins; Kathy Saunders,
5 S-A-U-N-D-E-R-S; John Israel, I-S-R-A-E-L; Charlie Watson; Dr.
6 Donald S. Wu, W-U; and Daniel Owens, Jr.

7 Is there any member of the jury panel that's related by
8 blood or marriage, close personal friends, acquaintances of
9 any of these particular witnesses that the Court has named?
10 If so, please stand at this time.

11 (Whereupon, no one stands.)

12 THE COURT: All right. Is there any member of the jury
13 panel that either you yourself or a member of your immediate
14 family has ever had any matters handled by the Twelfth Circuit
15 Solicitor's Office? That's Florence and Marion County; is
16 that right? Let's see. They've got an office in Florence and
17 Marion County. So is there any member of the jury panel that
18 you yourself or a member of your immediate family has ever had
19 any matters handled by the Twelfth Circuit Solicitor's Office
20 in Florence or Marion County? If so, please stand.

21 (Whereupon, no one stands.)

22 THE COURT: All right. Is there any member of the jury
23 panel that's ever had any matters handled by the Marion County
24 Public Defender's Office? If so, please stand.

25 (Whereupon, no one stands.)

1 THE COURT: Is there any member of the jury panel that's
2 related by blood or marriage, close personal friends,
3 acquaintances of anybody employed at the Twelfth Circuit
4 Solicitor's Office either in Florence or Marion County? If
5 so, please stand.

6 (Whereupon, no one stands.)

7 THE COURT: Is there any member of the jury panel that's
8 related by blood or marriage, close personal friends,
9 acquaintances of anybody employed at the Marion County Public
10 Defender's Office? If so, please stand.

11 (Whereupon, no one stands.)

12 THE COURT: All right. Gentlemen, on the solicitor's
13 side and then on the -- for the defendant, if y'all would just
14 stand, identify yourselves to the jury at this time, please.

15 MR. MCEACHIN: Thank you, Your Honor. Ladies and
16 gentlemen, my name is Fitzlee McEachin. I'll be representing
17 the State of South Carolina and the County of Marion in this
18 case. I work for Solicitor Ed Clements, who is seated here
19 beside me. You also may see some other members of our office:
20 Deputy Solicitor John Jepertinger and Assistant Solicitors
21 Todd -- excuse me -- Todd Tucker and Matt Ozment. In
22 addition, we have Vicky Floyd, who is our victim's advocate
23 seated here with us as well.

24 THE COURT: Thank you. Yes, sir, as to the defense?

25 MR. BROOKER: Thank you, Your Honor. Ladies and

1 gentlemen, my name is Thurmond Brooker. I am a sole
2 practicing attorney. My office is located in Florence, South
3 Carolina. I represent Daniel Owens, Jr.

4 THE COURT: Thank you. Is there any member of the jury
5 panel that's related by blood or marriage, close personal
6 friends, acquaintances of these gentlemen that have identified
7 themselves to you? And in regards to Mr. Brooker, is there
8 any member of the jury panel that's been a client of his
9 either currently or in the past? If any of that applies to
10 you, please stand.

11 (Whereupon, no one stands.)

12 THE COURT: All right. Does any member -- and again, I'm
13 not referring to the -- the questionnaires. If any of you
14 answered yes to any of those questions, I will go over those
15 individually with the juror at that point in time, but in
16 general, is there any member of the jury panel that you
17 believe you have any kind of personal, political, religious,
18 philosophical belief that you believe would prevent you from
19 being a fair and impartial juror? If so, please stand.

20 (Whereupon, no one stands.)

21 THE COURT: All right. Is there any member of the jury
22 panel that you yourself were a former law enforcement officer
23 or you've got a current family member or a family member who
24 was in the past in law enforcement or is now in law
25 enforcement? So as far as the juror themselves, were you in

1 law enforcement in the past and do you have a family member
2 who is now in law enforcement or in the past was in law
3 enforcement? If any of that applies to you, please stand.

4 (Whereupon, several people stand.)

5 THE COURT: Okay. Yes, ma'am, your name and juror
6 number, please?

7 THE POTENTIAL JUROR: Judy James, 77.

8 THE COURT: All right. And who might that be, please,
9 ma'am?

10 THE POTENTIAL JUROR: My ex-daughter-in-law's brother was
11 on the police force.

12 THE COURT: And where at, please?

13 THE POTENTIAL JUROR: In Marion.

14 THE COURT: On the -- was that the city or the Sheriff's
15 Department?

16 THE POTENTIAL JUROR: The city.

17 THE COURT: In the city. All right. Can you give the
18 State of South Carolina and to the defendant a fair and
19 impartial trial? Can you be a fair and impartial juror in
20 this case?

21 THE POTENTIAL JUROR: Yes, I can.

22 THE COURT: All right. Thank you very much. Yes, sir?

23 THE POTENTIAL JUROR: My uncle is a ---

24 THE COURT: Well, could you -- first -- I'm sorry. I
25 need your name and juror number first.

1 THE POTENTIAL JUROR: Matthew Harrelson.

2 THE COURT: Okay.

3 THE POTENTIAL JUROR: I don't remember the juror number.

4 THE COURT: That's all right, but you -- all right, sir.

5 THE POTENTIAL JUROR: My uncle is Keith Mark Lewis of
6 Nichols. He was a Marion County Sheriff's deputy.

7 THE COURT: All right.

8 THE POTENTIAL JUROR: And that's it.

9 THE COURT: Okay. Now, can you give the State of South
10 Carolina and to the defendant a fair and impartial trial? Can
11 you be a fair and impartial juror in this case? That -- I
12 have -- don't explain. Just tell me yes or no.

13 THE POTENTIAL JUROR: No.

14 THE COURT: All right, sir. Come up here and talk to me.
15 (Whereupon, a bench conference is held with the potential
16 juror and counsel off the record and out of the hearing
17 of the court reporter. Juror Number 63 is set aside for
18 this case.)

19 THE COURT: All right. Yes, sir? Your name and juror
20 number, please, sir?

21 THE POTENTIAL JUROR: Dustin Suggs, 155.

22 THE COURT: All right, sir, and who are you related to or
23 ---

24 THE POTENTIAL JUROR: My brother is a highway patrolman
25 in Horry County.

1 THE COURT: All right, sir. He's on the Horry County
2 Police Department?

3 THE POTENTIAL JUROR: No, the highway patrol.

4 THE COURT: The highway patrol. Okay. He's assigned in
5 Horry County. All right. Can you give to the State of South
6 Carolina and to the defendant a fair and impartial trial? Can
7 you be a fair and impartial juror in this case?

8 THE POTENTIAL JUROR: Yes, sir.

9 THE COURT: All right. Thank you very much. Yes, ma'am?
10 What's your name, please, ma'am?

11 THE POTENTIAL JUROR: Lynn McNeil.

12 THE COURT: All right, ma'am. And who -- who are you
13 related to?

14 THE POTENTIAL JUROR: My ex-husband is on the Sheriff's
15 Department of Marion County.

16 THE COURT: In Marion County? All right. If you are
17 selected on the case, can you give to the State of South
18 Carolina and to the defendant a fair and impartial trial? Can
19 you be a fair and impartial juror in this case?

20 THE POTENTIAL JUROR: Yes, sir.

21 THE COURT: Thank you, ma'am. Yes, ma'am?

22 THE POTENTIAL JUROR: My name is Hallie Stagers and my
23 husband was on patrol at Mullins Police Department.

24 THE COURT: All right. Very good. Can you give to the
25 State of South Carolina and to the defendant a fair and

1 impartial trial? Can you be a fair and impartial juror in
2 this case?

3 THE POTENTIAL JUROR: Yes.

4 THE COURT: Thank you, ma'am. Yes, sir?

5 MR. BROOKER: Your Honor, may I get her name again?

6 THE COURT: Yes. Ma'am, could you tell us your name
7 again?

8 THE POTENTIAL JUROR: My name is Hallie Staggers.

9 MR. BROOKER: Staggers? Thank you.

10 THE CLERK: Number 151, Judge.

11 THE COURT: Thank you, ma'am. Yes, sir?

12 THE POTENTIAL JUROR: Mike Richardson. I don't know my
13 juror number.

14 THE COURT: All right, sir.

15 THE POTENTIAL JUROR: I'm a former federal police officer
16 with the Central Intelligence Agency.

17 THE COURT: All right, sir. Can you give to the State of
18 South Carolina and to the defendant a fair and impartial
19 trial? Can you be a fair and impartial juror in this case?

20 THE POTENTIAL JUROR: Yes, sir.

21 THE COURT: Thank you very much. Yes, ma'am?

22 THE POTENTIAL JUROR: My name is Sandra Byrd. I'm Juror
23 Number 18.

24 THE COURT: Yes, ma'am?

25 THE POTENTIAL JUROR: My ex-brother-in-law, Larry

1 Johnson, is on the -- is a highway patrolman in Columbia.

2 THE COURT: All right. Very good. Can you give to the
3 State of South Carolina and to the defendant a fair and
4 impartial trial? Can you be a fair and impartial juror in
5 this case?

6 THE POTENTIAL JUROR: Yes, sir.

7 THE COURT: Thank you very much. All right. All right.
8 The next question is -- is -- are -- as to the potential
9 jurors in this case, are you or a member of your immediate
10 family a member of any kind of victims' rights or law
11 enforcement support organization? Let me give you a couple of
12 examples. Now, this is not going to be an exhaustive list of
13 any kind, but I'm just trying to give you some examples of
14 what I'm talking about. Citizens Against Violent Crime,
15 Mothers Against Drunk Driving, the South Carolina Law
16 Enforcement Officers Association, or the South Carolina
17 Sheriff's Association. Just some kind of victims' rights or
18 law enforcement support organization. Are you a -- you
19 yourself a member of or do you have a member of your immediate
20 family that's a member of any of that type of organization?
21 If so, please stand.

22 (Whereupon, no one stands.)

23 THE COURT: All right. Now, the next question I'm going
24 to ask you is whether you yourself or a member of your
25 immediate family has ever been the victim of a crime? Now, I

1 am not going to ask you what occurred. I do not want you to
2 volunteer any information to me about what occurred. The
3 question is going to be very straightforward. Was it yourself
4 or a family member? And then based upon that answer, I'll ask
5 a general qualification question. So is there any member of
6 the jury panel, either you yourself or a member of your
7 immediate family, has ever been the victim of a crime? If so,
8 please stand.

9 (Whereupon, several people stand.)

10 THE COURT: All right. Yes, ma'am? Your name and juror
11 number, please, ma'am?

12 THE POTENTIAL JUROR: 104, Pearlie Mae McGee.

13 THE COURT: All right, ma'am, and was it yourself or a
14 family member?

15 THE POTENTIAL JUROR: Family member.

16 THE COURT: Can you give to the State of South Carolina
17 and to the defendant a fair and impartial trial? Can you be a
18 fair and impartial juror in this case?

19 THE POTENTIAL JUROR: Yes.

20 THE COURT: Thank you very much. All right. Yes, ma'am?

21 THE POTENTIAL JUROR: Number 89, Wanda Lane.

22 THE COURT: Did we set her aside?

23 THE CLERK: Yes, we did.

24 THE COURT: I set you aside for this case. Thank you,
25 ma'am, though. I appreciate it. All right. Yes, sir?

1 THE POTENTIAL JUROR: Traywick White. I'm not sure about
2 my jury number.

3 THE COURT: All right.

4 THE POTENTIAL JUROR: I have two cousins that were
5 victims of ---

6 THE COURT: All right. Okay. All right. Just don't
7 tell me anything. I don't want to hear anything about it.
8 All right. So it was family members; correct?

9 THE POTENTIAL JUROR: Yes, sir.

10 THE COURT: All right. Can you give to the State of
11 South Carolina and to the defendant a fair and impartial
12 trial? Can you be a fair and impartial juror in this case?

13 THE POTENTIAL JUROR: I doubt that very seriously.

14 THE COURT: All right, sir. If you'll come up and talk
15 to me for a second?

16 THE CLERK: Number 170.

17 (Whereupon, a bench conference is held with the potential
18 juror and counsel off the record and out of the hearing
19 of the court reporter. Juror Number 170 is set aside for
20 this case.)

21 THE COURT: All right. Oh, I'm sorry. Yes, sir? I'm --
22 I didn't notice you standing there. I'm sorry. Yes, sir?
23 Your name and juror number, please?

24 THE POTENTIAL JUROR: Douglas Perry, 124.

25 THE COURT: All right, sir, and was it yourself or a

1 family member?

2 THE POTENTIAL JUROR: Myself.

3 THE COURT: All right, sir. Can you give to the State of
4 South Carolina and to the defendant a fair and impartial
5 trial? Can you be a fair and impartial juror in this case?

6 THE POTENTIAL JUROR: Yes.

7 THE COURT: Thank you very much, sir. All right.
8 General catch-all question, ladies and gentlemen. Do you --
9 and again, discounting the written answers you gave to those
10 four questions. Okay? We're discounting that, but in
11 general, do you know of any reason, have any question in your
12 mind, any doubt in your mind that you cannot give to the State
13 of South Carolina and the defendant a fair and impartial
14 trial? That is for any reason whatsoever you believe you
15 cannot be a fair and impartial juror. If so, please stand.

16 (Whereupon, no one stands.)

17 THE COURT: All right. Very good. All right. Let's
18 see. All right. Mr. Foley? Charlie Foley, could you come
19 down, please? I'm sorry, ma'am. Ms. Foley, I'm sorry. I
20 didn't look at my list here. Could you come down and talk to
21 me, please, ma'am? Thank you, ma'am.

22 THE CLERK: Number 44.

23 (Whereupon, a bench conference is held with the potential
24 juror and counsel off the record and out of the hearing
25 of the court reporter regarding the written questions.

1 Juror Number 44 is not set aside.)

2 THE COURT: Ms. McGee, Pearlie McGee? Ms. McGee, could
3 you come -- come up and talk to me, please, ma'am?

4 THE CLERK: 104.

5 (Whereupon, a bench conference is held with the potential
6 juror and counsel off the record and out of the hearing
7 of the court reporter regarding the written questions.

8 Juror Number 104 is not set aside.)

9 THE COURT: Matthew Harrelson? Mr. Harrelson? Did we
10 already excuse him? We already excused you -- I'm sorry --
11 for this particular case. Thank you. I'm sorry. All right.
12 Mr. Suggs? Dustin Suggs? Mr. Suggs?

13 THE CLERK: Number 155.

14 (Whereupon, a bench conference is held with the potential
15 juror and counsel off the record and out of the hearing
16 of the court reporter regarding the written questions.

17 Juror Number 155 is not set aside.)

18 THE COURT: Lequan Thompson?

19 THE CLERK: Number 158.

20 (Whereupon, a bench conference is held with the potential
21 juror and counsel off the record and out of the hearing
22 of the court reporter regarding the written questions.

23 Juror Number 158 is not set aside.)

24 THE COURT: All right. So with the jurors that the Court
25 has excused from this particular case, we'll proceed with

1 selecting the jury in this particular matter. So how that's
2 going to happen is the Clerk of Court in a random order will
3 call out a name of a juror. If and when your name is called,
4 what we'll have you do is you'll come forward. You'll come
5 from wherever you're seated and you'll come to a position.
6 You can probably just stand right over there next to -- next
7 to the bailiffs right over there. All right?

8 At that point in time, the clerk is going to inquire of
9 the State, ask of the State to either seat -- I'm sorry -- to
10 present or excuse the juror. If you are presented, she'll ask
11 a question of the defense. If you are excused by the State,
12 you go back and have a seat from whence you came. If you are
13 presented by the State, the clerk -- the clerk will inquire of
14 the defense whether or not to seat or excuse the juror. If
15 you are seated or excused, the clerk will instruct you what to
16 do. If you're seated, the clerk will tell you to go over
17 there and have a seat. If you're excused, you go back to from
18 where you came.

19 If you have any personal items, if you've got a purse or
20 whatever, if your name is called, please bring that along with
21 you in case you're seated so you can go over there to the --
22 to the jury box. Is the jury box over here or over there?

23 THE CLERK: Over there, sir.

24 THE COURT: Okay.

25 THE CLERK: Yes, sir.

1 THE COURT: So the grand jury would be over there?

2 THE CLERK: Yes, sir.

3 THE COURT: All right. It's different in every courtroom
4 so I just wanted to make sure. All right. So it's over
5 there. All right. Before that -- yes, sir? You have -- you
6 have a matter?

7 MR. BROOKER: Yes, Your Honor. I believe that we talked
8 earlier with respect to the defendant's request for voir dire.

9 THE COURT: Yes, sir. Could you tell me the number,
10 please?

11 MR. BROOKER: Yes, Your Honor. I'd make a request for
12 numbers 7, 8, and 12.

13 MR. MCEACHIN: Your Honor, no objection to 7 and 8, and I
14 believe 12 has been covered by your prior voir dire.

15 THE COURT: All right. All right. There being no
16 objection by the State, I will ask questions 7 and 8.
17 Regarding number 12, I do believe that number 12 was properly
18 covered by the questions that the Court asked of the panel
19 itself.

20 MR. BROOKER: I'm sorry, Your Honor. I missed also one.
21 I think number 9 as well, too. I apologize.

22 THE COURT: All right, sir.

23 MR. BROOKER: Seven, 8, and 9.

24 THE COURT: All right. I will instruct -- if and when
25 that comes to pass, I will properly instruct the jury as to

1 testimony of persons who are underage, and I understand the --
2 as to their job, but I -- what's the State's position as to
3 number 9?

4 MR. MCEACHIN: Your Honor, may we approach?

5 THE COURT: Yes, sir.

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

7 THE COURT: All right. Based on discussions with counsel
8 and upon reflection, what I'm going to do, gentlemen, is I am
9 going to ask the following question to the -- to the jury
10 regarding the matters. I respectfully decline to grant the
11 defense's request to ask other specific questions. Your
12 objection is noted for the record and you'll make a copy of
13 your written request as part of the record.

14 All right. Ladies and gentlemen, despite a person's
15 particular standing, whatever field that they may occupy,
16 whether -- whatever job they may hold or whether or not a
17 person is young or old or whatever difference that person may
18 have, my question to you is: Would you find a particular
19 person, whoever it might be, whether it's a young person or an
20 old person or whatever particular position they hold or
21 whatever field that they work in, more truthful than a
22 general, ordinary person that comes to testify? So just
23 because a person occupies a particular status or a particular
24 position or they have a particular age, would you find them
25 more truthful than just a general, ordinary person coming into

1 court, putting their hand on the Bible, and swearing to tell
2 the truth? Would you find that particular person more
3 truthful then or not? If so, if you would find them more
4 truthful and they have some particular standing, I need for
5 you to stand up and let me know.

6 (Whereupon, no one stands.)

7 THE COURT: No one is standing. Thank you very much.
8 All right. Madame Clerk?

9 THE CLERK: Thank you, sir. When your name is called, if
10 you will, just come forward, please, and stand over there by
11 the post by the bailiff.

12 THE COURT: Yeah. Just right over there.

13 THE CLERK: Yes, sir.

14 THE COURT: Just come on down.

15 THE CLERK: Like the judge said, if you have a purse or
16 anything, any personal belongings you have with you, if you
17 will, bring them with you, please. Number 111. I'm calling
18 from jury number. Number 111, Kristen A. Morgan.

19 (Whereupon, a white female comes forward.)

20 THE CLERK: What say the State?

21 MR. MCEACHIN: Please present Ms. Morgan.

22 THE CLERK: What say the defense?

23 MR. BROOKER: Please excuse this juror for the purposes
24 of this trial.

25 THE CLERK: Ms. Morgan, you're excused from this trial.

1 You may have a seat back in the audience. Thank you. Number
2 77, Judy P. James. Ms. James, if you will, come forward
3 around, please, and stand right in front of the desk here,
4 please, ma'am.

5 (Whereupon, a white female comes forward.)

6 THE CLERK: That's great. What say the State?

7 MR. MCEACHIN: Please present Ms. James.

8 THE CLERK: What say the defense?

9 MR. BROOKER: Indulge me for just a second, please, Your
10 Honor. Please excuse this juror.

11 THE CLERK: You're excused from this trial, ma'am. Thank
12 you. Number 132, Charles M. Reaves.

13 (Whereupon, a black male comes forward.)

14 THE CLERK: What say the State?

15 MR. MCEACHIN: Please present Mr. Reaves.

16 THE CLERK: What say the defense?

17 MR. BROOKER: I'm sorry. That's 130?

18 THE CLERK: Two.

19 MR. BROOKER: 132. Please swear the juror.

20 THE CLERK: Mr. Reaves, if you will, have a seat in the
21 jury box, please, sir. Thank you. Number 18, Sandra Gail
22 Byrd.

23 (Whereupon, a white female comes forward.)

24 THE CLERK: What say the State?

25 MR. MCEACHIN: Please present Mrs. Byrd.

1 THE CLERK: What say the defense?
2 MR. BROOKER: If you can indulge me for just a second?
3 THE COURT: Yes, sir.
4 MR. BROOKER: Please excuse this juror.
5 THE CLERK: Ms. Byrd, you're excused from this trial.
6 Number 139, Shakiyla Q. Rowell.
7 (Whereupon, a black female comes forward.)
8 THE CLERK: What say the State?
9 MR. MCEACHIN: I beg the Court's indulgence for just a
10 minute.
11 THE COURT: Yes, sir.
12 MR. MCEACHIN: Please excuse Ms. Rowell for the purposes
13 of this trial only.
14 THE CLERK: You're excused from this trial, Ms. Rowell.
15 Thank you. Number 4, Barbara J. Anderson.
16 (Whereupon, a black female comes forward.)
17 THE CLERK: What say the State?
18 MR. MCEACHIN: Please present Ms. Anderson.
19 THE CLERK: What say the defense?
20 MR. BROOKER: Please indulge me for just a second.
21 Please present the juror.
22 THE CLERK: Ms. Rowell, if you will, have a seat in the
23 jury box, please, ma'am. Thank you. Number 63 has been
24 excused by the Court. Number 125, Portia N. Phillips.
25 (Whereupon, a black female comes forward.)

1 THE CLERK: What say the State?

2 MR. MCEACHIN: Please present Ms. Phillips.

3 THE CLERK: What say the defendant?

4 MR. BROOKER: Please present the juror.

5 THE CLERK: You can have a seat in the jury box, please,
6 ma'am. Number 91, Eric W. Larrimore.

7 (Whereupon, a white male comes forward.)

8 THE CLERK: What say the State?

9 MR. MCEACHIN: I beg the Court's indulgence for just a
10 moment.

11 THE COURT: Yes, sir.

12 MR. MCEACHIN: Please present Mr. Larrimore.

13 THE CLERK: What say the defense?

14 MR. BROOKER: Please present the juror.

15 THE CLERK: If you will, have a seat in the jury box,
16 please, sir. Number 38, Lakita T. Evans.

17 (Whereupon, a black female comes forward.)

18 THE CLERK: What say the State?

19 MR. MCEACHIN: Please excuse Ms. Evans for the purposes
20 of this trial only.

21 THE CLERK: You've been excused from this trial, ma'am.
22 Thank you. Number 104, Pearlie M. McGee.

23 (Whereupon, a black female comes forward.)

24 THE CLERK: What say the State?

25 MR. MCEACHIN: I beg the Court's indulgence for just a

1 moment.

2 THE COURT: Yes, sir.

3 MR. MCEACHIN: Please excuse Ms. McGee for purposes of
4 this trial only.

5 THE CLERK: You're excused from this trial, Ms. McGee.
6 Thank you. Number 53, Marvin L. Genwright.

7 (Whereupon, a black male comes forward.)

8 MR. BROOKER: I apologize. Could you repeat that number
9 again?

10 THE CLERK: 53.

11 MR. BROOKER: Thank you.

12 THE CLERK: What say the State?

13 MR. MCEACHIN: Please present Mr. Genwright.

14 THE CLERK: What say the defense?

15 MR. BROOKER: Please present the juror.

16 THE CLERK: If you will, have a seat in the jury box,
17 please, sir. Thank you. Number 170 has been excused by the
18 Court. Number 167, Keith A. White.

19 (Whereupon, a white male comes forward.)

20 THE CLERK: What say the State?

21 MR. MCEACHIN: I beg the Court's indulgence for just a
22 moment.

23 THE COURT: Yes, sir.

24 MR. MCEACHIN: Please excuse Mr. White for the purposes
25 of this trial only.

1 THE CLERK: You're excused from this trial, Mr. White.
2 Thank you. Number 114, Vickie J. Nichols.
3 (Whereupon, a black female comes forward.)
4 THE CLERK: What say the State?
5 MR. MCEACHIN: Please present Ms. Nichols.
6 THE CLERK: What say the defense?
7 MR. BROOKER: I beg indulgence for just a second, please.
8 Please present the juror.
9 THE CLERK: If you will, have a seat in the jury box,
10 please, ma'am. Number 124, Douglas P. Perry.
11 (Whereupon, a white male comes forward.)
12 THE CLERK: What say the State?
13 MR. MCEACHIN: Please present Mr. Perry.
14 THE CLERK: What say the defense?
15 MR. BROOKER: Please excuse this juror.
16 THE CLERK: Mr. Perry, you're excused from this trial.
17 Thank you. Number 8, Laurel B. Bennett.
18 (Whereupon, a black female comes forward.)
19 THE CLERK: What say the State?
20 MR. MCEACHIN: Please present Ms. Bennett.
21 THE CLERK: What say the defense?
22 MR. BROOKER: Please excuse this juror.
23 THE CLERK: You're excused from this trial. Thank you,
24 ma'am. Number 56, Sean J. Gilchrist.
25 (Whereupon, a black male comes forward.)

1 THE CLERK: What say the State?

2 MR. MCEACHIN: Please present Mr. Gilchrist.

3 THE CLERK: What say the defense?

4 MR. BROOKER: Please present the juror.

5 THE CLERK: If you will, have a seat in the jury box,
6 please, sir. Number 121, Rebecca B. Owens.

7 (Whereupon, a white female comes forward.)

8 THE CLERK: What say the State?

9 MR. MCEACHIN: Please present Mrs. Owens.

10 THE CLERK: What say the defense?

11 MR. BROOKER: Please indulge me for just a second. I
12 apologize. Present the juror.

13 THE CLERK: Have a seat in the jury box, please, ma'am.
14 Number 120, Larry W. Owens.

15 (Whereupon, a black male comes forward.)

16 THE CLERK: What say the State?

17 MR. MCEACHIN: Please excuse Mr. Owens for the purposes
18 of this trial only.

19 THE CLERK: You're excused from this trial, Mr. Owens.
20 Thank you. Number 57, Teaner N. Godbolt.

21 (Whereupon, a black female comes forward.)

22 THE CLERK: What say the State?

23 MR. MCEACHIN: Your Honor, may we approach?

24 THE COURT: Yes.

25 (Whereupon, a bench conference is held with the potential

1 juror and counsel off the record.)

2 THE COURT: I'm going to set her aside for this
3 particular case.

4 THE CLERK: You've been excused by the Court. You may
5 have a seat back out in the audience. Thank you, ma'am.
6 Number 115, Iris M. Norris.

7 (Whereupon, a white female comes forward.)

8 THE CLERK: What say the State?

9 MR. MCEACHIN: Please present Dr. Norris.

10 THE CLERK: What say the defense?

11 MR. BROOKER: Please excuse this witness for the purpose
12 of this trial only.

13 THE CLERK: You're excused from this trial, Ms. Norris.
14 Thank you. Number 34, Jonathan F. Dozier.

15 (Whereupon, a white male comes forward.)

16 THE CLERK: What say the State?

17 MR. MCEACHIN: Please present Mr. Dozier.

18 THE CLERK: What say ---

19 MR. BROOKER: I apologize. What number is that again?

20 THE CLERK: Number 34.

21 MR. BROOKER: 34.

22 MR. MCEACHIN: Your Honor, we may need to approach.

23 (Whereupon, a bench conference is held off the record
24 with the potential juror and counsel.)

25 THE COURT: He's excused.

1 THE CLERK: Mr. Dozier, you've been excused by the Court
2 for this trial. You may have a seat back in the audience.
3 Thank you. Number 141, Teresa M. Samuels.

4 (Whereupon, a black female comes forward.)

5 MR. MCEACHIN: What was the number again, Madame Clerk?

6 THE CLERK: 141.

7 MR. MCEACHIN: Thank you.

8 THE CLERK: What say the State?

9 MR. MCEACHIN: Please present Ms. Samuels.

10 THE CLERK: What say the defense?

11 MR. BROOKER: Please indulge me for just a second to
12 converse with my client.

13 THE COURT: Yes, sir.

14 MR. BROOKER: Please present the juror.

15 THE CLERK: You may have a seat in the jury box, Ms.
16 Samuels. Thank you. Number 126, Tyrell T. Phillips.

17 (Whereupon, a black male comes forward.)

18 THE CLERK: What say the State?

19 MR. MCEACHIN: Please present Mr. Phillips.

20 THE CLERK: What say the defense?

21 MR. BROOKER: Please present the juror.

22 THE CLERK: You may have a seat in the jury box, please,
23 sir. Thank you. Number 44, Charlie E. Foley.

24 (Whereupon, a white female comes forward.)

25 THE CLERK: What say the State?

1 MR. MCEACHIN: Please present Ms. Foley.
2 THE CLERK: What say the defense?
3 MR. BROOKER: Please excuse this juror.
4 THE CLERK: You're excused from this trial. Thank you.
5 Number 19, Watt Byrd.
6 (Whereupon, a white male comes forward.)
7 MR. BROOKER: What number is that, please?
8 THE CLERK: Number 19.
9 MR. BROOKER: 19.
10 THE CLERK: What say the State?
11 MR. MCEACHIN: Please present Mr. Byrd.
12 THE CLERK: What say the defense?
13 MR. BROOKER: Please present the juror.
14 THE CLERK: If you will, have a seat in the jury box, Mr.
15 Byrd. Thank you. Number 48, Myra Dale Fowler.
16 (Whereupon, a white female comes forward.)
17 THE CLERK: What say the State?
18 MR. MCEACHIN: Please present Ms. Fowler.
19 THE CLERK: What say the defense?
20 MR. BROOKER: Please excuse this juror.
21 THE CLERK: You're excused from this trial, Ms. Fowler.
22 Thank you. Number 50, Levan Franklin.
23 (Whereupon, a black male comes forward.)
24 THE CLERK: What say the State?
25 MR. MCEACHIN: Is this Juror Number 50?

1 THE CLERK: Number 50.

2 MR. MCEACHIN: Please present Mr. Franklin.

3 THE CLERK: What say the defense?

4 MR. BROOKER: Please present the juror.

5 THE CLERK: Have a seat in the jury box, please, sir.

6 THE COURT: Can we have one alternate, please?

7 THE CLERK: Number 60, James F. Hardwick.

8 THE COURT: Two and one on the alternate.

9 (Whereupon, a white male comes forward.)

10 THE CLERK: What say the State?

11 MR. MCEACHIN: Please present Mr. Hardwick.

12 THE CLERK: What say the defense?

13 MR. BROOKER: Please present the juror.

14 THE CLERK: Mr. Hardwick, if you will, have a seat in the

15 alternate's chair. Thank you, sir. Thank you.

16 THE COURT: Thank you. Are there any objections to the

17 jury as a panel from the State?

18 MR. MCEACHIN: Yes, Your Honor.

19 THE COURT: All right. And from the defense? Are there

20 any objections to the jury?

21 MR. BROOKER: No objection, Your Honor.

22 THE COURT: All right. Y'all come talk to me, please.

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

24 THE COURT: All right. All right. Ladies and gentlemen,

25 I have got to conduct a short hearing before we go any further

1 so -- in this particular matter. So what we're going to have
2 to do is, if y'all will, take this jury as assembled and put
3 them in the jury room for right now. All right? So y'all go
4 do that right now. All the potential jurors, y'all go in the
5 jury room for right now.

6 (Whereupon, the jury exits the courtroom at 12:21 p.m.)

7 THE COURT: Now, as to all the potential jurors that are
8 in the courtroom, I have to conduct this hearing outside the
9 presence of any jurors. So what I'm going to have to ask
10 y'all to do is go outside the courtroom. Don't get lost
11 because I'm going to be calling you back in in about five
12 minutes. So don't go anywhere, but I do have to ask you to
13 exit the courtroom. So all the jurors -- the potential jurors
14 go outside the courtroom. You'll be back in the courtroom in
15 five minutes so don't get lost.

16 (Whereupon, the jury panel exits the courtroom at 12:22
17 p.m.)

18 THE COURT: All right. Solicitor, you are making an
19 objection to the selection process that was undertaken by the
20 defense in this matter; is that correct?

21 MR. MCEACHIN: That's correct, Your Honor.

22 THE COURT: All right, sir. So, if you could, make your
23 presentation as to which jurors and what -- what your basic
24 objection is, please.

25 MR. MCEACHIN: Certainly, Your Honor. The State is

1 objecting specifically with regard to Number 111, which was
2 the first juror called which was a white female; Juror Number
3 115, which was also a white female; and Juror Number 48, which
4 was also a white female. The State sees no reason why those
5 particular individuals should have been struck and believe
6 that they were not done for race neutral reasons.

7 THE COURT: All right. I'm sorry. Tell me the numbers
8 again. 111?

9 MR. MCEACHIN: Your Honor, 111, 115, and Number 48.

10 THE COURT: All right. The objection having been made,
11 Mr. Brooker, I would ask from you to present a gender neutral
12 explanation for the selection.

13 MR. BROOKER: Certainly, Your Honor. I'm going to start
14 off with the last one he mentioned, which was Number 48. And,
15 of course, is, is that there is an extremely logical reason as
16 to why we excused Juror Number 48. If you can indulge me for
17 just a second?

18 THE COURT: Yes, sir.

19 MR. BROOKER: And I have written down at least right next
20 to on the strike is, is that she was a retired school teacher,
21 and because of the fact that she was a retired school teacher
22 and, of course, we -- I did not have written down whether or
23 not she was an elementary school teacher or whether or not she
24 was a middle aged school -- a middle school teacher or high
25 school teacher, but because she would be around or has been

1 around a number of children within her capacity as a school
2 teacher, I was concerned with the fact as to whether or not
3 when she saw these two young victims or alleged victims who
4 take the stand, they would probably be of the same age and the
5 same type of students that she'd spent her entire career
6 around and whether or not that would somehow, you know,
7 inappropriately impact her ability to be able -- to be fair
8 and impartial. That she might, you know, I guess in some way
9 -- at least in my opinion, you know, she might find them more
10 believable, more credible because of a prior relationship with
11 kids. So we struck her for that reason and absolutely nothing
12 to do with race.

13 With respect to Number 115, which is a very easy one, we
14 struck her immediately and the reason why we struck her was,
15 is that because she is a physician. And the reason why we
16 struck her is, is that I think in just about every case I've
17 ever had, I never put physicians or either lawyers on the
18 stand and the reason why is, is that if you have a physician
19 or lawyer on the stand, my belief is, is that you no longer
20 have a jury of twelve people. Usually because those persons
21 are -- you know, are -- are, you know, highly educated that
22 the remaining eleven jurors sometimes would tend to -- to
23 defer to that particular person's opinion, which means is, is
24 that in a case like this when the doctor gets in and the
25 doctor says I think it's this, because the other people will

1 have much, much, much, much less education than that
2 particular person, they would defer to that person. Now, if I
3 knew that that person would -- would be favorable to the
4 defense, I would put them on, but you can't predict that at
5 all and so we never put doctors on the -- on the stand.

6 THE COURT: All right, sir. And the last one?

7 MR. BROOKER: And with respect to Number 11 is, is that
8 the only reason why we struck her is because I was sitting
9 here ---

10 THE COURT: Is that -- that's 111?

11 MR. BROOKER: Number 111, I apologize.

12 THE COURT: Okay.

13 MR. BROOKER: I was sitting here with my -- with my
14 client trying to figure out what her relative age was. The
15 only thing I noticed about her is that she looked very young.
16 She had tattoos on her arm and, of course, I know she had to
17 be above the age of eighteen because if she was below
18 eighteen, she would not be in here, but the reason why we
19 struck her is, is that we did not want anyone -- and I think
20 the young victims in this particular case right now is going
21 to be around fifteen or sixteen years of age. We didn't want
22 anyone that would be relatively close to their particular age.

23 And, of course, I think the -- the State, you know, says
24 is, is that, you know, we struck these people for race reasons
25 and, of course, is, is that I think that there's also a South

1 Carolina case that -- and I don't have the case right in front
2 of me that deals with this particular issue and says that when
3 Your Honor is looking at whether or not the jurors that were
4 struck were struck for race reasons that Your Honor can also
5 look at the entire collective make-up of the jury to determine
6 whether or not, you know, that that may have influence. And
7 if you look at the jury is, is that I think that we selected I
8 think four or five -- I think at least four Caucasian
9 individuals that are on that -- on the jury, and I think with
10 respect to females, I think it's almost evenly balanced. I
11 think there's something like five -- five females that are on
12 the jury. And so we did not exclude these people based upon
13 race or either sex -- is that we have a particular reason, at
14 least in our mind, as to why we thought that they would not be
15 favorable for our client which had nothing to do with race.

16 THE COURT: All right. Very good. Solicitor, the Court
17 finds the explanations as given by the defense to the
18 objections to be race and gender neutral. Therefore, I would
19 ask you to give me your position as to if you believe the
20 explanations tendered or offered by the defense are a mere
21 pretext to strike either a person under a racial category or a
22 gender category.

23 MR. MCEACHIN: Certainly, Your Honor. And with regard to
24 Juror Number 48, since that was the first one Mr. Brooker
25 started with, I understand. I don't believe there were any

1 jurors situated like her that were schoolteachers, whether
2 male or African-American. So that being said, I don't think
3 that the State has any objection to his basis on that one.

4 With regard to Juror 115, Your Honor, he made a point to
5 state that the individual was a physician and was in the
6 medical field. I would put on the record that he did seat
7 Juror Number 125, which was a black female who is a CNA or a
8 nurse, Your Honor. Likewise, with regards to Juror Number
9 111, a white female, he indicated that her age was a concern
10 for him. He sat Juror Number 126, which was a black male and
11 he's only fifteen months older than she is, Your Honor. For
12 those two reasons, I believe that the State stands with their
13 proposition that these were racially motivated.

14 THE COURT: All right.

15 MR. BROOKER: May I respond to Number 115, Your Honor?

16 THE COURT: Yes, sir.

17 MR. BROOKER: Your Honor, is, is that I can understand
18 why -- why the State might be confused with respect to a CNA.
19 We specifically discussed whether or not we wanted to excuse
20 that juror because she is a -- she is a CNA. I have a lot of
21 experience. I have actually represented CNAs and I know what
22 their qualifications are. CNAs are usually nurse's assistants
23 and usually what they do is -- at least the CNAs that I --
24 that I am familiar with is, is that they have very little
25 medical knowledge that goes absolutely nowhere near that of a

1 doctor.

2 Usually, the CNAs will provide usually administrative
3 assistance. A lot of times they will clean patients. A lot
4 of times they will move patients. They -- they don't
5 administer any medication. They don't take no board
6 examinations that require them to be qualified, you know, with
7 respect to the anatomy of the body. They do absolutely none
8 of that. A lot of times is that CNAs used to be referred to
9 as orderlies sometimes. These were people who would go in and
10 they would do administerial [verbatim] duties. They may move
11 a patient if a patient needs to be moved. They would
12 sometimes come in if a patient needs assistance going to the
13 bathroom. They would provide that. If a patient needs to be
14 cleaned, they would provide those sorts of services, but they
15 have absolutely no medical training at all. And we were
16 discussing that and I think we took a while in order to choose
17 her, but -- but finally decided to put her on there because
18 she does not have any medical training.

19 THE COURT: What about Juror Number 111 and the position
20 of the State as to the younger black male?

21 MR. BROOKER: Well, that's -- that's -- that's the thing,
22 Your Honor, is this is the form that we have to go by, Your
23 Honor, that was given to us by the Clerk's Office, and on our
24 forms I don't believe that there is any indications of age, at
25 least on our form. And I understand, of course ---

1 THE COURT: Yeah. In the general form that's handed out,
2 that is correct.

3 MR. BROOKER: Yeah, yeah. So basically what is, is that
4 we are left to then look at the persons and try and make a
5 determination as to whether or not we think the person is
6 close to that particular age. It is that I had absolutely no
7 idea that there was -- I don't know how many months he says,
8 five months or whatever it was that the State says between
9 those two particular jurors.

10 THE COURT: All right, sir. Thank you. I -- I believe
11 that the defense has set forth a race and/or gender neutral
12 explanation. I do not find the explanations of the defense to
13 be a mere pretext to strike a particular racial or gender
14 status. Therefore, the Court would respectfully decline to
15 grant the State's objection and I would qualify the jury
16 pursuant to Batson v. Kentucky and JEB v. Alabama.

17 All right. Why don't we just deal with the whole panel
18 as a whole? Why don't we call all them in? The panel that is
19 outside, get them all in and let's deal with that first.
20 Other than that, are there any other objections from the
21 State?

22 MR. MCEACHIN: None other than that from the State, Your
23 Honor.

24 THE COURT: There were none from the defense; correct?

25 MR. BROOKER: No, Your Honor.

1 THE COURT: All right. Very good.

2 (Whereupon, the jury panel enters the courtroom at 12:35
3 p.m.)

4 THE COURT: All right. Ladies and gentlemen of the jury,
5 we have selected the jury in this particular case so I'm going
6 to be able to excuse all of you for the balance of today. I
7 am going to ask that you call back that juror information line
8 tonight after six p.m. I expect what it's going to do is to
9 have instructions for you to call back again at a certain time
10 rather than to report, but just in case, I want y'all to call
11 that juror information line tonight after six p.m. You can
12 call that number after six p.m. tonight and then follow those
13 instructions, whatever they are.

14 I expect at some point in time y'all are going to have to
15 report, but probably the -- the response by the clerk tomorrow
16 is going to be to call back at a certain time. So with that,
17 you're now excused. Thank you very much.

18 (Whereupon, the jury panel exits the courtroom at 12:37
19 p.m.)

20 (Whereupon, the jury enters the courtroom at 12:38 p.m.)

21 THE COURT: Y'all just fill in the seats wherever.
22 There's no assigned seating so y'all just sit down, except the
23 alternate. Very good.

24 All right. Ladies and gentlemen, y'all are going to be
25 the jury in this particular case. Now, the very first thing

1 that we're -- I'm going to unfortunately have you do is I'm
2 going to have you get together and select your foreperson for
3 this particular jury. It's proper that -- that y'all start
4 with that.

5 So what I'm going to have you do is I'm going to get
6 y'all to go back into the jury room in just a second and
7 select whom the foreperson is going to be. Now, let me tell
8 you very briefly what the foreperson's duties and
9 responsibilities are.

10 If we're here in the courtroom and the jury needs
11 attention for something, you know, the witness needs to speak
12 up or the lawyers need to speak up or whatever it is, whoever
13 is the foreperson will raise their hand and get the Court's
14 attention and then we'll handle the matter, whatever it is.
15 If it comes -- if something comes up when y'all are in the
16 jury room, the Clerk of Court is going to provide a pad and a
17 pen for y'all and the foreperson is going to write out a note
18 and sign their -- sign their name to it and give it to the
19 bailiff. Give the note to the bailiff and then I'll handle
20 the matter again, whatever it is.

21 When we have gone through the main portion of the trial,
22 that is we've heard all the witnesses, all the witnesses have
23 testified in this case, the attorneys have made their closing
24 arguments to you, their final arguments to you, the Court has
25 given to you the law that you have to apply to the facts and

1 evidence you find to be true in this case, and then I send you
2 back in there for your deliberations and your unanimous
3 decision in this matter, it's the foreperson's duty to change.
4 In this regard, the foreperson is going to act like the
5 chairperson at a meeting. Guide the discussions if necessary
6 and an important duty the foreperson has is to make sure
7 everybody that wants to speak has an opportunity to speak.
8 Everybody, if they want to, gets to talk about the issues.

9 Also, you know, again, if there's some question or some
10 matter that comes up, you know, the foreperson will write that
11 note out, sign it, and give it to the bailiff. He'll come to
12 me and we'll handle the matter, whatever it is.

13 Now, the foreperson's voice and vote carries no more
14 weight than all the other members of the jury. Everybody is
15 equal in that regard, but it may be necessary for the
16 foreperson to move the discussions along or guide the
17 discussions, hopefully to keep good order, but the final duty
18 of the foreperson is when the jury has well and truly
19 deliberated, when y'all have reached your unanimous decision
20 in this matter, on the verdict form that the Court will
21 provide to you, the foreperson is going to check the
22 appropriate block and then they're going to sign their name
23 down at the bottom and put the date, whatever the date of --
24 you know, whatever it is. It has to indicate to the Court
25 that every single member of the jury agrees. Everybody agrees

1 that's their verdict. And so that will be the final duty of
2 the -- of the foreperson in this particular matter.

3 So with that, I'd ask that you go back in your jury room,
4 select a foreperson, knock on the door, and let the bailiff
5 know who that is, and as to the alternate, sir, you can vote
6 on a foreperson, but being the alternate, obviously, you can't
7 be the foreperson of the jury. All right. So if y'all will,
8 go back in there and select a foreperson. Knock on the door
9 and let the bailiff know who that is, please. Thank you.

10 (Whereupon, the jury exits the courtroom at 12:42 p.m.)

11 THE COURT: All right. Mr. Brooker, give me a little
12 help here. On one of the motions that you have basically ask
13 who the expert is that the State intends to present in this
14 matter. Can you give me some kind of estimate as to how long
15 you think that's going to take? Because that's -- I need to
16 give the jury some idea of when to come back.

17 MR. BROOKER: Sir, I don't think it's going to take very
18 long. Your Honor, I think -- at least one of these motions I
19 don't think there is going to be a tremendous amount of
20 opposition to and that's specifically the first one with
21 respect to whether or not the forensic expert can testify with
22 respect to the credibility and reliability ---

23 THE COURT: It's just we'll have to have -- obviously,
24 we'll have to have a basic testimony and basic presentation of
25 the expert ---

1 MR. BROOKER: Yes, sir.

2 THE COURT: --- as to qualifications and then whatever
3 cross examination you have to that. So then the other issue?

4 MR. BROOKER: The other issue is going to be as to
5 whether or not a forensic expert can be qualified as an expert
6 and, of course, my primary argument is going to be based upon
7 the -- you know, the South Carolina Supreme Court decision,
8 State v. Kromah.

9 THE COURT: Okay. And so in that, I'm assuming -- and
10 I'm going back to, you know, State v. Counsel and Jones 1 and
11 Jones 2 about the admission of an expert and basically what
12 I'm hearing -- and you tell me if I'm wrong -- is, you know,
13 assuming the Court might say that they could testify as to ---

14 THE BAILIFF: They're ready, Judge.

15 THE COURT: We'll get to them in just a second. Could --
16 could testify -- they're generally qualified to be an expert
17 whether or not the field or the underlying science is reliable
18 or accepted. Is that -- is that what you're saying to me?

19 MR. BROOKER: Well, Your Honor, what we're saying is, is
20 that there is not a forensic -- there is not a forensic
21 interviewer field.

22 THE COURT: Okay.

23 MR. BROOKER: There is not a curriculum. There is not a
24 discipline. There is not a certification, whether it be
25 through the State of South Carolina, and that basically is, is

1 that what a forensic interviewer is, is that -- and I think
2 the Court in Kromah began to point this out is, is that a
3 forensic interviewer generally is a person who is basically
4 told that there is a procedure in which you use to interview
5 an individual and here is the procedure and you follow the
6 procedure, but there is no qualifications. There is no
7 certification that's recognized by the State of South Carolina
8 or even any other organization.

9 It is that anybody can be a forensic interviewer. You
10 can pull someone off the street right now and say here's the
11 technique for interviewing and they can be highly presented as
12 a forensic interviewer.

13 THE COURT: Okay. Well, I assume in that then that you
14 would be also attacking the -- the technique, saying that
15 there is -- your position is there is no recognized scientific
16 authority or recognized scientific basis for the question?

17 MR. BROOKER: Well, Your Honor, is, is that actually it's
18 not -- I don't doubt her ability to be able to get up and I
19 think that the Court in Kromah says that a forensic
20 interviewer can get up and basically state to certain factual
21 things that they observed during the process -- during the
22 process of the interview and they have that right, but you're
23 absolutely right. The -- the technique that's used for
24 forensic interviewing is one that is -- that I think is it's
25 widely used, you know, but this is a technique that was

1 developed by a -- I think my understanding was a private
2 advocacy group, you know, that -- you know, that there was
3 actually, you know, at least that I'm aware of, you know, is
4 that any -- you know, you know, scientific evidence that's --
5 that's -- you know, that scientific evidence where this has
6 been tested and it's proven to be reliable that over any other
7 particular technique to ---

8 THE COURT: All right.

9 MR. BROOKER: Basically, every jurisdiction is left to
10 decide how they're going to interview -- do their forensic
11 interviews and they ---

12 THE COURT: All right.

13 MR. BROOKER: --- can choose ---

14 THE COURT: All right.

15 MR. BROOKER: --- any style they want.

16 THE COURT: Well, that will be part of -- part of your
17 motion. All right.

18 MR. BROOKER: Thank you, Your Honor.

19 THE COURT: So if I tell the jury to be back at three
20 thirty, do you think that will be sufficient time? Now,
21 assuming, you know, we're going to break basically from one
22 until about two fifteen I guess and we'll come back at two
23 fifteen. If we start at two fifteen, if I tell the jury to be
24 back at three thirty, will that be enough time you think?

25 MR. BROOKER: I think, Your Honor.

1 THE COURT: All right.

2 MR. MCEACHIN: Yes, sir, Judge.

3 THE COURT: All right. Very good. Okay. Ask the jury
4 to come back in, please.

5 (Whereupon, the jury enters the courtroom at 12:48 p.m.)

6 THE COURT: All right. Ms. Nichols, you have been
7 selected as the foreperson for this particular jury. Is that
8 correct, ma'am?

9 THE FOREPERSON: Yes, sir.

10 THE COURT: All right. Very good. All right. Ladies
11 and gentlemen, there is only two assigned seats or sacred
12 seats. That's the foreperson and the alternate. Okay? Y'all
13 two have to sit in those two seats every time we come back
14 from the jury room.

15 You want -- oh, you have your foreperson over here? I
16 would rather have the foreperson over here. If you don't
17 mind, gentlemen, I might be breaking your tradition, but the
18 witness is going to be right here so it might be difficult for
19 me to see the foreperson through the witness. So you're going
20 to sit in that seat. That's going to be the foreperson's
21 seat. Okay? Because I can see you. Over here, I might have
22 a hard time seeing you. All right? So good. So other than
23 those two seats, y'all come back from the jury room, you just
24 fill in wherever it is. Okay? You just take a seat.

25 Now, there are some matters that I have to take up with

1 the lawyers to -- hopefully, it will smooth out the trial and
2 it will go quicker, but those things have to be done outside
3 of your presence. So I'm going to send y'all to lunch, but
4 it's going to be an extended break. I need for y'all to be
5 back at three thirty. Y'all be back at three thirty. If
6 we're still in here on the matters, a bailiff or deputy
7 sheriff will meet you right up -- right up here and kind of
8 hold you in the -- in the anti-way there until -- until y'all
9 can come in.

10 But y'all be back at three thirty. All right? So with
11 that, you're now excused. Okay? Thank y'all very much.

12 THE CLERK: And take your badges and wear them when you
13 come back.

14 (Whereupon, the jury exits the courtroom at 12:50 p.m.)

15 THE COURT: All right. Gentlemen, two fifteen. Be back
16 at two fifteen and we'll get started with the motions. All
17 right?

18 MR. BROOKER: Thank you, sir.

19 MR. MCEACHIN: Thank you, Judge.

20 THE COURT: Thank y'all very much.

21 (Whereupon, there is a break in the proceedings from
22 12:50 p.m. until 2:21 p.m.)

23 THE COURT: All right. Mr. Brooker, you have some
24 motions for the -- for the Court?

25 MR. BROOKER: Yes, Your Honor.

1 THE COURT: All right, sir.

2 MR. BROOKER: The first motion, Your Honor, we ask the
3 Court to entertain, it's going to be a motion in limine and,
4 of course, that motion is -- is based upon -- almost entirely
5 upon the South Carolina Supreme Court's recent decision in
6 State v. Kromah, and what we're asking the Court to do is, is
7 to limit any testimony from the forensic interviewer or either
8 any other person who might testify in any form or manner that
9 might bolster or suggest the trustworthiness, legitimacy, or
10 credibility of the allegations of the defendant -- excuse me
11 -- of the victims in this particular case. And, of course,
12 is, is that -- and I have a copy of that case, Your Honor, if
13 you would like.

14 THE COURT: Well, I was going to say that'd be great or
15 if you want to just give me the cite, that will be fine, too.

16 MR. BROOKER: Certainly. Well, I have a copy of it and
17 ---

18 THE COURT: Okay. Great.

19 MR. BROOKER: Your Honor, it's -- very briefly, Your
20 Honor, with respect to Kromah, you know, obviously, this is a
21 case in which -- that involves the abuse of a minor child. I
22 think the mother was charged in connection with that case.
23 The minor child -- obviously, there was a criminal
24 investigation in which there was a detective or investigator
25 who spoke with the child and there was also a forensic

1 interviewer who also interviewed the child in connection with
2 the case.

3 And at the trial of the -- of the case against -- against
4 Kromah, the forensic interviewer testified to the fact -- and
5 I think it specifically says that -- it says that she
6 testified to the fact that she found the victim which is a
7 minor child's testimony to be compelling of physical abuse.
8 And, of course, is, is that the -- the South Carolina Supreme
9 Court then, you know, dealt with it and, obviously, an
10 objection was made and, of course, is, is that the South
11 Carolina Supreme Court then dealt with whether or not when the
12 forensic interviewer testified to the fact that she find --
13 found the minor child's statements to be -- to be compelling,
14 you know, with respect to abuse, is that whether or not that
15 was inappropriate.

16 And, of course, is, is that the Kromah Court undoubtedly
17 found that it was inappropriate and, specifically, the Court
18 sought out and I think did an extremely well job of
19 identifying exactly what the duties and responsibilities of a
20 forensic interviewer are. And on page 499, the Court says
21 specifically that Smith, who was the forensic interviewer, is
22 a forensic interviewer of children. A forensic interviewer is
23 a person specifically trained to talk to children when there
24 is suspicion of abuse.

25 And, of course, the Court went on to say the job of a

1 forensic interviewer is not to provide therapy, but to call --
2 but to collect facts. And the Court citing -- or at least
3 referencing State v. Borden says it has been said that a
4 forensic interviewer's purpose is to prepare for trial. Okay?
5 And, of course, the court went on to say that Smith was
6 qualified as an expert and that as an expert, although experts
7 do have the ability to be able to give opinion testimony, that
8 experts do not have the ability to be able to give an opinion
9 with respect to whether or not another witness's testimony is
10 credible or either trustworthy.

11 And, of course, in this particular situation, the
12 forensic interviewer testified that she found the testimony of
13 the young boy to be compelling with respect to abuse. And, of
14 course, the Court not only indicated that it was inappropriate
15 for a forensic interviewer to testify with respect to anything
16 that might suggest, you know, the credibility or the
17 trustworthiness of -- of the minor child or even in any other
18 way bolster the credibility of the minor child, the Court went
19 as far as to at least set out some -- some guiding -- some
20 guidelines to guide future courts, you know, as to what
21 questions forensic interviewers might particularly be
22 prohibited from stating and also identifies some -- some
23 things or facts that forensic interviewers are permitted to
24 testify to.

25 And, of course, the Kromah court basically says that --

1 that the type of statements that forensic interviewers should
2 stay away from or should avoid testifying to, and it says,
3 one, that the child was told to be truthful. So they should
4 not testify to that. They should not testify or give any
5 direct opinion as to a child's veracity or tendency to tell
6 the truth. That they should not make any statement that
7 indirectly vouches for the child's believability, such as
8 stating the interviewer was making a compelling -- a
9 compelling finding of abuse, which is a lot of times jargon
10 that's found in the forensic interviews.

11 And, of course, it says the forensic interviewer should
12 stay away from making any statements to indicate to a jury
13 that the interviewer believes the child's allegation in the
14 current matter or give any opinion that the child's behavior
15 indicated the child was telling the truth. So not necessarily
16 just words, but forensic interviewers should not look at the
17 way in which the child behaves in the forensic interview room
18 and then, of course, extrapolate from that behavior with
19 respect to whether or not the child is trustworthy or
20 believable.

21 And, of course, the Court went on to say that some things
22 that are properly -- that a forensic interviewer may properly
23 testify to is the time, date and circumstances of the
24 interview, any personal observations regarding the child's
25 behavior or demeanor, or a statement as to events that

1 occurred within the personal knowledge of the interviewer.
2 And, of course, the Court says that this list is not -- this
3 list is not -- (coughs) excuse me, Your Honor -- that this
4 list is not to be exclusive, but it gives the court at least
5 some examples of the type of testimony, you know, that
6 forensic interviewers may not give and the type they may
7 properly testify to to provide at least some guidance.

8 And, of course, is, is that we have a concern that in
9 this particular case because it has been I think in the past
10 that forensic interviewers has traditionally testified to or
11 at least at some point in time during trials giving a
12 statement that suggests that the child -- that they had no
13 reason to believe that the child was not being honest or
14 either make an inference with respect to the child's behavior
15 and, of course, suggest that inference or make a suggestion
16 from the child's behavior that the child appeared to be
17 trustworthy.

18 And the Court says directly or either indirectly that
19 there should be nothing stated by the forensic interviewer
20 that would suggest even remotely to the jury that the forensic
21 interviewer is somehow bolstering, you know, or either lending
22 credibility to what the child may have -- any information that
23 the forensic interviewer may have provided to the child.

24 That's the basis, Your Honor, for our request to ask the
25 Court to issue a motion in limine instructing the forensic

1 interviewer or either any other witness who might testify in
2 connection with this case to refrain from making any
3 statements that would suggest that -- that any testimony that
4 came from the alleged victims is somehow credible, you know,
5 or either somehow is valid. Thank you, Your Honor.

6 THE COURT: All right. Solicitor, your position?

7 MR. MCEACHIN: Your Honor, Mr. Brooker summed up the case
8 of Kromah pretty well. I mean I think what the State Supreme
9 Court has indicated is that you can't ask a witness whether or
10 not the child is telling the truth or whether or not you
11 believe what the child is saying. I think I'm bound by the
12 law and I think I'm not permitted to go into that and I don't
13 plan on it, Judge.

14 THE COURT: All right.

15 MR. MCEACHIN: But Mr. Brooker alluded a couple of times
16 to behavior of the children. I agree that I can't ask a -- a
17 witness what particular behavior may mean, but the criminal
18 court does say you can ask the witness what kind of behavior
19 or demeanor was exhibited that day and I think I can ask that
20 question. But as far as his motion asking that we stay away
21 from anything that would bolster the witness as far as
22 believability, credibility or truthfulness is concerned, I
23 tend to agree with Mr. Brooker and I don't think I'm allowed
24 to go into that and I don't intend to.

25 THE COURT: All right. Well, I -- from what I

1 understand, it's in the context of this particular case, but I
2 don't think it's plowing new ground that the State or any
3 witness can't vouch for the -- the credibility of a -- of
4 another witness or you can't ask a question whether or not the
5 -- another witness is telling the truth or -- or not telling
6 the truth, lying. I mean that's just a basic principle so I
7 certainly agree and I think it's been a basic principle, you
8 know, for as long as I know that that's not proper and should
9 not be allowed by, you know, either side in the -- in the
10 particular case.

11 So I -- I appreciate the issue that you've brought to the
12 Court's attention, Mr. Brooker. I believe the State also
13 understands your position. You fully explained it. You have
14 gone over the -- the case in your motion. If you think that
15 this particular case, Kromah -- I guess that's how you
16 pronounce the name. It's K-R-O-M-A-H. I'm not sure how the
17 person actually pronounces the name.

18 But if you think there's been a violation of what the
19 South Carolina Supreme Court has set forth in that case, I'll
20 be glad to -- for you to make an objection during the
21 testimony, but it appears that the State understands the
22 issue. The State is aware of the case. I'm sure, Solicitor,
23 you're telling me that you've reviewed that with your witness;
24 correct?

25 MR. MCEACHIN: That's correct.

1 THE COURT: All right. So I don't know that I need to
2 give any further instruction to the State at this point in
3 time, but I am telling you if you see during the actual
4 testimony of the State's witness that you find there is a
5 violation of the case, then obviously bring that immediately
6 to the Court's attention and we'll handle the matter at that
7 time. But it seems clear that all parties are aware of and --
8 and understand the issue at hand and what the -- what the --
9 not only in this case, but honestly it's been I think the law
10 of this state for a long period of time.

11 So do you wish to cover at this point in time the
12 credentials and qualifications of the proposed expert witness
13 to have an opportunity to voir dire the witness as to their
14 qualifications or do you want to do that in front of the jury?
15 What would be your choice?

16 MR. BROOKER: It's preferably up to you, Your Honor.
17 Like I said is, is that if the forensic -- if the forensic --
18 forensic interviewer is someone who might be qualified within
19 another area and, of course, if the State seeks to have him
20 qualified within another area, then obviously is, is that we
21 would, you know, then, you know, examine whether or not they
22 satisfy the qualifications as an expert. But our only
23 contention here is, is that whether or not -- in general,
24 whether or not a forensic interviewer can ever be qualified as
25 an expert in forensic interviewing. And, of course, that's

1 one of the -- that's one of the issues that -- that I think
2 Kromah addresses.

3 THE COURT: Well, I mean we'll certainly go into that. I
4 -- I don't know that a person can be an expert. I will tell
5 you that what I tell the jury and what I say at the time any
6 person in quotation marks is offered as an expert. It is my
7 standard practice to say that the witness is qualified to give
8 their opinion in that field based upon the strictures that we
9 understand. Okay? And Kromah and numerous other cases about
10 trying to take the issue of credibility and believability away
11 from the jury, obviously no expert can do that.

12 So I don't know that I will qualify the witness, but I --
13 depending upon their study of -- I'm assuming we're talking
14 about the RATAC ---

15 MR. BROOKER: Yes.

16 THE COURT: --- standard, Solicitor?

17 MR. MCEACHIN: Yes, sir, Your Honor.

18 THE COURT: All right. So assuming there's to be
19 sufficient knowledge of that system and experience and
20 training in that system that I would qualify them to give
21 their opinion in that field of study either based on training,
22 experience, knowledge of the -- of the area, but as I will
23 tell the jury at the very end, just because the Court
24 qualifies somebody to give their opinion, that doesn't give
25 them any special status. I will tell them they judge the

1 witnesses all the same and judge everybody's credibility and
2 believability the same.

3 So I -- but again, if you would like the State to present
4 them and get some idea if you want to challenge the -- the
5 qualifications in front of the jury, I'll be glad for you to
6 do that at this time.

7 MR. BROOKER: Well, I can probably tell you right now,
8 Your Honor, is that I'm probably going to -- I'm probably
9 going to challenge -- challenge the forensic interviewer's
10 qualifications or challenge the forensic interviewer's being
11 qualified an expert for purposes of forensic interviewing.

12 THE COURT: Okay. Very good.

13 MR. BROOKER: So that's it.

14 THE COURT: Solicitor, why don't you call the -- call
15 your witness?

16 MR. MCEACHIN: Your Honor, that witness will be
17 unavailable until tomorrow morning.

18 THE COURT: Okay. Well, that's not good.

19 MR. BROOKER: I don't mind, Your Honor, is if we address
20 this tomorrow.

21 THE COURT: Well, we'll have to. I mean if the person's
22 not here, I can't very well ---

23 MR. BROOKER: Certainly, Your Honor.

24 THE COURT: --- make a decision on what -- what I would
25 do. In the ---

1 MR. MCEACHIN: And, Your Honor, it may be helpful. I
2 don't even know that I anticipate attempting to qualify the
3 individual as an expert. I think Mr. Brooker is pointing out
4 to the Court what may be elicited in a footnote filed with the
5 Kromah decision where the Court stated -- we state today we
6 envision no circumstance where their qualification as an
7 expert at trial would be appropriate, referring to forensic
8 interviewers. I don't anticipate trying to qualify the
9 individual as a forensic interviewer. I ---

10 THE COURT: Okay.

11 MR. MCEACHIN: --- certainly intend to go over what they
12 did.

13 THE COURT: But as a -- you know, I mean they would be
14 qualified the same as an investigator I would think. I mean,
15 you know, let's just say the police had an investigator in
16 this area, criminal sexual conduct with a minor, and that
17 investigator is always assigned to those cases for that police
18 department. I don't know that they would be -- I don't know
19 if they're any more than that, but they're certainly not any
20 less than that. So I don't know that -- and it doesn't appear
21 that the State is going to use the, quote, forensic
22 interviewing, but certainly they're an investigator.

23 MR. BROOKER: And, Your Honor ---

24 THE COURT: So for the State. Yes, sir? Go ahead.

25 MR. BROOKER: I'm sorry. I didn't mean to interrupt you,

1 Your Honor.

2 THE COURT: That's all right. Go ahead.

3 MR. BROOKER: Your Honor, with respect to basically
4 saying that -- that the -- that the forensic interviewer is an
5 investigator, I think in Kromah the Court talks extensively
6 with respect to -- and suggests that that's probably exactly
7 what they are and talks extensively about what the term
8 forensic interviewer means and it basically means is, is that
9 a forensic interviewer's job is to collect information for
10 purposes of trial and I think went into that in great detail.
11 But I think the Kromah court -- I think not just in dicta or
12 either in a -- in a footnote, but specifically said that the
13 Court -- that -- that the label of expert should be jealously
14 guarded. It should be jealously guarded by the Court and
15 never loosely binded.

16 And, of course, with respect to qualifying Smith in that
17 case as a -- as a forensic interviewer, the Court went on to
18 say is, is that -- it went on to say is, is that -- that --
19 that -- and I will read it. It says, furthermore, even though
20 experts are committed to give opinion -- to give an opinion,
21 they may not offer an opinion regarding the credibility of
22 others. It is un -- it is undeniable in that the primary
23 purpose of calling a forensic interviewer as a witness is to
24 lend credibility to the victim's allegations. Where the
25 witness is qualified as an expert, the impermissible harm is

1 compounded.

2 And so I think what the Court is suggesting is, is that
3 forensic interviewers and -- are, you know, quite actually not
4 experts, but they are investigators. I agree with you one
5 hundred percent. They're part of the investigatory process.

6 THE COURT: Okay.

7 MR. MCEACHIN: Your Honor, I'm -- and I'll even tell Mr.
8 Brooker my trial strategy. I'm just going to ask for
9 information of her personal knowledge. I'm not going to
10 elicit an expert ---

11 THE COURT: Great.

12 MR. MCEACHIN: --- expert response.

13 THE COURT: All right. Well, then that's -- that's good.
14 I don't ---

15 MR. BROOKER: Yes, sir.

16 THE COURT: You know, like I said, it -- you know, I've
17 always thought that they were -- I know I don't want to say a
18 glorified investigator, but they're just another investigator
19 for the State and they -- they have training in a particular
20 field that might help them investigate or develop facts for
21 the State better than someone who is not -- does not do that
22 on a regular basis.

23 So again, I -- you know, that's -- again, I don't see
24 that we're going to have any issue. Certainly, I think the
25 State understands we're not having anybody vouch for the

1 credibility of -- of anybody. That's not -- that's not
2 happening. That's a longstanding rule. So ---

3 MR. BROOKER: Certainly.

4 THE COURT: --- again, I think we're all on the same
5 page, but again, you see a violation of either this case or
6 any of the numerous previous cases about credibility and
7 believability, vouching for witnesses, I'll be glad to hear
8 from you. The State is not going to offer them as an expert
9 in that particular field. I'm assuming they'll be offering
10 them as one of their interviewer/investigators of the case. I
11 don't think there'd be any issue with calling them what they
12 are. I mean that's a person that the State has in these
13 particular cases to interview and investigate the matter and
14 bring facts and/or evidence to the attention of the State.
15 And so I think we're all in agreement there. But again ---

16 MR. BROOKER: Yes, sir.

17 THE COURT: --- if you see something you need to object
18 to during the trial, you do so and the Court will rule on it
19 at that point in time.

20 MR. BROOKER: Thank you, Your Honor.

21 THE COURT: All right. Very good.

22 MR. BROOKER: Your Honor, can I make one ---

23 THE COURT: Yes, sir, please.

24 MR. BROOKER: And this is a routine motion I've got to
25 make.

1 THE COURT: Yes, sir, please.

2 MR. BROOKER: Because normally is I make a routine motion
3 to -- to at least sequester at least any fact witnesses.

4 THE COURT: Okay.

5 MR. BROOKER: So witnesses won't have the benefit of, you
6 know ---

7 THE COURT: Any issue with that?

8 MR. MCEACHIN: I join in with that request.

9 THE COURT: All right. That's fine. We'll -- that'll be
10 for the State and the defense obviously. Do you have a -- a
11 lead investigator, Solicitor, that ---

12 MR. MCEACHIN: Yes, Your Honor.

13 THE COURT: And who is that?

14 MR. MCEACHIN: And, of course, we would ask that he be
15 allowed to remain in the courtroom.

16 THE COURT: And I'm sorry. His name again?

17 MR. MCEACHIN: Charlie Watson.

18 THE COURT: All right. So, Mr. Watson, I'll -- Mr.
19 Brooker, I'm going to allow the State's lead investigator to
20 stay with the State. I think that's certainly proper that --
21 for them to be able to have somebody that's shepherded the
22 case to be there with the solicitor.

23 MR. BROOKER: I have no objection, Your Honor.

24 THE COURT: All right. Very good. Okay. As far as
25 witnesses for today, Solicitor, do you think you're prepared

1 to produce some witnesses today?

2 MR. MCEACHIN: Yes, sir, Your Honor. I have three
3 prepared and I anticipate if we start at three thirty maybe
4 getting through two of them.

5 THE COURT: Okay. Well, that's good. I mean it sounds
6 like you have enough. I'm not sure we'll get through three.
7 I'll tell you gentlemen it's -- it's my standard practice
8 that, you know, we'll try to leave at a reasonable hour.
9 We've got a captive audience over here. They're -- you know,
10 they're honestly not here by their choosing and so I try to
11 respect that and keep -- keep their hours relatively --
12 relatively limited. Obviously, we've got work to do and we're
13 going to accomplish that, but I don't -- unless it's
14 necessary, I'm not going to keep them very late so they can at
15 least get home at some decent hour. All right?

16 MR. BROOKER: Certainly.

17 THE COURT: All right. Good deal. All right, gentlemen.
18 Then we'll just wait for the jury to arrive. As soon as the
19 jury starts arriving, shepherd them into the jury room and
20 when they're all here, y'all let me know and we'll -- we'll
21 get started. Anything else from the defense that you can
22 think of?

23 MR. BROOKER: Nothing from the defense, Your Honor.

24 THE COURT: From the State?

25 MR. MCEACHIN: No, sir, Judge.

1 THE COURT: All right, gentlemen. I appreciate it very
2 much. Thank you.

3 MR. BROOKER: Thank you, Your Honor.

4 (Whereupon, there is a break in the proceedings from 2:44
5 p.m. until 3:30 p.m.)

6 THE COURT: All right, gentlemen. As to -- just so that
7 it's part of the record, we had handed out to the whole panel
8 those four questions. You had your defendant's voir dire that
9 you had presented and I told you that I had a form of four
10 questions that I would ask in a CSC with a minor case. The
11 vast majority of the jurors responded no to all four
12 questions, but we did have a few that did respond yes to one
13 of the questions. I've got those here. What I'll do is hand
14 that package of them to the court reporter for filing as part
15 of the record as the -- as a Court's exhibit. The record will
16 reflect that the jurors that we struck for cause and that
17 regarding these four questions and the other ones that we kept
18 on the jury. As you'll recall, gentlemen, when we called
19 those jurors forward, they all responded that they could be
20 fair and impartial to the State and the defendant and could be
21 a fair and impartial juror and render a fair and impartial
22 decision in this matter and so the Court kept those jurors on
23 regarding this particular matter.

24 (Whereupon, the questionnaires packet is marked as
25 Court's Exhibit Number 1.)

1 THE COURT: All right. So it appears that the jury is
2 here ready to go forward. Is the State ready?

3 MR. MCEACHIN: Ready to proceed, Your Honor.

4 THE COURT: And defense?

5 MR. BROOKER: Yes, Your Honor.

6 THE COURT: All right. Very good. Ask the jury to come
7 out then, please.

8 (Whereupon, the jury enters the courtroom at 3:33 p.m.)

9 THE COURT: All right. Ladies and gentlemen, we're going
10 to start the trial of the case of the State of South Carolina
11 v. Daniel Owens, Jr. The very first thing that's going to
12 happen in the trial is the Clerk of Court is going to
13 administer your oath to you. So if you would all please stand
14 at this time.

15 (Whereupon, the jurors comply.)

16 THE CLERK: I need for you to raise your right hand to be
17 administered the oath and after I repeat the oath, if you will
18 repeat "I will" behind the oath, please. You shall well and
19 truly try and a true deliverance make between the State of
20 South Carolina and the prisoner at the bar whom you shall have
21 in charge and a true verdict give according to the law and the
22 evidence, so help you God.

23 THE JURY: I will.

24 THE CLERK: Thank you. You may be seated.

25 (Whereupon, the jurors comply.)

1 THE COURT: All right. Ladies and gentlemen, first is
2 there any member of the jury that did not affirmatively take
3 the oath as given by the Clerk of Court? If you did not,
4 please stand.

5 (Whereupon, no one stands.)

6 THE COURT: No juror having stood, the Court finds the
7 jury is properly sworn in this matter.

8 I indicated to you in general that your job was, one, to
9 look at the evidence. You're going to be listening to the
10 facts and evidence presented in this case. You are to make
11 your decision solely and completely on the facts and evidence
12 presented in this case. And I'll tell you probably before you
13 go, you know, you're not investigators. You're not
14 researchers. You're not to look up anything, but you're going
15 to make your decision based solely and completely on the facts
16 and the evidence presented from the witnesses who come before
17 the Court testifying under oath and any other kind of
18 documentary or paper evidence that is properly introduced in
19 this case.

20 So with that, what that means is essentially you're going
21 to be the judges of the facts of this case. I will not
22 intimate to you in any way what I believe the facts of this
23 case are because that's not my job. It's going to be your job
24 and your responsibility to listen to the facts and evidence
25 presented in this case and find the facts and evidence that

1 you find to be true. So in doing so, you're going to have to
2 judge the credibility. That is the believability of the
3 witnesses that come before you under oath and testify in this
4 matter.

5 If you're thinking about it, well, how can I judge
6 somebody's credibility and believability, you do it every
7 single day of your life. When somebody tells you something,
8 you're automatically judging whether or not you believe them
9 and you do that by using your good common sense and your good
10 judgment that you use in conducting your own affairs every
11 single day. So that's what we're going to be asking you to
12 do. Use your good common sense. Use your good judgment.
13 Find that evidence which convinces you of its truth.

14 Now, that evidence you find to be true, what you're going
15 to do is you take that evidence and you weigh it against the
16 State's burden to prove the defendant guilty beyond a
17 reasonable doubt. I told you at the very beginning when I
18 read to you the information contained in the indictment, the
19 charging document that brought the matter to court, that this
20 wasn't evidence. The evidence will come in during the trial.

21 When the State charged the defendant with these crimes,
22 the defendant pled not guilty. That means the State has to
23 prove him guilty of the crimes they charged him with beyond a
24 reasonable doubt. That is the State's job: prove the
25 defendant guilty, if they can, beyond a reasonable doubt by

1 the facts and evidence they present to you.

2 The defendant has nothing to show to you. The defendant
3 has nothing to prove to you. I tell juries all the time the
4 defendant need not even show up for trial because they don't
5 have to show you anything. They don't have to prove anything
6 to you. The State has to produce the evidence that you will
7 evaluate, the evidence you find to be true, and then you
8 decide whether or not the evidence you find to be true, the
9 State has proved the guilt of the defendant beyond a
10 reasonable doubt. Now, we'll define all these things and I'll
11 talk to you about your -- the law and what the State has to
12 prove at the very end, but in general, that's what has to
13 happen.

14 During the course of the trial, the attorneys may raise
15 certain objections or motions or bring some matter to the
16 Court's attention. If I rule on them in your presence and
17 tell the attorneys something while y'all are still here in the
18 courtroom and I haven't sent you back to the jury room so I
19 could talk to them some more about it, please remember I'm not
20 making any comments on the facts. I'm carrying out one of my
21 duties. That is to govern the conduct of the trial, how the
22 trial will be conducted, and to see -- to make sure that
23 proper rules are followed and that the attorneys are doing
24 what they are obligated to do according to the -- the rules of
25 practice. So if I make a ruling, just remember I'm basically

1 just telling the lawyers how the trial will be conducted. I'm
2 not talking about credibility and believability or, you know,
3 what the facts of this particular case are.

4 How the trial will be conducted. We'll have brief
5 opening statements by the lawyers. Now, the opening
6 statements and I'll tell you the closing statements, they're
7 not evidence. They're that side's position. In the opening
8 statement, they're introducing the matter to you, what they
9 hope to prove or what -- what they want y'all to be looking at
10 during the course of the trial. In the closing arguments,
11 they're making their comments about what they believe the
12 evidence has shown to you during the course of the trial.
13 Remember, of course, you're the judges of the facts. So what
14 they tell you, that's not evidence, but it's important because
15 it's their -- their position and you need to -- to listen to
16 that.

17 In between the opening statements and the closing
18 statements, we'll have the evidence. The witnesses will come
19 before the Court, be sworn by the Clerk of Court to tell the
20 truth. You'll evaluate their testimony, what they tell you.
21 You'll look at any documentary or paper evidence the State may
22 have in this particular matter.

23 When we're done with that, the closing arguments and then
24 I'll tell you the law that you will apply to the facts and
25 evidence you find to be true. So I'll explain the law, you'll

1 apply the facts you find to be true to the law, and see
2 whether or not the State has proven the guilt of the defendant
3 beyond a reasonable doubt.

4 So with that and understanding that to be your general
5 duties and responsibilities, I'll turn it over to the lawyers
6 for their opening statements. All right, Solicitor.

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

9 THE COURT: Yes, sir.

10 OPENING STATEMENT BY THE STATE

11 MR. MCEACHIN: Mr. Brooker. Madame Forelady and ladies
12 and gentlemen of the jury, the one place that children should
13 feel safer than any other place is when they're with their
14 family and that's because the family protects children. They
15 guard children. They fend off danger when it comes the
16 children's way.

17 But unfortunately for the Grover girls, that wasn't the
18 case. These girls were not attacked, they were not assaulted,
19 they were not abused by some stranger in some dark alley.
20 They were abused by a family member. They were abused by
21 their uncle, Daniel Owens.

22 There was no comfort for those girls with their family
23 and that's what this case is about, ladies and gentlemen.
24 It's about a little nine and a half -- ten-year-old girl and a
25 little seven-year-old girl being sexually abused by a mid- to

1 late forty-year-old man.

2 I introduced myself to you at the beginning of the trial
3 and I told y'all I represented the State of South Carolina and
4 the County of Marion, and the judge has indicated to you that
5 I'm the prosecutor or the assistant solicitor in this case and
6 the burden is on me to prove to you twelve individuals and the
7 alternate if you end up serving that Dan Owens or Daniel
8 Owens, Jr., committed the crimes for which he's been charged
9 with, and the obligation rests on my shoulders to prove to you
10 that he did this beyond a reasonable doubt.

11 And the judge is going to talk to you a little bit more
12 about that theory of law when we get to the end of the case.
13 What is this beyond a reasonable doubt? What does it mean?
14 Well, I can tell you this much now. It means that after you
15 hear the evidence in this case, if you are firmly convinced
16 that Dan Owens raped one of his nieces and sexually
17 inappropriately touched another one, if you're firmly
18 convinced of that, then you find him guilty.

19 I don't have to prove the case to you beyond any and all
20 doubt. That's not what the law requires, but it does require
21 that I prove it to you so that you're firmly convinced that
22 what I'm telling you and what the people in this stand tell
23 you more pertinently is what happened in the case. And the
24 way I do that is through evidence and there are two forms of
25 evidence in any case that comes to trial. You have exhibits,

1 which are the hard evidence. It's called the hard evidence.
2 It's tangible things, things you can touch, you can see, you
3 can hear. There aren't going to be a whole lot of exhibits in
4 this case.

5 Instead, most of the evidence that you folks will be
6 presented with will be the second form and that's through
7 testimony or the spoken word and it's going to come from this
8 chair right here from the witness stand. And you're going to
9 hear from the witnesses in this case. You're going to hear
10 from the people in this case who have firsthand knowledge and
11 you're going to hear from the little victims in this case.

12 You're going to hear from three little girls. They're a
13 little bit older now. One of these incidents occurred about
14 nine years ago, the other one about seven -- six or seven
15 years ago. The girls have grown up a little bit. They're all
16 teenagers now, but at the time when these things occurred,
17 like I've already told you, one was nine, maybe ten.

18 The reason I say nine, maybe ten, is because the incident
19 occurred in July of 2007 and her birthday is in [REDACTED]. So she
20 could have been nine, she could have been ten, but it was in
21 July of 2007 when this occurred and that's Miss Minor 1

22 And you're going to hear from her and she's going to
23 tell you about how she was raped by Dan Owens.

24 You're also going to hear from Miss Minor 2 Minor 2
25 was seven years old and in June of 2004, she's going to

1 testify to you that Dan Owens came in a room behind her,
2 closed the door so she couldn't get out, pulled down his
3 pants, and inappropriately touched her. And you're going to
4 hear from their little sister who witnessed some of these
5 things.

6 You're going to hear from Charlie Watson of the Marion
7 County Sheriff's Office. He's the lead investigator in this
8 case and you'll hear from other witnesses as well, and once
9 you hear from those people, I suggest to you that you will be
10 firmly convinced that Dan Owens is guilty of the two crimes
11 that he's been charged with, which is the rape and the
12 inappropriate touching of his two young nieces.

13 But I want you to keep in mind when you're listening to
14 this testimony, ladies and gentlemen, that these acts didn't
15 occur to some sixteen, seventeen, eighteen-year-old, some
16 adult. They occurred to a nine-year-old and a seven-year-old
17 and you've got to keep that in mind when you're listening to
18 what they have to tell you because when those girls take this
19 stand, they're going to have to tell you twelve folks and our
20 alternate here the most horrific story, the most horrific
21 reality that anybody would ever have to live through and
22 they're going to tell it to you twelve strangers. So you can
23 imagine how hard that's going to be on them, but you've got to
24 take all of that into account when you sit here and listen to
25 these girls -- these young girls take the stand and tell you

1 that.

2 And as I've said, I think once you hear what these girls
3 have to tell you, you will be firmly convinced that they were
4 in fact raped and they were touched inappropriately. This is
5 an important case to the defendant. It's an important case to
6 the County of Marion and it's an important case to the State
7 of South Carolina. The case probably won't last all week.
8 It's not going to be a long case, but that doesn't lessen the
9 importance of it and because of the importance of it, I want
10 to thank you in advance for the time, effort and consideration
11 that you're going to put into it because it is such an
12 important case and I thank you.

13 THE COURT: All right. Mr. Brooker?

14 OPENING STATEMENT BY THE DEFENSE

15 MR. BROOKER: Thank you, Your Honor. The evidence or
16 lack of evidence presented to you will show that this case is
17 about inconsistencies and contradictions. That this case is
18 about deficiencies of investigation and incompetency of the
19 investigation. That this case is about woefully lack of
20 evidence to substantiate any allegations made in reference to
21 Daniel Owens, Jr.

22 Now, the judge said some things that are extremely
23 important. They are so important that they bear repeating
24 because what the judge just explained to you is probably some
25 of the most important principles in our judicial system of

1 government. In our judicial system, they are extremely
2 important and extremely vital in order for the -- in order for
3 the judicial system to work and also in order for you to
4 perform your duties as fair, impartial jurors, void of
5 passion, prejudice or sympathy.

6 You're guided by the facts, not by sympathy, not by
7 prejudice at all. If you are unable to do that, then you have
8 failed in your role as jurors. That is the purpose, ladies
9 and gentlemen, of all of those voir dire questions that was
10 discussed to you. That's the purpose of them all is to rule
11 out -- to rule out prejudice, to rule out passion, sympathy,
12 and to find jurors that would simply listen to the evidence or
13 the lack thereof of evidence, and make their decisions based
14 on that.

15 Now, let's talk about those important principles. One is
16 innocent until proven guilty, which is probably one of the
17 most important principles within our judicial system. As
18 Daniel Owens sits right there, he is as innocent as any of us
19 sitting in this room. Any of us. And in order for you to
20 serve -- in order for you to serve your duty and serve it
21 correctly as a juror, you have to believe that. You have to
22 be able to look at Daniel Owens and see that he sits there
23 innocent because that's what our law says and it's extremely
24 important.

25 I often say is, is that you might consider him cloaked in

1 a robe of innocence or wrapped in a blanket of innocence, and
2 we all -- we all are cloaked and wrapped in that blanket.
3 Every man, woman, child, regardless of their race, regardless
4 of their creed, regardless of their religion, regardless of
5 their culture, we are all innocent. And the only way that
6 that innocent -- innocence can be removed is by a standard of
7 proof beyond a reasonable doubt. That the State has to rip
8 away that robe of innocence and leave him sitting there guilty
9 and they have to do that by proof beyond a reasonable doubt.

10 The standard, ladies and gentlemen -- gentlemen, is not
11 firmly convinced. That is not the criminal standard. The
12 criminal standard that you have to abide by in this case is
13 the highest burden of proof that we have in our judicial
14 system and that's proof beyond a reasonable doubt, not firmly
15 convinced.

16 MR. MCEACHIN: I'm going to object at this point.

17 THE COURT: What I'll do is, ladies and gentlemen, I told
18 you the opening and closing arguments are not evidence. I'm
19 going to allow the -- Mr. Brooker to continue. You will
20 remember that I will give you the instructions as to the law
21 at the very end. All right? Thank you very much. Continue
22 on, sir.

23 MR. BROOKER: Thank you, Your Honor. It's proof beyond a
24 reasonable doubt.

25 Now, I am not going to go into great detail and explain

1 exactly what proof beyond a reasonable doubt is. That is the
2 job, you know, of Judge John and when it is appropriate at the
3 end of this case, he will charge you with the law and he will
4 give you a definition of what beyond a reasonable doubt means
5 so that you can take it in the jury room and apply it to the
6 facts or to the evidence or lack of evidence presented in
7 connection with this case.

8 Now, there is another very, very, very important
9 principle of law that Judge John mentioned and it's so
10 important it bears repeating and that is the roles of -- the
11 role of lawyers in criminal cases. Anything that I say is not
12 considered to be evidence. Anything that's said by the
13 State's attorney is not considered to be evidence. We all
14 have a role in this judicial process.

15 The attorneys' role, the defense attorney and the
16 prosecution, you can think of us as facilitators. Our job is,
17 is to collect the evidence and to orderly present that
18 evidence in a way in which you can process it and hopefully
19 make an intelligent decision. I am not a witness in
20 connection with this case. Mr. McEachin for the State is not
21 a witness in connection with this case. Your Honor is not a
22 witness in connection with this case. We all are
23 facilitators. We have a job in making sure that this evidence
24 or lack thereof is presented to you in an orderly manner so
25 that you can hopefully go back and make an intelligent

1 decision with respect to proof beyond a reasonable doubt has
2 been satisfied and do it without passion and without
3 prejudice.

4 Now, Mr. McEachin talked with you in reference to some of
5 the witnesses that are anticipated being presented in
6 connection with this case and he talked with you with the type
7 of evidence that's expected to be presented in this case. And
8 I think Mr. McEachin advised you is, is that there are certain
9 types of evidence. You know, there is tangible evidence that
10 you can touch and feel that's sometimes presented in the form
11 of exhibits, and then there is testimony, word of mouth, and
12 what people say.

13 And you heard Judge John's instructed to you -- or
14 instructed you is that when you are listening to testimony
15 from witnesses, you are the sole deciders of whether or not
16 that testimony is accurate, that whether or not you chose to
17 believe it, and you have to use your common sense and judgment
18 that you have accumulated in your long lives in making that
19 determination.

20 You have to look at things like consistency and
21 inconsistency. Those are the type of things that we use in
22 our own lives. Which witness was consistent, which witness's
23 statement was not consistent, and any other factors that you
24 think is relevant in assisting you in -- in that -- in
25 assessing credibility, assessing whether or not proof beyond a

1 reasonable doubt is present.

2 And you will hear from a lot of witnesses. You will hear
3 from -- (coughs) excuse me -- Minor 1 [sic], who Mr.
4 McEachin advised you is, is the young lady who said Daniel
5 Owens molested her, came to her room one night while she was
6 asleep, and when she woke up, he was on top of her. That's
7 the type of testimony that you're expected to hear from her.
8 And Minor 2 [sic], who alleges that Daniel Owens pulled
9 his pants down and exposed himself to her and tried to pull
10 her pants down some three or four years earlier.

11 You will also hear testimony from people who have been
12 involved in the investigation. You will hear from Danna
13 Collins, who interviewed these two girls. You will hear from
14 Detective Charlie Watson, who is seated right here. My
15 understanding was -- is, is that he was the investigator in
16 connection with this case. You will hear from Deputy John
17 Israel, who is a law enforcement officer involved.

18 You will hear from the grandmother, who I think initially
19 presented these allegations to law enforcement on July -- I
20 think it was July 22 of 2009. And you will also hear from
21 Kathy Saunders. Kathy Saunders's testimony is going to be
22 particularly relevant because Kathy Saunders's testimony is
23 going to be based upon a forensic examination that she
24 performed. You will also hear the testimony of Dr. Wu, who is
25 an OB/GYN I think who is now retired from Marion, South

1 Carolina, who also examined the young girls.

2 And I hope -- I absolutely hope that you listen to the
3 evidence carefully and don't allow your passions -- you don't
4 allow your passions, you know, to run wild with you just
5 because we're talking about minors. You have to listen to the
6 evidence or the lack thereof of evidence, the inconsistency in
7 the evidence, and make your determination based upon the
8 existence and non-existence of evidence, not based upon
9 passion or prejudice or the fact that the young girls who are
10 making the allegations are minors or adolescents.

11 If you cannot void that from your mind, then you will
12 fail in your duties as jurors. Fairness, impartiality, lack
13 of prejudice, the existence and non-existence of evidence is
14 what you're concerned with. Thank you very much.

15 THE COURT: All right. Solicitor, your first witness,
16 please, sir.

17 MR. MCEACHIN: Thank you, Your Honor. We'd call
18 Minor 1 to the stand.

19 THE COURT: All right.

20 THE CLERK: If you'll come around and let me swear you
21 in, please. Okay. Put your left hand on the Bible and raise
22 your right hand. Do you solemnly swear or affirm that you
23 will tell the truth, the whole truth, and nothing but the
24 truth, so help you God?

25 THE WITNESS: Yes, ma'am.

1 THE CLERK: Have a seat.

2 THE COURT: Before you begin, Solicitor, ma'am, can you
3 tell me how old you are right now, please?

4 THE WITNESS: I'm sixteen.

5 THE COURT: Sixteen. Okay. Now, I heard you, but I'm
6 not sure those people over there heard you. Okay? They are
7 the jury and they're the people you need to speak to. All
8 right? They have to hear you. If they don't hear you,
9 they're going to raise their hand and say please say it over
10 again. All right? So you've got -- got to speak up. All
11 right? You've got to speak up and -- and be loud enough so
12 people can hear you. All right.

13 Now, before you get started, Solicitor, again it's
14 proper, ladies and gentlemen, and I'll repeat this at the very
15 end. When you have minors or children testifying, again, I
16 told you, your job -- and I'm not, again, making any comments
17 on the facts here, but it's your job to judge the credibility
18 and believability of all witnesses. When you are talking
19 about a minor or a -- children, you have to also keep in mind
20 the age of the child, the child's ability to observe and
21 remember facts, the child's ability to understand and answer
22 questions, because some children, whatever their age, may not
23 fully understand what is happening in a courtroom situation.

24 It's up to you to decide whether the child understood the
25 seriousness of appearing as a witness in a criminal trial,

Minor 1

- DIRECT EXAMINATION BY MR. MCEACHIN

1 whether the child understood the questions, whether the child
2 has a good memory, whether the child understands the
3 difference between lying and telling the truth, and
4 understands and that it -- it's possible that children may or
5 may not be influenced by the way questions are asked. It's up
6 to you to decide whether or not a minor, a child, understands
7 the questions asked and answers the questions truthfully.

8 All right. Solicitor, you may proceed.

9 MR. MCEACHIN: Thank you very much.

10 Minor 1 , being first duly
11 sworn, testifies as follows:

12 DIRECT EXAMINATION

13 BY MR. MCEACHIN:

14 Q: Minor 1 , if you don't mind, state your full name for
15 the record?

16 A: Minor 1 .

17 Q: All right. And you're going to have to talk a little bit
18 louder than that. Okay? Just a little bit louder. You've
19 got to make sure everybody in this jury and this fellow back
20 here in the red shirt and this fellow in the orange shirt, we
21 want everybody to be able to hear what you have to say. Okay?

22 A: Yes.

23 Q: All right. Is that okay? Do you understand?

24 A: Mm-hmm.

25 Q: All right. You've got ---

Minor 1 - DIRECT EXAMINATION BY MR. MCEACHIN

- 1 THE COURT: And you're going to have to answer yes or no.
2 Okay? Because of the court reporter.
3 Q: You've got to say yes or no. You can't -- you can't nod
4 your head and you can't say mm-hmm or uh-uh. You've got to
5 say yes or no so -- so the court reporter can take it down.
6 All right?
7 A: Yes, sir.
8 Q: All right. Now, Minor 1 if you don't mind, would you
9 tell the jury who you live with?
10 A: My grandma and my grandpa.
11 Q: And what are their names?
12 A: Margaret and Terry Grover.
13 Q: Margaret and Terry Grover?
14 A: Yes, sir.
15 Q: And who else lives with you and your grandparents?
16 A: My little brother, J.G. and my sister, Minor 2 and my
17 sisters, J.A.G. and R.G. and H.G. .
18 Q: Okay.
19 A: And that's all.
20 Q: So y'all have a house full?
21 A: Yes, sir.
22 Q: Okay. So it's you -- your grandparents, you, and then if
23 I count correctly, Minor 2 J.G. , R.G. , H.G. and J.A.G. .
24 So you've got five other siblings?
25 A: Yes, sir.

Minor 1

- DIRECT EXAMINATION BY MR. MCEACHIN

- 1 Q: And y'all all live with your grandparents?
- 2 A: Yes, sir.
- 3 Q: And where are you in regards to age? Are you the oldest?
- 4 A: No, sir.
- 5 Q: And where do you fall in the line of age?
- 6 A: I'm the second oldest..
- 7 Q: The second oldest?
- 8 A: Yes, sir.
- 9 Q: And how old are you?
- 10 A: Sixteen.
- 11 Q: Okay. And when did you turn sixteen?
- 12 A: July 10th.
- 13 Q: July 10th? So ---
- 14 A: Yes, sir.
- 15 Q: --- about a month ago?
- 16 A: Yes, sir.
- 17 Q: And are you in school right now?
- 18 A: Yes, sir.
- 19 Q: Where do you go to school?
- 20 A: Aynor High School.
- 21 Q: And what grade are you going in? Well, I guess you
- 22 haven't started yet. What grade are you going into?
- 23 A: Tenth.
- 24 Q: The tenth grade?
- 25 A: Yes, sir.

Minor 1

- DIRECT EXAMINATION BY MR. MCEACHIN

- 1 Q: And do you have any hobbies or activities you like to do?
- 2 A:) Marching band and play with my little sisters and brother
- 3 and play football.
- 4 Q: Football?
- 5 A: Yes, sir.
- 6 Q: All right. Do you -- do you have a favorite football
- 7 team?
- 8 A: Carolina.
- 9 Q: The Gamecocks?
- 10 A: Yes, sir.
- 11 Q: Okay. Okay. If you don't mind, would you let the jury
- 12 know? You said your birthday was on [REDACTED] [REDACTED]. What year were
- 13 you born?
- 14 A: 1997.
- 15 Q: 1997?
- 16 A: Yes, sir.
- 17 Q: And, Minor 1 the reason we're here today -- I think
- 18 you know why -- is because of some stuff that took place back
- 19 in July of 2007. Do you recall that period in time?
- 20 A: Yes, sir.
- 21 Q: And during that period in time, who were you living with?
- 22 A: My mama and my daddy.
- 23 Q: Okay. And where were y'all living?
- 24 A: In Springville.
- 25 Q: Where is that?

Minor 1

- DIRECT EXAMINATION BY MR. MCEACHIN

1 A: In Springville.

2 Q: In Springville? Is that in Marion County?

3 A: Yes, sir.

4 Q: All right. And in whose house were y'all living at at

5 the time?

6 A: Dan Owens.

7 Q: Dan Owens?

8 A: Yes, sir.

9 Q: And how do you know Dan Owens?

10 A: He is my uncle.

11 Q: Okay. And do you see Dan Owens seated in the courtroom

12 here today?

13 A: Yes, sir.

14 Q: What's he wearing?

15 A: White with sun shades on his shirt.

16 Q: And can you point him out to the jury real quick?

17 (Whereupon, the witness points at the defendant.)

18 MR. MCEACHIN: Your Honor, please have the record reflect

19 the witness has identified the defendant.

20 THE COURT: All right, sir.

21 MR. MCEACHIN: All right.

22 Q: So you were living there with your parents at your Uncle

23 Dan's. Who else was living with y'all at the time?

24 A: Jen and Becca and Minor2 and my mama and my daddy.

25 Q: Okay. So it was the four girls -- or wait a minute. I

Minor 1

- DIRECT EXAMINATION BY MR. MCEACHIN

1 ain't counting right. It was you, Minor 2 R.G. and Jen. So
2 four girls ---
3 A: Yes, sir.
4 Q: --- and your parents and your Uncle Dan?
5 A: Yes, sir.
6 Q: Okay. And specifically in July of 2007, did something
7 happen to you while you were staying at your Uncle Dan's
8 house?
9 A: Yes, sir.
10 Q: And do you recall what time of day it was that it
11 occurred?
12 A: It was -- I'm trying to remember. It was night time.
13 Q: Okay. It was night time?
14 A: Yes, sir.
15 Q: So it wasn't in the morning or midday?
16 A: No, sir.
17 Q: And where were you in the house when this -- when this
18 thing occurred?
19 A: In my bedroom.
20 Q: In your bedroom?
21 A: Yes, sir.
22 Q: And if you don't mind, tell the jury kind of -- if you
23 don't -- if you don't mind, where is your bedroom located in
24 that particular house?
25 A: At the far end of the house.

Minor 1

- DIRECT EXAMINATION BY MR. MCEACHIN

- 1 Q: So -- and I'm just trying to picture it in my head. Is
2 it -- is it the very last bedroom in the house?
- 3 A: Yes, sir.
- 4 Q: Okay. And was there anybody else staying in the bedroom
5 with you on this particular night?
- 6 A: Minor2 my sister, was in the room.
- 7 Q: Your sister, Minor2 was in there with you?
- 8 A: Yes, sir.
- 9 Q: And do you and Minor2 normally stay in the same room
10 together?
- 11 A: Yes, sir.
- 12 Q: Okay. And if you don't mind, Minor1 tell the jury
13 what you recall happening on that particular evening?
- 14 A: I was laying down in the bed. Me and my sister, Minor2
15 always went to the room and we always talked a little bit
16 before we even went to bed. Well, the door was locked when we
17 went to the bed.
- 18 Q: Okay. You said the door was locked. The bedroom door
19 was locked?
- 20 A: Yes, sir.
- 21 Q: Okay. And was it -- does it get locked from the inside
22 or the outside?
- 23 A: The inside.
- 24 Q: Okay. So y'all locked it?
- 25 A: Yes, sir.

Minor 1

- DIRECT EXAMINATION BY MR. MCEACHIN

- 1 Q: Okay. And y'all locked it and y'all were talking. What
2 -- what else -- what else did y'all do? What did y'all do
3 next?
- 4 A: And then we laid down. Well, I reached over and gave her
5 a kiss and a hug like we did every night and we went to -- we
6 laid down and we went to sleep. I always slept -- I always
7 sleep on the right so then she loves sleeping on the left
8 side.
- 9 Q: So y'all kind of had -- had it set up where you always --
10 you always slept on the right and she always slept on the
11 left?
- 12 A: I always slept by the nightstand.
- 13 Q: Okay. And what happened next?
- 14 A: And then when I woke up, Dan Owens was on top of me.
- 15 Q: Okay.
- 16 A: And ---
- 17 Q: And you're referring to the Dan Owens that you pointed
18 out earlier?
- 19 A: Yes, sir.
- 20 Q: All right. Did you see or hear him come into the room?
- 21 A: No, sir.
- 22 Q: Okay. And you said when you woke up, he was on top of
23 you?
- 24 A: He was on top of me.
- 25 Q: Okay. And can you explain to the jury what he did?

Minor 1

DIRECT EXAMINATION BY MR. MCEACHIN

- 1 A: He was on top of me and I had on no clothes. They were
2 off of me.
- 3 Q: And when you went to bed that night, did you have your
4 clothes on?
- 5 A: Yes, sir.
- 6 Q: Okay. But when he was on top of you, they weren't on?
- 7 A: I didn't have on my clothes.
- 8 Q: Okay. And when you say clothes, you're talking about
9 clothes and underwear; is that right?
- 10 A: Yes, sir.
- 11 Q: Okay. And they were off of you when he was on top of
12 you?
- 13 A: Yes, sir.
- 14 Q: Okay. What happened next?
- 15 A: When I woke up, his hand was over my mouth so I couldn't
16 say nothing or nothing else and he was on top of me and his
17 body was touching my body.
- 18 Q: Okay. And, Minor 1, it's -- I know that sometimes
19 we're told not to use specific words because they're
20 inappropriate, but it is appropriate to use them today. When
21 you say his body was touching your body, tell the jury what
22 you're talking about?
- 23 A: His private part was in my private part.
- 24 Q: Okay. And how long did this happen for?
- 25 A: It happened really until he got up when I'm guessing he

Minor 1

- DIRECT EXAMINATION BY MR. MCEACHIN

1 was done. Then he got up and then he left out the room.

2 Q: Okay. Where was -- do you know where Minor 2 was when this
3 was going on?

4 A: She was somewhere in -- I know she was in the room. She
5 was somewhere in the room. She might have been -- she
6 normally makes a pallet either on the floor or in the bed on
7 the side of the bed.

8 Q: Okay.

9 A: Because I used to use the bathroom in the bed and I would
10 wet the bed.

11 Q: And I don't -- I don't want you to be embarrassed about
12 that. So that's -- sometimes that's why she'd get out of the
13 bed?

14 A: Yes, sir.

15 Q: Because you used to use the bathroom in the bed?

16 A: Yes, sir.

17 Q: All right. And when Dan Owens was doing what he was
18 doing to you, was she in the bed with you?

19 A: No, sir. I had wet the bed that night.

20 Q: Okay. So she had gotten out of the bed?

21 A: Yes, sir.

22 Q: And what, if anything, did -- did the defendant say to
23 you while he was doing what he was doing to you?

24 A: He said if I said anything, then he would make it where I
25 wouldn't see my mama or my daddy or my family no more if I

Minor 1

- DIRECT EXAMINATION BY MR. MCEACHIN

- 1 said anything to anyone.
- 2 Q: So he said you wouldn't get to see your family no more if
- 3 you said anything to anybody?
- 4 A: Yes, sir.
- 5 Q: All right. Now, after he left the room that night, what
- 6 did you do?
- 7 A: I got up and I moved the sheets. I moved one of the
- 8 sheets over some and then tried to get where it wasn't wet on
- 9 the bed because I peed on the bed.
- 10 Q: Okay.
- 11 A: And so I -- then I laid down and I went back to sleep and
- 12 then in the morning when we got up, we took the covers off the
- 13 sheets.
- 14 Q: Okay. Did somebody wake you up or did you wake up on
- 15 your own?
- 16 A: No. My sister woke me up in the morning.
- 17 Q: Okay. And when she woke you up, what did y'all do?
- 18 A: We took the sheets off of the bed and we noticed that
- 19 there was blood on the sheets.
- 20 Q: All right. What did y'all -- when y'all noticed that,
- 21 what did you do with the sheets?
- 22 A: We went and put them in the washing machine.
- 23 Q: Why did y'all do that?
- 24 A: So I wouldn't get a beating for peeing in my bed.
- 25 Q: Okay. So you didn't want to get -- you'd get a spanking

Minor 1

- DIRECT EXAMINATION BY MR. MCEACHIN

1 for using the bathroom in the bed?

2 A: Yes, sir.

3 Q: Okay. And how old were you around this time?

4 A: I was ten.

5 Q: Okay. And this was in July. Did you just turn ten?

6 A: Yes, sir.

7 Q: Okay. So y'all put the sheets in the washing machine and

8 y'all washed them. When did you tell anybody about this?

9 A: When we went to Grandma's. When we come out of a foster
10 home and we went and stayed with Grandma Margaret. Then
11 that's when it come out and I told Aunt Doris.

12 Q: Okay. And you said -- about how long after the fact was

13 that? Was that -- was that a couple of days later or was it a
14 couple of years later? How -- how long after the fact was it?

15 A: It was exactly two -- one year and a half.

16 Q: Okay. So it -- it wasn't -- you didn't tell them right
17 away. And what was your reason for not saying anything right
18 away?

19 A: Because I was scared that I might not ever get to see my
20 family again.

21 Q: And is that because that's what he told you?

22 A: Yes, sir.

23 Q: Okay. And then you said you talked to your grandma and I
24 think your Aunt Doris about it?

25 A: Yes, sir.

Minor 1

- DIRECT EXAMINATION BY MR. MCEACHIN

1 Q: Okay. And did you have -- did you talk to anybody else
2 about it?

3 A: I talked to the people that we went in Florence. I told
4 them about it.

5 Q: Okay. And is that the Care House you went to in
6 Florence?

7 A: Yes, sir.

8 Q: And you spoke to somebody there about it?

9 A: Yes, sir.

10 Q: Okay. And other than those people you spoke to and
11 you're here telling the jury today, did you speak to anybody
12 else about it?

13 A: No, sir.

14 Q: Okay. Please answer any questions Mr. Brooker may have
15 for you. Okay?

16 A: Yes, sir.

17 THE COURT: Cross examination.

18 MR. BROOKER: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MR. BROOKER:

21 Q: Minor 1 how old did you say you were ---

22 A: Sixteen.

23 Q: --- right now? I'm sorry. I'm sorry. Go ahead.

24 A: Sixteen.

25 Q: Sixteen? Okay. And I think that you testified that this

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

1 allegedly happened when you were ten years old. It's been
2 roughly about six years ago?

3 A: Yes, sir.

4 Q: Okay. Now, you also testified to the fact that y'all
5 were staying at -- at Uncle Dan's house; is that correct?

6 A: Yes, sir.

7 Q: What type of home was this? Is this a mobile home?

8 A: Yes, sir.

9 Q: Okay. And how many bedrooms does it have in it?

10 A: Three bedrooms.

11 Q: Okay. And I'm assuming that your mother and father were
12 staying there, too. Is that -- is that what your testimony

13 is?

14 A: Yes, sir.

15 Q: Okay. And I'm assuming that one of the rooms was
16 occupied by your mother and father?

17 A: Yes, sir.

18 Q: Okay. And the other room would have been occupied by
19 Uncle Dan? He'd be sleeping in a bedroom?

20 A: Yes, sir.

21 Q: Okay. And then, of course, the other bedroom was
22 occupied by -- I know you testified you and you said Minor 2
23 Who else -- you testified to I think that particular period of
24 time that you had -- at the beginning of this case besides
25 Minor 2 that you had ---

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

- 1 A: Two other sisters.
- 2 Q: Two others? Where were they sleeping at?
- 3 A: Jen and Becca normally slept in whichever room that they
- 4 landed in. Whenever mama and them went to bed, they landed
- 5 in. Which Jen normally slept with me because she used to use
- 6 the bathroom in the bed, too.
- 7 Q: You said Jen. Is that J.A.G.
- 8 A: Yes, sir.
- 9 Q: Okay. Did she ---
- 10 A: She ---
- 11 Q: I'm sorry. Go ahead. I didn't mean to interrupt you.
- 12 A: Yes, sir. J.A.G. used to use the bathroom in the bed,
- 13 too. So we -- wherever she landed because we used to get a
- 14 beating in the morning if our sheets were wet. So Becca would
- 15 normally sleep in there with mama and them. If not, she would
- 16 sleep on a pallet on the floor.
- 17 Q: So did Jen sleep -- did J.A.G. sleep in the room with
- 18 you?
- 19 A: She might have been sleeping on the floor, if I recall,
- 20 or -- which I know J.A.G. -- she was sleeping with us
- 21 because she used to pee in the bed, too, with us -- well, with
- 22 me because I was the only one that stayed up with her
- 23 nightmares. I still do.
- 24 Q: Okay.
- 25 A: She used to pee in the bed, too, so we used to get up in

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

1 the morning and have to hurry up and get our sheets out the
2 bedroom before anybody else woke up.

3 Q: Okay. Now, you testified that y'all locked the door from
4 the inside of the bedroom; is that correct?

5 A: Yes, sir.

6 Q: Okay. Now, you testified I think also is, is that you
7 remember talking to -- going to see an interviewer in
8 Florence; is that correct?

9 A: Yes, sir.

10 Q: Now, do you remember telling that interviewer -- that
11 interviewer that you were actually -- were sleeping in the
12 room alone and that nobody was sleeping in the room with you?

13 A: I might have said that, but I know Minor 2 always slept in
14 there with me so I wouldn't be alone.

15 Q: Okay. Now, you're testifying now is, is that Minor 2 was
16 in the room; is that correct?

17 A: She might be. She was in there. I just didn't see her.
18 She was in there somewhere. I just did not see her until in
19 the morning because she never left out that room. She was
20 always in there with me.

21 Q: Okay. Well, would you agree with me that your memory was
22 probably -- I think you gave this statement roughly four years
23 ago. Would you agree with me that usually time causes the
24 memory to deteriorate instead of the memory getting better?

25 A: No, sir.

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

1 Q: Okay. So usually memory -- you're saying that your
2 memory usually gets better as time passes?

3 A: Yes, sir.

4 Q: Okay. And so what you're saying is, is that -- that your
5 memory with respect to whether or not Minor 2 was in the room is
6 better today than it was four years ago when you may have told
7 the forensic interviewer that you were in the room alone and
8 that no one else was?

9 A: She was in the room with me when we go to sleep and she
10 always stayed in the room with me because she was the one who
11 woke me up in the morning to get the sheets off the bed and
12 she'd never leave out the room.

13 Q: Okay. Well, why would you tell the forensic interviewer
14 four years ago that no one was in the room with you?

15 A: Because when I get -- when I got up, I did not see her,
16 but she was in there because how did she wake up in the
17 morning before daddy and then because she woke me up to change
18 the sheets and her pallet was on the floor?

19 Q: Okay. Now, also four years ago that you told the
20 forensic interviewer that J.A.G. was not in the room with
21 you. Do you remember telling the forensic interviewer that?

22 A: J.A.G. might not have been in the room with me, but I
23 know she goes in the room and she still will sleep with me if
24 she's having nightmares. She will sleep with me still, but I
25 don't wet the bed no more.

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

1 Q: So do you know whether or not J.A.G. was in the room
2 with you? And the reason why I'm asking, not trying to
3 confuse you, is, is that I'm asking you that because of the
4 statements that was made to the forensic interviewer and what
5 you're testifying to now. Do you know whether or not she was
6 in the room with you?

7 A: I don't know.

8 Q: Okay. So when you told the forensic interviewer that she
9 was not in the room ---

10 THE COURT: I'm sorry, ma'am. What did you say, please,
11 ma'am?

12 THE WITNESS: I said I don't know.

13 THE COURT: You don't know? All right. Go ahead.

14 Q: So when you told the forensic interviewer that she was
15 not in the room four years ago, the truth was, is that you
16 really didn't know?

17 A: She might have been in the room with me. I just did not
18 see her. Once again, it's dark in there because we never had
19 nightlights in the rooms. The only places that had a
20 nightlight was the bathroom. That's when we walked out the
21 room into the bathroom. That's the only thing that had
22 nightlights.

23 Q: Okay.

24 A: So you could not see in the room because it was jet black
25 in there.

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

- 1 Q: Okay. So -- so the room was completely dark when you're
2 in the room to go to sleep?
- 3 A: Yes, sir.
- 4 Q: Okay. Now, you testified to the fact that when -- when
5 -- that when you locked the door, and I'm assuming did you go
6 to sleep?
- 7 A: Yes, sir.
- 8 Q: And how long did it take you to go to sleep? Do you
9 remember?
- 10 A: It doesn't take me long to go to sleep.
- 11 Q: Okay. Okay. And I think you testified that you woke up
12 and that -- that you took -- you said that Uncle Dan was on
13 top of you; is that correct?
- 14 A: Yes, sir.
- 15 Q: Now, you just testified at least on direct examination
16 that you had no clothes on; is that correct? Do you remember
17 telling that to ---
- 18 A: Yes, sir.
- 19 Q: --- Mr. McEachin when he asked you?
- 20 A: Yes, sir.
- 21 Q: Okay. Do you remember telling the forensic interviewer
22 is, is that -- that when you woke up that it was just your
23 panties that was taken off and that you never mentioned being
24 without your nightgown to the forensic interviewer?
- 25 A: That's clothes to me.

Minor 1 - CROSS EXAMINATION BY MR. BROOKER

1 Q: Okay. Okay. So did you have your nightgown on or you
2 didn't have your nightgown on?

3 A: I slept in a nightgown.

4 Q: Okay. Okay. I understand that. My understanding is --
5 and you tell me whether or not I'm right -- that when you went
6 to bed that you had on a nightgown and you had on some
7 panties; is that correct?

8 A: Yes, sir.

9 Q: What type of nightgown was it?

10 A: It was one of them cloth little nightgowns.

11 Q: Is it one that you pull over and it's kind of like a
12 dress or something like that?

13 A: Yes, sir.

14 Q: Okay. Okay. And that -- so when you -- when you
15 testified today that you -- that the nightgown was off, why
16 didn't you tell the forensic investigator that your nightgown
17 was off when you said that it was only your panties that was
18 removed when you woke up?

19 A: Because my definition of clothes is ---

20 Q: I'm sorry. Go ahead.

21 A: --- what is on my body most of the time.

22 Q: Okay. And so your nightgown was not on your body when
23 you woke up?

24 A: No, sir.

25 Q: What ---

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

1 A: I had nothing on my body to be exact.

2 Q: Okay. And so -- well, it was completely ---

3 A: I ---

4 Q: It was completely removed from your body; is that correct

5 is what you're saying?

6 A: Yes, sir.

7 Q: Were you naked?

8 A: Yes, sir.

9 Q: Okay. Why didn't you tell that to the forensic

10 interviewer?

11 A: I don't know.

12 Q: Now, are you a very heavy sleeper?

13 A: Yes, sir.

14 Q: Okay. Okay. Now, what you're saying is -- you ask me if

15 I'm wrong. You're asking the jury to believe that -- let me

16 -- let me withdraw that question and ask you another question

17 first. How long did that nightgown go down? Was it one of

18 the ones that go down to your knees or down to your ankles or

19 ---

20 A: It was -- I remember it being just right above my -- it

21 hit my knees exactly.

22 Q: Okay. It kind of dropped at your knees?

23 A: Yes. Close right at my knees.

24 Q: Okay. And so I'm assuming that when you're lying down in

25 bed, you're laying on top of the nightgown; is that correct?

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

1 It's on your body or underneath your body because it's around
2 your body; is that correct?
3 A: Yes, sir.
4 Q: Okay. And so what you're saying is, is that Uncle Dan
5 was able to lift you up and remove the ---
6 A: I didn't ---
7 Q: I'm sorry.
8 A: I always slept on my side though. I never slept really
9 on my back ever. I still don't sleep on my back.
10 Q: Okay. You don't -- you don't sleep on your back?
11 A: I sleep on my side.
12 Q: Okay. Did you sleep on your side that entire night?
13 A: I still do ---
14 Q: Okay.
15 A: --- sleep on my side.
16 Q: Okay. Now, do you remember telling the forensic
17 interviewer that when you woke up and that Uncle Dan was on
18 top of you, do you remember telling the forensic interviewer
19 that you were laying flat on your back and he was on top of
20 you?
21 A: Yes, sir.
22 Q: Okay. And so when you just said that you always sleep on
23 your side, then ---
24 A: But if somebody's on top of you, then you're on your
25 back.

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

1 Q: I understand. I understand. My question is, is that are
2 you saying that Uncle Dan was able to lift your body up so
3 that he can remove the clothes from your body without your
4 waking up; is that what you're saying?

5 (Whereupon, no verbal response.)

6 Q: I'm sorry. I didn't mean to make you cry. Do you need
7 to take a break?

8 (Whereupon, the witness nods.)

9 THE COURT: Take all the time you need.

10 (Whereupon, there is a pause in the questioning.)

11 Q: Minor 1 I'm just going to wait until you tell me when
12 you're ready; okay?

13 A: I'm ready.

14 Q: Okay. Okay. Excuse me. So do you want me to re-ask the
15 question to you? Do you remember the last question I just
16 asked to you?

17 THE COURT: Why don't you rephrase your question, sir?

18 MR. BROOKER: Thank you, Your Honor.

19 Q: So what you're saying is, is that Uncle Dan was able to
20 lift your body up and to remove the nightgown completely from
21 your body without your waking up; is that what you're saying?

22 A: Yes, sir.

23 Q: Okay. And you're also saying is, is that Uncle Dan also
24 removed your panties, again without waking you up; is that
25 correct?

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

1 A: Yes, sir.

2 Q: And you're also -- I'm sorry. Go ahead.

3 A: It's not easy to really wake me up. My brother sits in
4 my room all morning and plays really, really loud and noisy
5 trucks and I don't wake up. It's hard really to wake me up.

6 Q: Okay. And are you also saying -- (coughs) excuse me --
7 is that you previously testified that you normally sleep on
8 your side and that you -- you normally don't move from that
9 side so you ---

10 MR. MCEACHIN: Your Honor, that's been asked and answered
11 a number of times.

12 THE COURT: I -- I appreciate that. I'm going to allow
13 Mr. Brooker to ask again.

14 MR. BROOKER: Okay.

15 THE COURT: Continue on, sir.

16 Q: My question is, is that are you also saying that -- that
17 Uncle Dan then turned you over onto your back and laid you
18 flat over -- and laid you flat on your back before getting on
19 top of you?

20 A: Yes, sir.

21 Q: And that you didn't woke up during any of that?

22 A: No, sir.

23 Q: Okay. Now, you also testified -- and indulge me if I'm
24 wrong ---

25 MR. BROOKER: Indulge me for just a second, Your Honor.

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

1 THE COURT: Yes, sir.

2 Q: You testified -- now, do you remember testifying to the
3 forensic interviewer that when you woke up and Uncle Dan --
4 (coughs) excuse me -- was on top of you and that he was kind
5 of moving?

6 A: Yes, sir.

7 Q: Okay. Now, you just testified I think when asked on
8 cross -- on direct examination by -- by Mr. McEachin, you
9 testified that once you woke up that Uncle Dan got off of you
10 when he was finished?

11 A: I did not get into details because I did not want to get
12 upset.

13 Q: Okay. Did -- did you not tell Mr. McEachin that -- that
14 -- that once you woke up and Uncle Dan got off of you once he
15 finished?

16 A: No, sir, I did not. I said that I woke up when he got
17 finished and then he got up. I didn't say he got up with me.

18 Q: I'm sorry.

19 A: I said when -- when I woke up, he was on top of me and he
20 had his hand over my mouth and he didn't leave until he was
21 finished.

22 Q: Okay. Okay. That's what you testified earlier in the
23 court?

24 A: Yes, sir, I did.

25 Q: Do you remember telling the forensic interviewer that

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

1 once you woke up that he simply got off of you and left and
2 went to his room?

3 A: Once again, I did not like -- I did not get into details
4 really. The only person I got into details with was the
5 doctor that I went to see.

6 Q: Okay. And you testified here today that -- that -- that
7 Uncle Dan put his hand over your mouth. Isn't it true that
8 you never made that statement to the forensic interviewer that
9 Uncle Dan had ever put his hand over your mouth?

10 A: I mentioned that to actually the blonde lady who saw us
11 the very first time that we went.

12 Q: But you did not mention that to the forensic interviewer?

13 A: I don't know. I might have. Which I know when I went to
14 the Care House in Florence, because we went there almost every
15 week -- every other week, that I did mention it to a blonde-
16 headed girl that was up there who talked to me and another one
17 talked to my other sisters. So yeah.

18 Q: And I'm sorry. I'm going to ask you at least to repeat
19 that again. You said you went to the Care House almost every
20 week?

21 A: Every other week because there's three of us who went.

22 Q: Okay. Okay. So -- so you went to the Care House every
23 other week for the -- for -- and I'm assuming you're talking
24 about yourself, Minor 2 and -- and J.A.G. And you're saying
25 that -- that -- that you were not -- that -- that all of you

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

1 were not seen at the Care House on that one visit that you
2 were there?

3 A: No, sir.

4 Q: Okay. All right. Now, you testified also on direct
5 examination that it was about a year and a half before you
6 told; is that correct?

7 A: Yes, sir.

8 Q: Do you remember telling the forensic interviewer that it
9 was not you that told, but actually J.A.G. had told?

10 A: J.A.G. had come out and said it first, but then I ended
11 up having to finish out my -- finish out the story that
12 happened to me from him.

13 Q: And then -- now, when this alleged incident took place
14 that night when you allege that Uncle Dan got on top of you
15 and that sort of thing, did anybody see what happened? Did
16 anybody saw Uncle Dan get -- get on top of you?

17 A: No. I don't know. I don't know.

18 Q: Okay. Now, I am not going to ask you what -- what
19 J.A.G. said, your sister. I'm only going to ask you what
20 you said. Isn't it true that you told the forensic
21 interviewer that J.A.G. seen Uncle Dan get on top of you?

22 A: J.A.G. was in the room most of the time, like I said.
23 She was in the room. She might have been in there when he got
24 on top of me. She might have been in there because she's the
25 one who told. So obviously she seen it ---

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

1 Q: Okay.

2 A: --- she said.

3 Q: Okay. And I just want to know is, is that is there a
4 reason why today you testified that no one saw, but -- but
5 four years ago you told the forensic interviewer that J.A.G.
6 saw it?

7 A: J.A.G. had to see it or J.A.G. would not have known.

8 Q: Okay. Yes, ma'am. I understand and my question is, is
9 that why is there inconsistency between what you said four
10 years ago to the forensic interviewer and what you said
11 earlier on the stand when you said that -- that no one saw?

12 A: I said I don't know. She had -- like I said though, she
13 had to have seen it or she wouldn't have known about it.

14 Q: Okay.

15 A: She had to have seen it.

16 Q: Okay. Now, have -- now, I'm not going to ask you
17 anything and don't you tell me anything that J.A.G. said,
18 but I'm going to ask you this question. Is -- is that I don't
19 want to know what J.A.G. said. I'm just going to ask you
20 did you and J.A.G. ever have a conversation in reference to
21 your allegation that Uncle Dan did this to you?

22 A: No, sir.

23 Q: Y'all have never had a conversation?

24 A: No, sir. I've never told her that because of what he
25 said.

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

1 Q: Okay. Now, isn't it true that you told the forensic
2 interviewer the next day -- that the night that this happened
3 that the next day that you talked with J.A.G. in reference
4 to this?

5 A: J.A.G. had mentioned something.

6 Q: Yeah. Don't -- yeah. Don't tell me J.A.G. 's words.
7 I'm not asking you to tell me J.A.G. 's words. I'm asking
8 you ---

9 MR. MCEACHIN: Your Honor, may we approach?

10 THE COURT: Yes, sir.

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

12 MR. MCEACHIN: Thank you, Judge.

13 THE COURT: Yes, sir. Go ahead, sir.

14 MR. BROOKER: Thank you, Your Honor.

15 Q: And let me make sure that I can pick up where we left
16 off. I think I asked you and you may have answered. I think
17 you testified to the fact previously that you had not told
18 anyone and then I asked you -- I said why -- I asked you
19 whether or not isn't it true that in the forensic interview
20 that you told the forensic interviewer that you had talked
21 with J.A.G. the next day? And again, I'm not asking you to
22 tell me and you can't tell me what J.A.G. says. What I'm
23 asking you is, is that did you talk with J.A.G. the next
24 day? Not what you said to her, but did you talk with her the
25 next day?

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

1 A: J.A.G. had brung the situation up to me and asked me
2 what went on and I said ---

3 Q: Okay. Don't tell me what J.A.G. says. I'm just asking
4 did you talk ---

5 THE COURT: I don't believe that she said that. She was
6 going to say what she said.

7 MR. MCEACHIN: Thank you.

8 THE COURT: And I will allow her to do that. You may
9 continue, ma'am.

10 A: And I said just don't say nothing. Don't worry about it
11 right now, I said, because I can't really say what went on
12 last night. She said -- and then I just kind of walked away
13 and said just drop it.

14 Q: Okay. Well, if that's the case, why did you previously
15 tell me that you did not have a conversation -- you didn't
16 have a conversation with J.A.G. or either anyone else?

17 A: Because I did not talk to her about it. I told her to
18 drop it. That is why.

19 Q: Now -- now, you said that -- that Aunt Doris was the
20 first person that was told is what you say in the forensic
21 interview. Who was -- who was Aunt Doris? How is she related
22 to you? Can you explain your relationship to -- to -- to Ms.
23 Doris?

24 A: She is my papa's sister's sister.

25 Q: Okay.

ELIZABETH GROVER - CROSS EXAMINATION BY MR. BROOKER

1 A: She's my papa's sister.

2 Q: Okay. Okay. And when you -- when you're making
3 reference to your papa, are you talking about your grandfather
4 that you live with right now?

5 A: Yes, sir.

6 Q: He is her sister [sic]? Okay. And I think you also
7 indicated and you tell me if I'm wrong that -- that when it
8 was -- when it was disclosed that your papa take you to get a
9 check-up; is that correct? Do you remember telling the
10 forensic interviewer that?

11 A: Yes, sir.

12 Q: Okay. Okay. Now, are you talking about the visit with
13 Dr. Wu?

14 A: Yes, sir.

15 Q: Okay. Who was present? And I'm not asking anything
16 about what anybody says, but who went with you for your visit
17 with Dr. Wu?

18 A: Grandma, Minor² and JAG.

19 Q: Okay. Okay. Now, just for my understanding is, is that
20 this was -- this was -- this allegation was disclosed in July
21 of 2009; is that correct?

22 A: Yes, sir.

23 Q: And you allege that this occurred two years earlier in
24 July of 2007; is that correct?

25 A: Repeat that, please?

Minor I

- CROSS EXAMINATION BY MR. BROOKER

1 Q: Okay. Okay. I asked you is, is that when -- when the
2 disclosure came out -- when the allegation came out that Uncle
3 Dan allegedly sexually assaulted you, the allegation was made
4 in July of 2009; is that correct?

5 A: Yes, sir.

6 Q: Okay. And the allegation is, is that the actual event --
7 the actual alleged molestation happened two years earlier in
8 July of 2007; is that correct?

9 A: Yes, sir.

10 Q: Now, did you ever tell anybody a specific date to when it
11 happened? Did you ever tell anyone -- (coughs) excuse me --
12 that it happened on July 14 of 2007?

13 A: I told the people at the Care House. I told them dates
14 and I told the people at the doctor that I went and got my
15 check-up with. He asked for the date, too, so I told him.

16 Q: Okay. Okay. And how did you come up with -- obviously,
17 I think we've established that this was -- that this allegedly
18 occurred two years earlier. How did you establish -- well,
19 first of all, do you remember what date that you told them?

20 A: I do not know right now, not off the top of my head.

21 Q: Okay. Okay. Now, how did you remember that specific
22 date? Whatever date it was that you allege, how did you
23 remember that specific date?

24 A: Because I knew it was right after my birthday.

25 Q: Okay. And what is your birthday?

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

- 1 A: My birthday is [REDACTED].
- 2 Q: Okay. [REDACTED]?
- 3 A: Yes, sir.
- 4 Q: And so you said that you remember because it -- I'm
- 5 sorry. Go ahead. I didn't mean to interrupt you.
- 6 A: It happened around my birthday time.
- 7 Q: Okay. And did you ever tell anyone a specific time that
- 8 it allegedly took place? I know that you testified previously
- 9 that -- that you said it was dark, that it happened at night.
- 10 A: It happened at night and we didn't normally go into the
- 11 room ---
- 12 Q: Did you ever -- yes, ma'am?
- 13 A: We didn't normally go into the room until about eight --
- 14 seven thirty, eight.
- 15 Q: Okay.
- 16 A: Whenever it was dark.
- 17 Q: Did you ever -- did you ever specify a specific time to
- 18 anyone as to when this allegedly happened in July of 2000 --
- 19 in 2007?
- 20 A: I can remember the woman at the Care House asking me what
- 21 time -- about what time around did I think that I got up and
- 22 seen what time it was.
- 23 Q: Okay. You don't have to tell me what anybody says. I'm
- 24 just asking do you remember telling anyone -- and I'm talking
- 25 about what you said. You don't have to tell me what anybody

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

1 else says. Those people will come and testify. Do you
2 remember telling anybody about a specific time?

3 A: I probably did at the Care House.

4 Q: Okay. Did you ever tell law enforcement or either anyone
5 else about a specific time?

6 A: I mentioned it. I'm not sure, but I think I had
7 mentioned it to -- to the person that we went to when we first
8 found out about the place.

9 Q: Okay. You may have mentioned a specific -- you may have
10 specified a specific time? Okay.

11 MR. BROOKER: If you can indulge me for just a minute,
12 Your Honor?

13 THE COURT: Yes, sir.

14 MR. BROOKER: I want to check and make sure that I don't
15 have any -- any further questions.

16 THE COURT: All right, sir.

17 MR. BROOKER: (Coughs.) Excuse me.

18 (Whereupon, there is a pause in the proceedings.)

19 MR. BROOKER: Just a few more questions, Your Honor, and
20 I promise I'll be finished.

21 THE COURT: Yes, sir.

22 Q: I know you testified previously who was staying at the
23 house. Is it also true that Uncle -- (coughs) excuse me --
24 Dan had a live-in girlfriend that was living in that house?

25 A: No, sir. His girlfriend didn't come up until he moved

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

1 out in -- moved into a camper which he bought from my
2 grandfather, Terry, and my grandma, Margaret. That is when he
3 went and found a woman named Gloria, who she didn't know about
4 anything that was happened because she was ---

5 Q: Now, don't tell me what Gloria said.

6 MR. MCEACHIN: Objection, Your Honor. I ask that she be
7 allowed to answer ---

8 THE COURT: I'm going to allow you to continue the
9 answer.

10 MR. MCEACHIN: --- the question.

11 THE COURT: Solicitor? I'm going to allow you to
12 continue your answer.

13 A: She was mentally challenged and she didn't know what was
14 going on anyway.

15 MR. BROOKER: Can we approach, Your Honor?

16 THE COURT: Yes, sir.

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

18 THE COURT: Continue on. Thank you.

19 MR. BROOKER: All right.

20 THE COURT: Yes, sir.

21 MR. BROOKER: Just -- just for the purposes of the
22 record, do we agree on that that question was is that ---

23 THE COURT: The court reporter can read it back if
24 necessary. Thank you.

25 MR. BROOKER: All right.

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

1 Q: Now, you testified also that that room was pitch black.

2 Do you remember testifying to ---

3 A: Yes, sir.

4 Q: --- that earlier?

5 A: It was dark in there.

6 Q: Okay. Now -- and you said that -- that that's one of the

7 reasons why -- and I think you said that that may have been

8 one of the reasons why that maybe you didn't see J.A.G. or

9 either Minor 2 That they may have been on the floor and it was

10 pitch dark in the room. Do you remember testifying to that?

11 A: Yes, sir.

12 Q: Okay. Now, if it was pitch dark in that room, do you

13 remember telling the forensic interviewer that you saw Uncle

14 Dan's complete naked body? Do you remember saying that to the

15 forensic interviewer?

16 A: Yes, sir.

17 Q: Okay. Now, if it was pitch dark in that room and you

18 couldn't see Minor 2 or you couldn't see -- see J.A.G. , how

19 could you see Uncle Dan's completely naked ---

20 A: Because the bed is higher than the floor and they were on

21 the floor. They were not on the bed. The bed was wet because

22 I peed in the bed. So you could not see over the bed from

23 laying in the bed unless you get up and I was scared of the

24 dark so I was not going to get up to look over the bed to see

25 if they were.

Minor 1

- CROSS EXAMINATION BY MR. BROOKER

- 1 Q: Yes. Yes, ma'am. I understand that and -- and I'll
2 repeat it because I want to make sure you understand. If it
3 was pitch black dark in the room -- you testified that you saw
4 Uncle Dan's naked body and I'm asking you how did you see
5 Uncle Dan's naked body if you testified that it was pitch
6 black dark in the room?
- 7 A: Because he -- okay. I'm not going to say that. Because
8 he has a lighter skin color and you could see him and the only
9 way that you could not see -- or the only way that you could
10 see Minor 2 and Jen is if you actually looked over the bed where
11 it was dark.
- 12 Q: Okay. Okay. Now -- and I'll try and be as delicate as
13 possible in answering these questions. Does Uncle Dan have
14 any tattoos or scars on his body that you saw?
- 15 A: I don't know.
- 16 Q: Okay. Okay. You don't know whether or not he had any
17 tattoos or scars or moles or anything like that?
- 18 A: I did not look for that.
- 19 Q: Okay. Now, you also mentioned about Uncle Dan's
20 girlfriend -- (coughs) excuse me. I think you alleged that
21 you believe that she didn't live with Uncle Dan until later
22 on; is that correct?
- 23 A: She -- I know she did not live with Uncle Dan until he
24 moved out.
- 25 Q: And you said that he bought a -- a -- a trailer or

Minor 1 - CROSS EXAMINATION BY MR. BROOKER

1 something from your uncle?

2 A: He bought a camper from my grandpa.

3 Q: Okay. Now, you tell me whether you know this or not. If
4 you don't know, you say you don't know. Do you know whether
5 or not Uncle Dan and your grandpa got in a dispute in
6 reference to that trailer?

7 A: When?

8 Q: They got in an argument about -- about Uncle Dan buying
9 that trailer from your -- from your -- from your grandpa?

10 A: I don't know. I do know that he agreed on buying it from
11 them and paying them for it, but he never paid for it and then
12 it ended up getting messed up and the thing that pulls out
13 from the camper was broken and so he did not pay for the
14 camper because of that.

15 Q: Do you know whether or not they went to court about that?
16 Uncle Dan and your grandpa?

17 A: I don't know because I wasn't staying with them at the
18 time.

19 Q: Okay. Okay.

20 MR. BROOKER: I have no further questions, Your Honor.

21 THE COURT: Redirect?

22 MR. MCEACHIN: Just one, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. MCEACHIN:

25 Q: Minor 1 you said you remember it was at some point in

Minor 1

- REDIRECT EXAMINATION BY MR. MCEACHIN

1 July of 2007 that your uncle -- uncle sexually assaulted you
2 because it was near your birthday; is that right?

3 A: Yes, sir.

4 Q: And that's how you remember that time frame?

5 A: Yes, sir.

6 MR. MCEACHIN: Thank you. No further questions.

7 THE COURT: Anything on that particular question?

8 MR. BROOKER: Nothing on that question, Your Honor.

9 THE COURT: Very good. You may step down.

10 (Whereupon, the witness leaves the stand at 4:54 p.m.)

11 THE COURT: All right. Ladies and gentlemen, we're going
12 to stop for the evening. I try to respect your time as the
13 best that I can and obviously you understand we need to
14 accomplish some things, but I'm going to try to respect your
15 time as best I can. We're going to stop for the evening.

16 Go home tonight and see your husband, wife, boyfriend,
17 girlfriend, person down the street. If they ask you where you
18 were, you can tell them you were at the courthouse. Other
19 than that, you're on jury duty. You can't talk about the
20 case. All right? They don't have an opinion about this case.
21 Y'all shouldn't have an opinion about this case. That's one
22 thing I want to talk to you about.

23 When you go back in the jury room and you're there until
24 I give the case to you at the very end, I don't want you to
25 discuss this case because you'd be discussing the case before

1 you've heard all the witnesses testify and before you know the
2 law that you have to apply to the facts and evidence you find
3 to be true. So don't be talking about it. You can talk about
4 anything else you want to, but don't talk about this case
5 until the end when I give it to you at the very end and you'll
6 have all the time you want to to talk about it.

7 But like I said, when you go home, don't talk about it.
8 Don't allow anybody to talk to you about it. If somebody
9 tries to, you can -- you know who that person is or you can
10 find out in relative safety, you report it to the Court and
11 we'll take care of that person.

12 Now, I would like for y'all to be back in the jury room
13 at least by 9:25 tomorrow morning. I'm going to try and start
14 court with y'all out here ready to go at nine thirty. So if
15 y'all could be in the jury room by 9:25 and make sure that,
16 you know, we're all ready to go at nine thirty. So with that,
17 y'all are now excused. Thank you very much.

18 (Whereupon, the jury exits the courtroom at 4:57 p.m.)

19 THE COURT: Mr. Bailiff, is there an issue you need to
20 talk to me about?

21 THE BAILIFF: He wanted -- his question was where did he
22 go to get an excuse to go back to work.

23 THE COURT: So you told him the Clerk's Office?

24 THE BAILIFF: Correct, Judge.

25 THE COURT: All right. Very good. All right. Now,

1 while I'm remembering it -- and I'll get to y'all in just a
2 second. I would appreciate it if we had a bailiff. It's not
3 the solicitor's job to escort the juror -- or the witness to
4 the jury box. That's what the bailiffs are here for. Okay?
5 Y'all help them out. They need help getting in and they need
6 help getting out. They need help getting to the jury box.
7 The bailiffs take care of them. That's not the solicitor's
8 job. That's not the defense attorney's job. Y'all are here
9 to help and assist in the court. So y'all take care of that.
10 Okay? Thank you. Anything from the State?

11 MR. MCEACHIN: Nothing from the State, Your Honor.

12 THE COURT: Anything from the defense?

13 MR. BROOKER: Just something, Your Honor. I'd like to
14 put the objection on the record we talked about previously at
15 sidebar.

16 THE COURT: All right. Very good. I'll be glad to hear
17 from you.

18 MR. BROOKER: Your Honor, is, is that the question I
19 asked the witness, Minor 1 [sic], and -- and -- and I
20 think -- and I'll try to repeat it as verbatim -- I'll try to
21 repeat it verbatim as I remember it. I specifically asked her
22 is, is that isn't it true that at the time in which she was
23 alleging this incident occurred that night that Uncle Dan's
24 girlfriend was living in the house with them and, of course,
25 is, is that which is a yes or no, not an open-ended question.

1 And then, of course, is that then she proceeded to -- to then
2 I think make statements in reference to about something Uncle
3 Dan's girlfriend may have said, you know, and I, you know,
4 told her that, well, you know, I'm not asking about what Uncle
5 Dan's girlfriend -- I'm just asking you isn't it true that she
6 was living in the house, which is a yes or no question.

7 And my concern is, is that I think you said I opened the
8 door and, obviously, is that I know a lot of cases that
9 basically says that when you ask an open-ended question that a
10 witness can go in and answer that open-ended question, but I'm
11 concerned about what qualifies as an open-ended question
12 because I thought specifically that was a close-ended question
13 and that I was asking her the existence or non-existence of
14 Uncle Dan's girlfriend living in that house. Not anything
15 that she said because if that's the case, you know, then I
16 just would like to know so that -- you know, know at least
17 what the definition of an open-ended question is so I can stay
18 away from it.

19 THE COURT: All right, sir. You want to respond?

20 MR. BROOKER: If ---

21 THE COURT: I'm sorry. Are you done?

22 MR. BROOKER: And the only thing is, is in closing is
23 that Your Honor is, is that -- and I want to assert my
24 objection for the record that the jury has already heard it so
25 I would ask Your Honor is, is to -- is the only other thing

1 would be is to give the jury a curative instruction in
2 reference to what Uncle Dan's girlfriend may have said.

3 THE COURT: All right, sir.

4 MR. BROOKER: Thank you, Your Honor.

5 THE COURT: Solicitor, would you like to respond?

6 MR. MCEACHIN: Yes, sir. Your Honor, I will agree he did
7 ask the question was Uncle Dan's girlfriend living with you at
8 the time. The answer was no, he didn't -- she didn't move in
9 until he moved into a camper. So it was responsive to the
10 question he asked, Your Honor. It may not be the answer that
11 Mr. Brooker wanted, but it was responsive to the question that
12 was asked. He asked the question and the witness is always
13 entitled to respond to any sort of question. They aren't
14 limited to a single answer to a question or a single word
15 answer to a question. I thought it was responsive to the
16 question.

17 THE COURT: All right, sir. She did go on to say
18 something about the -- the girlfriend's mental capabilities or
19 something like that and I -- I -- I appreciate the defense's
20 concern. Whether or not you rephrase or you phrase a question
21 to be answered yes or no, you can ask for and get the Court's
22 assistance to have the witness answer your question yes or no,
23 but then the witness is always entitled to explain their
24 answer. They cannot be and are never held to an absolute yes
25 or no. They are always able to explain their answer.

1 I do believe and it's the Court's ruling that her answer
2 to your question was responsive and that she was explaining
3 her answer as to why she believes that this woman was not
4 living with the defendant at the time, but at a later time.
5 And your objection is noted for the record and that's the
6 Court's ruling. All right?

7 MR. BROOKER: Thank you, Your Honor.

8 THE COURT: All right, sir. Now, gentlemen, I want y'all
9 to be here at least at the very latest by 9:15. I want y'all
10 to be here ready to go. If you believe that you have some
11 issue that you -- the Court needs to attend to before the jury
12 gets here, y'all get here by nine o'clock because I want to
13 start at nine thirty. I want us to be ready. I want to have
14 a witness on the stand at nine thirty. All right? Thank
15 y'all. See y'all in the morning.

16 MR. MCEACHIN: Thank you, Your Honor.

17 (Whereupon, the proceedings end for the day at 5:02 p.m.)

18 AUGUST 12, 2013

19 (Whereupon, the proceedings resume at 9:30 a.m.)

20 THE COURT: All right. Are there any matters before we
21 bring out the jury from the State?

22 MR. MCEACHIN: No, sir, Your Honor.

23 THE COURT: From the defense?

24 MR. BROOKER: None from the defense, Your Honor.

25 THE COURT: All right. Very good. Ask the jury to come

1 out, please.

2 (Whereupon, the jury enters the courtroom at 9:30 a.m.)

3 THE COURT: All right. Solicitor, your next witness,
4 please, sir.

5 MR. MCEACHIN: Thank you very much, Your Honor. The
6 State would call Minor2 to the stand.

7 THE COURT: All right. All right, ma'am. Just come
8 right up -- up to where the bailiff is and he'll help you to
9 the witness box. You can go ahead and have a seat. All
10 right. If you would, just state your full name, please,
11 ma'am.

12 THE WITNESS: Minor2 Lynn Grover.

13 THE COURT: All right. Now, you'll need to speak up.
14 All those ladies and gentlemen of the jury need to -- to hear
15 you so you have to speak up so they can hear you. And can you
16 spell your first name, please, ma'am?

17 THE WITNESS: C-I-E-R-A.

18 THE COURT: All right. Very good. Go ahead, Solicitor.

19 MR. MCEACHIN: I apologize. May we approach real quick?

20 THE COURT: Yes, sir.

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

22 THE COURT: All right. Ms. Grover, if you would, raise
23 your right hand, please, ma'am. Do you solemnly swear or
24 affirm to tell the truth, the whole truth, and nothing but the
25 truth, so help you God?

1 THE WITNESS: Yes, sir.

2 THE COURT: All right. Very good. And can you tell me,
3 ma'am, how old are you, please?

4 THE WITNESS: Sixteen.

5 THE COURT: Sixteen now?

6 (Whereupon, the witness nods.)

7 THE COURT: All right. Very good. All right. Ladies
8 and gentlemen, I told you this yesterday, but again, in your
9 job and responsibility of being the determiner of the facts of
10 the case, it is proper that I tell you each time there is a
11 minor or child who testifies, and again I'll remind you about
12 this at the very end when I give you instructions on the law,
13 that regarding the testimony of minors or -- or children, you
14 can consider the -- regarding their testimony, the age of the
15 child, the child's ability to observe and remember facts, the
16 child's ability to understand and answer questions.

17 Because minors or children may not fully understand
18 what's happening in a courtroom situation, it's up to you to
19 decide whether the minor or the child understands the
20 seriousness of appearing as a witness in a criminal trial,
21 whether the minor or the child understands the questions,
22 whether they have a good memory, whether they understand the
23 difference between lying and telling the truth, and obviously
24 you can consider, if you decide to, that minors or children
25 may be influenced by the way that questions are asked. It's

Minor 2

- DIRECT EXAMINATION BY MR. MCEACHIN

1 up to you to decide whether or not the child witness or a
2 minor answers -- understood the questions asked and then
3 answered those questions truthfully.

4 All right. Solicitor, you may continue.

5 MR. MCEACHIN: Thank you much, Your Honor. Thank you
6 very much, Your Honor.

7 Minor 2 being first duly sworn,
8 testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. MCEACHIN:

11 Q: And, Minor 2 I'm going to ask you to do the same thing the
12 judge asked you to do, which is to speak up loud enough so
13 that I can hear you if I'm standing back here. Okay? Because
14 everybody on this jury needs to hear what you have to say.
15 All right?

16 (Whereupon, the witness nods her head.)

17 Q: And you've got to answer with a yes or no. You can't --
18 sometimes I know it's very polite to shake your head up and
19 down or sideways.

20 A: Yes, sir.

21 Q: You've just got to answer yes or no. Okay?

22 A: Yes, sir.

23 Q: Okay. You've got to speak up now. Minor 2 if you don't
24 mind, would you let the jury know where you live?

25 A: In Mullins, South Carolina.

Minor 2 - DIRECT EXAMINATION BY MR. MCEACHIN

- 1 Q: Okay. And who do you live with?
- 2 A: My grandparents.
- 3 Q: And what are your grandparents' names?
- 4 A: Margaret Grover and Terry Grover, Sr.
- 5 Q: And does anybody else live with you and your
- 6 grandparents?
- 7 A: Yes, sir. Would you like me to ---
- 8 Q: Yeah, please.
- 9 A: My sisters, Minor 1 , J.A.G. , R.G.
- 10 , H.G. , and my brother, J.G. .
- 11 Q: Okay. So y'all got a houseful?
- 12 A: Yes, sir.
- 13 Q: And with regard to all your siblings and all your
- 14 brothers and sisters, are you the oldest? Youngest? Where do
- 15 you fall in it?
- 16 A: I'm the oldest.
- 17 Q: You're the oldest?
- 18 A: Yes, sir.
- 19 Q: And when is your birthday?
- 20 A: [REDACTED], 1996.
- 21 Q: And I believe you said that -- you told the judge you
- 22 were sixteen years old; is that right?
- 23 A: Yes, sir.
- 24 Q: And later this month I guess you'll be turning seventeen?
- 25 A: Yes, sir.

Minor 2

DIRECT EXAMINATION BY MR. MCEACHIN

- 1 Q: And are you currently in school?
- 2 A: Yes, sir.
- 3 Q: And where are you going to school?
- 4 A: Aynor.
- 5 Q: Aynor High School?
- 6 A: Yes, sir.
- 7 Q: And what grade will you be going into?
- 8 A: Eleventh.
- 9 Q: Do you have any hobbies that you -- you like to do or any
- 10 activities you like to do outside of the school setting?
- 11 A: I like to listen to music and watch TV.
- 12 Q: Okay. And the reason we're here today, Minor 2 is because
- 13 of some stuff that's taken place in the past. Okay? And
- 14 that's primarily what we're here to do and here to discuss
- 15 with the jury. Do you understand that?
- 16 A: Yes, sir.
- 17 Q: And I want to ask you first, back in June of 2004, where
- 18 were you living at that time?
- 19 A: With my parents.
- 20 Q: Okay. And where were -- where did your parents live at
- 21 that time?
- 22 A: Marion, South Carolina.
- 23 Q: Okay. And did you ever have an occasion to go somewhere
- 24 else with your parents during June of 2004?
- 25 A: Family's houses.

Minor 2 - DIRECT EXAMINATION BY MR. MCEACHIN

- 1 Q: Okay. So you would go visit family members' houses?
- 2 (Whereupon, the witness nods.)
- 3 Q: And specifically with regard to the incident that
- 4 occurred in June of 2004, where did you go that day?
- 5 A: My Uncle David's house.
- 6 Q: Your Uncle David's house?
- 7 (Whereupon, the witness nods.)
- 8 Q: And how are you related to your Uncle David?
- 9 A: He is my -- he is my great-uncle. He's my mother's
- 10 uncle.
- 11 Q: Okay. And where did David live?
- 12 A: He lives in Marion, South Carolina.
- 13 Q: He lives in Marion as well?
- 14 (Whereupon, the witness nods.)
- 15 Q: And y'all went over to his house that day. Why did you
- 16 go over to his house that day?
- 17 A: Sometimes we'd help him with bills and someone take him
- 18 grocery shopping. So my parents went over that day to take
- 19 him grocery shopping.
- 20 Q: And I just want to make sure we understand you properly.
- 21 You weren't living at your Uncle David's house. You were
- 22 living with your parents, but your parents went over to help
- 23 him that day?
- 24 A: Yes, sir.
- 25 Q: And what were your parents going to do with your Uncle

Minor 2 - DIRECT EXAMINATION BY MR. MCEACHIN

1 David that day?

2 A: Take him grocery shopping.

3 Q: Okay. And did you go with your parents over there?

4 A: Yes, sir.

5 Q: Who else went with y'all?

6 A: My sister, Minor 1 and Daniel, my uncle.

7 Q: Your Uncle Dan?

8 A: Yes, sir.

9 Q: And you say your Uncle Dan. Do you see your Uncle Dan

10 seated in the courtroom here today?

11 A: Yes, sir.

12 Q: Where is he seated?

13 (Whereupon, the witness points at the defendant.)

14 Q: And what's he wearing?

15 A: Striped red shirt.

16 MR. MCEACHIN: Your Honor, please have the record reflect

17 that the witness has identified the defendant in the case.

18 THE COURT: So noted.

19 MR. MCEACHIN: Thank you, Your Honor.

20 Q: And so it was your parents, both your mom and your dad?

21 A: Yes, sir.

22 Q: You and your sister, Minor 1 and your Uncle Dan went

23 over to David's that day?

24 A: Yes, sir.

25 Q: And tell the jury once y'all got over there what, if

Minor 2

DIRECT EXAMINATION BY MR. MCEACHIN

- 1 anything, did your parents do?
- 2 A: They took my Uncle David to go grocery shopping.
- 3 Q: They took your Uncle David to go grocery shopping?
- 4 (Whereupon, the witness nods.)
- 5 Q: And when they did that, who was still at the house?
- 6 A: My Uncle David's son, Donnie, and Minor 1 and myself
- 7 and Dan.
- 8 Q: And Dan?
- 9 A: Yes, sir.
- 10 Q: Okay. So it was the four of y'all still at the house?
- 11 A: Yes, sir.
- 12 Q: All right. And remember, you've got to speak up a little
- 13 louder; okay?
- 14 A: Yes, sir.
- 15 Q: So it was still -- it was the four of y'all at the house?
- 16 A: Yes, sir.
- 17 Q: And can you please tell the jury what y'all were doing
- 18 after your parents left the house?
- 19 A: Just watching TV and sitting in the living room.
- 20 Q: At some point while you were watching TV, can you tell
- 21 the jury what happened?
- 22 A: My Uncle Dan comes and he asked me did I want to get some
- 23 toys for all the kids to play with and I said sure.
- 24 Q: Okay. He -- he asked you about getting some toys for
- 25 everybody to play with?

Minor 2

DIRECT EXAMINATION BY MR. MCEACHIN

- 1 A: Mm-hmm. Yes, sir.
- 2 Q: And did he tell you where the toys might be found?
- 3 A: In the spare bedroom, middle bedroom.
- 4 Q: In the middle bedroom; is that correct?
- 5 A: Yes, sir.
- 6 Q: And when he asked you if you wanted to do that and told
- 7 you where they were, what did you do?
- 8 A: I said sure, I'd go get some toys in the middle bedroom
- 9 for us to play with and I went to the room and I looked in the
- 10 room to see if I could find, you know, toys to play with.
- 11 Q: All right. And before we get too much further, J.A.G.
- 12 [sic], at this time when this was happening, how old were you?
- 13 A: I was seven, about to be eight.
- 14 Q: You were seven, about to be eight years old?
- 15 A: Yes, sir.
- 16 Q: Okay. And did you go in that bedroom looking for toys?
- 17 A: Yes, sir.
- 18 Q: Did you find any toys?
- 19 A: No, sir.
- 20 Q: Tell the jury what you did when you went into the
- 21 bedroom?
- 22 (Whereupon, there is no verbal answer.)
- 23 Q: Take your time. Okay? Take -- take as much time as you
- 24 need. Take as much time as you need. All right?
- 25 (Whereupon, there is a pause in the questioning.)

Minor 2

DIRECT EXAMINATION BY MR. MCEACHIN

- 1 Q: Okay. Are you ready?
- 2 A: Yes, sir.
- 3 Q: All right. Tell the jury what you -- what happened when
- 4 you went in the bedroom?
- 5 A: I started looking for toys, but I couldn't find them.
- 6 Q: Okay. And what happened next?
- 7 A: I turned around to look to see if I could see any
- 8 anywhere else in the room and my Uncle Dan was in the room and
- 9 he shut the door and locked it.
- 10 Q: Okay. So he came in -- he was in-between you and the
- 11 door?
- 12 A: Yes, sir.
- 13 Q: And he locked the door?
- 14 A: Yes, sir.
- 15 Q: What happened next?
- 16 A: I started to walk towards the door and I asked him where
- 17 the toys were because I couldn't find them and he didn't say
- 18 anything. He just pulled down his pants and I started to walk
- 19 towards the door to leave because I couldn't find the toys and
- 20 he -- he tried to pull down my pants and then I kicked him and
- 21 I unlocked the door and I left.
- 22 Q: Okay. So he pulled down his pants first; is that
- 23 correct?
- 24 A: Yes, sir.
- 25 Q: And then he tried to pull down yours?

Minor 2 - DIRECT EXAMINATION BY MR. MCEACHIN

- 1 A: Yes, sir.
- 2 Q: And then you kicked him? Where did you kick him?
- 3 A: In his private part.
- 4 Q: Okay. And did that get him away from the door?
- 5 A: Yes, sir.
- 6 Q: And were you able to get out of the room?
- 7 A: Yes, sir.
- 8 Q: Once you got out of the room, what did you do?
- 9 A: I went and sat in the living room with my sister and my
- 10 cousin, Donnie, and waited until my parents got back.
- 11 Q: Okay. And once your parents got back, what happened?
- 12 A: Nothing. Uncle Dan left out of the room and we all left.
- 13 Me and my sister, Minor 1 and Daniel and my parents left to
- 14 go to our house.
- 15 Q: Okay. And during that period in time from when you
- 16 kicked him until when your parents got back, did he stay in
- 17 that bedroom the whole time?
- 18 A: Yes, sir.
- 19 Q: Did anything else happen with regard to that incident?
- 20 A: After I got home?
- 21 Q: Yes, ma'am.
- 22 A: When I got home, my Aunt Michelle was down from North
- 23 Carolina and I was sitting on the couch and I was being quiet
- 24 and I was not usually a quiet person. So she wanted to know
- 25 what was wrong with me and I asked -- I told her what had

Minor 2 DIRECT EXAMINATION BY MR. MCEACHIN

1 happened at my uncle's.

2 Q: Okay. And -- and after you told her that, what, if
3 anything, happened with regard to your Uncle Dan?

4 A: She told ---

5 Q: And you can't -- and I don't mean to do that, but you
6 can't say what other people tell you. There's a rule of law
7 that you can't say what other people tell you. Can you tell
8 me did your Uncle Dan stay at the house?

9 A: No, sir.

10 Q: He did not stay at the house?

11 A: No, sir.

12 Q: Okay. Now, after that incident, was there a point in
13 time between June of 2004 and July of 2007 that you and your
14 parents moved?

15 A: Yes, sir.

16 Q: And where did y'all move?

17 A: To stay at my Uncle Dan's house.

18 Q: Okay. And I don't want to confuse the jury here. You
19 have an Uncle David and you have an Uncle Dan; correct?

20 A: Yes, sir.

21 Q: Okay. And I think you've already -- you've already
22 identified Uncle Dan. So y'all went to live at the
23 defendant's house; is that correct?

24 A: Yes, sir.

25 Q: And do you recall a specific night or do you recall a

Minor 2 - DIRECT EXAMINATION BY MR. MCEACHIN

- 1 night in 2007 -- in July of 2007 when something occurred with
2 your Uncle Dan?
- 3 A: Yes, sir.
- 4 Q: All right. And at that time, who all was living at your
5 Uncle Dan's house?
- 6 A: My parents, my Uncle Dan, and me, my sister, Minor 1
7 and my two little sisters, J.A.G. and R.G. .
- 8 Q: All right. So it was your Uncle Dan, your mom, your dad,
9 you, Minor 1 J.A.G. , and R.G. . There were seven of
10 y'all living in the house?
- 11 A: Yes, sir.
- 12 Q: And what kind of house is this?
- 13 A: It's a -- I believe it was maybe a single wide or ---
- 14 Q: Okay. So a fairly small house for seven people?
- 15 A: Yes, sir.
- 16 Q: And if you don't mind, on that night in July of 2007,
17 what room were you sleeping in?
- 18 A: The middle bedroom.
- 19 Q: Okay. And was there anybody in there with you?
- 20 A: My sister, Minor 1
- 21 Q: Okay. So the two of y'all were in the bedroom and
22 normally what time do y'all go to sleep at night?
- 23 A: I'd say maybe eight o'clock, eight thirty. I'm not sure.
- 24 Q: And when y'all went in the room that night, what did you
25 do?

Minor 2 DIRECT EXAMINATION BY MR. MCEACHIN

1 A: I locked the door.

2 Q: Okay. And did y'all -- you eventually went to sleep?

3 A: Yes, sir.

4 Q: And tell the jury what the next thing was that you
5 noticed?

6 A: Well, when I woke up, the door was unlocked and I went
7 and I asked my sister how the door got unlocked.

8 Q: And was this in the morning or -- was this the following
9 morning?

10 A: Yes, sir.

11 Q: And when you woke up you said the door was unlocked. At
12 that time, was Minor 1 still sleeping?

13 A: She was just laying in the bed. She was, you know, being
14 quiet. So I couldn't tell until I went to her if she was
15 awake or sleeping.

16 Q: Okay. And can you tell the jury -- you can't say what
17 Minor 1 said, but can you tell the jury what happened while
18 -- while you were sitting there talking to her and what y'all
19 did?

20 A: Well, when I went on up to the bed, I noticed there was
21 blood on the sheets.

22 Q: And had you noticed that blood the night before?

23 A: No, sir.

24 Q: You had not?

25 (Whereupon, the witness shakes head side to side.)

Minor 2

- DIRECT EXAMINATION BY MR. MCEACHIN

- 1 Q: And did Minor 1 eventually get up?
- 2 A: Yes, sir.
- 3 Q: And once she got up, what did the two of y'all do?
- 4 A: Well, I tried to ask her some questions about how the
- 5 blood got on the bed and everything and she didn't want to
- 6 talk to me.
- 7 Q: Okay. And did y'all eventually do something with the
- 8 sheets on the bed?
- 9 A: Yes, sir. We took the sheets and washed them.
- 10 Q: Okay. Why did y'all wash them?
- 11 A: Because -- because it's the bed we sleep in and, you
- 12 know, there was blood on the sheets and we didn't want to
- 13 leave it on the bed with stains on the sheets.
- 14 Q: Okay. So -- and the two of y'all took them to wash them?
- 15 A: Yes, sir.
- 16 Q: Okay. After that particular day and after y'all had
- 17 washed the sheets and everything, when was the next time you
- 18 spoke with anybody about what happened to you and what
- 19 happened to your sister?
- 20 A: I spoke with my grandparents when my sister, J.A.G. ,
- 21 brought it up to my aunt and my aunt told.
- 22 Q: And which -- what's your aunt's name?
- 23 A: My Aunt Doris.
- 24 Q: Okay. Your Aunt Doris? And that was the next time you
- 25 spoke to anybody about it?

Minor 2

DIRECT EXAMINATION BY MR. MCEACHIN

1 A: Yes, sir.

2 Q: Okay. And in addition to speaking to your grandparents
3 about it, did you speak to anybody else about it?

4 A: I went to -- to the doctor's and I spoke with a lady in
5 Florence about it.

6 Q: And you spoke to the lady in Florence? And would that
7 have occurred at the Care House maybe?

8 A: Yes, sir.

9 Q: All right. And after you spoke with folks in Florence at
10 the Care House and other than the people you're speaking to
11 here today on the jury, have you spoken to anybody else about
12 either of these incidents?

13 A: Not before now. No, sir.

14 MR. MCEACHIN: Okay. Thank you very much. Please answer
15 any questions Mr. Brooker might have for you.

16 THE COURT: Cross examination.

17 MR. BROOKER: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. BROOKER:

20 Q: Minor 2 I'm assuming that you knew that you were going to
21 testify today in this trial; is that correct?

22 A: Yes, sir.

23 Q: Okay. How did you prepare yourself for your testimony
24 today?

25 A: I -- there was nothing to prepare for.

Minor 2

CROSS EXAMINATION BY MR. BROOKER

- 1 Q: I -- I'm sorry. I can't hear you.
- 2 A: I didn't have to prepare for my testimony. It's
- 3 permanently etched on my brain.
- 4 Q: Okay. It's permanently etched in your mind?
- 5 A: Yes, sir.
- 6 Q: Okay. So what you're saying is, is that -- that your
- 7 memory has always been clear in reference to what took place
- 8 -- allegedly took place that night; is that correct?
- 9 A: Yes, sir.
- 10 Q: And, of course, I'm assuming -- are you alleging that
- 11 your memory is clear with respect to what allegedly took place
- 12 with you I think? Is that correct?
- 13 A: Yes, sir.
- 14 Q: Is your memory also equally clear on the night that
- 15 you're alleging that Minor 1 was assaulted?
- 16 A: Yes, sir.
- 17 Q: Okay. Let's talk about the -- I think the -- (coughs)
- 18 excuse me -- your alleged experience. I think you testified
- 19 on cross examination -- if I'm not correct -- is, is that --
- 20 is that you were at your Uncle David's house; is that correct?
- 21 A: Yes, sir.
- 22 Q: Okay. And that Uncle David has a son?
- 23 A: Yes, sir.
- 24 Q: How old is that son?
- 25 A: He ---

Minor 2 -CROSS EXAMINATION BY MR. BROOKER

- 1 Q: At that -- at that time?
- 2 A: I don't know exactly ---
- 3 Q: Okay.
- 4 A: --- years.
- 5 Q: Do you know how old is he now?
- 6 A: Nineteen.
- 7 Q: Okay. Nineteen or so?
- 8 (Whereupon, the witness nods.)
- 9 Q: Okay. And I think you testified that you were seven or
- 10 eight?
- 11 A: Yes, sir.
- 12 Q: Okay. Now, I think you also testified to the fact is, is
- 13 that you talked with an individual at the Care House -- an
- 14 interview at the Care House ---
- 15 A: Yes, sir.
- 16 Q: --- when you were asked on cross examination who did you
- 17 talk with and you said you spoke with an individual at the
- 18 Care House; is that correct?
- 19 A: Yes, sir.
- 20 Q: Okay. Do you remember telling that individual at the
- 21 Care House -- do you remember stating that you were five or
- 22 six when this allegedly took place?
- 23 A: I'm not sure.
- 24 Q: So were you seven or eight or five or six?
- 25 A: When I count the years, I was either seven or eight.

Minor 2

- CROSS EXAMINATION BY MR. BROOKER

- 1 Q: Okay. So what you said previously that you were five or
2 six, that would not be correct?
- 3 A: I'm not sure.
- 4 Q: I'm sorry?
- 5 A: I'm not sure.
- 6 Q: Okay. You're not sure whether or not your previous
7 statement was inaccurate?
- 8 A: I was -- I had to have been seven or eight. I try not to
9 dwell on our past experience much more than I need to dwell on
10 it.
- 11 Q: Okay. I understand. Now, I think you said that were
12 dropped off at Uncle Dave's house and that your mother and
13 father left to take Uncle Dave grocery shopping or something
14 like that?
- 15 A: My Uncle David.
- 16 Q: Uncle David. I'm sorry. Uncle David grocery shopping?
- 17 A: Yes, sir.
- 18 Q: And that in the home was yourself and was Minor 1 is
19 that correct?
- 20 A: Yes, sir.
- 21 Q: Okay. And there was Uncle Dave's son -- David's son; is
22 that correct?
- 23 A: Yes, sir.
- 24 Q: And, of course, is, is that -- did you say anybody else?
25 Was J.A.G. there?

Minor 2

- CROSS EXAMINATION BY MR. BROOKER

- 1 A: Daniel, my uncle.
- 2 Q: Your ---
- 3 A: My Uncle Dan.
- 4 Q: Your Uncle Dan. Okay. Okay. And that's the total --
- 5 and that was everybody that was there at the house; is that
- 6 correct?
- 7 A: Yes, sir.
- 8 Q: Okay. Now, you said that Uncle Dan said to you -- asked
- 9 you whether or not you wanted to play with some toys?
- 10 A: Whether I wanted to get some toys for my sister and my
- 11 cousin to play with and myself.
- 12 Q: Okay. And where was those toys located at?
- 13 A: He said they were in the spare bedroom, which was the
- 14 middle bedroom.
- 15 Q: Okay. It was in a spare bedroom?
- 16 (Whereupon, the witness nods.)
- 17 Q: Okay. Was there a bed or either anything in that room?
- 18 A: There was a bunch of stuff piled around the room.
- 19 Q: Okay. Okay. And I'm assuming that you said yes or you
- 20 indicated yes and I think your testimony is that you went into
- 21 the room?
- 22 A: Yes, sir.
- 23 Q: Okay. Now, I think you said when you got there is that
- 24 you couldn't find the toys; is that correct?
- 25 A: Yes, sir.

Minor 2

CROSS EXAMINATION BY MR. BROOKER

- 1 Q: Okay. And that Uncle Dan at some point in time came in
2 behind you; is that correct is what your ---
- 3 A: Yes, sir.
- 4 Q: --- testimony is?
- 5 A: Yes, sir.
- 6 Q: That he shut the door and locked it?
- 7 A: Yes, sir.
- 8 Q: Okay. Did he come in immediately -- allegedly come in
9 immediately behind you or how long were you in there before,
10 you know, Uncle Dan allegedly came in behind you?
- 11 A: It wasn't long.
- 12 Q: Okay. Was a light on in that room? Was it dark? What
13 was the lighting in the room?
- 14 A: It was a curtain open over the window.
- 15 Q: I'm sorry? Okay. There was curtains open?
- 16 A: Yes, sir.
- 17 Q: Okay. All right. And I think you said there was a bunch
18 of stuff in there, almost like storage?
- 19 A: Yes, sir.
- 20 Q: Okay. All right. Now, what did he have on? Uncle Dan?
- 21 A: I'm not sure.
- 22 Q: Okay. Did he have on -- like I said is, is that you tell
23 me if you don't know. And what I'm asking is did he have on
24 shorts or jeans?
- 25 A: I'm not sure.

Minor 2

CROSS EXAMINATION BY MR. BROOKER

- 1 Q: Okay. Do you remember what color shirt he had on?
- 2 A: No, sir.
- 3 Q: Or what type of shirt that he had on?
- 4 A: No, sir.
- 5 Q: Okay. Do you remember whether or not he had a belt on?
- 6 A: No, sir.
- 7 Q: Okay. All right. Now, you said also that he -- did he
- 8 pull down his pants or did he -- or how did he expose himself?
- 9 A: He pulled down his pants.
- 10 Q: Did he put them down around his knees or his ankles?
- 11 A: I'm not sure.
- 12 Q: Okay. You don't remember that? You just remember he put
- 13 his pants down?
- 14 (Whereupon, the witness nods.)
- 15 Q: Okay. All right. Now, how far away from you when he
- 16 allegedly did this?
- 17 A: Middle ways of the room.
- 18 Q: Okay. And where were you at in the room?
- 19 A: About midway. I was walking towards the door.
- 20 Q: Okay. Okay.
- 21 A: Pretty close.
- 22 Q: Okay. Were you as close as I am to you or closer?
- 23 A: I'm not sure.
- 24 Q: Okay. You're not sure of the distance? Is this a mobile
- 25 home?

Minor 2

CROSS EXAMINATION BY MR. BROOKER

1 A: Yes, sir.

2 Q: Okay. Now, you said he locked the door. Do you remember
3 what type of lock was on the door?

4 A: I guess it was a trailer house lock -- door lock.

5 Q: Okay. Okay. And explain to me exactly -- I think you
6 said that -- that -- that when he pulled down his pants, were
7 you able to see his genitalia?

8 A: Yes, sir.

9 Q: Okay. Any other part of his body, his legs, his thighs
10 or anything like that?

11 A: I'm not sure.

12 Q: Okay. You remember seeing his genitalia, but don't know
13 whether or not you saw his thighs or his legs or anything like
14 that?

15 (Whereupon, the witness shakes head side to side.)

16 Q: Did you see -- I'm sorry. Go ahead. I didn't mean to
17 interrupt you. And just make sure that -- that you speak
18 words so the court reporter can record anything you're saying.

19 A: Yes, sir.

20 Q: Okay.

21 A: I wasn't trying to look. When I seen, I turned away, but
22 I was still walking towards the door. I didn't look at him.

23 Q: Okay. So you didn't see whether or not he had any
24 tattoos or either any scars or, you know, either any
25 distinguishing marks on his body?

Minor 2 - CROSS EXAMINATION BY MR. BROOKER

- 1 A: No, sir.
- 2 Q: Okay. All right. Now -- now, you said that at some
- 3 point in time he tried to pull down your pants?
- 4 A: Yes, sir.
- 5 Q: Did he try to pull down your pants as he walked towards
- 6 you or did he rush up to you and grab you?
- 7 A: I tried to leave the room and he grabbed me.
- 8 Q: Okay. Where did he grab you at?
- 9 A: He grabbed my pants.
- 10 Q: I'm sorry?
- 11 A: He grabbed my pants and tried ---
- 12 Q: He grabbed your pants? Okay. Do you remember what type
- 13 of pants you had on?
- 14 A: Jeans.
- 15 Q: Okay. And a shirt or something like that?
- 16 A: Yes, sir.
- 17 Q: Okay. And that he tried to grab your pants and tried to
- 18 pull them down?
- 19 A: Yes, sir.
- 20 Q: Okay. Okay. And you said he grabbed you. Where did he
- 21 grab you at? Where did his hand make contact with your body?
- 22 A: My pants.
- 23 Q: On your pants? Did he grab the front, the back or the
- 24 sides?
- 25 A: The sides.

Minor 2

CROSS EXAMINATION BY MR. BROOKER

- 1 Q: He grabbed the sides of your pants? With both hands or
2 with one hand?
- 3 A: Yes, sir.
- 4 Q: I'm sorry. With both hands?
- 5 A: Yes, sir.
- 6 Q: Okay. Okay. Now; was he standing or kneeling?
- 7 A: Standing I guess. I'm not sure.
- 8 Q: Okay. Was he -- okay. Was he standing in front of you
9 or on the side of you?
- 10 A: In front of me.
- 11 Q: Okay. And -- and I think you -- correct me if I'm wrong.
12 You said with both hands he -- he grabbed the sides of your --
13 your jeans and tried to pull them down?
- 14 A: Yes, sir.
- 15 Q: Okay. All right. And I think you said that -- was there
16 a struggle?
- 17 A: I tried to get away from him.
- 18 Q: Okay.
- 19 A: Then I kicked him.
- 20 Q: I'm sorry. I didn't mean to interrupt you. Go ahead.
- 21 A: I was trying to get away from him and then I kicked him.
- 22 Q: How long did you allegedly struggle with him?
- 23 A: As fast as my mind could react, I kicked him.
- 24 Q: Okay. All right. And you said I think you unlocked the
25 door at that time?

Minor 2

CROSS EXAMINATION BY MR. BROOKER

- 1 A: Yes, sir.
- 2 Q: Okay. And you went into the next room that you come out?
- 3 A: Yes, sir. The living room.
- 4 Q: Okay. Now, so the living room and the bedrooms were
- 5 adjacent; is that correct?
- 6 A: Yes, sir.
- 7 Q: So Minor 1 was in the living room and -- and Uncle
- 8 David's son was in the living room?
- 9 A: Yes, sir.
- 10 Q: Okay. So did they witness Uncle Dan ask you -- did they
- 11 witness Uncle Dan ask you to go into this room to look for
- 12 toys?
- 13 A: Whether they were listening or not, I'm not sure.
- 14 Q: Okay. Did they see you go in that room?
- 15 A: Possibly.
- 16 Q: Okay. So you don't know if they saw you go into the room
- 17 or not?
- 18 A: No, sir.
- 19 Q: Did they see Uncle Dan go into that room behind you?
- 20 A: I'm not sure.
- 21 Q: Okay. Did they see you come out of that room?
- 22 A: Yes.
- 23 Q: Okay. Did they see Uncle Dan come out of that room?
- 24 A: I'm not sure.
- 25 Q: Did Uncle Dan come out of that room?

Minor 2

- CROSS EXAMINATION BY MR. BROOKER

- 1 A: Not until my family -- my mother and father got back with
2 my Uncle David.
- 3 Q: Okay. You said that this was a mobile home. Was this a
4 single-wide mobile home?
- 5 A: I'm not sure.
- 6 Q: Okay. You don't remember whether it was a single-wide or
7 a double-wide, but the living room is just adjacent to the
8 bedroom that -- that you went into?
- 9 A: Yes, sir.
- 10 Q: Okay. And you said you're sixteen right now; is that
11 correct?
- 12 A: Yes, sir.
- 13 Q: And I think you said is that Uncle Dave's son -- Uncle
14 David's son right now is nineteen?
- 15 A: I said he could be about nineteen.
- 16 Q: He could be about nineteen? And so roughly he would be
17 roughly about a couple years older than y'all?
- 18 A: Yes, sir.
- 19 Q: Okay. And so at that time you said you were between
20 seven and eight; is that correct?
- 21 A: Yes, sir.
- 22 Q: So that would probably put him somewhere between I think
23 ten or eleven; is that correct?
- 24 A: Yes, sir.
- 25 Q: Assuming the math is correct; is that correct?

Minor 2

CROSS EXAMINATION BY MR. BROOKER

1 A: Yes, sir.

2 Q: But your testimony is, is you don't know whether or not
3 he witnessed any of this?

4 A: No, sir. He's mentally challenged.

5 Q: Okay. And your testimony is, is that you don't know
6 whether or not your sister, Minor 1 who was in the same
7 room you were, witnessed any of this?

8 A: She's not in the same room with me and Daniel.

9 Q: No, no. Not in the same -- not in the same room that --
10 in the adjacent living room before you went -- allegedly went
11 into the bedroom?

12 A: Yes, sir.

13 Q: Okay. So my understanding is, is that you were saying is
14 that you don't know whether or not she witnessed you go into
15 the bedroom or come after the -- come out of the bedroom or
16 witnessed -- allegedly witnessed Uncle Dan go in after you or
17 you come out?

18 A: No, sir.

19 Q: Okay. Now, do you also remember talking to this
20 gentleman that's sitting at the table with -- with -- (coughs)
21 excuse me -- Mr. McEachin? Do you remember talking to
22 Detective Charlie Watson?

23 A: Yes, sir.

24 Q: Okay. Do you remember telling Detective Charlie Watson
25 that he took -- that -- that you went into a locked bathroom

Minor 2

CROSS EXAMINATION BY MR. BROOKER

- 1 and that this happened in a locked bathroom as opposed to a
2 bedroom?
- 3 A: No, sir.
- 4 Q: Okay. So if you did tell that to Detective Watson, that
5 would not be accurate?
- 6 A: No, sir.
- 7 Q: Now, you also testified -- (coughs) excuse me -- that
8 when your mother allegedly came back -- your mother and father
9 allegedly came back with Uncle David from taking him to the
10 store that you and Minor 1 and Uncle -- Uncle Dan and your
11 mother and father got in the car and went over to -- is that
12 Aunt Doris?
- 13 A: No. It was my house -- my parents' house.
- 14 Q: You went over to your parents' house?
- 15 (Whereupon, the witness nods.)
- 16 Q: Okay. Was Aunt Doris there? Excuse me. I'm sorry.
17 Aunt Michelle?
- 18 A: She had just come over when we was coming up.
- 19 Q: Okay. Okay. And Aunt Michelle, how is she your aunt?
20 On which side of your family?
- 21 A: She's my mother's sister.
- 22 Q: She's your mother's sister?
- 23 (Whereupon, the witness nods.)
- 24 Q: Okay. And at that time, how well did you know her?
- 25 A: She stays in North Carolina. We only see her on

Minor 2 - CROSS EXAMINATION BY MR. BROOKER

1 holidays. .

2 Q: Okay. And I think you testified that you told her?

3 A: Yes, sir.

4 Q: Okay. When was the last time you saw your Aunt Michelle?

5 A: I'm going to say I haven't seen her in about five years.

6 Q: About five years?

7 (Whereupon, the witness nods.)

8 Q: Okay. Okay. And this alleged incident would have taken
9 [phonetic] place in about -- so you've seen her since this
10 alleged incident? This alleged incident allegedly taken
11 place about -- let me do the math -- about eight or nine years
12 ago? And if you've seen her five years ago, you would have
13 seen her since this -- this alleged incident; is that correct?

14 A: Can you repeat your question?

15 Q: Since this alleged incident, you've seen her since this
16 alleged incident?

17 A: Yes, sir.

18 Q: Okay. Don't tell me anything that she says and I'm not
19 asking you what she says, I'm asking you what you said. Have
20 you told her or talked with her about this since that
21 particular period of time with Aunt Michelle?

22 A: No, sir.

23 Q: Okay.

24 MR. BROOKER: Now, Your Honor, I'm about to ask another
25 question and I may want to approach and discuss it with you

Minor 2 - CROSS EXAMINATION BY MR. BROOKER

1 before I ask it ---

2 THE COURT: That's fine.

3 MR. BROOKER: --- in case he has an objection and I don't
4 want to say anything in the presence of the jury.

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

6 THE COURT: Go ahead.

7 Q: In addition to -- to allegedly telling your Aunt
8 Michelle, isn't it true that you also told the forensic
9 interviewer that your Aunt Michelle told your -- your mom and
10 that your mama told your daddy and that your daddy then ran
11 Uncle -- Uncle -- Uncle Dan or Uncle Daniel off? Is that
12 correct?

13 A: Yes, sir.

14 Q: Okay. So you're alleging that you told three people the
15 day that this event took place; is that correct?

16 A: No, sir.

17 Q: I'm sorry?

18 A: No, sir.

19 Q: One person?

20 A: I told one person.

21 Q: I'm sorry?

22 A: I told my Aunt Michelle.

23 Q: Okay. Okay. And then she allegedly told mom and dad?

24 A: Yes, sir.

25 Q: Okay. And so you're alleging that three people knew on

Minor 2

- CROSS EXAMINATION BY MR. BROOKER

1 the -- on the day this allegedly took place; is that correct?

2 A: Yes, sir.

3 Q: All right. Now, I want to move you away from this
4 particular incident and -- and talk about the -- you know, the
5 alleged assault of your sister, Minor 1 I think a number of
6 years later. I think it was alleged that it happened in
7 something like 2010 or something like that.

8 A: 2007.

9 Q: 2007?

10 A: I believe so. Yes, sir.

11 Q: Okay. 2007 is when you believe it happened?

12 (Whereupon, the witness nods.)

13 Q: Okay. Now, on direct examination -- you correct me if
14 I'm wrong -- is, is that the home that you allege -- that you
15 allege that y'all were staying at was -- was Uncle Dan's? His
16 mobile home?

17 A: Yes, sir.

18 Q: Okay. And at that time, there was your mother and father
19 and there were how many -- how many kids at that time? There
20 were you, Minor 1 J.A.G. . There was also R.G. ?

21 A: Yes, sir.

22 Q: Okay. Okay. And that's everyone? That's all of the --
23 all of the kids at that time?

24 A: Yes, sir.

25 Q: Okay. Now, you testified that you stayed in the room

Minor 2 CROSS EXAMINATION BY MR. BROOKER

1 with Minor 1

2 A: Yes, sir.

3 Q: That you and -- and R.G. stayed in that room with

4 Minor 1

5 A: Me and Minor 1 I was in the room with Minor 1

6 Yes, sir.

7 Q: Okay. You did not testify on direct examination that

8 R.G. was in that room as well?

9 A: No, sir.

10 Q: Who else was in that room?

11 A: There was just me and my sister, Minor 1

12 Q: Okay. And where were you sleeping at in that room?

13 A: On the floor.

14 Q: Okay. And where was Minor 1 sleeping at?

15 A: On the bed.

16 Q: Okay. Was J.A.G. ever in that room?

17 A: Not that night.

18 Q: Okay. You testified to the fact that you locked the

19 door?

20 A: Yes, sir.

21 Q: Okay. And do you remember what type of lock was on the

22 door?

23 A: A regular trailer house lock.

24 Q: Okay. Okay. Is it one of those doors where you -- in

25 order to lock it, it has a little button in the center and you

Minor 2 CROSS EXAMINATION BY MR. BROOKER

1 push it in or something like that?

2 A: You twist it.

3 Q: I'm sorry?

4 A: You twist it.

5 Q: It's a -- it's a twist or a twist lock?

6 (Whereupon, the witness nods.)

7 Q: Okay. I think you testified that y'all went to bed

8 around maybe eight or eight thirty or something like that?

9 A: Yes, sir.

10 Q: All right. What were you wearing?

11 A: I'm not sure.

12 Q: Okay. Do you remember what J.A.G. -- excuse me --

13 Minor 1 was wearing?

14 A: No, sir.

15 Q: Okay. Do you remember talking to the forensic

16 interviewer about this incident I think on -- on July 22 of --

17 of 2009?

18 A: I'm not sure.

19 Q: Okay. You're not remembering -- you don't remember

20 talking to the forensic interviewer?

21 A: I remember talking to the forensic interviewer, but I

22 don't remember the exact date.

23 Q: Yes, ma'am. Okay. Do you remember telling the forensic

24 interviewer that Minor 1 woke up without her pants on?

25 A: I'm not sure.

Minor 2

- CROSS EXAMINATION BY MR. BROOKER

1 Q: Okay. And just so I get it correctly is, is that you're
2 not sure of what you told the forensic interviewer or you're
3 -- is that what you're saying when you said you're not sure?

4 A: I'm not sure whether she had on pants when she woke up or
5 not.

6 Q: Okay. Okay. So -- and just for -- my question is, is
7 that if you are not sure that she had on pants, why would you
8 tell the forensic interviewer that she had on pants -- that
9 she woke up without pants on?

10 A: I'm not sure.

11 Q: Okay. Now, was there any lights in that room or -- or
12 anything like that when you and Minor 1 were sleeping in it?

13 A: There was a window, but it was closed -- the curtains
14 closed.

15 Q: Okay. Okay. Did y'all had nightlights or lamps or
16 anything that y'all used or y'all slept in the dark?

17 A: We slept in the dark.

18 Q: Okay. Now, did -- that night, did you ever see Uncle Dan
19 come into the room?

20 A: No, sir. I was a heavy sleeper.

21 Q: Okay. Did you ever hear Uncle Dan come into the room
22 that night?

23 A: I'm not sure.

24 Q: I'm sorry?

25 A: I'm not sure. I was asleep. I was asleep.

Minor 2

CROSS EXAMINATION BY MR. BROOKER

1 Q: Okay. You're not sure whether or not you heard -- heard
2 him come in?

3 A: I was asleep.

4 Q: Okay. And did you sleep throughout the entire night?

5 A: Yes, sir.

6 Q: Okay. Now ---

7 MR. BROOKER: If you can indulge me for just a second,
8 Your Honor?

9 Q: Now, you previously testified that you and Minor 1 were
10 the only two in that room; is that correct?

11 A: Yes, sir.

12 Q: And again, do you remember talking with the forensic
13 interviewer? I know you said you don't remember the date, but
14 do you remember talking to the forensic interviewer in
15 Florence?

16 A: Yes, sir.

17 Q: Okay. Did you remember telling the forensic interviewer
18 -- and I think you -- you previously testified here today is
19 that R.G. was not in that room?

20 A: Yes, sir.

21 Q: Do you remember telling me that?

22 A: Yes, sir.

23 Q: A few minutes ago?

24 A: She was not in the room.

25 Q: Do you remember telling the forensic interviewer that you

Minor 2 - CROSS EXAMINATION BY MR. BROOKER

1 and Minor 1 and R.G. were sharing a bedroom together?

2 A: No, sir.

3 Q: Okay. Now, which is the truth? Is what you're saying
4 right now the truth or either what you said to the forensic
5 interviewer?

6 MR. MCEACHIN: Objection, Your Honor.

7 THE COURT: Sustained.

8 A: I remember we ---

9 MR. MCEACHIN: Objection.

10 THE COURT: Ma'am, I sustained the objection. You do not
11 have to answer the question. You may rephrase your question.

12 MR. BROOKER: Certainly. Certainly.

13 Q: Let me just ask you it this way. Okay? When you talked
14 with the forensic interviewer and you said this thing -- these
15 things, were these things fresher in your mind then, July 22
16 of 2007 [sic], were they more fresher in your mind then than
17 they are today -- when you're testifying here today some four
18 years later?

19 A: Can you rephrase the question?

20 Q: Yes, ma'am. The events that you testified to to the
21 forensic interviewer, were your memory about those events
22 fresher in 2009 when you talked with the forensic interviewer
23 or is your memory about these events fresher today?

24 A: Like I said at the beginning, the events I told you are
25 in my brain and I'll never get rid of them and they've never

Minor 2

CROSS EXAMINATION BY MR. BROOKER

1 changed, so.

2 Q: Okay. All right. (Coughs) Excuse me. Now, do you
3 remember telling the forensic interviewer that the next
4 morning that when you and Minor 1 -- when y'all woke up, she
5 didn't have her panties on?

6 A: Can you repeat the question?

7 Q: I'm sorry. I didn't hear you.

8 A: Can you repeat the question?

9 A: Yes, ma'am. Do you remember telling the forensic
10 interviewer that the next morning when Minor 1 woke up that
11 she didn't have her pants -- I know you said you don't
12 remember the pants, but do you remember also telling her she
13 didn't have her panties on?

14 A: I don't remember.

15 THE COURT: I'm sorry. Ma'am, you need to speak up.

16 A: I don't remember.

17 THE COURT: Thank you.

18 Q: Okay. Do you have a recollection of that right now?

19 A: No, sir.

20 Q: So right now you don't recollect whether or not her
21 panties were on or off?

22 A: No, sir.

23 Q: Do you remember telling the forensic interviewer that
24 when Minor 1 didn't have panties on that you -- that y'all
25 just were assuming that she was sleep walking, as she

Minor 2 - CROSS EXAMINATION BY MR. BROOKER

- 1 frequently sleep walks and goes to the bathroom at night?
- 2 A: No, sir.
- 3 Q: Okay. And just correct me. You don't remember telling
- 4 the forensic interviewer that?
- 5 A: No, sir.
- 6 Q: Okay. Do you have any independent recollection of that
- 7 today?
- 8 A: No, sir.
- 9 Q: Did Minor 1 sleep walk during that period of time?
- 10 A: No, sir.
- 11 Q: Okay. Have you ever seen Uncle Dan do anything to your
- 12 sister -- to Minor 1
- 13 A: I'm not sure.
- 14 Q: Do you remember telling the forensic interviewer that you
- 15 never saw Dan do anything to your sister?
- 16 A: No.
- 17 Q: Now, that next morning -- (coughs) excuse me. That next
- 18 morning, did you -- when did you became aware of your sister's
- 19 allegation that Uncle Dan had assaulted her that night?
- 20 A: I woke up and seen the door was unlocked and then I went
- 21 to the bed and I tried to talk to Minor 1 but she wouldn't
- 22 answer me and I noticed the blood on the sheets.
- 23 Q: Okay. Did you also talk with your -- talk with your
- 24 mother -- spoke with your mother?
- 25 A: No, sir.

Minor 2

CROSS EXAMINATION BY MR. BROOKER

1 Q: Do you know whether or not J.A.G. spoke with your
2 mother?

3 A: No, sir.

4 MR. BROOKER: If you can indulge me for just a second,
5 Your Honor?

6 THE COURT: Yes, sir.

7 Q: I think you said that -- that y'all allegedly noticed
8 blood on the sheets?

9 A: Yes, sir.

10 Q: Okay. Who all allegedly seen blood on the sheets?

11 A: My sisters, Minor 1 and J.A.G.

12 Q: And -- and Minor 1 and J.A.G. ?

13 (Whereupon, the witness nods.)

14 Q: Okay. But not R.G. ?

15 A: No, sir.

16 Q: And what did y'all do with the sheets?

17 A: Took them to wash them.

18 Q: Did you ever show the sheets to your mother?

19 A: I'm not sure.

20 Q: I'm sorry?

21 A: I'm not sure.

22 Q: Why did you wash the sheets?

23 A: Because we sleep on the sheets and the blood was setting
24 in stained.

25 Q: Had Minor 1 wet in the bed that night and was those

Minor 2 - CROSS EXAMINATION BY MR. BROOKER

1 sheets soiled?

2 A: I'm not sure.

3 MR. BROOKER: If you'll indulge me for just a second,
4 Your Honor? I'm just about finished. I want to make sure I
5 don't ---

6 THE COURT: Yes, sir.

7 MR. BROOKER: --- have any follow-up questions if you'll
8 indulge me.

9 THE COURT: Yes, sir.

10 Q: I'm almost finished, Minor 2 I'm going to just ask you a
11 couple more questions and in reference to -- and if you don't
12 know the answer to this, you tell me you don't. Are you aware
13 -- are you aware of a dispute that occurred later on between
14 your grandfather that you're living with right now and Uncle
15 Dan over a mobile trailer or mobile home or something like
16 that?

17 A: I know about my grandfather selling a camper to Uncle Dan
18 and that's all I know.

19 Q: Okay. Do you know whether or not they were feuding?

20 A: No, sir.

21 Q: And I'm not asking you what anybody says except you.
22 Now, did you ever discuss your allegations with your
23 grandfather?

24 A: About?

25 Q: What you said happened to you when you were seven or

Minor 2

CROSS EXAMINATION BY MR. BROOKER

1 eight, did you ever discuss that with your grandfather?

2 A: Whenever my Aunt Doris told my grandparents, I told both
3 of my grandparents about everything that happened.

4 Q: Okay. Okay. And you tell me -- you may not know this or
5 not, but you tell me if you do. Are you the one who told your
6 Aunt Doris?

7 A: No.

8 Q: Okay. And you tell me whether you have the knowledge;
9 you may not. Do you know who told your Aunt Doris?

10 A: My little sister, J.A.G.

11 Q: Okay. Have you ever talked about -- talked -- have you
12 ever talked with your grandmother about your allegations of
13 what happened to you when you were seven or eight?

14 A: I told both my grandma and my grandpa.

15 Q: Okay. Is that when they took you to Dr. Wu, you and your
16 sister?

17 A: Yes, sir.

18 Q: Okay.

19 MR. BROOKER: I don't have any further questions, Your
20 Honor.

21 THE COURT: Redirect?

22 MR. MCEACHIN: Briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. MCEACHIN:

25 Q: Minor 2 we're just about through. I've got just a couple

Minor 2 - REDIRECT EXAMINATION BY MR. MCEACHIN

1 of follow-up questions for you. Okay?

2 (Whereupon, the witness nods.)

3 Q: When your sister, J.A.G. , told your Aunt Doris, at that
4 time were you and your sisters living with your grandparents?

5 A: Yes, sir.

6 Q: Okay. And is there any question in your mind at all that
7 your Uncle Dan exposed himself to you?

8 A: No, sir.

9 Q: He did that?

10 A: Yes, sir.

11 Q: And is there any question in your mind he tried to pull
12 your pants down that day in that locked bedroom?

13 A: He did.

14 Q: He did?

15 (Whereupon, the witness nods.)

16 Q: Now, going back to -- Mr. Brooker asked you a number of
17 questions -- a number of questions about what happened in July
18 of 2007 with regard to your sister and he asked if you ever
19 saw anything. I think you indicated to us that you were
20 asleep during that period in time; is that right?

21 A: Yes, sir.

22 Q: And you slept through the whole night?

23 A: Yes, sir.

24 Q: Okay. And your sister, J.A.G. -- I mean -- excuse me.

25 Your sister, Minor 1 when you asked her about it the next

Minor 2 **REDIRECT EXAMINATION BY MR. MCEACHIN**

1 morning, what did she say to you?

2 A: My sister, Minor 1 she didn't talk to me. She was
3 just quiet.

4 Q: She didn't tell you anything about what happened that
5 night?

6 A: No, sir.

7 MR. MCEACHIN: Thank you. No further questions, Your
8 Honor.

9 THE COURT: Anything on those questions, Mr. Brooker?

10 MR. BROOKER: Nothing on those questions, Your Honor.

11 THE COURT: All right, sir. All right, ma'am, you may
12 step down. Thank you.

13 (Whereupon, the witness leaves the stand at 10:26 a.m.)

14 THE COURT: All right. Ladies and gentlemen, we're going
15 to take a short break at this time. If you'd go into your
16 jury room, please. Everyone else remain seated while the jury
17 retires, please.

18 (Whereupon, the jury exits the courtroom at 10:27 a.m.)

19 THE COURT: All right. Anything that you need to bring
20 to the Court's attention at this time from the State?

21 MR. MCEACHIN: No, sir, Your Honor.

22 THE COURT: From the defense, Mr. Brooker?

23 MR. BROOKER: No, Your Honor.

24 THE COURT: All right. Very good. We'll take a short
25 break. Thank you very much.

J.A.G.

- DIRECT EXAMINATION BY MR. MCEACHIN

1 (Whereupon, there is a break in the proceedings from
2 10:27 a.m. until 10:39 a.m.)

3 THE COURT: All right.

4 MR. MCEACHIN: Judge, I'm going to make sure my witness
5 is right outside.

6 THE COURT: All right, sir. That's great. Thank you.
7 That's a good idea.

8 MR. MCEACHIN: She is, Your Honor.

9 THE COURT: All right. Great. Ask the jury to come back
10 in here, please.

11 (Whereupon, the jury enters the courtroom at 10:39 a.m.)

12 THE COURT: All right. Solicitor, your next witness,
13 please, sir.

14 MR. MCEACHIN: Thank you, Your Honor. The State would
15 call J.A.G. to the stand.

16 THE COURT: All right. Please come around, ma'am. If
17 you'd just come right up here next to the bailiff, please.

18 THE CLERK: If you'd place -- if you'd stand up for me
19 and place your left hand on the Bible and raise your right
20 hand. Do you solemnly swear or affirm to tell the truth, the
21 whole truth, and nothing but the truth, so help you God?

22 THE WITNESS: I swear.

23 THE CLERK: Thank you. You may have a seat.

24 THE COURT: All right. Ma'am, your name is J.A.G.

25 ?

J.A.G. - DIRECT EXAMINATION BY MR. MCEACHIN

1 THE WITNESS: Yep.

2 THE COURT: And can you tell me how old you are, please,
3 ma'am?

4 THE WITNESS: I'm thirteen years old.

5 THE COURT: Thirteen right now? All right. Thank you
6 very much. Ladies and gentlemen of the jury, as I've told you
7 with the other minors and/or children that testified in this
8 case, again as the judges of the facts of this particular
9 matter, you can consider regarding the testimony of a minor or
10 a child the age of the child, again the child's ability to
11 observe and remember facts, the child's ability to understand
12 and answer questions.

13 Because children or minors may not fully understand what
14 is happening in a courtroom proceeding, it is up to you to
15 decide whether the child or the minor understands the
16 seriousness of appearing as a witness in a criminal trial,
17 whether the child or the minor understands the questions,
18 whether they have a good memory, whether the child understands
19 the difference between lying and telling the truth. In
20 addition, you understand that young children possibly can be
21 influenced by the way questions are asked. It's up to you,
22 again as the deciders of the facts and evidence in this case,
23 to decide whether the child or the minor understands the
24 questions and answers the -- answers the questions truthfully.
25 You may proceed, Solicitor.

J.A.G.

- DIRECT EXAMINATION BY MR. MCEACHIN

1 MR. MCEACHIN: Thank you, Your Honor.

2 J.A.G. , being first duly
3 sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. MCEACHIN:

6 Q: J.A.G. , would you please state your full name for the
7 record?

8 A: My name is J.A.G.

9 Q: All right. J.A.G. , you're the first witness I've had
10 that I haven't had to tell to speak louder. You did a good
11 job. Make sure you keep that voice up for me. Okay?

12 A: Yes, sir.

13 Q: All right, J.A.G. . And how old did you tell the judge
14 you are?

15 A: I'm thirteen years old.

16 Q: And what's your date of birth?

17 A: [REDACTED] . I was born in 2000.

18 Q: Okay. And, J.A.G. , where do you currently live?

19 A: [REDACTED] Old Fox Court.

20 Q: Who do you live with?

21 A: My grandparents.

22 Q: And who are your grandparents?

23 A: Margaret Grover and Terry Grover.

24 Q: And does anybody else live with y'all?

25 A: Yep. My sisters and my brother.

J.A.G. - DIRECT EXAMINATION BY MR. MCEACHIN

- 1 Q: Who are your sisters?
- 2 A: Minor 1 Minor 2 R.G , and H.G. .
- 3 Q: Okay. How about your brother? What's his name?
- 4 A: J.G. .
- 5 Q: All right. And where do you rank in the siblings? Are
- 6 you the oldest, youngest, or somewhere in the middle?
- 7 A: I'm in the middle.
- 8 Q: Okay. And other than your grandparents and your
- 9 siblings, does anybody else live with y'all?
- 10 A: No, sir.
- 11 Q: All right. And have you ever had to testify in a
- 12 courtroom before?
- 13 A: No, sir.
- 14 Q: All right. And you don't appear to be nervous, but if
- 15 you are a little nervous, I just need to make sure you keep
- 16 your voice up for us. Okay?
- 17 A: Yes, sir.
- 18 Q: Can you do that for me?
- 19 A: Yes, sir.
- 20 Q: Okay. Now, before you lived with your grandparents, who
- 21 did you live with?
- 22 A: My mama and daddy.
- 23 Q: All right. How long have you been living with your
- 24 grandparents?
- 25 A: I think since third grade, maybe second. I'm not sure.

J.A.G.

- DIRECT EXAMINATION BY MR. MCEACHIN

- 1 Q: All right. Well, that's -- that's a good point. What
2 grade are you in now?
- 3 A: In the sixth. I'm going to seventh.
- 4 Q: And where ---
- 5 A: This year, I'm going to seventh.
- 6 Q: Where are you going to school this coming year?
- 7 A: Aynor.
- 8 Q: And when do y'all start classes?
- 9 A: The 22nd.
- 10 Q: Of this month?
- 11 A: Mm-hmm.
- 12 Q: Are you ready?
- 13 A: I'm ready.
- 14 Q: Okay. Now, the reason we're here today, J.A.G. , is
15 because of some things that happened in the past, specifically
16 back in 2007. July of 2007. That's what I want to talk to
17 you about today. Okay?
- 18 A: Yes, sir.
- 19 Q: In July of 2007, who were you living with?
- 20 A: I was living with Uncle Dan and my mom and daddy.
- 21 Q: All right. You said your Uncle Dan and your mom and dad?
- 22 A: We were living at his house.
- 23 Q: Whose house?
- 24 A: We were living in Uncle Dan's house.
- 25 Q: All right. And you say Uncle Dan. Do you see Uncle Dan

J.A.G. - DIRECT EXAMINATION BY MR. MCEACHIN

1 sitting in the courtroom today?

2 A: Yeah, right there.

3 (Whereupon, the witness points at the defendant.)

4 Q: What's he wearing?

5 A: Stripes.

6 Q: Striped shirt?

7 (Whereupon, the witness nods.)

8 MR. MCEACHIN: Please have the record reflect that the
9 witness has identified the defendant.

10 THE COURT: So noted.

11 Q: And where did -- where was your Uncle Dan living at the
12 time?

13 A: I don't know. I don't know the address.

14 Q: And maybe that wasn't a very fair question on my part.
15 Was it here in Marion?

16 A: I don't know really. I was young. I still don't know.

17 Q: Okay. Well, how old were you back in 2007?

18 A: I was seven years old.

19 Q: Okay. And in 2007, you said you were living with your
20 parents and your Uncle Dan. Was anybody else living with
21 y'all at the time?

22 A: Yep.

23 Q: Who?

24 A: R.G. , the dog, me, and I guess that's it.

25 Q: All right. So it was R.G. , Minor 2 Minor 1 you,

J.A.G.

- DIRECT EXAMINATION BY MR. MCEACHIN

- 1 your parents, your mom and dad, your Uncle Dan, and I think
2 you said the dog?
- 3 A: Yeah. I guess so.
- 4 Q: Okay. That was everybody? And you said y'all were
5 living with Uncle Dan at the time?
- 6 A: Yes, sir.
- 7 Q: Okay. And what kind of house was your Uncle Dan -- or
8 what kind of house did your Uncle Dan have?
- 9 A: A trailer.
- 10 Q: And that's a lot of people. That's seven people and a
11 dog. That's a lot of people for a trailer; isn't it?
- 12 A: Yes, sir.
- 13 Q: And during this period in time back in July of 2007 and
14 specifically on the night in question, where were you sleeping
15 on that particular night?
- 16 A: In the living room on a little rug.
- 17 Q: On a little rug in the living room?
- 18 A: Mm-hmm.
- 19 Q: And do you know where everybody else was sleeping that
20 night?
- 21 A: No, sir, I do not.
- 22 Q: All right. Do you know where some of the people might
23 have been sleeping?
- 24 A: Yes, sir, I do.
- 25 Q: Where was Minor I sleeping that night?

J.A.G.

- DIRECT EXAMINATION BY MR. MCEACHIN

1 A: In the bedroom. In the bedroom by herself I think. I
2 know Minor2 wasn't in there at some point.

3 Q: Okay. And when you went to bed, about -- do you recall
4 how late it was when you went to bed?

5 A: No, sir. I know when I was like living with them, mama
6 and daddy had a little bed kind of for me. They'd put me to
7 bed early.

8 Q: Okay. And it's fine if you don't know the exact time. I
9 was just -- I was just wondering. So you went to bed that
10 night. Did anything ever wake you up during that night?

11 A: Yes, sir.

12 Q: Please tell the jury what woke you up?

13 A: I went -- I heard somebody walking through the house and
14 I kind of raised up my head. I can't hardly, but I saw him.
15 I saw him because -- and then, but I heard snoring and this,
16 that and the other and he's the only one that's up at the
17 time. So when he walked past me, he went through the other
18 way and I thought he was going to the bathroom at first, but
19 the bathroom door didn't squeak as loud as the bedroom door.
20 So then he opened that bedroom door and when he went in, he
21 closed the door behind him.

22 Q: All right. And I'm going to take you back just a little
23 bit there. Okay?

24 A: All right.

25 Q: When you say him, who are you talking about?

J.A.G.

- DIRECT EXAMINATION BY MR. MCEACHIN

- 1 A: I'm talking about Uncle Dan.
- 2 Q: Okay. And that's the fellow you pointed out to the jury
- 3 earlier; right?
- 4 A: Yes, sir, I did.
- 5 Q: He was the one walking through the house that night?
- 6 A: Yes, sir.
- 7 Q: And when you say you thought he was going to the
- 8 bathroom, but the bathroom door didn't squeak as loud as the
- 9 bedroom door, which bedroom door are you referring to?
- 10 A: Like the one near the bathroom.
- 11 Q: Okay. Who was staying in that room?
- 12 A: Minor 1
- 13 Q: She was staying in the room that night?
- 14 (Whereupon, the witness nods.)
- 15 Q: All right. And you said he went in and did he close the
- 16 door or leave it open?
- 17 A: He closed the door behind him.
- 18 Q: All right. Once he did that, what did you do?
- 19 A: I kind of just laid back down. I didn't want to get up.
- 20 Q: All right. So you went back to sleep?
- 21 A: Mm-hmm.
- 22 Q: And did you wake up the next morning?
- 23 A: Yes, sir, I did.
- 24 Q: And what did you do when you woke up the next morning?
- 25 A: I went to Minor 1 room and asked her, you know, to

J.A.G.

- DIRECT EXAMINATION BY MR. MCEACHIN

- 1 fix me some breakfast, please, and it took her about five
2 minutes or so to get up and when she did get up, we noticed
3 red stains on the blanket.
- 4 Q: Okay. And that was there on the -- on her bed?
- 5 A: Yes, sir.
- 6 Q: Okay. And you saw those?
- 7 A: Yes, sir.
- 8 Q: All right. Once you saw those and once she got up, what
9 did y'all do?
- 10 A: We didn't really do nothing. We just -- we just -- we
11 were wondering about it. Of course, we got curious. I can't
12 remember exactly what we did after we saw it. I know she
13 fixed me breakfast though after that.
- 14 Q: Okay. And after that particular day, at some point did
15 you have occasion to tell somebody about what you had
16 witnessed?
- 17 A: That particular day, no, sir.
- 18 Q: All right. How about in the future? After that point in
19 time, did you ever tell somebody about what you saw or what
20 you thought happened?
- 21 A: Yes, sir. I told my Aunt Doris about it.
- 22 Q: Okay. So you told your Aunt Doris about it and do you
23 remember how -- how much time had passed in-between when it
24 happened and when you told your Aunt Doris?
- 25 A: About a couple years.

J.A.G.

- DIRECT EXAMINATION BY MR. MCEACHIN

- 1 Q: Okay. A couple of years?
- 2 (Whereupon, the witness nods.)
- 3 Q: And once you told your Aunt Doris, what, if anything, did
- 4 you have to do after that?
- 5 A: Could you repeat that, please?
- 6 Q: I'd be happy to. After you told your Aunt Doris, did you
- 7 have to do anything else or speak to anybody else?
- 8 A: Not for a while.
- 9 Q: Okay. And when you say not for a while, did you
- 10 eventually speak to somebody else about it?
- 11 A: Yes, sir.
- 12 Q: Okay. And do you remember where you went to speak to
- 13 that person?
- 14 A: The Caring Place.
- 15 Q: The Caring Place? Could it be the Care House?
- 16 A: The Care House.
- 17 Q: Okay. And was that over in Florence?
- 18 A: Yes, sir.
- 19 Q: Okay. And did you speak to somebody there?
- 20 A: Yes, sir.
- 21 Q: Okay. After that, did you speak to anybody else before
- 22 you came and spoke to the jury today?
- 23 A: No, sir.
- 24 Q: Okay.
- 25 MR. MCEACHIN: J.A.G. , thank you so much. Please

J.A.G. - CROSS EXAMINATION BY MR. BROOKER

1 answer any questions Mr. Brooker may have for you.

2 THE COURT: All right. Mr. Brooker, cross examination.

3 MR. BROOKER: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. BROOKER:

6 Q: J.A.G. , I think you said that you remember talking with

7 -- (coughs) excuse me -- talking with someone at the Care

8 House in reference to these allegations; is that correct?

9 A: Yep, that's correct.

10 Q: Okay. Now, I think your testimony on direct examination

11 were that you were sleeping in the living room; is that

12 correct?

13 A: That's correct.

14 Q: And that Minor 1 was sleeping in a bedroom. I think

15 you specifically said -- and correct me if I'm wrong -- that

16 she was sleeping in the bedroom alone and that sometimes that

17 Minor 2 was in there?

18 A: Repeat that?

19 Q: That you testified on direct examination a few minutes

20 ago that Minor 1 was sleeping in a bedroom alone by herself,

21 but sometimes Minor 2 was in there?

22 A: What I meant by that was Minor 1 was sleeping in the

23 bedroom by herself that night. Minor 2 was somewhere else. I

24 didn't -- I don't know where she was at and that's all I can

25 say about that.

J.A.G.

- CROSS EXAMINATION BY MR. BROOKER

- 1 Q: Okay. So Minor 2 was someplace else and you don't know
2 where she was?
- 3 A: I do not know.
- 4 Q: Okay. So you don't know if she was in the bedroom or not
5 then is what you're saying?
- 6 A: I know Minor 1 was in there and that's about it and I
7 know Minor 2 hadn't been in there because if Minor 2 was in there,
8 she would have woke up because she's a light sleeper and still
9 is.
- 10 Q: Okay. She's a light sleeper? Minor 2
- 11 A: She would have woke up.
- 12 Q: Now, you said that you heard Uncle Dave ---
- 13 A: Uncle Dan.
- 14 Q: --- Uncle Dan walking around the house; is that correct?
- 15 A: That's correct.
- 16 Q: And you said that he walked past you; is that correct?
- 17 A: That's correct. He walked right past me.
- 18 Q: Okay.
- 19 A: I raised up my head and I looked at him and that's it. I
20 went back to sleep after I saw him going in that room and
21 closing the door. I was sleepy.
- 22 Q: Which room did he go into?
- 23 A: He went in Minor 1 room.
- 24 Q: Okay.
- 25 A: In the back.

J.A.G. - CROSS EXAMINATION BY MR. BROOKER

1 Q: Was Minor 1 door locked? How did he get in there?

2 A: Yes, it was locked, but you know what? He had a key to
3 every bedroom in that dadgum house and we didn't know it until
4 the next morning. Of course, it was his house, but still he
5 shouldn't have went in there. It's her privacy.

6 Q: So he opened it with a key?

7 A: Yes, sir.

8 Q: Okay. Now, you said he closed the door. How long -- how
9 long did he allegedly stay in there?

10 A: Repeat that because I did not hear you.

11 Q: I'm sorry?

12 A: I didn't hear you. Can you repeat that?

13 Q: How long did -- did -- did -- are you alleging that Uncle
14 Dan stayed in the room after he went in and closed the door?

15 A: I don't know. I went back to sleep.

16 Q: Okay.

17 A: I just ---

18 Q: Okay. Did you sleep throughout the rest of that night?

19 A: I did.

20 Q: Okay. Now, everything that you just testified to, you
21 stated none of that to the forensic interviewer; is that
22 correct?

23 A: I don't know what that meant. Can you ---

24 Q: Everything that you just testified to, you stated -- you
25 stated none of that to the forensic interviewer when you

J.A.G.

- CROSS EXAMINATION BY MR. BROOKER

1 talked with the forensic interviewer; is that correct?

2 A: Are you talking about the Care House?

3 Q: Yes.

4 A: I did not tell her because I don't trust everybody I
5 meet. I only told Aunt Doris because I trust her and I love
6 her and I know she wouldn't start nothing, but I knew she
7 would do something good.

8 Q: Okay. Now, do you remember being asked as to whether or
9 not you seen any -- anybody do anything -- well, let me put it
10 this way. Do you remember telling the forensic interviewer --
11 so this is the lady at the Care House. Do you remember
12 telling her that you had never seen anybody do anything to
13 your sisters ---

14 MR. MCEACHIN: Your Honor, I'm going to object at this
15 time. I believe that's hearsay.

16 MR. BROOKER: No. I'm asking this is what she said.

17 MR. MCEACHIN: Your Honor, may we approach?

18 THE COURT: Yes, sir.

19 THE WITNESS: I wouldn't have minded ---

20 THE COURT: It's all right, ma'am. Just -- just stay
21 right there for a second. Thank you.

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

23 THE COURT: You may proceed, sir.

24 Q: Do you remember responding to the interviewer at the Care
25 House that you had never seen anybody do anything to your

J.A.G. - CROSS EXAMINATION BY MR. BROOKER

1 sister's body -- your sisters' bodies?

2 A: Yes, sir.

3 Q: Now, you also testified to the next morning I think --
4 and you correct me if I'm wrong. You testified here today
5 that you noticed what's called some red stains on the -- the
6 blankets or the sheets; is that correct?

7 A: Yes, sir. I did.

8 Q: But you never told the forensic interviewer that; did
9 you?

10 A: No, sir. I didn't trust him. I just met him.

11 Q: So you didn't tell him anything because you didn't trust
12 him?

13 A: I did not trust him and that's why. If I -- when I first
14 meet someone, for instance, if I just met you, I'm not going
15 to trust you.

16 Q: I understand. I understand. I just wanted to make sure
17 that -- that we understand that none of this was told to --
18 did you tell this to any other authority figure in this case,
19 either the detective investigating this case or either any
20 other law enforcement officer?

21 A: The only people I told was my Aunt Doris. I made it
22 clear to papa and grandma after that and I told them after
23 that and I didn't tell the Care place because I didn't trust
24 them.

25 Q: Okay.

J.A.G.

- REDIRECT EXAMINATION BY MR. MCEACHIN

1 MR. BROOKER: I don't think we have any further
2 questions, Your Honor.

3 THE COURT: Any redirect?

4 MR. MCEACHIN: Just one question, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. MCEACHIN:

7 Q: J.A.G. , I think you were asked on cross about where.
8 Minor 2 was sleeping that night and you said you didn't know
9 where she was sleeping; is that correct?

10 A: That's correct.

11 MR. MCEACHIN: Thank you. No further questions.

12 THE COURT: Anything on that particular question, Mr.
13 Brooker?

14 MR. BROOKER: Nothing, Your Honor.

15 THE COURT: All right. You may step down, ma'am. Thank
16 you very much.

17 THE WITNESS: You're welcome.

18 (Whereupon, the witness leaves the stand at 11:00 a.m.)

19 THE COURT: Your next witness, Solicitor.

20 MR. MCEACHIN: Your Honor, the State would call Ms. Danna
21 Collins to the stand.

22 THE COURT: All right. All right, ma'am, if you'd come
23 around, please, and meet the bailiff right here, please.

24 THE CLERK: Please place your left hand on the Bible and
25 raise your right hand. Do you solemnly swear or affirm to

DANNA COLLINS - DIRECT EXAMINATION BY MR. MCEACHIN

1 tell the truth, the whole truth, and nothing but the truth, so
2 help you God?

3 THE WITNESS: Yes, sir.

4 THE COURT: State your full name for the record, please,
5 ma'am.

6 THE WITNESS: Danna Collins.

7 THE COURT: Would you spell your first name, please
8 ma'am?

9 THE WITNESS: D-A-N-N-A.

10 THE COURT: You may proceed, Solicitor.

11 MR. MCEACHIN: Thank you, Your Honor.

12 DANNA COLLINS, being first duly
13 sworn, testifies as follows:

14 DIRECT EXAMINATION

15 BY MR. MCEACHIN:

16 Q: Good morning, Danna.

17 A: Good morning.

18 Q: If you don't mind, would you let the jury know what your
19 current occupation is?

20 A: I'm self-employed. I'm a contract farmer for Prestige
21 Farms. We have two turkey brooders -- brooder houses, and we
22 also do hay and have cows.

23 Q: Okay. And before you got into the agricultural field,
24 would you let the jury know what you were doing?

25 A: I have an undergraduate degree in psychology and a

DANNA COLLINS - DIRECT EXAMINATION BY MR. MCEACHIN

1 masters in social work. I did forensic interviewing for the
2 Care House for -- for a while. I worked for DSS prior to that
3 and was a counselor at Pee Dee Mental Health after that.

4 Q: Okay. And specifically with regard to your time at the
5 Care House, what was your role and function when you were
6 working at the Care House?

7 A: I did forensic interviews for the Department of Social
8 Services and law enforcement when there were allegations of
9 physical abuse or sexual abuse with a child.

10 Q: And over how long -- well, let me -- strike that. How
11 long did you do that for the Care House?

12 A: I started working there in October of 2008 and was
13 employed there until January of 2011.

14 Q: And during that period of time, how many forensic
15 interviews would you say you conducted?

16 A: Well into the hundreds.

17 Q: Do you remember or do you have occasion to remember
18 conducting forensic interviews on a J.A.G. , a Minor 2
19 Minor 2 , and I believe an Minor 1 back in maybe August
20 of 2009?

21 A: Yes. I interviewed Minor 1 first on August the 5th.

22 Q: And I want to talk to you briefly about the interview you
23 had with Minor 1 on August the 5th. Who referred the Grovers
24 to your -- to the Care House?

25 A: I believe the referral was actually made by Gina Smith

DANNA COLLINS - DIRECT EXAMINATION BY MR. MCEACHIN

1 from the Department of Social Services, but Investigator
2 Charlie Watson with the Marion County Sheriff's Office was
3 also involved.

4 Q: And did you, in fact, conduct a forensic interview on
5 August the 5th, 2009, with Minor 1 ?

6 A: I did.

7 Q: Who was she accompanied by when she came to you?

8 A: Her paternal grandmother brought her to the Care House.

9 Q: And on that particular occasion, was she by herself? Her
10 and her grandmother?

11 A: Yes.

12 Q: Now, when you met with her on that particular day, I
13 believe y'all discussed the allegations involved in that -- in
14 this case; is that correct?

15 A: We did.

16 Q: What did Minor 1 tell you occurred?

17 A: She reported that while she was staying at Uncle Dan's
18 house with her whole family ---

19 MR. BROOKER: Your Honor, objection. I'm going to make
20 an objection.

21 THE COURT: Come over here and talk to me for just one
22 second, please.

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

24 THE COURT: Over the objections of defense, I'm going to
25 allow you to continue, Solicitor.

DANNA COLLINS - DIRECT EXAMINATION BY MR. MCEACHIN

1 MR. MCEACHIN: Thank you.

2 Q: Ms. Collins, specifically where did Minor 1 tell
3 you the alleged assault occurred?

4 A: At Uncle Dan's house.

5 Q: Okay. And did -- did she give you a timeframe of when
6 that occurred?

7 A: We didn't go over a specific date. I do know that she
8 was twelve years of age when I interviewed her and stated that
9 the incident occurred when she was nine or ten years old.

10 Q: All right. But she did, in fact, indicate the incident
11 occurred at her Uncle Dan's house?

12 A: That's correct.

13 Q: Is that correct? Now, after that particular interview,
14 did you have occasion to conduct forensic interviews on any of
15 her siblings?

16 A: I did. I saw Minor 2 J.A.G. , and R.G. on August the
17 12th of 2009.

18 Q: And with regard to your forensic interview specifically
19 related to Minor 2 did Minor 2 indicate to you -- or more
20 pertinent in June of 2004, was there a disclosure made to
21 you about where a particular incident occurred?

22 A: She reported that they were staying at Uncle David's
23 house and that an incident had occurred there.

24 Q: Okay. And that was -- that was prior to the incident
25 with regard to Minor 1 is that correct?

DANNA COLLINS - DIRECT EXAMINATION BY MR. MCEACHIN

1 A: That's correct.

2 Q: Now, I want to make sure we're clear for the jury here.

3 Minor2 indicated the incident occurred at Uncle David's house
4 and Minor1 indicated the incident occurred at Uncle Dan's
5 house; is that correct?

6 A: That's correct.

7 Q: Okay.

8 MR. MCEACHIN: I beg the Court's indulgence for just a
9 moment.

10 THE COURT: Yes, sir.

11 Q: You also indicated that you spoke with R.G. and

12 J.A.G. ?

13 A: Yes, sir.

14 Q: And that was on the same day?

15 A: That's correct.

16 Q: And neither of those girls made any sort of disclosure
17 with regard to sexual abuse; did they?

18 A: They did not.

19 Q: Okay. Please answer any questions Mr. Brooker may have
20 for you.

21 THE COURT: Cross examination.

22 MR. BROOKER: I would have none for this witness, Your
23 Honor.

24 THE COURT: All right. Very good, ma'am. Do you wish to
25 release this witness from her subpoena?

DANNA COLLINS - DIRECT EXAMINATION BY MR. MCEACHIN

1 MR. MCEACHIN: I would ask that she be relieved from her
2 subpoena, Your Honor.

3 THE COURT: Any objection?

4 MR. BROOKER: If you can indulge me for just a second,
5 Your Honor? Let me see.

6 THE COURT: Yes, sir.

7 MR. BROOKER: I don't -- I want to make sure that we --
8 we will not need to call her in rebuttal.

9 THE COURT: Well, that's what I'm asking. Do you want to
10 release her from the subpoena or not?

11 MR. BROOKER: Your Honor, we'd like to retain her at this
12 particular period of time.

13 THE COURT: Very good.

14 MR. BROOKER: We don't know whether or not we'll call
15 her.

16 THE COURT: All right. Ms. Collins, you are free to go,
17 but you remain under the terms of the subpoena subject to
18 recall by the Court. All right?

19 THE WITNESS: Yes, sir.

20 THE COURT: Thank you, ma'am.

21 (Whereupon, the witness leaves the stand at 11:06 a.m.)

22 THE COURT: Your next witness, Solicitor.

23 MR. MCEACHIN: Your Honor, we'd call Investigator Charlie
24 Watson to the stand.

25 THE COURT: All right, sir.

INV. CHARLIE WATSON - DIRECT EXAMINATION BY MR. MCEACHIN

1 THE CLERK: Do you solemnly swear or affirm to tell the
2 truth, the whole truth, and nothing but the truth, so help you
3 God?

4 THE WITNESS: I do.

5 THE CLERK: Thank you, sir.

6 THE COURT: All right, sir. Would you state your full
7 name for the record, please, sir?

8 THE WITNESS: Harry Charles Watson.

9 THE COURT: All right, sir. You may proceed, Solicitor.

10 MR. MCEACHIN: Thank you, Your Honor.

11 INVESTIGATOR CHARLIE WATSON, being first
12 duly sworn, testifies as follows:

13 DIRECT EXAMINATION

14 BY MR. MCEACHIN:

15 Q: Investigator Watson, would you please tell the jury what
16 your current occupation is?

17 A: My current occupation is I'm a sheriff's deputy assigned
18 to the detectives division. I've been a detective for about
19 four years.

20 Q: And which department are you with?

21 A: The Marion County Sheriff's Office.

22 Q: And how many years did you say you've been a detective?

23 A: I've been a detective four years.

24 Q: And how many total years of law enforcement experience do
25 you have?

INV. CHARLIE WATSON - DIRECT EXAMINATION BY MR. MCEACHIN

- 1 A: This month makes seventeen years.
- 2 Q: And would you please tell the jury if you have any
3 specialized training with regard to your investigative
4 position?
- 5 A: Just classes in our office by the Criminal Justice
6 Academy and pretty much trial and error.
- 7 Q: Okay. And do you still go occasionally to the Criminal
8 Justice Academy to take classes?
- 9 A: Yes.
- 10 Q: Is there a specific type of case that you investigate
11 currently?
- 12 A: Currently, I'm assigned to financial indemnity thefts,
13 pretty much classified as financial crimes.
- 14 Q: And what about back in 2009?
- 15 A: Back in 2009, I was handling financial crimes, criminal
16 sexual conduct crimes, and child abuse.
- 17 Q: And did you have occasion to become involved in an
18 investigation in July 2009?
- 19 A: I did.
- 20 Q: And if you don't mind, would you please let the jury know
21 who the victims of that alleged crime were?
- 22 A: The victims of the case was Miss Minor 2 and
23 Minor 1.
- 24 Q: And at the time or -- strike that. Upon completing or
25 doing your investigation in this case, did you have occasion

INV. CHARLIE WATSON - DIRECT EXAMINATION BY MR. MCEACHIN

1 to make an arrest?

2 A: I did.

3 Q: And who did you arrest?

4 A: I arrested a Mr. Daniel Owens, Jr.

5 Q: And do you know or do you recognize Dan Owens, Jr., in
6 the courtroom today?

7 A: Yes, I do.

8 Q: And could you please point him out for the jury?

9 A: He's the gentleman right here.

10 MR. MCEACHIN: Please have the record reflect the witness
11 has identified the defendant.

12 THE COURT: So noted.

13 Q: Now, during the course of the investigative procedure or
14 the arrest procedure in the case, do you have occasion to get
15 certain personal information about the defendant or about the
16 suspect?

17 A: Yes.

18 Q: And specifically, Detective Watson, can you please tell
19 the jury what the defendant's date of birth is?

20 A: The defendant's date of birth is [REDACTED] of the
21 year 1958.

22 Q: And do you know how old he would have been in July of
23 2007?

24 A: Forty-nine.

25 Q: And how about in June of 2004?

INV. CHARLIE WATSON - DIRECT EXAMINATION BY MR. MCEACHIN

1 A: Around forty-six maybe. Forty-six.

2 Q: And once you made your arrest in this case, did you have
3 any other involvement once the arrest was made?

4 A: No.

5 Q: Other than brief follow-up investigation?

6 A: Yes.

7 Q: And that was the extent of it?

8 A: Right.

9 Q: Thank you. Please answer any questions Mr. Brooker might
10 have.

11 A: Yes, sir.

12 THE COURT: Cross examination

13 MR. BROOKER: Thank you.

14 CROSS EXAMINATION

15 BY MR. BROOKER:

16 Q: Detective Watson ---

17 A: Yes, sir.

18 Q: I think you testified that you are -- you've been a
19 detective for about four years?

20 A: Yes, sir

21 Q: Okay. Of course, that would mean -- this case was
22 roughly four years old so that would mean that you became a
23 detective somewhere around in 2009?

24 A: Yes, sir.

25 Q: So you were very fresh on the job?

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

- 1 A: Yes, sir.
- 2 Q: At least as to a detective?
- 3 A: Yes, sir, in the detective's division.
- 4 Q: Yes, yes. As a detective?
- 5 A: Yeah.
- 6 Q: Very fresh as a detective?
- 7 A: Yes, sir.
- 8 Q: At the time in which you had handled this case, how many
- 9 sexual assault or alleged sexual assault cases have you -- had
- 10 you investigated back in 2009 at the time in which you started
- 11 investigating this case?
- 12 A: I can't recall the exact number. I handled adults as
- 13 well as children.
- 14 Q: So -- and let me make sure I understand this is correct
- 15 and let me rephrase it. As a detective, when you became a
- 16 detective, how many CSC cases or allegations of CSC or either
- 17 -- or either sexual assault cases had you investigated before
- 18 you became the investigator in this one?
- 19 A: We handle so many, I can't recall a specific number. It
- 20 -- this was one of the first few. I will say that.
- 21 Q: That you had as an investigator?
- 22 A: Yes.
- 23 Q: I know you said you can't recall. Was it more than ten?
- 24 A: No. It was not more than ten.
- 25 Q: Was it more than five?

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 A: That's going to be around the number.

2 Q: Now, let's talk a little bit about how you became a
3 detective and specifically how you became a detective with
4 these particular type of cases, criminal sexual assault cases
5 of that nature. Did you have to have some sort of special
6 certification to become an investigator of criminal sexual
7 assault cases?

8 A: No.

9 Q: Okay.

10 A: I just -- I had thirteen years of patrol, which that's
11 the basis of any law enforcement position. You learn to do
12 field investigations, interviews, and stuff of that nature
13 during patrol.

14 Q: Okay. Did you took any -- any courses in investigating
15 criminal sexual conduct cases prior to becoming a detective?

16 A: No.

17 Q: Had you attended any college or obtained any degree,
18 whether it be a bachelor's, doctor's or associate's degree in
19 criminal justice or either criminology?

20 A: No.

21 Q: At that particular period of time, did you or either the
22 Marion County Sheriff's Department have a protocol that you
23 used for investigating allegations of criminal sexual conduct?

24 A: Not just a protocol. It's just normally we do a brief
25 interview and then we refer the children to the Care House

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 facility where they conduct a forensic interview.

2 Q: Okay. Now, my understanding was, is that -- did you
3 interview both Minor 2 -- Minor 2 [sic] and also did you
4 interview Minor 1 [sic], the two young ladies that
5 testified before?

6 A: I spoke to them very briefly.

7 Q: Okay. Do you remember what questions you asked
8 Minor 1

9 A: I pretty much asked them what had happened. They gave me
10 just minor details. At that particular moment, I decided to
11 stop with the questioning because I was going to refer them to
12 the Care House and wanted to wait for all of that.

13 Q: So -- so any questioning or either conversation you had
14 with Minor 1 was very, very, very brief?

15 A: Yes.

16 Q: Okay. Just enough for her to make the allegation?

17 A: Absolutely.

18 Q: And then, of course, it was your intent then to refer to
19 the Care House?

20 A: Yes.

21 Q: Okay. Now, did you also talk with Minor 2

22 A: Yes.

23 Q: Now ---

24 A: Actually, I spoke to both of them at the same time and
25 the conversation was very brief.

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

- 1 Q: You spoke with both of them at the same time?
- 2 A: Yes.
- 3 Q: Okay. Did you spoke with them together or either isolate
- 4 them?
- 5 A: They were pretty much together.
- 6 Q: Okay. Is there any particular reason why you spoke with
- 7 them together?
- 8 A: They were sitting with their grandmother. Once I heard
- 9 from them the allegation, then I just concluded and waited
- 10 until they sent them to the Care House.
- 11 Q: Okay.
- 12 A: I didn't want them to have to relive everything with me
- 13 as a pretty big guy. So I'm a man so I didn't want to
- 14 intimidate them or anything. I wanted everything to stay
- 15 fresh so we went to the Care House.
- 16 Q: Okay. Isn't it the best police practice is that when
- 17 you're interviewing two witnesses for the same crime that you
- 18 interview them separately so that one alleged witness don't
- 19 say anything or taint the other alleged witness, that each
- 20 statement is given individually so that you can then compare
- 21 them to make sure that they're accurate?
- 22 A: Of course, if it's an in-depth interview. This was not.
- 23 Q: But you didn't do that?
- 24 A: No. It wasn't an in-depth interview.
- 25 Q: Now, do you have any personal knowledge -- and I'll

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 repeat that again. You were in the courtroom when the young
2 ladies made these allegations -- when Minor1 made her
3 allegations. You don't have any personal knowledge about
4 anything that she said; is that correct?

5 A: No, sir.

6 Q: It wasn't -- I'm sorry. I didn't mean to interrupt you.

7 A: No, sir.

8 Q: Okay. You wasn't with them that night when these alleged
9 things took place; is that correct?

10 A: No.

11 Q: And obviously, you were not with Minor2 you know, on the
12 day in which she alleged roughly back in 2004 when -- when the
13 allegations that she made took place?

14 A: No.

15 Q: Okay. So when you sit in the courtroom and you're
16 testifying, you're basically -- you're basically investigating
17 allegations made?

18 A: Yes.

19 Q: Okay. But other than that, you have no personal
20 knowledge at all?

21 A: No.

22 Q: About -- about what happened, if anything?

23 A: No, sir. I wasn't there.

24 Q: Okay. Now, I'm going to ask you at least something that
25 you -- that you obtained at least in your report. Let me,

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 first of all, I'll let you take a look at it and make sure
2 that you recognize this. You take a look at this and tell me
3 whether or not you recognize that?

4 A: Yes. This is my investigative report.

5 Q: And I ask you about a statement that's contained within
6 your investigative report and, of course, I'm going to be
7 looking at the last paragraph and, specifically, it says that
8 you have down here that Uncle Dan exposed himself ---

9 MR. MCEACHIN: Your Honor, I'm going to object at this
10 time. If he wants to introduce this to the jury, I have no
11 objection to that, but if he's going to publish part of the
12 report ---

13 THE COURT: Sustained.

14 MR. MCEACHIN: Thank you.

15 MR. BROOKER: May I respond, Your Honor?

16 THE COURT: Sir, if you want to introduce it into
17 evidence, I'll be glad for you to do so. Otherwise, you may
18 not publish its contents. You can rephrase your question, but
19 you may not publish the contents.

20 MR. BROOKER: Okay. I'm going to ask him specifically
21 about his report.

22 Q: Did -- did Minor 2 [sic] tell you that this incident
23 happened in a locked bathroom?

24 A: I thought it was a bedroom, a locked bedroom.

25 Q: Do you want to refresh your memory and look at your

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 report and refresh your memory?

2 A: I don't have a copy of the report. I turned everything
3 over to the Solicitor's Office.

4 Q: Would you like to see a copy of yours?

5 A: Sure.

6 THE COURT: Once you finish reading the report, just let
7 me know, sir.

8 THE WITNESS: Yes, sir.

9 (Whereupon, there is a pause in the proceedings.)

10 A: It says right here it's a ---

11 THE COURT: Sir ---

12 A: --- bedroom.

13 THE COURT: Yes, sir.

14 THE WITNESS: Sorry.

15 THE COURT: All right, sir. Once you've looked at it,
16 then put it down. You can't testify directly from the report.
17 You can use it to refresh your memory.

18 THE WITNESS: Yes, sir. I've finished, Your Honor.

19 THE COURT: Very good, sir. Go ahead, Mr. Brooker.

20 Q: Did Minor2 [sic] tell you that this incident
21 happened -- (coughs) excuse me -- in a locked bathroom?

22 A: No.

23 MR. BROOKER: If you can indulge me for just a second,
24 Your Honor?

25 THE COURT: Yes, sir.

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 Q: Did you reach that conclusion that this incident happened
2 in a locked bathroom?

3 MR. MCEACHIN: Objection, Your Honor. That's a question
4 of fact for the jury.

5 THE COURT: I'll -- I'll allow him to ask that particular
6 question.

7 Q: Did you reach that conclusion?

8 A: No.

9 Q: You did not reach that conclusion?

10 A: I'm not familiar with anything happening in a bathroom.

11 MR. BROOKER: Your Honor, I would move to introduce a
12 redacted version of the report into evidence.

13 THE COURT: Ladies and gentlemen of the jury, go to your
14 jury room, please.

15 (Whereupon, the jury exits the courtroom at 11:23 a.m.)

16 THE COURT: Let me see the report, please. I think
17 that's a copy of it.

18 MR. BROOKER: Yes, sir.

19 THE COURT: Is that a full, complete copy of the report?

20 MR. BROOKER: That's a full, complete copy.

21 THE COURT: All right, sir.

22 (Whereupon, there is a pause in the proceedings for the
23 Court to review the report.)

24 THE COURT: So what is the part that you want to ---

25 MR. BROOKER: Specifically, Your Honor, is, is that it

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 says -- it says in that report that -- that the incident
2 happened in a locked bathroom.

3 THE COURT: I see locked bedroom.

4 MR. MCEACHIN: I see that, too.

5 THE COURT: Where does it say locked bathroom? I'm
6 sorry. I must be overlooking it. Where did -- here, I'll let
7 you have it back.

8 MR. BROOKER: Unless I'm reading it wrong, Your Honor. I
9 thought sure I said a locked bedroom.

10 THE COURT: Do you see locked bathroom in the report
11 anywhere?

12 MR. BROOKER: I'm not sure.

13 MR. MCEACHIN: I just see bedroom, Your Honor.

14 MR. BROOKER: It does say a locked bedroom, Your Honor.

15 THE COURT: All right, sir.

16 MR. BROOKER: Like I said, I don't see bathroom.

17 THE COURT: All right. Thank you very much.

18 MR. BROOKER: Thank you, Your Honor.

19 THE COURT: All right. All right. Ask the jury to come
20 back in, please.

21 MR. MCEACHIN: Your Honor, before they come back, is he
22 still attempting to admit it? Because if he is, I've got an
23 objection.

24 THE COURT: I'm assuming you've withdrawn your attempt to
25 introduce it; is that right?

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 MR. BROOKER: No, because it does not contain the
2 language in which we thought it did.

3 THE COURT: All right. So you don't want to offer it
4 into evidence?

5 MR. BROOKER: Yeah. Yeah, because he testified
6 correctly.

7 THE COURT: All right. Very good. All right. Ask the
8 jury to come back in, please.

9 (Whereupon, the jury enters the courtroom at 11:29 a.m.)

10 THE COURT: You may continue, Mr. Brooker.

11 MR. BROOKER: Thank you, Your Honor.

12 Q: Detective Watson, you testified previously is, is that
13 after you got that brief information that you wanted to send
14 them to a forensic -- forensic interviewer for questioning; is
15 that correct?

16 A: Yes.

17 Q: And that you testified on direct examination that you
18 followed up thereafter. Were you present at the forensic
19 interviewing?

20 A: I was not present in -- I wouldn't be present in the
21 room.

22 Q: Just at the interview, not sitting in the room?

23 A: I can't recall being there that day, which is not normal.
24 Normally, I am, but I want to say I wasn't there that day
25 because I had other engagements with other cases. But I can't

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 recall being there that day.

2 Q: Was there another investigator there?

3 A: No. There would not be another investigator there.

4 Q: Okay. Now, you testified that normally an investigator
5 would be there; is that correct?

6 A: Yes.

7 Q: Okay. And the purpose of the investigator would be there
8 would be to observe and assist in questioning; is that
9 correct?

10 A: Normally, they would sit in a room and just observe. The
11 Care House takes complete control. The officer is just going
12 to sit there and observe.

13 Q: Okay. Now, did you receive the Care House reports
14 thereafter?

15 A: I did.

16 Q: Were you aware of the fact -- I think Minor2 -- let's talk
17 with Minor2 -- that Minor2 testified -- testified that when the
18 incident involving her where Uncle Dan allegedly tried to pull
19 down her pants that on that exact same day that she told Aunt
20 Michelle?

21 A: I can't recall that specific. The only specific that I
22 would be interested in is the actual incident that took place
23 between -- the allegation between her and her Uncle Dan.

24 Q: Okay. So -- and I'll -- and I'll just repeat that. You
25 may have answered it. Were you aware of that she alleged that

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 she told her Aunt Michelle? We're dealing with Minor 2

2 A: I don't recall that.

3 Q: Okay. The question would be is, is that if that was
4 true, then that would basically make Aunt Minor 2 -- excuse me
5 -- Aunt Michelle at least a witness to the initial allegations
6 and exactly what those initial allegations were.

7 A: I don't think so.

8 Q: Is that correct?

9 A: No. Not as far as I'm concerned because Aunt Michelle
10 was not present in the room when the incident took --
11 allegedly took place.

12 Q: Okay. Well, listen to me and I know, but that's not what
13 I'm asking. What I'm saying is, is that would make Aunt
14 Michelle a witness to ---

15 A: She's not a witness.

16 Q: Let me finish my question and I promise you if you let me
17 finish my question ---

18 THE COURT: Excuse me. Mr. Brooker, if you have a
19 problem with how a witness is responding to a question ---

20 MR. BROOKER: Mm-hmm.

21 THE COURT: --- you address that to the Court. You don't
22 take care of it yourself. Thank you very much. Continue on.

23 Q: Would -- wouldn't that make Aunt Michelle a witness to
24 the initial report by Minor 2

25 A: For the Care House is what you're talking about? The

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 report for the Care House?

2 Q: No, sir. No, sir. I'll rephrase that again. You were
3 in the room when Minor2 testified that when Uncle Dan attempted
4 to pull her pants down -- allegedly attempted to pull her
5 pants down; correct? You were in the room when she testified
6 to that; right?

7 A: Yes.

8 Q: You were also in the room when she testified that after
9 she left Uncle Dan's house -- Uncle David's house with her
10 mother and her siblings and Uncle Dan, that they went home;
11 right?

12 A: Okay. Before I answer, are we specifically talking about
13 here today?

14 Q: No. Yeah.

15 A: Or are we talking about at the Care House? Because I
16 don't think I was in the room at the Care House.

17 Q: I'm not asking about the Care House. I'm asking about
18 what she testified to today.

19 A: Here today?

20 Q: Yes, sir.

21 A: Yes.

22 Q: That's what I'm asking. Were you in the room when she
23 testified is what I'm saying.

24 A: Okay. I just wanted to make sure I'm correct. I
25 understand you now.

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 Q: All right. Certainly. You were in the room when she
2 testified that -- that after these alleged -- this alleged
3 incident ---

4 MR. MCEACHIN: Your Honor, at this point, I'm going to
5 object. I mean ---

6 THE COURT: Sustained. You're asking this witness to
7 comment on the testimony of a previous witness. That's not
8 proper. Sustained. It's up to the jury.

9 Q: I don't want your comment on that. I'm asking you were
10 you in here when she testified ---

11 MR. MCEACHIN: Same objection, Your Honor.

12 THE COURT: Mr. Brooker, the witness has testified. It
13 will be up to the jury to judge her credibility and
14 believability. It's not up to this witness to give an opinion
15 about her credibility and believability. That is the purpose
16 of your question. The objection is sustained. Move along.

17 MR. BROOKER: It is not, Your Honor.

18 THE COURT: Sir.

19 MR. BROOKER: Yes, sir.

20 THE COURT: I have ruled. I appreciate you do not agree.
21 I have ruled.

22 MR. BROOKER: Yes, sir.

23 THE COURT: The objection is sustained. Move along.

24 Thank you.

25 MR. BROOKER: May we approach, Your Honor? And we're --

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 and the reason why I'm asking is ---

2 THE COURT: Ladies and gentlemen, go to the jury room
3 right now.

4 (Whereupon, the jury exits the courtroom at 11:36 a.m.)

5 THE COURT: Go ahead, Mr. Brooker.

6 MR. BROOKER: Your Honor, just for the record, I am not
7 asking him to comment on the credibility of this witness. I
8 am ---

9 THE COURT: You are asking this witness to make a
10 comment. You're saying that this witness testified to a
11 certain fact in the courtroom. That is not his job. His job
12 is to answer proper questions. It is not a proper question to
13 ask this witness did Jane Doe earlier in this courtroom
14 testify to X, Y and Z. That is not a proper question. I am
15 not going to allow that. I understand you do not agree. I am
16 not going to allow you to do so. Your objection is noted for
17 the record. Do you wish to add anything else?

18 MR. BROOKER: No, Your Honor, other than the fact is, is
19 that I'm -- and -- and I'll leave this alone, but I'm going to
20 add this at least for the protection of the record for my
21 client -- is, is that it's my understanding that when a
22 witness sits in the courtroom and observes another witness, I
23 can ask that witness about things that they observed at the
24 time that the testifying witness testified to, and the purpose
25 of asking that question is not to ask him questions with

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 respect to her credibility or her reliability or anything like
2 that, but to direct him to the question that apparently he
3 just simply is not getting and that question is, is that
4 wouldn't that -- when -- when Minorl [sic] testified that
5 she reported this on the same day it allegedly happened to
6 Aunt Michelle, that that would make Aunt Michelle a witness to
7 the initial report.

8 THE COURT: Solicitor?

9 MR. MCEACHIN: He answered that question. It's been
10 asked and answered and then Mr. Brooker kept asking. But to
11 go back to what Your Honor originally said ---

12 MR. BROOKER: He didn't.

13 MR. MCEACHIN: Yes, he did. He answered she ---

14 THE COURT: Gentlemen ---

15 MR. MCEACHIN: --- would not be a witness.

16 THE COURT: Do not argue among yourselves.

17 MR. MCEACHIN: Yes, sir, Your Honor.

18 MR. BROOKER: I apologize.

19 MR. MCEACHIN: I apologize, Your Honor.

20 THE COURT: Thank you.

21 MR. MCEACHIN: Your Honor?

22 THE COURT: Yes, sir.

23 MR. MCEACHIN: Two things there. That question was
24 asked. It was answered and then Mr. Brooker tried to ask it
25 two other ways. He elicited the question with regard to the

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 witness Minor 2 testimony and I believe Your Honor is
2 correct in that he was asking based on that question, even if
3 it wasn't a direct comment on what she was testifying to, it
4 would have been an indirect comment on the testimony of that
5 particular witness and I tend to think, Your Honor, that that
6 is -- because it would be a comment on that witness's
7 testimony, it would be an improper question.

8 THE COURT: I -- I think and believe, Mr. Brooker, the
9 purpose of your question is to invade the jury's province in
10 this matter. You can ask the witness did he interview this
11 aunt. If he says no, you can ask him why he didn't interview
12 the witness. I don't know what his answer is going to be, but
13 you can certainly ask him those questions. But you may not
14 ask him to comment on the prior testimony of a witness.

15 It will be your job in closing arguments to point out
16 what you believe to be any inconsistencies as to what the
17 witness is testifying to. You may not ask this witness to
18 comment on what another witness said in the courtroom. If
19 your purpose is to bring out something about whether or not
20 this other person might be a witness and the State hasn't
21 called them, you can certainly ask this witness did he
22 interview her, did she -- did he speak to her, why he didn't
23 speak to her, but you can't ask him to comment on what
24 somebody else said in the courtroom. All right? You can
25 agree or disagree with me. That's my ruling.

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 MR. BROOKER: I'm going to move on.

2 THE COURT: Very good. Ask the jury to come back.

3 (Whereupon, the jury enters the courtroom at 11:41 a.m.)

4 THE COURT: You may continue, Mr. Brooker.

5 MR. BROOKER: Thank you, Your Honor.

6 Q: Did you interview Aunt Michelle?

7 A: No, I did not.

8 Q: Did you make any attempts to contact her?

9 A: No, I did not.

10 Q: And again, we're still talking about Minor2 with respect

11 -- with respect to the alleged incident involving Minor2 Did

12 you contact Minor2 s mother?

13 A: No.

14 Q: Did you make any attempt to interview her at all?

15 A: No.

16 Q: Did you contact Minor2 father?

17 A: No.

18 Q: Did you make any attempt to contact her [sic] at all?

19 A: No.

20 Q: Did you contact Aunt Doris?

21 A: No.

22 Q: Did you make any attempt to question her at all?

23 A: No.

24 Q: Why?

25 A: I didn't see a need for it.

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 Q: Now, did you make an attempt to talk with J.A.G.
2 [sic]?
3 A: No.
4 Q: Why?
5 A: I didn't see a need for it.
6 Q: Did you make an attempt to contact R.G. [sic]?
7 A: Who is R.G. ?
8 Q: R.G. is the -- is the other daughter or sibling.
9 A: [REDACTED]?
10 Q: [REDACTED]. I'm sorry.
11 A: No.
12 Q: Why?
13 A: I didn't see a need for it.
14 Q: Did you make an attempt to contact Dr. Wu?
15 A: No.
16 Q: Why?
17 A: I didn't see a need for it.
18 Q: One more simple question before I sit down. You
19 testified that you didn't see a need to contact any of these
20 people?
21 A: No.
22 Q: Could you explain why you -- why was it you didn't need
23 to contact them?
24 A: Because the probable cause was based on everything that
25 was collected at the Care House facility in Florence which

INV. CHARLIE WATSON - CROSS EXAMINATION BY MR. BROOKER

1 specializes in these kind of cases.

2 Q: Did you interview the grandmother?

3 A: Briefly.

4 Q: Did you interview the grandfather?

5 A: Who? Papa, the grandfather?

6 Q: Yeah, the grandfather of the kids.

7 A: Which one? Mr. Grover? Terry Grover?

8 Q: Yes, sir.

9 A: No.

10 Q: And again, I'm assuming that your reasons are the same?

11 You saw no need for it?

12 A: I based everything on the Care House.

13 MR. BROOKER: If you can indulge me for just a second,

14 Your Honor?

15 THE COURT: Yes, sir.

16 MR. BROOKER: Let me make sure I don't have any follow-up

17 questions.

18 THE COURT: Yes, sir.

19 MR. BROOKER: No further questions, Your Honor.

20 THE COURT: Any redirect?

21 MR. MCEACHIN: Yes, sir, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. MCEACHIN:

24 Q: Mr. Brooker was just asking you a number of questions

25 about whether you interviewed Aunt Michelle and whether you

INV. CHARLIE WATSON - REDIRECT EXAMINATION BY MR. MCEACHIN

1 interviewed the mother of the children, the father of the
2 children and others, and I believe you indicated that no, you
3 didn't interview them?

4 A: I did not.

5 Q: Do you normally when you investigate cases interview
6 people who are not eyewitnesses?

7 A: I do not.

8 Q: To your knowledge, were any of these people eyewitnesses?

9 A: They were, in fact, not eyewitnesses.

10 Q: Okay. Now, getting back to what Mr. Brooker started
11 asking you about to begin with, he asked you about your
12 initial interview with the girls and I believe your testimony
13 was once a disclosure was made, you shut it down and you sent
14 them to the Care House?

15 A: Yes, because it is sensitive.

16 Q: Explain to this jury why you do that, Charlie?

17 A: One, you're dealing with children. I'm a man. I'm a big
18 guy. I'm intimidating and I wanted to -- I didn't want the
19 children to have to sit down and relive everything with me.

20 MR. BROOKER: Objection, Your Honor, based upon Kromah.

21 THE COURT: I -- I don't see that to be a violation of
22 that case. I'm going to allow the answer as given so far.

23 Q: Please continue, Charlie.

24 A: Okay. I didn't want the children to have to sit down and
25 tell me everything allegedly that happened and then have to go

INV. CHARLIE WATSON - REDIRECT EXAMINATION BY MR. MCEACHIN

1 and sit down with another complete stranger and have to tell
2 the story for a second time or a third time. I felt
3 personally that the children had been through enough. Once
4 they made a disclosure that something had happened, I shut
5 everything down.

6 Q: Okay. And I believe you indicated that that was the
7 procedure you followed that if a disclosure is made, you sent
8 them to the Care House; is that correct?

9 A: Absolutely.

10 Q: Now ---

11 MR. MCEACHIN: I beg the Court's indulgence for just a
12 moment.

13 THE COURT: Yes, sir.

14 Q: Mr. Brooker asked you a number of questions about your
15 report specifically with regard to a locked bathroom. Was it
16 a locked bathroom?

17 A: No, it was not.

18 Q: What was it?

19 A: It was a locked bedroom.

20 Q: A locked bedroom?

21 A: Yes.

22 Q: All right. And once again, the reason you didn't speak
23 to those last four people he discussed was why?

24 A: They weren't eyewitnesses.

25 MR. MCEACHIN: Thank you very much. No further

INV. CHARLIE WATSON - RECROSS EXAMINATION BY MR. BROOKER

1 questions.

2 THE COURT: Questions, Mr. Brooker, on those questions
3 just asked by the Solicitor?

4 MR. BROOKER: Just very one.

5 THE COURT: Yes, sir.

6 RECROSS EXAMINATION

7 BY MR. BROOKER:

8 Q: I think you testified to the fact that you didn't -- you
9 didn't interview the children because you didn't want them to
10 repeat their story twice; is that correct you just testified
11 to that?

12 A: In an emotional aspect of it, yes.

13 Q: Okay. Are you qualified or been trained as a forensic
14 interviewer of minor children?

15 MR. MCEACHIN: Your Honor, I'm going to object. I
16 believe that exceeds the scope of my redirect.

17 THE COURT: I think it does, too. I'm going to -- if you
18 want to rephrase your question, I'll be glad for you to do so,
19 but I'm going to sustain that particular objection.

20 MR. BROOKER: I don't need to rephrase it, Your Honor.

21 THE COURT: All right, sir. You may step down, sir.

22 THE WITNESS: Thank you, Your Honor.

23 (Whereupon, the witness leaves the stand at 11:49 a.m.)

24 THE COURT: Solicitor, Mr. Brooker, y'all come over here
25 and talk to me for just one second, please.

1 (Whereupon, a bench conference is held off the record
2 regarding scheduling.)

3 THE COURT: All right, Solicitor, the position of the
4 State at this point in time?

5 MR. MCEACHIN: Your Honor, the State of South Carolina
6 rests.

7 THE COURT: All right. Very good. All right, ladies and
8 gentlemen, the State has rested or ended its portion of the
9 presentation of the evidence in this particular case. Now,
10 that obviously does not end this case. What happens now is
11 there are motions and matters that the Court has to take up
12 outside of your presence. I understand there may be some
13 recorded evidence that has to be set up to make sure that it
14 actually works before it's attempted to be shown to you.

15 So all that to say I'm going to send y'all to lunch.
16 There's no sense you sitting back in the jury room while all
17 that's going on. All right? So what it also means is it's
18 probably going to be two o'clock before we get started. So
19 I'm going to send y'all out. Y'all be back here by two
20 o'clock. I'd appreciate it if you don't wait until two
21 o'clock to walk through the door, but if -- you know, so we
22 can get started at two.

23 Remember, you're going to lunch or whatever you're doing,
24 don't talk about the case. Don't allow anybody to talk to you
25 about it. We'll see you back by two o'clock. All right?

1 Y'all are now excused. Thank you very much.

2 (Whereupon, the jury exits the courtroom at 11:52 a.m.)

3 THE COURT: All right. The State having rested, defense
4 motions at this time, Mr. Brooker?

5 MR. BROOKER: No motions at this time.

6 THE COURT: All right, sir. All right. Very good.

7 We'll -- we'll come back at two o'clock. I'd appreciate it if
8 y'all would go and you're going to check video, make sure that
9 it works, and then when you get back here if we can make sure.
10 How do you intend to present it or play it to the jury?

11 MR. BROOKER: There is a -- there is a television with a
12 -- with a DVD player and we plan to bring that upstairs and
13 play it on the television.

14 THE COURT: Okay. All right. So if we can take -- since
15 we've got plenty of time, y'all take that time, get it up
16 here, let's make sure it works, and everything is in operation
17 before we call the jury out so that we don't have to, you
18 know, send them back out and say, oh, it's not working. Okay?

19 MR. BROOKER: Yes, sir.

20 THE COURT: All right.

21 MR. MCEACHIN: Yes, sir.

22 THE COURT: Good deal. Thank y'all, gentlemen. I
23 appreciate it very much.

24 (Whereupon, there is a break in the proceedings from
25 11:53 a.m. until 1:58 p.m.)

1 THE COURT: All right. Did we figure out the situation
2 regarding the video?

3 MR. BROOKER: No, Your Honor. It is that the only thing
4 we've been told is that the -- the -- the videographer is on
5 his way back to the office and that he's going to try to
6 correct it when he got there, but when I called about ten
7 minutes ago, he had not arrived.

8 THE COURT: All right. Well, we'll just -- we'll do the
9 -- the other witnesses before that I guess and then we'll see
10 where we are with the -- with the deposition.

11 MR. BROOKER: Yes, sir.

12 THE COURT: Did you -- for the record, do you want to go
13 forward with your directed verdict motion at this point in
14 time?

15 MR. BROOKER: Yes, Your Honor, we can.

16 THE COURT: All right. Very good. All right. Other
17 than a -- the standard directed verdict motion, any other
18 motions that you would make?

19 MR. BROOKER: No other motions, Your Honor.

20 THE COURT: All right. Very good. Regarding a directed
21 verdict motion, under basic case law the defendant is entitled
22 to a directed verdict when the State fails to produce evidence
23 of the offense charged. As the trial judge, I'm concerned
24 with the existence of evidence, not with its credibility or
25 believability, just whether or not the evidence exists. It

1 will be up to the jury to judge credibility and believability.
2 If there's any direct evidence or substantial circumstantial
3 evidence reasonably tending to prove the guilt of the accused
4 of the crime charged, the case is properly submitted to the
5 jury.

6 I have a different standard than the jury. The jury
7 standard is beyond a reasonable doubt. The Court's standard
8 is if there's any, as I indicated, direct evidence or
9 substantial circumstantial evidence reasonably tending to
10 prove the guilt of the accused, then the case properly goes
11 before the jury.

12 In this particular matter, I find that the evidence, if
13 that evidence is believed by the jury, more than sufficiently
14 meets that standard of reasonably tending to prove the guilt
15 of the accused and, in fact, rises to the standard of --
16 again, if that evidence is believed by the jury, to find the
17 defendant guilty of both crimes charged by the State beyond a
18 reasonable doubt. I think there is more than sufficient
19 evidence in the record to convict the defendant of both crimes
20 if that evidence is so believed by the jury.

21 Therefore, I respectfully decline to grant your motion
22 for directed verdict. Anything further before we call the
23 jury back in then from the State?

24 MR. MCEACHIN: No, sir, Your Honor.

25 THE COURT: From the defense?

26

DEPUTY JOHN ISRAEL - DIRECT EXAMINATION BY MR. BROOKER

1 MR. BROOKER: No, sir, Your Honor.

2 THE COURT: All right. Very good. Ask the jury to come
3 back in, please.

4 (Whereupon, the jury enters the courtroom at 2:01 p.m.)

5 THE COURT: All right. Mr. Brooker, the witnesses for
6 the defense?

7 MR. BROOKER: Thank you, Your Honor. At this particular
8 time, we will call Deputy Israel.

9 THE COURT: All right, sir. Where -- is that the deputy?
10 Will you come around, sir, and just meet the bailiff right
11 over here, please, sir?

12 THE CLERK: Please place your left hand on the Bible and
13 raise your right hand. Do you solemnly swear or affirm to
14 tell the truth, the whole truth, and nothing but the truth, so
15 help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you, sir.

18 MR. BROOKER: Thank you, Your Honor.

19 THE COURT: You may proceed, sir.

20 MR. BROOKER: Thank you, Judge.

21 DEPUTY JOHN ISRAEL, being first duly
22 sworn, testifies as follows:

23 DIRECT EXAMINATION

24 BY MR. BROOKER:

25 Q: Deputy Israel, how long have you been in law enforcement?

DEPUTY JOHN ISRAEL - DIRECT EXAMINATION BY MR. BROOKER

- 1 A: Five years.
- 2 Q: And that is five years from -- from this particular point
3 in time?
- 4 A: Yes, sir.
- 5 Q: Okay. Now, do you recall responding to -- to a complaint
6 from I guess Ms. Margaret Glover [sic] in connection with this
7 case?
- 8 A: I'm not a hundred percent sure. We take reports all the
9 time and I believe, if I'm familiar with this case, that they
10 came to the LEC to report to our office.
- 11 Q: Now, I'm assuming that you knew that you were going to
12 testify in connection with this case?
- 13 A: I did.
- 14 Q: Okay. You -- you did not receive a subpoena in
15 connection with this case?
- 16 A: Well, I don't recall.
- 17 Q: Okay. Okay. Did you review your -- your -- your file in
18 connection with this case?
- 19 A: I did not.
- 20 Q: Okay. Well, basically is, is that I'm going to ask you
21 at least some questions. At any point in time is, is that if
22 you need a copy of your report to refresh your memory, just
23 let me know.
- 24 A: Can I see a copy of the report now to refresh my memory?
- 25 Q: Well, I think it's only appropriate and I will -- well,

DEPUTY JOHN ISRAEL - DIRECT EXAMINATION BY MR. BROOKER

1 I'll let the judge respond to that.

2 THE COURT: Sir, you can -- if you are unable to respond
3 to a question and you need to refer to your report to respond
4 to the question, you may go back and read through your report.
5 You read through the report in its entirety. Then you set the
6 report aside and then answer the question as posed. You
7 cannot answer the question directly from the document itself.
8 You can use it to refresh your memory. So you need to listen
9 to the question and if you need to refresh your memory by
10 looking at the report, just please ask and you'll be able to
11 do that. All right?

12 THE WITNESS: All right.

13 THE COURT: Thank you. Go ahead, sir.

14 MR. BROOKER: Okay.

15 Q: Now, again, I think you said that -- that you've been on
16 for -- been a deputy for five years; is that correct?

17 A: Yes, sir.

18 Q: Okay. And -- and that is -- is that your complete
19 history as a deputy or -- or did you work someplace else prior
20 to becoming a deputy?

21 A: No. I was a deputy just five years.

22 Q: Just five years? And, of course, is, is that this
23 occurred I understand back in -- I think it was July of 2007;
24 is that correct?

25 A: I'm not a hundred percent sure. I really need to refer

DEPUTY JOHN ISRAEL - DIRECT EXAMINATION BY MR. BROOKER

1 to the police report to refresh my memory.

2 Q: Certainly.

3 THE COURT: Just go ahead and read through the -- the
4 report and then just let me know when you've finished that.
5 Okay?

6 MR. MCEACHIN: Your Honor, while he's doing that, may we
7 approach?

8 THE COURT: Yes, absolutely.

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

10 THE COURT: Have you had an opportunity to look at the
11 report?

12 THE WITNESS: Yes, sir.

13 THE COURT: All right. Very good. You can just set that
14 aside. Go ahead, Mr. Brooker.

15 Q: That day -- that day you -- you met with Margaret Glover
16 [sic]; is that my understanding?

17 A: Yes, sir.

18 Q: Okay.

19 A: Not on that date in 2007.

20 Q: Yes, on the date that's contained on your -- the date
21 that's contained on your ---

22 A: Yes, sir.

23 Q: --- on your report? Okay. Was there anyone else
24 accompanying Ms. Glover [sic] when you met with her?

25 A: I believe she had two young girls with her.

DEPUTY JOHN ISRAEL - DIRECT EXAMINATION BY MR. BROOKER

1 Q: Okay. Now, don't tell me what anybody else said --
2 anybody said, but did you talk with those girls?
3 A: Well, they did -- they did speak with me.
4 Q: I'm not asking you what they said. I'm asking you did
5 you talk with them?
6 A: Yes, I did.
7 Q: Okay. Did you talk with Ms. Glover [sic]?
8 A: Yes, I did.
9 Q: About how long did you talk with Ms. Glover [sic]?
10 A: Long enough to gather the information, which was probably
11 maybe ten minutes to gather information for my report.
12 Q: You said she had also had two girls with her?
13 A: Yes, sir.
14 Q: How long did you talk with those two girls?
15 A: Maybe three -- four minutes.
16 Q: Okay. Now, at that particular period of time, did you
17 have any other involvement in connection with this case?
18 A: I had no further involvement other than filing the
19 initial report.
20 Q: Okay. And, of course, generally in a situation like this
21 because you were a deputy and I think you said you were --
22 this was four years ago and I think you said you were a deputy
23 five years ago. So you were roughly one year as a deputy at
24 that time?
25 A: Correct.

DEPUTY JOHN ISRAEL - DIRECT EXAMINATION BY MR. BROOKER

1 Q: Okay. Is it your -- is it your protocol or procedure at
2 that particular period of time to refer it to a detective?

3 A: Yes, it is.

4 Q: Okay. And -- and that would have been Detective Charlie
5 Watson?

6 A: Well, we don't specifically assign a case to a detective
7 ourselves. That gets -- when a report gets done, it gets
8 handed over to the captain and she issues it out to the
9 detectives.

10 Q: And so I'm assuming is, is that once you took the initial
11 report that you don't have any part of the investigation
12 whatsoever?

13 A: I don't.

14 Q: So -- so other than what you've just explained, talking
15 with Ms. Glover [sic] and talking with the -- the two young
16 ladies, that you have no other involvement in connection with
17 this case?

18 A: No other involvement.

19 Q: Okay. Now ---

20 MR. BROOKER: Judge, we may -- may need to approach?

21 THE COURT: Well, why don't you ask a question and let's
22 just see if there is any objection to it. Okay?

23 MR. BROOKER: Okay.

24 Q: Ms. -- Ms. Margaret Glover [sic]. Did she stated to you
25 ---

DEPUTY JOHN ISRAEL - DIRECT EXAMINATION BY MR. BROOKER

1 MR. MCEACHIN: Objection, Your Honor, hearsay.

2 MR. BROOKER: All right. Let's go.

3 THE COURT: Y'all -- y'all come up here and talk to me.

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

5 THE COURT: All right. Go ahead, Mr. Brooker.

6 MR. BROOKER: Thank you, Your Honor.

7 Q: Did you take any -- and like I said, I don't want you to

8 tell me what anybody else said. Did you take any written

9 statements from anyone that you talked with that day?

10 A: I don't recall that I did.

11 Q: Okay. And again, this is -- that's the extent of your

12 involvement in connection with this case is what you just

13 testified to?

14 A: That's it.

15 MR. BROOKER: No further questions, Your Honor.

16 THE COURT: Okay. Now, Deputy, you're going to remain on

17 call from the Court if maybe an opportunity for you to be

18 called back depending upon what transpires. So just

19 understand that you may be called back to answer some

20 questions. Okay?

21 THE WITNESS: Okay.

22 THE COURT: All right. Thank you very much. You're

23 excused at this point in time. Thank you.

24 MR. MCEACHIN: And no ---

25 THE COURT: Oh, I'm sorry, Solicitor.

1 MR. MCEACHIN: That's all right, Your Honor. No cross
2 examination from the State.

3 THE COURT: Well, I -- I just assumed from what we talked
4 about that you didn't have any. I shouldn't have assumed
5 that.

6 MR. MCEACHIN: Thank you, Your Honor.

7 THE COURT: Thank you.

8 (Whereupon, the witness leaves the stand at 2:12 p.m.)

9 THE COURT: All right. Go ahead, Mr. Brooker. You next
10 witness, please?

11 MR. BROOKER: It would be Margaret Glover [sic], Your
12 Honor.

13 THE COURT: All right. Is Ms. Glover [sic] outside?

14 THE BAILIFF: She's downstairs.

15 THE COURT: Okay.

16 MR. MCEACHIN: I believe she's downstairs, Your Honor.

17 THE COURT: Yeah. Well, can we -- can we go and get
18 here, please?

19 THE BAILIFF: Yes, sir.

20 (Whereupon, there is a pause in the proceedings until the
21 witness enters the courtroom.)

22 THE BAILIFF: Your Honor, one of the jurors has a
23 question.

24 THE COURT: Okay. Madame Forelady, if there is some
25 issue, you'll need to secure that from the -- not you, to

1 secure that from the other member of the jury, write out a
2 note, and then give it to me. All right? So you can do that
3 at the break. All right? Thank you.

4 All right. Ms. Glover [sic], come on up here, please.
5 Just stay standing for just a second.

6 THE CLERK: Place your left hand on the Bible and raise
7 your right hand. The other way. Place your left hand on the
8 Bible and raise your right hand.

9 THE WITNESS: Wait a minute. This is my right.

10 THE CLERK: Yes, ma'am.

11 THE WITNESS: Okay.

12 THE CLERK: Do you solemnly swear or affirm to tell the
13 truth, the whole truth, and nothing but the truth, so help you
14 God?

15 THE WITNESS: Yeah.

16 THE CLERK: Okay. You may have a seat. Thank you,
17 ma'am.

18 THE COURT: And can you tell me your first name again,
19 ma'am, please?

20 THE WITNESS: It's Margaret.

21 THE COURT: Can you spell it for us, please?

22 THE WITNESS: M-A-R-G-A-R-E-T.

23 THE COURT: Great. And if you'll just kind of keep up
24 that voice tone so ---

25 THE WITNESS: Okay.

MARGARET GROVER - DIRECT EXAMINATION BY MR. BROOKER

1 THE COURT: --- everybody -- all the members of the jury
2 need to hear you.

3 THE WITNESS: All right.

4 THE COURT: So if you'll just keep that up. All right.
5 Thank you, ma'am.

6 THE WITNESS: Yes, sir.

7 THE COURT: Go ahead, Mr. Brooker.

8 MR. BROOKER: Thank you, Your Honor.

9 MARGARET GROVER, being first duly
10 sworn, testifies as follows:

11 DIRECT EXAMINATION

12 BY MR. BROOKER:

13 Q: Ms. Glover [sic], you are the grandmother of Minor 2
14 [sic] and Minor 1 [sic]?

15 A: That's true.

16 Q: Okay. Now, at some point in time, they came to live with
17 you and your husband?

18 A: Yes.

19 Q: Do you remember when that was?

20 A: It's been about five years. I can't remember the date.

21 Q: Were they living with you back in 2009?

22 A: Yes.

23 Q: Okay. Now, at some point in time, did you become
24 concerned with respect to whether or not Minor 1 had been
25 assaulted and Minor 2 had been assaulted?

MARGARET GROVER - DIRECT EXAMINATION BY MR. BROOKER

1 A: Yeah.

2 Q: And when did you develop that concern?

3 A: When my husband's sister, Doris, called me about it.

4 J.A.G. had talked to her about it.

5 Q: Okay.

6 A: J.A.G.

7 Q: Okay. Okay. J.A.G. ?

8 A: Yes.

9 Q: Okay. And at that particular period of time, did -- did

10 you take the -- the girls to be checked out?

11 A: Yes, sir.

12 Q: And did you check them out? Did you take them to be

13 checked out immediately?

14 A: The next day. It was on a Sunday the 21st when I found

15 out about it and the 22nd I carried them to the doctor and then

16 to the Sheriff's Department.

17 Q: Okay. Now, where did you take them to be examined?

18 A: Dr. Wu. He was my doctor at the time.

19 Q: And where is Dr. Wu's office located at?

20 A: In Marion, but he's retired now.

21 Q: Okay. Were you there? I'm assuming you were there when

22 -- who else was there when you went to see Dr. Wu? Who went

23 along with you to take the kids to see Dr. Wu?

24 A: J.A.G. , Minor 1 and Minor 2

25 Q: Okay. Were you in the examination room when Dr. Wu

MARGARET GROVER - DIRECT EXAMINATION BY MR. BROOKER

1 examined the girls?

2 A: No.

3 Q: Okay.

4 A: The nurse was.

5 Q: Okay. Okay. Did you talk with Dr. Wu later on?

6 A: Yes, I did.

7 Q: Okay. And don't tell me -- I'm not asking you anything

8 that Dr. Wu said at this particular period of time, but did

9 you discuss with Dr. Wu his examination?

10 A: No. I didn't discuss it with him. He discussed it with

11 me, but it's hearsay. So you'll have to get his opinion.

12 Q: Yes, ma'am. Yes, ma'am. I understand. Yeah, and that's

13 what I wanted to know. I just wanted to know whether or not

14 you talked with him in reference to the examination.

15 A: Yeah. I talked to him afterwards.

16 Q: Okay. Now ---

17 A: He talked to me.

18 Q: Okay. How long did you talk with him?

19 A: About thirty minutes because he had to calm one --

20 Minor 1 down. Minor 1

21 Q: Okay. Okay. Now, did the very next day -- when did you

22 take them to see at least or you went out to -- when did you

23 make a complaint with the Sheriff's Department?

24 A: Straight from the doctor's office.

25 Q: Okay. Do you remember what day the doctor's office would

MARGARET GROVER - DIRECT EXAMINATION BY MR. BROOKER

1 have been?

2 A: The 22nd of July.

3 Q: Okay. The 22nd of July?

4 A: Mm-hmm.

5 THE COURT: Was that a yes, ma'am? You can't -- the

6 court reporter can't -- doesn't know what uh-huh is.

7 THE WITNESS: Oh.

8 THE COURT: Was that yes or no?

9 THE WITNESS: Yes.

10 THE COURT: Okay.

11 Q: And you just at least previously said that you took them

12 straight to the -- to make a complaint that same day?

13 A: Yes, sir.

14 Q: Okay. Did you actually talk with an officer that day?

15 A: Yes, sir.

16 Q: And you made -- did you make your complaint that day?

17 A: No. The girls made their complaint.

18 Q: Okay. You did not talk with the officer?

19 A: I just told him what we were there for.

20 Q: Okay. Did you ever stated to -- stated to -- to the

21 officer that ---

22 MR. MCEACHIN: Object to leading, Your Honor.

23 THE COURT: I'm going to allow this particular question.

24 You may ask the question, sir.

25 Q: Did you ever stated to the officer that Margaret Glover

MARGARET GROVER - DIRECT EXAMINATION BY MR. BROOKER

1 [sic] and Minor 1 [sic] had been molested?
2 A: That who?
3 Q: That -- I'm sorry. That -- that Minor 1 [sic]
4 and Minor 2 [sic] had been molested?
5 A: Yeah.
6 Q: Okay. Now, what was your basis for telling them that?
7 A: Because the girls were molested. They told -- told me
8 all about it that Sunday night, explained, and they were
9 crying when they told me, but they told me everything and my
10 husband.
11 Q: Okay. Was any of that based upon your conversations with
12 Dr. Wu?
13 A: Yeah. I told him what I was bringing them for.
14 Q: Okay. And my understanding is, is that -- and you
15 correct me if I'm wrong -- is that your basis is based upon
16 what the young girls had told you and based upon your -- your
17 conversations with Dr. Wu?
18 A: I believed what the girls were saying. There was no
19 reason for them to lie and I believed what I told Dr. Wu about
20 it.
21 Q: Okay. So now, did you talk with anyone else or have any
22 other -- talk with anyone else other than the law enforcement
23 officer that you talked with that day?
24 A: No.
25 Q: Okay. Have you had any other involvement in connection

MARGARET GROVER - DIRECT EXAMINATION BY MR. BROOKER

1 -- well, let me ask you this. Other than talking with the
2 initial investigator, were you -- were your taken -- statement
3 taken by anyone else that was involved in the investigation?
4 A: No.
5 Q: Did Detective Charlie Watson take your statement?
6 A: Yes, sir.
7 Q: Okay. Did he take a written statement or a verbal? Did
8 you write out a statement for him or was it a verbal
9 statement?
10 A: He took a written statement and I got a typed copy of a
11 written statement.
12 Q: Okay. Did you talk with anyone else?
13 A: No, sir, I did not.
14 Q: Okay. Is that the extent of your involvement in
15 connection with this investigation is what you just explained?
16 A: Yes, sir, except when he took them to -- told me to take
17 them to the Care House.
18 Q: Okay. And you took them all to the Care House?
19 A: Yes, sir, I did. Every -- every time they needed to go.
20 Q: Okay. How many times -- and I know it might be hard to
21 remember. Do you remember how many times you took them up to
22 the Care House?
23 A: I don't because I -- it was about -- they switched to
24 another house and I was in Florence for about eight months or
25 nine months taking them back and forth to Florence.

MARGARET GROVER - DIRECT EXAMINATION BY MR. BROOKER

1 Q: Did they get a forensic -- did they do their forensic
2 interviews all on the same day?

3 A: At the Care House, they did.

4 Q: Okay. Now, just one more question. I'm not going to ask
5 you -- I'm not going to ask you to tell me what anybody else
6 said is -- let me refrain that question. Other than what you
7 just explained -- I think you said you were at the Care House.
8 Other than what you just explained, was that the extent of
9 your involvement in the investigation?

10 A: Yes, sir.

11 Q: Okay.

12 MR. BROOKER: No further questions, Your Honor, from this
13 witness.

14 THE COURT: Cross examination.

15 MR. MCEACHIN: Thank you, Your Honor. Briefly.

16 CROSS EXAMINATION

17 BY MR. MCEACHIN:

18 Q: Ms. Grover, you indicated that the girls had been living
19 with y'all for about five years; is that right?

20 A: Yeah.

21 Q: And that ---

22 A: Yes, sir.

23 Q: And that's with you and your husband; right?

24 A: Yes, sir.

25 Q: And do y'all have custody of the girls now?

26

MARGARET GROVER - CROSS EXAMINATION BY MR. MCEACHIN

1 A: We adopted all the girls.

2 Q: Okay. Their parents aren't in the picture anymore; are
3 they?

4 A: No. They're not in the picture anymore.

5 Q: And y'all are -- y'all are acting as their parents; is
6 that correct?

7 A: That's correct.

8 Q: Okay. Do you care about your granddaughters?

9 A: I love them very much. They are like my own children.

10 Q: Okay. You'd do anything to protect them?

11 A: Yes, sir, I would.

12 Q: And is that why you did what you did in this case?

13 A: Yeah. That's exactly why I took them to the doctor and
14 took them to the Sheriff's Department.

15 MR. MCEACHIN: Thank you. No further questions.

16 THE COURT: Anything on those particular questions, Mr.
17 Brooker?

18 MR. BROOKER: Nothing on those questions, Your Honor.

19 THE COURT: You may step down. Thank you very much.

20 THE WITNESS: Thank you.

21 (Whereupon, the witness leaves the stand at 2:25 p.m.)

22 THE COURT: All right. Do you want to -- do y'all want
23 to come over and talk to me for just one second?

24 MR. MCEACHIN: Certainly, Your Honor.

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

1 THE COURT: All right. Deputy Israel, you're released
2 from your subpoena. You may go back to your regular duties,
3 sir. All right. And as I understand it, the -- regarding the
4 next witness, Dr. Wu, you need a few minutes to check on the
5 status of the deposition; is that correct?

6 MR. BROOKER: That's correct, Your Honor.

7 THE COURT: All right.

8 MR. MCEACHIN: Yes, sir, Your Honor.

9 THE COURT: All right. Ladies and gentlemen, we're going
10 to take a short break. The next witness is going to be by way
11 of deposition. I'll explain it to you. I'm uncertain whether
12 it's going to be a video deposition or a written deposition,
13 but what that is in either form is the actual testimony in a
14 recorded fashion, whether written or by video, of the
15 questions and answers posed to Dr. Wu.

16 As you might have heard, he is retired and out of the
17 area. So the attorneys asked Dr. Wu under oath at that point
18 in time questions, both the State and the defense, and however
19 the form is presented to you, that will be the testimony of
20 Dr. Wu in this case and you'll receive it as such.

21 But I'll remind you about that in a minute. But we need
22 to check on the status to see if it's going to be video or in
23 written form. All right? So if y'all will, just go back to
24 your jury room for a few moments, please. Thank you.

25 And, Madame Forelady, if there's some issue, you go ahead

1 and write that note out for us. Okay? Do they have a pad and
2 pen back there?

3 THE CLERK: They will have in just a second, sir.

4 THE COURT: All right. Very good. The clerk is going to
5 get you a pad and pen there. And just knock on the door and
6 let the bailiff know whatever you have.

7 (Whereupon, the jury exits the courtroom at 2:27 p.m.)

8 THE COURT: All right. We'll be at ease then, gentlemen.
9 Y'all check on that and then let me know, please.

10 MR. MCEACHIN: Thank you, Your Honor.

11 (Whereupon, there is a break in the proceedings from 2:28
12 p.m. until 2:44 p.m.)

13 THE COURT: All right. Who is going to read?

14 MR. MCEACHIN: Your Honor, Allen Gibson of our office is
15 going to be Dr. Wu for the day.

16 THE COURT: All right. Mr. Gibson, do you want to just
17 come on -- do you want to come on up here and then I'll
18 explain the -- the situation to the -- to the jury.

19 THE CLERK: I don't swear him in, do I?

20 THE COURT: No, ma'am.

21 THE CLERK: Okay.

22 THE COURT: We'll -- we'll -- you'll just need to reflect
23 that on the -- from the deposition itself. All right.
24 Gentlemen, do y'all want to place something on the record
25 regarding the -- the deposition testimony of Dr. Wu?

1 MR. MCEACHIN: Yes, Your Honor. The ---

2 THE COURT: And what is Dr. Wu's first name?

3 MR. MCEACHIN: It's actually Der Sun, D-E-R-S-U-N, but he
4 goes by Donald.

5 MR. BROOKER: Yeah. He goes by Donald.

6 THE COURT: Okay. All right. Go ahead, gentlemen.

7 MR. MCEACHIN: Your Honor, I'd just like to place on the
8 record that the defense is presenting the deposition testimony
9 of Dr. Donald or Der Sun Wu. The State has no objection to
10 the introduction of this evidence by deposition testimony.

11 THE COURT: All right. And as I understand it, at the
12 time the deposition was taken both the State and the defense
13 had ample opportunity to ask whatever questions you wanted to
14 at that time. Is that correct, gentlemen?

15 MR. MCEACHIN: That's correct, Your Honor.

16 MR. BROOKER: That's correct, Your Honor.

17 THE COURT: All right. Very good. All right. Mr.
18 Brooker, anything else we need to put on the record regarding
19 the deposition?

20 MR. BROOKER: Nothing else that we need to put on the
21 record, Your Honor. Obviously, at some point in time we'll
22 need to enter the deposition into the record.

23 THE COURT: Why don't you hand me the original if you
24 don't -- don't mind?

25 MR. BROOKER: Yes, sir.

1 THE COURT: And the record will reflect that I'm going to
2 be opening the original of the deposition and when the
3 deposition is concluded, then I will hand the original
4 deposition to the court reporter as part of the record in this
5 matter. And, Mr. Gibson, you've got a copy of the deposition;
6 is that right?

7 THE WITNESS: Yes, sir, I do.

8 THE COURT: All right, sir. And, you know, if there -- I
9 don't know if there's any medical terminology in here that
10 you're uncertain about the pronunciation. If that does occur
11 -- I don't know that it is. It sometimes happens in doctor's
12 depositions. If you would -- you pronounce it as best you can
13 and then spell that word if you have some question about
14 whether or not you're pronouncing it correctly. Okay? And
15 you understand your job is to read the answers exactly as Dr.
16 Wu gave them. However, you know, whether it's got uhs or, you
17 know, whatever -- whatever is there, that's what you're
18 reading back. Okay?

19 THE WITNESS: Yes, sir.

20 THE COURT: All right. Very good. Ask the jury to come
21 in, please.

22 (Whereupon, the jury enters the courtroom at 2:46 p.m.)

23 THE COURT: All right. Ladies and gentlemen, as I
24 explained to you, we are going to now have the deposition
25 testimony of Dr. Donald S. Wu. Mr. Gibson here, we recruited

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

1 him to play the part or read the answers of Dr. Wu to the
2 deposition.

3 The deposition is literally the testimony of that
4 particular witness taken at a different time under oath. That
5 witness was under oath at that time. Both the State and the
6 defense had whatever time they deemed necessary to ask
7 questions of Dr. Wu. He gave those answers. The questions
8 and the answers and the whole proceeding was recorded and set
9 down in writing by a court reporter and so when you hear Mr.
10 Gibson here read the answers of Dr. Wu, that is the actual
11 testimony of Dr. Wu just as if he was sitting here in front of
12 you. All right? All right. Mr. Brooker, you may proceed,
13 sir.

14 MR. MCEACHIN: Your Honor, may I approach the witness?

15 THE COURT: Yes, sir. You may do so.

16 DR. DER SUN "DONALD" WU, being first
17 duly sworn at his deposition, testifies as read by Allen
18 Gibson as follows:

19 DIRECT EXAMINATION

20 BY MR. BROOKER:

21 Q: Dr. Wu, first of all, could -- could you give me ---

22 A: Do you want me to turn? Okay.

23 Q: Could you give me your full legal name for the record,
24 please?

25 A: Der Sun Wu. D-E-R-S-U-N Wu. And then the last name is

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

- 1 W-U. Also known as Donald.
- 2 Q: Thank you, sir. Dr. Wu, my name is Thurmond Brooker and
- 3 I am counsel for Daniel Owens and, of course, your -- your
- 4 deposition is being taken in connection with a criminal action
- 5 that has been filed against Daniel Owens alleging -- if my
- 6 memory serves me correctly -- one count of criminal sexual
- 7 conduct with a minor and one count of lewd act with a minor.
- 8 And the purpose of our taking your deposition today is, is
- 9 that it's my understanding is, is that you are under subpoena
- 10 for criminal trial, but you will not be available for the
- 11 criminal trial. Is that correct?
- 12 A: That's correct.
- 13 Q: Okay. Do you have a prior engagement?
- 14 A: Yes.
- 15 Q: Okay. Well, I'm going to ask you at least a couple of
- 16 background questions. Where do you live, Dr. Wu?
- 17 A: I live in Marion, South Carolina.
- 18 Q: Okay.
- 19 A: [REDACTED] English Park Road.
- 20 Q: Okay. And -- and what is your age, Dr. Wu?
- 21 A: Sixty-nine plus. Going to turn eighty-four.
- 22 Q: Okay.
- 23 A: In three weeks.
- 24 Q: Okay. And ---
- 25 A: No, seventy. I'm sorry.

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

1 Q: Seventy?

2 A: Yes.

3 Q: Okay. Are you currently employed?

4 A: No. No. I -- I was employed, but I'm retired.

5 Q: Okay. And what is -- or -- or what was your occupation

6 before you retired?

7 A: I'm a physician. I specialize in OB/GYN.

8 Q: Okay. Okay. And how long have you been practicing

9 medicine as an OB/GYN?

10 A: Thirty-seven and a half years.

11 Q: Okay. Are you currently certified to practice medicine

12 in the state of South Carolina?

13 A: Yes.

14 Q: Okay. Is there any other state in which you are

15 certified to practice medicine in?

16 A: Maine, the state of Maine.

17 Q: The state of Maine?

18 A: And I just got my license in New York State.

19 Q: New York State?

20 A: Yes.

21 Q: Okay. How long have you been certified in -- certified

22 to practice medicine in the state of South Carolina?

23 A: Thirty-seven and a half years.

24 Q: Thirty-seven and a half years? And I think you said that

25 you just received your certification in New York; is that

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

- 1 correct?
- 2 A: New York State, yes.
- 3 Q: New York State?
- 4 A: Yeah.
- 5 Q: And how long have you been certified in Maine -- the
- 6 state of Maine?
- 7 A: Oh, about thirty-nine years.
- 8 Q: About thirty-nine years?
- 9 A: Uh-huh.
- 10 Q: Okay. And I think you what you previously indicated is,
- 11 is that you specialize in -- in OB/GYN. That is your
- 12 certification?
- 13 A: Yes.
- 14 Q: Okay. Okay. Now, what was the process that was required
- 15 for you to become certified to practice medicine in the state
- 16 of South Carolina? Which steps did you go through? Do you
- 17 have to take any examinations? What's the process?
- 18 A: You -- you had to go through the training, internship and
- 19 residency, and then -- you -- you had to go through the
- 20 training, internship and residency, and then you can -- you go
- 21 through a national exam. The ---
- 22 Q: Okay. And I am assuming ---
- 23 A: The license exam, national license exam, and I passed it,
- 24 yes.
- 25 Q: And I -- and I'm assuming since you've been certified for

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

1 roughly thirty-five years that -- that you went through the
2 residency, went through the exams, and satisfied all of the
3 requirements of a residency and exams?
4 A: And -- and the license exam, yes.
5 Q: And the licensing -- and the license exam. Yes, sir.
6 Thank you. And are there -- from time to time, do you have to
7 get recertified or -- and I can ask that in a different way.
8 A: Right.
9 Q: Do you have -- do you have to have your license -- your
10 -- to practice medicine renewal?
11 A: Yes.
12 Q: Okay.
13 A: You have to renew every two years.
14 Q: Every two years?
15 A: Right.
16 Q: And -- and what process do you have to go through in
17 order to renew your license in South Carolina?
18 A: Well, you had to have continuing education and you had to
19 put in application and they -- and they will ask you if
20 there's any problem with your practice. Yeah.
21 Q: Okay.
22 A: The normal -- the normal, routine questions.
23 Q: And where are you -- where are you next -- I'm sorry.
24 And when are you -- when are you next scheduled to be renewed
25 in South Carolina, if you -- if you remember?

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

- 1 A: It's probably a couple of years.
- 2 Q: A couple of years away from -- from having to renew in
- 3 South Carolina?
- 4 A: Right.
- 5 Q: Okay. Okay. Now, I'm just going to ask -- ask you a few
- 6 brief questions.
- 7 A: Yes.
- 8 Q: Excuse me. With respect to your educational background,
- 9 where did you attend undergraduate school?
- 10 A: This is a straight medical college program seven years.
- 11 Q: Okay.
- 12 A: So I didn't have to go through the regular college.
- 13 Q: Okay. Okay. And so -- so you went to straight medical
- 14 college for seven years?
- 15 A: Yeah. Pre-med and -- and medicine altogether seven
- 16 years.
- 17 Q: Okay. At one institution or one college?
- 18 A: It's Taipei Medical University.
- 19 Q: Okay.
- 20 A: In Taipei.
- 21 Q: Okay. In Taipei? And that's -- that's in China; is that
- 22 correct?
- 23 A: Republic of China.
- 24 Q: Republic of China. I apologize.
- 25 A: That's all right.

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

1 Q: And -- and when you attended school ---

2 A: 1962 to '69.

3 Q: Yes. I'm sorry. 1962 to '69?

4 A: Yes.

5 Q: Okay. And when did you move to the United States and --
6 and -- and started practicing in the United States?

7 A: I moved to the United States in '72, but I didn't start
8 practice. I -- I started -- I repeated internship.

9 Q: Mm-hmm.

10 A: And then residency.

11 Q: Okay.

12 A: Then I started practice after finishing my training.

13 Q: Okay. Do you know about what year that was that you
14 started practicing?

15 A: '76.

16 Q: About '76? Okay. All right.

17 MR. BROOKER: At this time, I submit Dr. Wu, you know, as
18 an expert in the medical field of OB/GYN. Is there any
19 objections?

20 MR. MCEACHIN: No objection.

21 MR. BROOKER: Okay.

22 Q: Now, Dr. Wu, I want to bring your attention ---

23 THE COURT: Before you go on, do you want -- what I'm
24 going to do, ladies and gentlemen, based upon the request and
25 no objection by the State, then Dr. Wu is qualified to give

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER -

1 his opinion. You may proceed.

2 MR. BROOKER: Thank you, Your Honor.

3 Q: Okay. Now, Dr. Wu, I want to bring your attention to two
4 individuals and that is, is that first let's discuss -- if you
5 can indulge me for just a second.

6 A: Uh-huh, yes.

7 Q: Are you familiar with a patient by the name of Minor l
8 [REDACTED] [sic]?

9 A: I see her on July 21st, 2009.

10 Q: Okay. And so you saw Minor l [sic] on July 21
11 of 2009?

12 A: Yes.

13 Q: Okay. And -- and what was the -- what's -- what's the
14 purpose of that visit?

15 A: Her legal guardian, Margaret Glover [sic], bring her to
16 my office.

17 Q: Now ---

18 A: And ---

19 Q: I'm sorry. Go ahead.

20 A: Yes. Yes. And by her request, she wanted me to check
21 her to see if she had been molested or not.

22 Q: Okay. Certainly. And do you -- I have at least a list
23 -- a list of I think -- one, two, three, four -- I think five
24 documents and -- and -- and I'm going to number them ---

25 A: Yes.

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

1 Q: --- one, two -- numbers -- number the pages three, four,
2 five. I'm going to hand you these documents and, if you
3 could, take a look at these and see whether or not these are
4 medical notes from your office that was generated as a result
5 of your seeing and treating Minor 1 [sic].

6 A: Yes.

7 Q: Do you want to take a look at them?

8 MR. MCEACHIN: Are you going to make these an exhibit?

9 MR. BROOKER: Yes.

10 MR. MCEACHIN: Okay. I have no objection to these
11 documents.

12 THE COURT: Do we have a copy of them then?

13 MR. BROOKER: We do.

14 THE COURT: Have those marked by the court reporter then,
15 please.

16 (Whereupon, the five pages of medical records regarding
17 Minor 1 is marked as Defendant's Exhibit Number
18 1.)

19 MR. BROOKER: I would like to move to -- to enter these
20 into the record as Defense Exhibit 1.

21 THE COURT: And as I understand it, the solicitor has no
22 objection?

23 MR. MCEACHIN: That's correct, Your Honor.

24 THE COURT: All right, sir. So they're in evidence as
25 Defendant's 1 then.

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

1 Q: I'll let you look at that. Now, with respect to what's
2 been identified as Defense Exhibit 1, what's been marked as
3 page 1 -- page -- I'm sorry -- page 2. I apologize. Page
4 number 3 of Defense Exhibit 1, is the page dated July 21st of
5 2009?
6 A: Right.
7 Q: And, of course, am I correct when that page indicates in
8 reading that it says that to see if you -- to see if she has
9 been molested and is that making reference to Minor 1
10 [sic]?
11 A: Right.
12 Q: Okay. Now, did you perform any tests or either
13 examinations to try to determine as what's indicated on your
14 -- your medical notes to see if -- if Minor 1 -- Minor 1
15 [sic] has been molested? Did you perform any tests or either
16 examinations for the purpose of trying to identify whether or
17 not she has been molested?
18 A: I -- I performed a pelvic exam.
19 Q: Okay. What sort of -- what sort of exam did you perform?
20 A: The pelvic exam consists with inspect ---
21 Q: Okay.
22 A: --- the genitalia and the -- if it's possible, inspect
23 the -- the hymen and inside of vagina to see if there's any
24 sign of infection.
25 Q: Okay. And when you performed that inspection ---

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

- 1 A: Uh-huh.
- 2 Q: --- what was your result or findings?
- 3 A: That I could insert a speculum to her -- through her
- 4 hymen to the vagina without problem.
- 5 Q: Okay. And then we took a ---
- 6 A: And ---
- 7 Q: Okay.
- 8 A: And then we took a smear to test to make sure there's no
- 9 infection and make sure -- make sure there -- there's no
- 10 gonorrhea or chlamydia.
- 11 Q: Okay. Did she have any -- any -- any sort of -- any of
- 12 the diseases that you tested for?
- 13 A: It's negative.
- 14 Q: They were negative for diseases?
- 15 A: Yes.
- 16 Q: Okay. I think you said is, is that -- that -- that --
- 17 that you performed I think a pelvic exam -- pelvic exam?
- 18 A: Uh-huh.
- 19 Q: Am I -- am I pronouncing that correctly? Is that what
- 20 you said?
- 21 A: Right.
- 22 Q: Okay. And you said that -- that what you did was, is
- 23 that you attempted to insert something into the vaginal area?
- 24 A: Right.
- 25 Q: Okay. And did you measure what size the vaginal opening

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

1 -- opening -- the vaginal opening was?

2 A: I used a small speculum that's produced. It's a prospect

3 speculum.

4 Q: Okay. And it -- it could come in without problem?

5 A: And it -- it could come in without problem.

6 Q: Okay. Okay. And about what size was that in

7 circumference?

8 A: There's only three sizes.

9 Q: Okay.

10 A: It's a small, medium and large, and this one is a small.

11 Q: This was a small?

12 A: Uh-huh.

13 Q: And -- and just -- just for -- for reference, I'm going

14 to ask -- I'm going to at least hand you my pen.

15 A: Uh-huh.

16 Q: And I want you to at least take a look at the pen.

17 A: Uh-huh.

18 Q: I'm going to hold it -- I'm going to hold it -- I'm

19 sorry. I'm going to hand it to you.

20 A: Okay.

21 Q: So -- so it will be on videotape. If you could, hold

22 that up. Is -- is that the -- the object that you inserted?

23 And you said it was a small size. Is it smaller or larger

24 than the circumference of that pen?

25 A: Larger.

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

1 Q: It's larger?

2 A: Uh-huh.

3 Q: How much larger?

4 A: Much larger.

5 Q: Much larger than the circumference of that pen?

6 A: Right. The -- the diameter is probably about this size.

7 Q: I'm sorry?

8 A: The diameter of the speculum.

9 Q: Uh-huh.

10 A: About this.

11 Q: Okay. Is it about -- and to the best of your result,

12 could -- could you -- could you use your hand to try to show

13 the diameter, you know, of -- of the object that you used? I

14 know it's difficult.

15 A: Uh-huh.

16 Q: Okay. Is it about that round?

17 A: Uh-huh.

18 Q: Okay. Okay. And, of course, how far were you able to

19 insert it?

20 A: Indicating.

21 Q: Okay. Okay. About that far?

22 A: Uh-huh.

23 Q: Okay. And, of course, is it -- is that -- I am -- did

24 you reach any conclusions or findings as a result of that?

25 A: The conclusion is that hymen had been penetrated.

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

- 1 Q: The hymen's been penetrated?
- 2 A: Uh-huh.
- 3 Q: Can you make a determination with respect to what caused
- 4 the hymen -- caused the penetration of the hymen?
- 5 A: No.
- 6 Q: Okay.
- 7 A: Uh-huh.
- 8 Q: What are some of the things that can cause -- well, let
- 9 me ask you this way.
- 10 A: Uh-huh.
- 11 Q: What are some of the things besides intercourse that can
- 12 be responsible for the tearing or rupture of -- of the hymen?
- 13 A: Well, an injury.
- 14 Q: Uh-huh.
- 15 A: Injury could cause that or an insertion of a tampon.
- 16 Q: Uh-huh.
- 17 A: Sometimes, you know, or insertion of object could cause
- 18 that.
- 19 Q: Okay.
- 20 A: Or insertion of finger.
- 21 Q: Okay. Like for instance masturbation or something like
- 22 that?
- 23 A: That possibility, yes.
- 24 Q: Okay. Okay. Okay. Were there any other tests that you
- 25 performed?

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

- 1 A: No, just as I had mentioned to you.
- 2 Q: Right. Just these two tests?
- 3 A: Right.
- 4 Q: Okay. All right. All right. Now -- and I'm going to
- 5 ask you this question to -- to be absolutely certain. I think
- 6 you said that you are OB/GYN?
- 7 A: Yes.
- 8 Q: Okay. Have you ever performed any rape kit examinations
- 9 on girls or either ladies in the past?
- 10 A: Yes.
- 11 Q: Okay. And approximately how many of these type
- 12 examinations have you performed in the past?
- 13 A: Including my residency?
- 14 Q: Sure.
- 15 A: Yeah. Yeah. Well, quite a few. In this -- in this,
- 16 easily thirty.
- 17 Q: About thirty?
- 18 A: Uh-huh.
- 19 Q: Okay. Now, is there a -- is there a -- and if you could
- 20 indulge me for just a second. Does South Carolina -- has
- 21 South Carolina -- has -- has South Carolina -- are you aware
- 22 of a protocol that has been established by South Carolina for
- 23 the purpose of ---
- 24 A: Right.
- 25 Q: --- of performing rape -- I guess the kit examination or

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

1 performing at least sexual assault examinations?

2 A: I do.

3 Q: Okay. What is that protocol?

4 A: What it consists?

5 Q: Yeah. What -- what's the protocol consist of?

6 A: Well, there would be a rape kit. Of course, in a

7 different state -- different stage, there would be a rape kit.

8 Kit is different and you just have to follow the -- the

9 procedure.

10 Q: Okay. Usually, this is ---

11 A: Usually ---

12 Q: Okay.

13 A: Usually, this is done. The rape kit is done in an

14 emergency room.

15 Q: Uh-huh.

16 A: So -- and always the police attend and they -- and there

17 would be a report of rape.

18 Q: Okay.

19 A: Yeah.

20 Q: Okay. Okay. Do you follow -- did you follow the

21 protocol when you performed the ---

22 A: No. This is not the rape -- rape kit.

23 Q: This is not the -- the -- the rape kit ---

24 A: Yeah.

25 Q: --- protocol that is normally used ---

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

1 A: Right. Right.

2 Q: --- in these sorts of examinations?

3 A: Right. I was not informed the patient was raped

4 originally. I was not informed that such protocol needed to

5 be followed.

6 Q: Okay.

7 A: The -- the sole purpose of the visit is to -- the legal

8 guardian of the patient wanted me to check her had she been

9 penetrated or not.

10 Q: I understand.

11 A: Yes.

12 Q: I understand. Okay. What's the difference between -- or

13 -- excuse me. What's the difference between the protocol of

14 the rape or sexual abuse protocol that's normally followed

15 versus the examination that you performed?

16 A: It's quite different.

17 Q: It's quite different?

18 A: Yeah.

19 Q: Okay.

20 A: Uh-huh.

21 Q: Okay. Okay. Now, you also examined I think Minor2

22 [sic]; is that correct?

23 A: Correct.

24 Q: Okay. What sort of exams did -- did you perform during

25 your examination of Minor2 [sic]?

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

1 A: I inspected her genitalia. I attempt -- I look at her
2 hymen opening. Yeah. I did not insert a speculum because the
3 -- the opening is very, very tiny and I didn't see any -- any
4 injury, but I used a Q-tip to take some smear to make sure ---
5 Q: Okay.
6 A: --- no -- that she has no ---
7 Q: Now, I have in my possession ---
8 A: Uh-huh.
9 Q: I apologize. Go ahead.
10 A: Okay.
11 Q: I didn't see -- I didn't mean to interrupt you. Go ahead
12 and finish your statement.
13 A: Okay. I used the Q-tip, took some smear from inside the
14 vagina to test for GC and chlamydia.
15 Q: Okay. What was the results of these tests?
16 A: It's all negative.
17 Q: Okay.
18 A: The -- the hymen is intact. There's no external
19 injuries.
20 Q: Okay. Now, I have at least in my hand two -- two
21 documents and I'm going to list them by page, page 1 and page
22 2. Would you take a look at them and tell me whether or not
23 these are the medical notes that you generated as a result of
24 your visit or examination of Minor2 [sic]?
25 A: Yes.

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

1 Q: Okay. Other than what you just explained, did you
2 perform any other examination on Minor2 [sic]?

3 A: No.

4 Q: And, of course, the only thing I see on your note is that
5 you -- you correct me if I'm wrong. It says on your note,
6 which is dated ---

7 MR. BROOKER: Well, first of all, let me -- let me go
8 ahead and enter this into -- into the record. I move to enter
9 -- enter that in the record as Defense Exhibit 2.

10 MR. MCEACHIN: No objection.

11 THE COURT: All right. So hand a copy to the court
12 reporter, please.

13 (Whereupon, the two pages of medical records is marked as
14 Defendant's Exhibit Number 2.)

15 THE COURT: All right. The -- that document then is
16 introduced into evidence as Defendant's 2 without objection.
17 You may proceed.

18 Q: Now, Doctor, I am looking at what's been identified as
19 Defense Exhibit 2 and there -- and these are the notes that
20 was generated as a result of your treatment of Minor2
21 [sic] and I'm looking at page 1 of that exhibit dated July 21
22 of 2009, and page 1 -- and you correct me if I'm wrong --
23 reads that -- reads that to see if she has been molested and,
24 of course, that's making reference to Minor2 [sic]; is
25 that correct?

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

- 1 A: That's correct.
- 2 Q: And, of course, at the bottom of that page, page 1 of --
- 3 of Defense Exhibit 2, it says no external injuries; is that
- 4 correct?
- 5 A: That's correct.
- 6 Q: Okay. And so with respect to Minor2 [sic], your
- 7 findings were negative; is that correct?
- 8 A: Right.
- 9 Q: And did you also perform a -- a -- you know, I guess the
- 10 rape kit test -- test -- at least the official rape kit test
- 11 ---
- 12 A: No.
- 13 Q: --- on Minor2 [sic]?
- 14 A: No.
- 15 Q: Okay. Did you follow South Carolina sexual abuse
- 16 examination protocol?
- 17 A: No.
- 18 Q: Okay. Now, I'm going to ask you at least just a couple
- 19 more questions in reference to -- I think you said that you've
- 20 performed about -- about thirty of these I think during --
- 21 during ---
- 22 A: Training.
- 23 Q: --- the course of your practice and also ---
- 24 A: Training.
- 25 Q: --- including your residency?

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

- 1 A: Yeah. More in the residency, yeah.
- 2 Q: More in the residency?
- 3 A: Right.
- 4 Q: Okay. Okay. When was the last time that you performed
- 5 one of these examinations prior to Minor2 [sic] and/or
- 6 Minor1 [sic], if you can remember?
- 7 A: Oh, I would say six or seven years.
- 8 Q: Six or seven years prior to this examination?
- 9 A: Right.
- 10 Q: Okay. All right. Now, at least for -- for the purpose
- 11 of the jury, I -- I know that you mentioned the word hymen.
- 12 Could you explain what is the hymen?
- 13 A: The hymen is the thin tissue that covers the vaginal
- 14 opening.
- 15 Q: Okay. Okay. Is it a thin tissue that covers the vaginal
- 16 opening?
- 17 A: Right.
- 18 Q: Okay. And if you can indulge me for just a second. Now,
- 19 I think you indicated previously is, is that -- that -- that
- 20 you believe there was a tear -- that there was a tear in her
- 21 hymen or -- or you explain to me that your testimony was --
- 22 was before and I am specifically referencing Minor1
- 23 [sic].
- 24 A: There -- there's a big opening on the hymen.
- 25 Q: Okay. Was ---

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

- 1 A: Open enough -- I mean big enough to admit the speculum.
- 2 Q: Okay. Now, when you examined her, did -- did you use any
- 3 sort of instrument to examine her or did you do this with the
- 4 naked eye?
- 5 A: With -- with my eye.
- 6 Q: Uh-huh. With your eye?
- 7 A: Uh-huh.
- 8 Q: Did you take photographs?
- 9 A: No.
- 10 Q: Okay. And the reason why I was asking you whether or not
- 11 you used a -- an instrument or something, I guess what I --
- 12 what a layperson might refer to as a microscope or something
- 13 is could you determine whether or not the hymen had been torn
- 14 or whether or not it was abnormally large?
- 15 A: Well, I'm -- I'm going to try to understand the question.
- 16 Q: Okay. Okay.
- 17 A: The -- okay.
- 18 Q: And I can -- I can rephrase it ---
- 19 A: Right. Right.
- 20 Q: --- if you like. Okay. Can you determine -- I know that
- 21 you said that you -- that the opening -- the opening on -- on
- 22 -- on was -- was I think a little large?
- 23 A: Uh-huh, yes.
- 24 Q: And was -- my question was, is -- is that you can
- 25 determine whether or not from at least your examination

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

1 whether or not the opening in -- opening in the vaginal area
2 was large because the hymen was -- could you determine -- let
3 me say it -- let me rephrase this. Can you determine whether
4 or not the hymen had been torn from your examination?
5 A: During the examination, I did not see any fresh injury or
6 bleeding or hematoma. Okay. So to correct answer your
7 question, it's -- I did not see any fresh injury, but there's
8 a possibility that people -- some -- some patients have a
9 bigger hymeneal opening enough -- big enough to admit the
10 speculum.
11 Q: Uh-huh. Okay. And -- and I think that's my question is
12 ---
13 A: Uh-huh.
14 Q: --- is that I'm trying to determine whether or not were
15 -- were you able to determine whether or not the hymen was
16 just simply -- the hymen opening was simply abnormally large
17 or either ---
18 A: I cannot.
19 Q: --- whether or not it was actually torn?
20 A: I cannot.
21 Q: You cannot tell whether or not it was torn?
22 A: Uh-huh.
23 Q: The only thing that -- the only thing that you know is
24 that the opening was -- was a little large?
25 A: Right.

DR. DER SUN "DONALD" WU - DIRECT EXAMINATION BY MR. BROOKER

1 Q: But can't determine whether or not it was torn?

2 A: Correct.

3 Q: And is there an instrument that -- that -- that's used --
4 that you can use at least in that sort of examination to get a
5 closer look at the hymen and actually photograph the hymen?

6 A: I guess you could, but we did not do it.

7 Q: Okay. Okay. All right. And I just -- just to make sure
8 that we're correct is, is that you're saying that you noticed
9 that the hymen opening was -- was a little large, but you
10 could not determine whether or not it had been torn?

11 A: That's correct.

12 MR. BROOKER: I have no further questions.

13 CROSS EXAMINATION

14 BY MR. MCEACHIN:

15 Q: Dr. Wu, I'm Fitzlee McEachin and I'm representing the
16 State of South Carolina in this case. I've got a couple of
17 questions -- small little questions for you based on the
18 questions that Mr. Brooker has asked you. First, you -- I
19 think you indicated that you were board certified as an
20 OB/GYN; is that correct?

21 A: Correct.

22 Q: Are you board certified in pediatrics?

23 A: No.

24 Q: Okay. And how about child abuse pediatrics specifically?

25 A: No.

DR. DER SUN "DONALD" WU - CROSS EXAMINATION BY MR. MCEACHIN

1 Q: Okay. And with regard to sexual assault or sexual trauma
2 cases, how many occasions in the past have you had the
3 opportunity to view or investigate cases in which a child has
4 been allegedly abused prior to this case?

5 A: Can you repeat the question one more -- I'm sorry.

6 Q: Certainly. And -- and I'm sorry if it wasn't clear
7 before -- excuse me -- clear. Before this case what we're
8 talking about here ---

9 A: Uh-huh.

10 Q: --- have you had occasion to be involved in the
11 investigation or the review of a child who has been allegedly
12 abused?

13 A: No.

14 Q: This was the first time?

15 A: As I can recall.

16 Q: Okay. And as -- as an OB/GYN, are your clients typically
17 adults or children?

18 A: Typically adult.

19 Q: Typically adults? Okay.

20 A: Uh-huh.

21 Q: And I believe in this case you said you examined both
22 Minor2 [sic] as well as Minor1 [sic]; is that
23 correct?

24 A: That's correct.

25 Q: And Minor2 you didn't do any sort of internal

DR. DER SUN "DONALD" WU - CROSS EXAMINATION BY MR. MCEACHIN

1 examination. You did an -- I guess an external examination
2 and noted no injury. Would that be fair to say?
3 A: Yes.
4 Q: But with regard to Minor I [sic], you indicated
5 that there was an -- an opening in the -- I believe the hy --
6 the vaginal area near the hymen; is that -- is that correct?
7 A: The hymen, that's an opening. There's an opening. \
8 Always there's an opening.
9 Q: Certainly. In the hymen, yes? I'm sorry. Certainly.
10 A: In the hymen, yes.
11 Q: Would ---
12 A: And this -- this opening was big, big enough to -- to
13 insert the speculum.
14 Q: Okay. And -- and -- and that's -- that's what I'm
15 asking.
16 A: Uh-huh.
17 Q: Let me ask -- maybe ask it to you this way. Was her --
18 was Minor I [sic] hymen intact?
19 A: I cannot determine.
20 Q: You could not determine that?
21 A: Uh-huh.
22 Q: Okay. And I guess another question for you. Just
23 because a hymen is intact, that isn't evidence of either
24 sexual assault occurring or sexual assault not occurring;
25 would that be fair to say?

DR. DER SUN "DONALD" WU - CROSS EXAMINATION BY MR. MCEACHIN

1 A: No. Can you repeat the question?

2 Q: Certainly. I'd be happy to.

3 A: Uh-huh.

4 Q: If the hymen is intact or if the hymen is damaged, that
5 is not necessarily evidence one way or another of sexual
6 assault; right?

7 A: No. You're right.

8 Q: Okay. And would it also be fair to say, Doctor, that
9 typically when -- when you are reviewing these type cases, if
10 an assault has occurred, the more recent the assault has
11 occurred typically is when you would see more evidence of an
12 assault as opposed to later in time?

13 A: That's -- that's correct.

14 Q: Okay. And I beg your indulgence just a moment, Doctor.

15 A: That's okay.

16 Q: I want to go back just a minute. Have you had any
17 specialized training with regard to child sexual assault
18 cases?

19 A: No.

20 Q: Okay. Thank you. No further questions.

21 REDIRECT EXAMINATION

22 BY MR. BROOKER:

23 Q: Just very briefly on follow-up on recross -- or redirect.
24 I apologize. Is it -- is that you indicated that from your
25 examination that you could not make a determination from your

DR. DER SUN "DONALD" WU - REDIRECT EXAMINATION BY MR. BROOKER

1 examination whether or not sexual assault had occurred or not;
2 is that correct?
3 A: Correct.
4 Q: These examinations are not conclusive; is that correct?
5 That's what you've said that your examination is not
6 conclusive with respect to whether or not sexual assault
7 occurred or either didn't occur?
8 A: Correct.
9 Q: Okay. Now, after the examination, did you ever tell at
10 least Margaret Glover [sic] -- I think the grandmother brought
11 Miss Glover [sic] in -- that she has been sexually molested?
12 A: No. I just simply tell -- tell her my findings.
13 Q: Okay. You did not tell her that she had been sexually
14 molested -- that Minor 1 -- that Minor 1 [sic] had
15 been sexually molested?
16 A: No. I cannot make that determination.
17 MR. BROOKER: Thank you, sir. No further questions.
18 MR. MCEACHIN: Nothing further.
19 THE COURT: Does that conclude the deposition?
20 MR. MCEACHIN: That does, Your Honor.
21 THE COURT: You can step down.
22 (Whereupon, Mr. Gibson leaves the stand at 3:22 p.m.)
23 THE COURT: Mr. Bailiff, would you hand this deposition
24 -- original deposition to the court reporter, please?
25 (Whereupon, the deposition transcript is marked and

1 entered as Court's Exhibit Number 2.)

2 THE COURT: All right. Mr. Brooker, the next witness for
3 the defense?

4 MR. BROOKER: Your Honor, the only other witness that we
5 have to call -- I think we discussed this earlier -- will not
6 be available until tomorrow morning.

7 THE COURT: All right. Very good. All right. Ladies
8 and gentlemen, there's -- the remaining witness -- and that
9 would be -- you'd be recalling -- was it -- was it Danna
10 Collins? Was that her name?

11 MR. BROOKER: No, sir. That would be Kathy Saunders.

12 THE COURT: Kathy Saunders. I'm sorry. Kathy Saunders.
13 All right. So you'd be calling Kathy Saunders. That
14 individual I believe is engaged in another proceeding in
15 another city in South Carolina at this time. So what we're
16 going to have to do, ladies and gentlemen, is we'll reconvene
17 tomorrow morning.

18 Again, please be here by nine thirty. I expect to start.
19 I want -- I want to be able to start with that witness at nine
20 thirty. So if y'all can arrive before then a little bit just
21 to make sure we can start at that point in time. That means
22 we'll be here at that time.

23 Please remember, don't talk about the case. Don't allow
24 anybody to talk to you about it. I'm sure you might be
25 getting questions at home or from a neighbor, but, you know,

1 until the case is over with, you can't talk about it. After
2 that, you're free to talk about it as much as you want to or
3 not. That's your choice. But until then, don't talk about
4 the case and, obviously, y'all won't do that until I give it
5 to you at the end for your deliberations.

6 With that, I'm going to excuse you for the balance of the
7 day. Please be back tomorrow morning by nine thirty, please.
8 Thank you very much. Everyone else remain seated while the
9 jury retires, please.

10 (Whereupon, the jury exits the courtroom at 3:24 p.m.)

11 THE COURT: All right. Mr. Brooker, is your client
12 prepared at this point in time to respond to the Court
13 regarding his right to testify in this matter or do you --
14 have you talked about that with him or you need a little bit
15 of time to talk to him about that?

16 MR. BROOKER: I would prefer to have a little bit more
17 time to talk with him about that, Your Honor. Normally, what
18 we do is, is that with most of my clients is, is that, you
19 know, pretty near the end of the -- of the defense case, we
20 make a determination based upon the progress of the case as to
21 whether or not ---

22 THE COURT: All right. How about -- why don't y'all be
23 here by nine fifteen in the morning then and maybe we can
24 review that issue at that point in time. All right?

25 MR. MCEACHIN: Yes, sir.

1 MR. BROOKER: Yes, Your Honor.

2 THE COURT: Yes, sir. Anything?

3 MR. MCEACHIN: No, sir, Your Honor. I was just standing
4 here.

5 THE COURT: Okay. That's good. So, gentlemen, y'all be
6 here by nine fifteen in the morning and let's be prepared to
7 go forward, and you've indicated that it's Ms. Kathy Saunders.
8 You've talked to her and she'll be here ---

9 MR. BROOKER: Yes, Your Honor.

10 THE COURT: --- by then?

11 MR. BROOKER: I've talked with her, Your Honor, and
12 advised her that she needs to be here at nine fifteen.

13 THE COURT: Great.

14 MR. MCEACHIN: And, Your Honor, I'm ---

15 THE COURT: Yes, sir.

16 MR. MCEACHIN: --- not necessarily asking for the Court
17 to make a decision. Would it be all right if we relieve Ms.
18 Collins from her subpoena?

19 THE COURT: Is there -- do you -- do you -- are you -- do
20 you need to wait until Ms. Saunders testifies?

21 MR. BROOKER: Your Honor, I think we can go ahead and
22 release her.

23 THE COURT: All right. Very good. All right. Well,
24 that's good. So, Solicitor, if you don't mind, if you could
25 communicate then with Ms. Collins and let her know that she is

1 now released from her subpoena and free to go about her
2 regular activities without fear of being called back to court.

3 MR. MCEACHIN: She had a new batch of turkeys delivered
4 this morning.

5 THE COURT: Well, it sounds like she was -- she turned --
6 turned her life completely around to agriculture.

7 MR. MCEACHIN: Yes, sir.

8 THE COURT: From what her training was anyway. Thank you
9 very much.

10 MR. MCEACHIN: Thank you, Judge.

11 THE COURT: Thank y'all.

12 (Whereupon, there is a break in the proceedings from 3:27
13 p.m. until the following morning.)

14 AUGUST 14, 2013

15 (Whereupon, the proceedings resume at 9:28 a.m.)

16 THE COURT: All right. Solicitor, are you ready for the
17 jury to come in?

18 MR. MCEACHIN: Yes, sir, Your Honor. We're ready to
19 proceed.

20 THE COURT: And the defense?

21 MR. BROOKER: Yes, Your Honor.

22 THE COURT: All right. Ask the jury to come in, please,
23 sir.

24 (Whereupon, the jury enters the courtroom at 9:28 a.m.)

25 THE COURT: All right. Mr. Brooker, your next witness,

1 please, sir.

2 MR. BROOKER: Thank you, Your Honor, and we'd call Kathy
3 Saunders.

4 THE COURT: Please come around and be sworn, ma'am. Meet
5 the bailiff right here, please. The clerk is going to do
6 that. You can turn around.

7 THE WITNESS: Sorry.

8 THE COURT: That's all right.

9 THE CLERK: Place your left hand on the Bible and turn
10 around, please.

11 THE COURT: Not a problem. Thank you, ma'am. There you
12 go.

13 THE CLERK: Do you solemnly swear or affirm to tell the
14 truth, the whole truth, and nothing but the truth, so help you
15 God?

16 THE WITNESS: I do.

17 THE CLERK: You can have a seat. Thank you.

18 THE COURT: All right, ma'am. If you would, just state
19 your full name for the record, please, ma'am.

20 THE WITNESS: Kathy Saunders.

21 THE COURT: All right. And your first name is with a K
22 or C?

23 THE WITNESS: K-A-T-H-Y.

24 THE COURT: Very good. Go ahead, Mr. Brooker.

25 KATHY SAUNDERS, being first duly

KATHY SAUNDERS - DIRECT EXAMINATION BY MR. BROOKER

1 sworn, testifies as follows:

2 DIRECT EXAMINATION

3 BY MR. BROOKER:

4 Q: Ms. Saunders, what is your current occupation?

5 A: I am a family nurse practitioner.

6 Q: Okay. And how long have you served as a family health
7 practitioner?

8 A: Since August 2011.

9 Q: August 2011?

10 A: Yes, sir.

11 Q: And I'm assuming is, is that there's an educational
12 requirement to obtain at least that particular -- that
13 position?

14 A: Yes, sir. There are.

15 Q: What are the educational requirements contained in that
16 position?

17 A: In the state of South Carolina, you have to hold a
18 master's degree in nursing as a minimum requirement. However,
19 I hold a doctorate degree in nursing, which I obtained in
20 2008. When I obtained that degree as a family nurse
21 practitioner and my doctorate of nursing practice, I was
22 employed full-time as a forensic medical examiner in the field
23 of child abuse. When I left the field of child abuse in
24 August of 2011, I began my practice in family practice full-
25 time.

KATHY SAUNDERS - DIRECT EXAMINATION BY MR. BROOKER

- 1 Q: So you said you obtained a doctorate in nursing?
- 2 A: Yes, sir, in 2008.
- 3 Q: In 2008? Okay.
- 4 A: In addition to holding a master's degree, it's required
- 5 in our state that you're also nationally board certified in
- 6 your area of specialty.
- 7 Q: Okay. And obviously is, is that -- are you -- are you
- 8 certified to practice in South Carolina?
- 9 A: I am.
- 10 Q: And what is your certification in South Carolina?
- 11 A: I hold a dual certification both in family practice and
- 12 pediatrics.
- 13 Q: Okay. And what's the process of obtaining that
- 14 certification that you went through?
- 15 A: You sit a national board exam and every five years you
- 16 have to re-credential, either through hours of practice and
- 17 continuing education, which includes 450 hours within that
- 18 five-year period within your specialty area, or you can
- 19 recertify through the written exam.
- 20 Q: Okay. And you also mention is, is that -- that you have
- 21 a master's -- excuse me -- a doctorate in nursing. Is that --
- 22 in obtaining that doctorate in nursing is, is that during the
- 23 course of obtaining that, did you took classes or obtain
- 24 classes on anatomy?
- 25 A: I did.

KATHY SAUNDERS - DIRECT EXAMINATION BY MR. BROOKER

1 Q: Okay. Now, you stated that you were a forensic examiner
2 back in -- in -- in 2009; is that correct?

3 A: That is correct.

4 Q: Okay. And at that particular period of time in 2009, how
5 long had you served as a forensic examiner?

6 A: Since October of 1996.

7 Q: And during that course of time, approximately how many
8 forensic examinations of the type that you're here to talk
9 about had you performed?

10 A: I would average seeing between 800 and 1,000 children a
11 year since 1996. So until 2009, probably 6- or 7,000 children
12 at a minimum I have seen.

13 Q: Okay.

14 MR. BROOKER: Your Honor, at this time, I would present
15 Kathy Saunders as an expert in the area of forensic
16 examinations.

17 THE COURT: All right. Solicitor, do you wish to voir
18 dire the witness as to her qualifications or challenge the
19 offer by the defense?

20 MR. MCEACHIN: I actually just want to ask her a couple
21 questions, Your Honor.

22 THE COURT: I'll be glad for you to do so.

23 MR. MCEACHIN: Thank you very much.

24 EXAMINATION REGARDING QUALIFICATIONS

25 BY MR. MCEACHIN:

KATHY SAUNDERS - EXAMINATION RE: QUALIFICATIONS BY MR. MCEACHIN

1 Q: Kathy, if you don't mind, would you please let the jury
2 know have you ever been qualified as an expert in the field of
3 child sexual assault examinations?

4 A: Yes, sir, I have.

5 Q: And on how many separate occasions have you been
6 qualified as an expert in that field?

7 A: Cumulatively, in family court and criminal court
8 proceedings in over 500 cases.

9 Q: Okay. So in over 500 cases, you've been qualified as an
10 expert?

11 A: Yes, sir.

12 MR. MCEACHIN: Your Honor, I would have no objection to
13 qualifying her as an expert and I think Mr. Brooker said in
14 forensic interviewing. I'd also ask that she be qualified as
15 an expert in the field of child sexual assault examinations.

16 THE COURT: Any objection to that, Mr. Brooker?

17 MR. BROOKER: No objections, Your Honor.

18 THE COURT: All right. Therefore, the witness is
19 qualified to give her opinion in those fields. You may
20 proceed.

21 MR. BROOKER: Thank you, Judge.

22 CONTINUED DIRECT EXAMINATION

23 BY MR. BROOKER:

24 Q: Back in August of 2009, did you perform a -- a --
25 examination -- sexual assault examination on a Minor?

KATHY SAUNDERS - DIRECT EXAMINATION BY MR. BROOKER

1 Glover [sic]?

2 A: Yes, sir, I did.

3 Q: Okay. And how did -- how was it that Minor 1

4 [sic] was -- was presented to you or came to you for that
5 sexual assault examination?

6 A: Because I'm no longer employed at the facility in which
7 this examination took place, I do not have the entire record,
8 but I can tell you that our standard protocol for accepting
9 referrals for evaluation of children was either through the
10 Department of Social Services or law enforcement. So it had
11 to be from one of those two agencies.

12 Q: Okay. And -- and just so that we're -- we're absolutely
13 clear and the jury is clear, could you explain to me what a --
14 a forensic medical examiner of the type of which you -- you
15 were when you were at the Care House, what do they do?

16 A: Actually, it was a process that occurred. When DSS or
17 law enforcement received a report of a concern or that the
18 child had reported or that maybe a caregiver -- someone had
19 reported a concern that a child may have been sexually or
20 physically abused, they would contact our facility -- and the
21 name of that facility is the Care House of the Pee Dee -- and
22 ask that the children or the child receive a forensic
23 interview, which was not performed by me but by someone else,
24 which is a fact-finding session where the child would speak
25 with someone to obtain information about the details of

KATHY SAUNDERS - DIRECT EXAMINATION BY MR. BROOKER

1 concern, whether it be sexual abuse or physical abuse.

2 Then I would see the child for a medical evaluation and
3 not only was I looking for evidence that there may be injuries
4 about the body, I was making sure of the child's general
5 health and well-being. So it was kind of a two-fold process
6 to identify elements for the medical component that the child
7 may not have expressed during the interview or to someone
8 else, as well as to make referrals for the child for things
9 like maybe dental care or counseling if needed to deal with
10 elements that the child is struggling with.

11 Q: Now, when you performed these, you know, sexual assault
12 examinations, is there a protocol or procedure that you
13 follow?

14 A: Yes, sir, there are.

15 Q: Okay. And could you explain to us what that protocol is?

16 A: There's two different types of exams that can occur. One
17 is called an acute sexual assault or evidence collection kit
18 and that's when the child has been sexually assaulted or
19 believed to be sexually assaulted within 72 hours or 96 hours
20 of being examined where you actually look for DNA evidence.
21 After about 96 hours, you know, they've bathed, they've
22 urinated, they've done different things to their body, and the
23 DNA typically leaves the body of the child.

24 So then we perform what we call a chronic sexual abuse
25 evaluation and it's delineated on a very different type of

KATHY SAUNDERS - DIRECT EXAMINATION BY MR. BROOKER

1 form, which is the form that I -- or the exam that I performed
2 on Minor 1 the day that I saw her because it was
3 reported to me that some time had passed. That maybe two
4 years had passed since the alleged assault had occurred to
5 her. So you're really not looking for DNA but evidence of an
6 injury that may have healed or maybe a normal exam and to be
7 sure that the child does not have a sexually transmitted
8 infection or a scar as a remnant of the injury that may have
9 occurred to them at the time.

10 Q: Now, you said you performed a chronic sexual abuse
11 examination?

12 A: Yes, sir, I did.

13 Q: Okay. Now, could you tell us at least what type of
14 examinations that you actually performed? And what I mean is,
15 is that could you explain the procedure to us exactly what you
16 did ---

17 A: Sure.

18 Q: --- during that examination?

19 A: The first thing that I do is obtain a history from the
20 caregiver or the person that is actually there with the child
21 to determine what has happened to the child. So I obtained a
22 history on Minor 1. Actually, it was from her great-
23 grandmother that that history was obtained.

24 We also collect information about the social history,
25 things like elements that have gone on in the family and

KATHY SAUNDERS - DIRECT EXAMINATION BY MR. BROOKER

1 information that may affect the child's safety and well-being.
2 We do a review of systems, asking about things like how does
3 the child sleep at night, has the child ever run away, ever
4 talked about hurting themselves. Other conditions that the
5 child may have like developmental delays, speech and language
6 delays. So just kind of talk a little bit about the child,
7 where they are now, where they were in their past from a
8 medical perspective.

9 And then I complete a general physical exam looking at
10 the child from head to toe. So every part of the child's body
11 is inspected looking at their developments, kind of an overall
12 development from our perspective, and then go through each
13 body system.

14 Q: Now, when you performed the behavioral -- the behavioral
15 assessment, did you indicate that there was no behavioral
16 changes that are identified with respect to Minor 1
17 [sic]?

18 A: Per the grandmother -- the great-grandmother's report,
19 there were no changes in her behavior.

20 Q: Okay. And you also did a -- a -- a physical review of
21 systems and, of course, I think you indicated that that was
22 negative as well, too?

23 A: Right.

24 MR. MCEACHIN: Your Honor, at this time I'm going to
25 object to leading.

KATHY SAUNDERS - DIRECT EXAMINATION BY MR. BROOKER

1 MR. BROOKER: Certainly.

2 THE COURT: If you just -- why don't you just ask her
3 what the results of her exams were?

4 MR. BROOKER: Certainly.

5 Q: Okay. Did you perform a physical -- a physical review of
6 assessments?

7 A: Yes, sir, I did.

8 Q: And what was the results of that?

9 A: Asking questions like did she wet the bed, have trouble
10 with frequent stomachaches, headaches, that kind of thing, the
11 grandmother reported that she had none.

12 Q: Okay. Now, I think the next thing that you performed was
13 a physical examination?

14 A: Yes, sir, I did.

15 Q: Okay. Why don't you take us through that physical
16 examination, exactly what you did?

17 A: We obtained a weight on the child. She weighed 112
18 pounds. She was 63 inches tall. Was cooperative with exam.
19 Her overall development appeared to be age appropriate.
20 Inspection of her eyes, her irises were equal and reactive to
21 light. Her nose, throat, mouth was found to be normal. Her
22 lungs were clear. Her heart inspection, there was no murmur.
23 She had regular rate and rhythm. Inspection of her abdomen,
24 it was soft, her bowel sounds positive, not tender to the
25 exam. Her muscular skeletal system, she could move all of her

KATHY SAUNDERS - DIRECT EXAMINATION BY MR. BROOKER

1 extremities without any problems. Her anal inspection, there
2 were no tags, tears or laxity and concluded that that was a
3 normal evaluation. On her skin survey, there was known to be
4 a surgical scar to the right side of her neck and otherwise
5 the skin survey was normal.

6 On her female genital exam, I used the colposcope to
7 inspect the genital area. She was lying on her back in a
8 supine position and she was found to be in Tanner Stage IV of
9 development, which V would be the most adult-like stage of
10 development. The presentation of the hymen was annular. It
11 was estrogenized with redundant tissue present. In other
12 comments that I made, that there was a thick, smooth posterior
13 rim with redundant tissue present, no discharge noted, and
14 that it was a normal pubertal exam without evidence of acute
15 or chronic injury.

16 Q: Okay. Okay. So -- so -- (coughs) excuse me. So the
17 result at least of the female genitalia examination was that
18 there was no pubic -- there was no evidence of acute or either
19 chronic injury?

20 A: That is correct.

21 Q: Okay. Now, I know that you said that -- that you use a
22 -- I think that's a colposcope?

23 A: That's correct.

24 Q: Okay. Could you explain to the jury exactly what that is
25 and how it's used?

KATHY SAUNDERS - DIRECT EXAMINATION BY MR. BROOKER

1 A: It is a non-invasive piece of equipment that you use. It
2 stands up on a little roller kind of stand and basically if
3 you'll think of it as a pair of binoculars with a light source
4 that you can focus in on any part of the body you want to look
5 at. Maybe they have a bad tooth or an old scar on their arm
6 or whatever, but you can focus in on part of the body and look
7 at it under magnification. So it gives you great detail of
8 the area that you're looking at.

9 Q: Okay. And so -- and -- and correct me if I'm
10 understanding is, is that it allows you to at least to get a
11 close detail examination into the genitalia?

12 A: That is correct.

13 Q: Okay. Okay. Did you -- did you observe or at least I
14 think you testified that you used a supine -- supine position
15 in performing the examination?

16 A: That is correct.

17 Q: Could you explain to the jury what the supine examination
18 position is?

19 A: It's where the child is laying on their back and their
20 feet -- for the purpose of inspecting the genital area, it has
21 little pedals or the stirrups that we use so that you can
22 better visualize the genital area. So basically laying on
23 their back.

24 Q: Okay. Okay. And you also indicated with respect to --
25 well, I think you testified previously that the hymen was

KATHY SAUNDERS - DIRECT EXAMINATION BY MR. BROOKER

1 annular. Could you explain to the jury what that means?

2 A: There are different shapes that the tissue into the
3 hymeneal opening can appear to be. Annular just means that
4 around the opening of the hymen that the tissue is a full
5 collar of skin. There's tissue around the entire circle of
6 the skin. The other presentations can be crescentic and if
7 you'll think about a half-moon, the tissue goes halfway around
8 the opening to the hymen. Fimbriated just means that it has
9 kind of jagged edges. There's septate hymens, where there can
10 be a band of tissue that goes across the opening of the
11 hymeneal tissue.

12 Redundant is a word that I used. It just means that
13 estrogen, the female hormone, is present in the body and it
14 causes that tissue to be kind of fluffy, if you will, and it
15 allows for stretching or distension of that tissue. Like a
16 rubber band, it will kind of give and relax, give and relax as
17 you insert an object into that hymeneal tissue.

18 Q: Now, hymen tissue -- is -- is that a thick tissue or is
19 it, you know, relatively thin and fragile?

20 A: Well, it really depends on the stage of development of
21 the female child. The presence of hormones, which means that
22 the child has entered into puberty, that they begin to develop
23 their secondary sex characteristics like breast tissue,
24 estrogen to the vaginal area that eventually leads to the
25 girls having their menstrual cycles. That tissue is very

KATHY SAUNDERS - DIRECT EXAMINATION BY MR. BROOKER

1 thick, very elastic. Like I said, like a rubber band, it will
2 stretch and then go back, stretch and go back.

3 If you're talking about a four or a five-year-old, six-
4 year-old, seven-year-old that has no estrogen or is not
5 estrogenized with secondary sex characteristics, that is very
6 thin, almost like Saran wrap. It's translucent. You can see
7 through that tissue. It's very sensitive tissue. Hormones of
8 puberty desensitize the tissue where that it's not painful to
9 touch that tissue. When they're young, then it's very thin,
10 very fragile. With no hormones to the area, it's very thin,
11 very fragile, and it's very painful to touch that part of the
12 female genitalia.

13 Q: Okay. Now, you testified that -- that Minor 1
14 genitalia was in a annular -- a complete annular shape. Did
15 you see -- when you did your examination, did you see any
16 evidence where the -- the hymen had been ripped or torn?

17 A: No, sir. There was no evidence of acute or chronic
18 injury.

19 Q: Okay. Okay. Okay.

20 MR. BROOKER: If you can indulge me for just a second?

21 Q: Now, did you do anything else as a part of your physical
22 examination or was that the completion of the physical
23 examination?

24 A: I did collect screen cultures for sexually transmitted
25 infections.

KATHY SAUNDERS - DIRECT EXAMINATION BY MR. BROOKER

1 Q: Okay.

2 A: And a urinalysis.

3 Q: Okay. The -- the -- the cultures that you collected,

4 were those cultures presented for analysis?

5 A: Yes, sir, they were.

6 Q: Okay. What were the results of those cultures?

7 A: Because I don't have the -- the entire chart, I don't

8 have those results.

9 Q: Okay. Okay. Would that be the same with respect to also

10 the urine sample that you allegedly -- that you said that you

11 took?

12 A: The urine sample results are here and it was negative

13 meaning no urinary tract infection.

14 Q: Okay. Now, you also performed -- did you -- did you

15 perform an examination on Minor2 [sic] as well?

16 A: Yes, sir, I did.

17 Q: Okay. And what type of examination did you perform on

18 Minor2

19 A: The same as Minor1

20 Q: Okay. Was it a chronic -- chronic examination?

21 A: Yes, sir.

22 Q: Okay. And as part of that chronic examination, did you

23 collect review of systems or perform the review of systems

24 similar to what you -- you did with -- with Minor1

25 A: Yes, sir, I did.

KATHY SAUNDERS - DIRECT EXAMINATION BY MR. BROOKER

1 Q: Okay. And specifically, did you -- did you collect I
2 guess behavioral review of systems with respect to Minor 2
3 A: Yes, sir, I did.
4 Q: And what was the result?
5 A: That there were no behavioral changes identified by the,
6 again, great-grandmother.
7 Q: Okay. Did you also collect physical review of systems?
8 A: Yes, sir, I did.
9 Q: Okay. And what was the result of physical review of
10 systems with respect to Minor 2
11 A: The grandmother had not noted any of those questions that
12 I had asked.
13 Q: Okay. And did you then perform -- is that when you
14 performed the physical examination -- the chronic physical
15 examination we discussed before?
16 A: Yes, sir.
17 Q: Okay. Could you go through the results of that -- the
18 performance and the results of that?
19 A: On Minor 2 she was found to be 98 pounds, 60 inches
20 tall. She was cooperative with the examination. She was age
21 appropriate of her genital -- excuse me -- general
22 development. Her eye exam, there was a red reflex that was
23 present. Her pupils were equally reactive to light. Ears,
24 nose, throat and mouth were found to be normal. Her lungs
25 were clear. Her heart had regular rate and rhythm with no

KATHY SAUNDERS - DIRECT EXAMINATION BY MR. BROOKER

1 murmur. Her abdomen was soft, bowel sounds present, non-
2 tender to the exam. Her muscular skeletal system, she had
3 full range of motion. The anal exam was found to be normal
4 with no tags, tears or laxity present. On her skin survey, it
5 was found to be a normal skin survey.

6 And on her vaginal exam, I also used the colposcope for
7 evaluation of the genital area. She was in the supine
8 position or laying flat on her back during the exam. She was
9 in early pubertal development, Tanner Stage II. She had
10 annular presentation of her hymeneal tissue and some
11 estrogenized effects of that tissue was present. The hymeneal
12 rim was thick, smooth, no discharge or redness noted. And the
13 conclusion of that exam was a normal examination.

14 Q: Okay. Now, when you performed the -- when you're using
15 the colposcope, are you taking a detailed or a very, very
16 microscopic detailed look at the hymen or the -- or the inside
17 of at least the -- the vaginal area?

18 A: Yes, sir.

19 Q: Are you actually looking at the hymen itself?

20 A: Yes, sir.

21 Q: Okay. Now, are you looking at the hymen close enough to
22 make a determination as to whether or not there is a scarring
23 around the outer rim of the hymen?

24 A: You can see all of the vaginal tissue, both the lateral
25 walls of the vestibule and the vaginal vault. You can see the

KATHY SAUNDERS - DIRECT EXAMINATION BY MR. BROOKER

1 hymeneal tissue, the urethral area where the children void
2 from. I also use it for inspection of the anal tissue. So
3 you can see all of that in very, very detailed fashion. Yes,
4 sir.

5 Q: With respect to I think back to Minor 1 -- just very
6 briefly with respect to Minor 1 -- and I know that you said
7 that -- that it was a -- now, I'll use your language that it
8 was a normal examination, but just for the purposes of the
9 jury, did you identify at least any scarring around -- around
10 the outer rim, you know, of the hymen area or the inner or
11 outer rim of the hymen area?

12 A: No, sir. I did not document that ---

13 Q: Okay.

14 A: --- there was scarring there.

15 Q: Okay. If you had notified that, that would have been
16 something that you would have documented?

17 A: Yes, sir.

18 Q: And, of course, with respect to Minor 2 [sic], did
19 you note any scarring, whether it be fresh or healed, around
20 the outer rim of the hymen?

21 A: No, sir, I did not.

22 Q: Did you note any other internal healing scars within the
23 vaginal area?

24 A: No, sir, I did not document that.

25 Q: And I'm assuming is -- are -- and I will ask it at least

KATHY SAUNDERS - DIRECT EXAMINATION BY MR. BROOKER

1 for -- for -- you know, for purposes of the jury, I'll ask did
2 you see any of that vaginal scarring inside of the vaginal
3 area with respect to Minor 2

4 A: No, sir.

5 Q: Did you see any internal vaginal scarring, whether it be
6 around the outer rim of the hymen or either anyplace else,
7 whether it be acute or either whether it be long-term
8 scarring, with respect to Minor 1

9 A: The only scar I saw on her was to the side of her neck.

10 Q: Okay. And that scar was as a result of -- was that a
11 surgical scar?

12 A: Yes, sir. That's what I have documented.

13 Q: Okay.

14 MR. BROOKER: I have no further questions for this
15 witness.

16 THE COURT: Cross examination.

17 MR. MCEACHIN: May I approach the witness?

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION

20 BY MR. MCEACHIN:

21 Q: Ms. Saunders, I'm going to hand you this.

22 MR. MCEACHIN: This is demonstrative evidence, Your
23 Honor.

24 THE COURT: All right, sir.

25 MR. MCEACHIN: I've shown it to Mr. Brooker.

KATHY SAUNDERS - CROSS EXAMINATION BY MR. MCEACHIN

1 Q: Kathy, if we get to a question that -- that you feel
2 necessary to explain to the jury what a certain portion of the
3 body is or part of the body is, please show them on that
4 diagram.

5 A: Okay.

6 Q: Kathy, I first want to address with you your testimony
7 with regard to Minor2 -- excuse me, Grover. When you're
8 doing your physical examinations of individuals, do you
9 typically find -- if somebody has not alleged penetration, if
10 it's simply an issue where maybe somebody's pants were pulled
11 down or something along those lines where there's no
12 indication of penetration, do you typically find the evidence
13 of that within the body?

14 A: No, sir.

15 Q: And I'll move on from Minor2 now. Let's talk briefly --
16 and I know Mr. Brooker asked you about it. If you don't mind,
17 if you'd hold up that diagram and show to the jury exactly
18 where the hymen and the hymeneal opening is?

19 A: The hymeneal tissue -- and just for clarification, can
20 everybody see this? The hymeneal tissue is what laypeople
21 refer to as the vaginal ring or the cherry of a female genital
22 part, and it is, as you can see in this picture here, this
23 collar of skin that runs around this area of the tissue or of
24 the opening. Excuse me. The hymeneal tissue is recessed
25 inside of the body and the best way to make you understand

KATHY SAUNDERS - CROSS EXAMINATION BY MR. MCEACHIN

1 what I mean by that is you have the outer folds of skin, which
2 are called the labia majora. Then you have another inner fold
3 of skin called the labia minora. And if you think about it
4 like your face, you have a lip and then you have your inner
5 gums and then you have your tongue and then you have that
6 little thing that hangs in the back called the uvula. If you
7 think about the hymeneal tissue, it sits way back inside of
8 the body. It's a very protected structure. You have to go
9 through the lips, past the gums, down past the tongue to get
10 to that little thing that hangs in the back.

11 So the hymeneal tissue does not sit near to the outside
12 of the body. It's protected by all these folds of skin.
13 Okay? So we're talking anywhere from maybe an inch to a half
14 an inch inside of the body -- of the outer side of the body to
15 the inside of the body where this cherry or hymeneal rim sits.
16 So this is actually called the hymeneal tissue, this collar of
17 skin.

18 Then there is a hole that is in 99.999 percent of all
19 girls when they are born and it's called the hymeneal opening
20 and it goes inside of the vaginal vault into the cervix, up
21 around where actually penetration through this tissue occurs
22 when an object goes inside of the body. So when something is
23 inserted into the vagina of a little girl, it goes through the
24 outer lip -- outer lips, the next fold of skin, through an
25 area called the fossa navicularis, which is a little cup-like

KATHY SAUNDERS - CROSS EXAMINATION BY MR. MCEACHIN

1 structure before you even get to the hymen tissue, and then
2 into the hymen into the vaginal wall.

3 Q: And how does the hymen itself and the hymeneal opening
4 normally allow for penetration to happen?

5 A: If the child is into puberty, meaning they have those
6 female hormones present, if you'll recall, the presence of
7 estrogen in the female once they near or start their periods,
8 that tissue stretches like a rubber band. It will stretch and
9 give, stretch and give, and think about it like this. If
10 you're trying to, for girls, put your hair in a ponytail, you
11 have a rubber band and you wrap that -- you pull your hair up,
12 wrap the ponytail around. That rubber band will go around
13 your hair only to a certain point and then if you force your
14 hair through that ponytail, that rubber band is going to pop.
15 It's not going to be able to go around that last little wrap.

16 The same thing with estrogenized or hormonized female
17 tissue. Objects can go in and out, in and out of this
18 structure, and the only time it's going to pop, rip or tear is
19 when it's forceful or when the object is too large to
20 accommodate the opening or the stretch of this tissue.

21 Q: And if you don't mind, Kathy, you can put that down for a
22 minute. Would you, based on your field of expertise, explain
23 to the jury what some of the common misconceptions are about
24 the hymen?

25 A: Laypeople outside of the medical community and sometimes

KATHY SAUNDERS - CROSS EXAMINATION BY MR. MCEACHIN

1 even within the medical community if they don't understand the
2 anatomy of children or female children, they think there's a
3 film of skin that over -- lies over the opening of the cherry
4 or of the hymeneal tissue and the first time a girl has sex,
5 it's going to bleed and pop and it's going to be very
6 traumatic, and that is not true depending on where the child
7 is or the female is in her pubertal development.

8 So there is no film of skin that lies over that opening.
9 All girls are born with an open hole, if you will, and those
10 that are not we call that a normal variant called an
11 imperforate hymen, which once they enter their puberty and
12 those female hormones come to the genital area, it self-
13 resolves. It kind of goes away on its own under the influence
14 of hormones. But that is a very, very small population of
15 girls that really have an imperforate hymen.

16 The other misconception of laypeople is that if an object
17 is inserted into the vagina, then with that rip and that tear
18 it's never going to look normal again. And what we know about
19 the female body is that it's very forgiving. It can heal and
20 repair itself even when there's injury, whether it be
21 accidental or intentional injury to the child. It can heal
22 and repair itself and never leave a scar. It can heal to
23 complete normal.

24 Q: Okay. And with regard to Minor 1 specifically,
25 I believe that you indicated on direct examination that she

KATHY SAUNDERS - CROSS EXAMINATION BY MR. MCEACHIN

1 had a normal exam; is that correct?

2 A: Yes, sir.

3 Q: And there -- there are two types of exams I believe.

4 There's an abnormal and a normal?

5 A: Yes, sir.

6 Q: And in this case, you had a normal exam?

7 A: Yes, sir.

8 Q: Could you explain to the jury, do you always find

9 evidence of trauma if there's been penetration?

10 A: No, sir.

11 Q: And why don't you?

12 A: Several factors. Just as I've explained, once there's

13 female hormones to the genital area, if there is injury at the

14 time of penetration, it can heal and repair to completely

15 normal. The other factor is when did the alleged incident

16 occur versus when did the examination occur. If a significant

17 period of time has passed, if there was injury at the time of

18 the alleged penetration, it could have healed to normal and I

19 would not see any evidence of past injury. It doesn't mean

20 that the penetration did not occur. It doesn't mean that

21 there was no injury at the time of the penetration. It means

22 that it healed without evidence of a scar or past injury.

23 Q: And I think you hit on this a little bit in that answer

24 you just gave, but can you explain to the jury how quickly

25 something can heal within -- within the vagina?

KATHY SAUNDERS - CROSS EXAMINATION BY MR. MCEACHIN

1 A: Depending on how deep the cut is to a particular area of
2 the genitalia, because of the type of cells that makes up the
3 whole genital tissue, if it's a very superficial, meaning just
4 a very scratch-like mark in the genital area, it can heal
5 within 24 to 48 hours. If it's a deep cut, it may take up to
6 several weeks for it to heal. But there again, it can still
7 heal to normal.

8 Q: Okay. And would it be fair to say, Kathy, that typically
9 evidence of trauma, if it is in fact found, more likely than
10 not it would be at or right after the penetration occurred as
11 opposed to later in time?

12 A: That is correct.

13 Q: Okay. And I want to -- I want to reference you to page 8
14 of your report on Minor 1 . And you told the jury
15 about I believe the Tanner scale. If you could, elaborate on
16 that a little bit and explain to the jury what the Tanner
17 scale is?

18 A: The Tanner scale is a measurement of pubertal development
19 that we look at two areas of the male or female genital
20 secondary characteristics. First being the breast tissue,
21 looking at the mounting of the aureole and nipple development,
22 the fat tissue around the breast. On a scale of 1 to 5, 5
23 being the most adult-like, 1 being no influence of pubertal
24 development to the breast tissue, and the same with the pubic
25 hair development, one being no pubic hair to the genital area,

KATHY SAUNDERS - CROSS EXAMINATION BY MR. MCEACHIN

1 whether it be male or female, and five being the most adult-
2 like pubic hair development.

3 Q: And I believe you were telling the jury and I'll focus
4 specifically on the female, five is the highest level or the
5 most adult; is that correct?

6 A: Yes, sir.

7 Q: And your determination on Minor 1 is that she
8 was a four on that scale; is that correct?

9 A: Yes, sir.

10 Q: And that means that, if my understanding is correct, that
11 she has more estrogen at that time flowing to different parts
12 of her body; is that correct?

13 A: That would be correct.

14 Q: And could you explain to the jury that when you have or
15 when estrogen is flowing to other parts of the body,
16 specifically the vaginal area of the body, if there are -- if
17 there is some sort of trauma or injury to that area, the
18 estrogen helps to repair it more quickly; is that a fair
19 statement?

20 A: That is correct.

21 Q: Now, we talked about penetrating injuries. Is it always
22 going to be the case that there's evidence of trauma when
23 there's a penetration?

24 A: No, sir.

25 Q: And if you don't mind, Kathy, just tell the jury why that

KATHY SAUNDERS - CROSS EXAMINATION BY MR. MCEACHIN

1 is?

2 A: Basically, there's two reasons. Well, really three
3 reasons. The lack of evidence when there's penetration can be
4 from when the incident occurs to the time in the exam, enough
5 time has elapsed that the redness, the tears, if there were
6 any, have healed. That's the first. The second is, is that a
7 lot of children are not sexualized. So when they say someone
8 put something in their body, it may not truly be all the way
9 into their body in a very sexual nature like we as adults see
10 penetration or sex because they are not sexualized.

11 In their body may be the same thing as on their body.
12 And to them, the feeling is the same because they can't really
13 discriminate. They can't see what's going on and the best way
14 they know to describe it can be in their body and really it's
15 against their body. And then thirdly, depending on where they
16 are in development, that tissue could stretch and give and
17 objects can go in and out of the body without causing any
18 injury at all.

19 Q: And with regard to some of the questions Mr. Brooker
20 asked you as it pertains to that with regard to the scarring
21 and/or tearing, will evidence of scarring or tearing once it
22 occurs, will it always be present?

23 A: Not necessarily. Depending on when the incident occurred
24 and when the child or where the child was at in their pubertal
25 development, as puberty continues remember those hormones.

KATHY SAUNDERS - CROSS EXAMINATION BY MR. MCEACHIN

1 Those female hormones are going to change the structure and
2 the look, if you will, of the genital area. Therefore, what
3 once was a scar maybe a year or two or three years ago, as the
4 body changes and begins to develop more into an adult-like
5 genitalia, it can mask or hide those scars or cause those
6 scars to fade away.

7 Q: And specifically with regard to Minor 1, the
8 alleged assault occurred in July 2007. And you conducted your
9 I believe your medical exam in August 2009. Given the length
10 of time that had passed in-between the alleged assault and
11 when the examination was, would it be more or less likely that
12 you found evidence of scarring, tearing, penetration, et
13 cetera?

14 A: It would be less likely because her body would continue
15 to develop.

16 Q: Okay. And again, you found her to be a level 4 out of 5
17 on the Tanner scale which means more estrogen and more
18 likelihood of repair; is that correct?

19 A: That is correct.

20 Q: Now, the final question I want to ask you, Kathy, is that
21 isn't it true that a normal finding in a medical exam could
22 still be consistent with an individual having been sexually
23 assaulted?

24 A: Absolutely.

25 MR. MCEACHIN: Thank you. No further questions.

1 THE COURT: Redirect?

2 MR. BROOKER: No redirect, Your Honor.

3 THE COURT: Thank you. All right. Do you wish the
4 witness to be excused, Mr. Brooker?

5 MR. BROOKER: She can be excused, Your Honor.

6 THE COURT: Any objection?

7 MR. MCEACHIN: No objection, Your Honor.

8 THE COURT: All right. Ms. Saunders, you are released
9 from your subpoena. You may go back to your regular
10 activities. If you would, just hand that to the solicitor
11 when you go by there. Thank you, ma'am.

12 (Whereupon, the witness leaves the stand at 10:13 a.m.)

13 THE COURT: All right. Mr. Brooker, is it your intention
14 to call Ms. Plumber next? Is that correct?

15 MR. BROOKER: That's correct, Your Honor.

16 THE COURT: All right. Ladies and gentlemen, a witness
17 is going to be called and while the Court was not aware of
18 this, I'm going to allow it, but I do need to give you that
19 person's name to question you to see if you happen to know
20 this particular individual. Her name is Sandra Michelle
21 Plumber. I believe before -- she's currently married. Before
22 her name was Marler. Is it M-A-R-L-E-R? Is that correct?

23 MR. BROOKER: I think it is, Your Honor.

24 THE COURT: All right, sir. So is there any member of
25 the jury panel that's related by blood or marriage, close

1 personal friends, acquaintances of or knows this particular
2 person? If so, please raise your hand. No juror having
3 raised their hand -- yes, sir?

4 MR. MCEACHIN: Sorry, Your Honor. Mr. Thurmond Brooker
5 brought it to my attention. I believe her maiden name was
6 actually Williams.

7 THE COURT: Williams?

8 MR. MCEACHIN: Not Marler.

9 THE COURT: Well, that's not what y'all wrote down or
10 what Mr. Brooker told me. Okay.

11 MR. MCEACHIN: Apparently, she was previously married and
12 her name was Marler, but her maiden name was Williams, Your
13 Honor.

14 THE COURT: Ah ha. All right. So it was also Williams.
15 So Sandra Michelle Williams, Sandra Michelle Marler, or now
16 Sandra Michelle Plumber. Anybody know her?

17 (Whereupon, there is no response.)

18 THE COURT: Thank you very much. You may proceed.

19 MR. BROOKER: Thank you, Your Honor. We'd call Michelle
20 Plumber.

21 THE COURT: All right. Please come around to be sworn,
22 ma'am. If you'd just remain standing so the clerk can give
23 you the oath.

24 THE CLERK: Place your left hand on the Bible and raise
25 your right hand, please. Do you solemnly swear or affirm to

SANDRA MICHELLE PLUMBER - DIRECT EXAMINATION BY MR. BROOKER

1 tell the truth, the whole truth, and nothing but the truth, so
2 help you God?

3 THE WITNESS: I do.

4 THE CLERK: Sit right here.

5 THE COURT: Ma'am, if you would, just state your full
6 name for the record, please, ma'am.

7 THE WITNESS: Sandra Michelle Plumber.

8 THE COURT: All right. Very good. Go ahead, sir.

9 SANDRA MICHELLE PLUMBER, being
10 first duly sworn, testifies as follows:

11 DIRECT EXAMINATION

12 BY MR. BROOKER:

13 Q: Ms. Plumber, where do you currently reside at?

14 A: In the state of North Carolina.

15 Q: Okay. And are you related to -- are you related to Minor 2
16 and Minor 1 ?

17 A: Yes, sir.

18 Q: How are you related?

19 A: I'm their aunt.

20 Q: And could you explain at least how you're their aunt and
21 which side of the family you are on?

22 A: Their mother is my sister.

23 Q: Okay. And I'll just ask this question for the record.

24 Has Minor 2 [sic] ever alleged to you that she was
25 sexually ---

SANDRA MICHELLE PLUMBER - DIRECT EXAMINATION BY MR. BROOKER

1 MR. MCEACHIN: Object to leading and hearsay, Your Honor.

2 THE COURT: Well, I'm going to allow the -- I'm going to
3 allow the question. I'm going to need for you to rephrase it,
4 Mr. Brooker, but I am going to allow the -- the response. I'm
5 not going to sustain it upon regards to hearsay, but I am
6 going to allow the response. But I do need for you to
7 rephrase your question, Mr. Brooker, to not suggest an answer.

8 MR. BROOKER: Okay.

9 THE COURT: If you would, just start with if they ever
10 had a conversation.

11 Q: I can ask it -- have you ever had a conversation with
12 Minor 1 -- with Minor 2 [sic] about sexual assault?

13 A: No, sir.

14 Q: Have you ever had a conversation with Minor 1
15 [sic] about sexual assault back in 2004 or after?

16 A: No, sir.

17 MR. BROOKER: No further questions, Your Honor.

18 THE COURT: Cross examination?

19 MR. MCEACHIN: No questions, Your Honor.

20 THE COURT: All right. Very good. Ma'am, you may step
21 down. Do you wish to release her from her subpoena?

22 MR. BROOKER: Yes, sir, Your Honor.

23 THE COURT: Any objection?

24 MR. MCEACHIN: No, sir, Your Honor.

25 THE COURT: All right, ma'am. You are released from your

1 subpoena and you may go back to your regular activities.

2 Thank you, ma'am.

3 (WHEREUPON, the witness leaves the stand at 10:17 a.m.)

4 THE COURT: All right. Do you wish to bring a matter to
5 the Court's attention at this time, Mr. Brooker?

6 MR. BROOKER: Yes, Your Honor.

7 THE COURT: All right. Very good. There's one matter,
8 ladies and gentlemen, I need to take up outside your presence.
9 It'll just take a few minutes. If you would, go to your jury
10 room, please. Thank you very much.

11 (Whereupon, the jury exits the courtroom at 10:17 a.m.)

12 THE COURT: All right. At this point in time, Mr.
13 Brooker, is your client ready for the Court to address him
14 regarding his right to testify and his constitutional rights?

15 MR. BROOKER: Yes, Your Honor.

16 THE COURT: All right. Very good. Mr. Owens, could you
17 stand up, please, sir?

18 (Whereupon, the defendant complies.)

19 THE COURT: And Madame Clerk, could you place him under
20 oath?

21 THE CLERK: Yes, sir.

22 THE COURT: You can just do it from right there. It'd be
23 fine.

24 THE CLERK: Okay. If you'll raise your right hand,
25 please, sir? Do you solemnly swear that answers you shall

1 give to the following questions shall be the truth, the whole
2 truth, and nothing but the truth, so help you God?

3 THE DEFENDANT: I do.

4 THE CLERK: Thank you, sir.

5 THE COURT: Very good. All right. Now, Mr. Owens, and
6 you are Daniel Owens, Jr.; correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Very good. Now, at this point in
9 time, I'm going to talk to you about and explain to you
10 certain of your constitutional rights and if at any point in
11 time you don't understand what I'm talking about, you've got a
12 question about it, you need to ask a question, you need to
13 bring that to my attention. You just can't stand there.
14 You've got to, you know, raise your hand and you tell your
15 attorney, but you've got to let me know that there's something
16 you don't understand or you got a question. Are we in
17 agreement there?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Very good. Now, we're obviously
20 at the stage of the trial where you are presenting your
21 defense in this particular matter. You have the right to
22 claim the protection given to you by the Fifth Amendment to
23 the Constitution of the United States of America and that
24 amendment states in part that no person shall be compelled in
25 any criminal case to be a witness against himself. That means

1 nobody can make you testify in this case. You can testify if
2 you want to, but nobody can make you do that. Do you
3 understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right, sir. Now, if you testify, you
6 will be subject to the same rules that you've seen all the
7 other witnesses that have testified in his case. You'll be
8 examined or questioned by your attorney. You'll be cross
9 examined or asked questions by the State -- the solicitor as
10 to any facts or matters that the Court deems relevant or
11 proper. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Solicitor, is there any evidence
14 of a prior crime that you would wish to examine him about that
15 would fall under the rule?

16 MR. MCEACHIN: I don't believe so, Your Honor, but if I
17 could have just a minute?

18 THE COURT: All right, sir. Very good.

19 MR. MCEACHIN: No, sir, Your Honor.

20 THE COURT: All right. Very good. So if you decide to
21 testify, Mr. Owens, it's got to be your decision, freely made,
22 voluntarily made, intelligently made, knowing your rights and
23 the rights that we've talked about. It's your decision. Do
24 you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You can get the advice of your attorney and
2 listen to that advice and ask him questions, but ultimately
3 it's your decision. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right, sir. Now, if you decide not to
6 testify, if that's your choice, I will instruct the jury and
7 tell them they can't give that fact that you didn't testify
8 any consideration whatsoever. I'll tell them they can't even
9 talk about it in the jury room. It's not an issue in this
10 case. It's not part of this case in any way and I will so
11 instruct them. You understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, before I ask you what you want to do,
14 first, do you understand everything we've talked about?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Do you have any questions or do
17 you want to talk to your attorney at this point in time?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right, sir. Do you wish to testify in
20 this case?

21 THE DEFENDANT: No, sir.

22 THE COURT: Very good, sir. Thank you very much. You
23 can have a seat. All right. With that, Mr. Brooker, would
24 that be the presentation of the defense in this matter?

25 MR. BROOKER: Yes, sir.

1 THE COURT: So the defense would rest of this time; is
2 that right?

3 MR. BROOKER: Yes, Your Honor.

4 THE COURT: All right. Is there going to be any reply
5 testimony from the State?

6 MR. MCEACHIN: No, sir, Judge.

7 THE COURT: All right. Very good. All right. There
8 being no reply testimony from the State, before I -- hold on a
9 second. Before I call the jury back out, do you want to renew
10 your directed verdict motion at this point in time, Mr.
11 Brooker?

12 MR. BROOKER: Yes, Your Honor. I do want to renew. I
13 know the last time is, is that I did not at least or nothing
14 was put on the record with respect to what that ---

15 THE COURT: I would be glad for you to more fully explain
16 at this point in time. I don't have a problem.

17 MR. BROOKER: And I'll be very brief, Your Honor.

18 THE COURT: That's all right.

19 MR. BROOKER: Okay. Your Honor, is, is that we're making
20 a motion for a directed verdict with respect to the charge of
21 criminal sexual conduct in the first degree. As Your Honor
22 knows, as well as I do, is, is that in order for criminal
23 sexual conduct to exist, there has to be proof of each and
24 every particular element of the offense. And, of course, in
25 criminal sexual conduct in the first degree, one of the

1 elements is, is there must the actual penetration. There must
2 be some sort of proof of penetration. And, of course, unless
3 I am wrong, is I do not believe that there was direct evidence
4 that was testified to with respect to actual penetration.

5 I think when -- and this is with respect to Minor 1
6 Glover [sic]. When Minor 1 [sic] testified --
7 testified, her testimony was -- (coughs) excuse me, Your Honor
8 -- in the form of vague and generic assertions that -- that
9 when she awoke that she had found her Uncle Dan on top of her
10 and that -- that I think she said is, is that he was moving on
11 top of her. And I think during her testimony at no particular
12 period of time that she was ever directly asked is that
13 whether or not there was actual insertion of his genitalia
14 into her vaginal area. And obviously is, is that even if she
15 suggested, you know, that -- that he was on top of her, that
16 -- that he was moving, unless there's actual evidence or at
17 least actual testimony with respect to -- with respect to
18 whether or not there was actual penetration, then, of course,
19 is, is that evidence on that particular element would be void.

20 And, of course, you know, as Your Honor knows probably
21 better than I do is, is that the law with respect to directed
22 verdict basically says is, is that if there is insufficient
23 evidence in which a jury could reasonably find proof beyond a
24 reasonable doubt, means is, is if they have to guess with
25 respect to whether or not something took place, then, of

1 course, is, is that it should be removed from the -- from me
2 jury's decision and a directed verdict should be granted.
3 Thank you very much, Your Honor.

4 THE COURT: All right, sir. Very good. All right.
5 Regarding the directed verdict motion, I've set the standard
6 out in the record before, but I'll just go over it again at
7 this point in time. And I appreciate it, Solicitor. It's
8 unnecessary.

9 MR. MCEACHIN: Thank you, Your Honor.

10 THE COURT: The defendant is entitled to a directed
11 verdict when the State fails to produce evidence of the
12 offense charged. Again, I'm concerned with the existence of
13 evidence, not with its weight, not judging credibility and
14 believability. That's the jury's job. I decide whether or
15 not the evidence exists and then based upon that if there's
16 any direct evidence or substantial circumstantial evidence
17 reasonably tending to prove the guilt of the accused, then the
18 matter is properly submitted to the jury.

19 Now, the trial court would grant a directed verdict
20 motion when the jury would be speculating as to the guilt of
21 the accused or where the evidence is sufficient only to raise
22 a mere suspicion of guilt. But in this particular case, and
23 specific reference has been made to first degree criminal
24 sexual conduct with a minor or criminal sexual conduct with a
25 minor first degree, and there are several elements. The State

1 has to prove beyond a reasonable doubt the defendant engaged
2 in a sexual battery and the description of sexual battery is
3 any number of things, including sexual intercourse or
4 intrusion, however slight, of any part of a person's body or
5 of any object into the genital or anal openings of another
6 person's body except for medical purposes. The other elements
7 I don't think are applicable to the directed verdict motion,
8 but obviously that the victim was less than 11 years old at
9 the time, consent is not an issue because a minor under the
10 age of 14 can't give consent.

11 In this particular case, there was the direct testimony
12 of Minor 1 in response to questions by the State when
13 she was describing what happened. He did -- she did describe
14 that her clothes were off, all of them. That she identified
15 the defendant as being on top of her, that his hand was over
16 her mouth, and she also stated that at that point in time that
17 his private part was in my private part.

18 That in and of itself is sufficient to defeat the motion
19 for a directed verdict in that there is evidence, if that
20 evidence is believed by the jury, to establish that particular
21 element of the crime of intrusion. She obviously did testify
22 as to her age later on. She said that she had just turned 10.
23 So that satisfies another element of first-degree criminal
24 sexual conduct with a minor.

25 As to lewd act on a minor, the -- the State has to prove

1 that the defendant was over the age of 14. They've
2 established evidence of that. The State has to prove that the
3 defendant willfully and lewdly committed or attempted a lewd
4 or lascivious act on or with the body or its parts of a child
5 under the age of 16, which, you know, the child was under the
6 age of 16.

7 There is sufficient evidence in the record to establish
8 that what its purpose was, to attempt to arouse or appeal or
9 gratify the lusts, passions or sexual desires of the defendant
10 or the child, and therefore, the Court finds that there is
11 more than sufficient evidence in the record, first, that would
12 reasonably tend to prove the guilt of the accused of the crime
13 charged and the case is properly submitted to the jury for
14 their consideration, but I will add that if the evidence is
15 believed that has been produced in this matter by the State of
16 South Carolina, there is more than sufficient evidence
17 produced by the State, again if believed by the jury. I'm not
18 judging that part of it. That evidence exists beyond a
19 reasonable doubt to convict the defendant of both crimes.
20 Therefore, the Court respectfully declines to grant your
21 motion for a directed verdict. Any -- any other motions?

22 MR. BROOKER: No other motions, Your Honor, from the
23 defense.

24 THE COURT: All right.

25 MR. MCEACHIN: And none from the State either, Your

1 Honor. I would simply ask you are we going to go directly
2 into closing? If so, I'd like about five minutes to use the
3 facilities.

4 THE COURT: Well, we are going to, but we're going to
5 talk about it first and that was the reason I was having the
6 -- the defense rest at this point in time while the jury was
7 out so I don't have to bring them in, the defense rest, and
8 I've got to send them right back out again. So I want to
9 cover all this before we bring them back out. All right.

10 Gentlemen, my clerk will come down there. We've got a
11 verdict form, one on criminal sexual conduct with a minor
12 first degree and one on committing or attempting to lewd act
13 on a minor. I would like for y'all to look at those two
14 verdict forms and see if the State or the defense has any
15 objection to them.

16 (Whereupon, there is a pause in the proceedings.)

17 MR. BROOKER: The defense has no objection.

18 MR. MCEACHIN: No objection, Your Honor.

19 THE COURT: All right, sir.

20 MR. MCEACHIN: From the State.

21 THE COURT: All right. Very good. All right. So
22 that'll be the -- with no objection then, that'll be the
23 verdict form that the Court will present to the jury.

24 As to the -- let me go over briefly what I put together
25 as a potential charge in this matter, gentlemen, and y'all can

1 tell me if you have any objections or additions, deletions to
2 it. And I'll just tell you now at the end of the charge I
3 will -- before the jury deliberates, I will give you an
4 opportunity again to comment on the charge if there's any
5 questions that y'all have.

6 We'll talk to the jury about the normal things that we
7 always talk to a jury about, credibility, believability, their
8 job and their role and that sort of thing. Direct and
9 circumstantial evidence. That basically the law doesn't make
10 any distinction between the two or greater degree of proof is
11 not required of one over the other.

12 Presumption of innocence. The -- we will go over the --
13 as I explained to Mr. Owens, that the defendant did not
14 testify is not a factor in this case. It can't be considered
15 by them in any way. They can't talk about it in the jury room
16 and again that will kind of flow into the presumption of
17 innocence.

18 After that, reasonable doubt. The kind of doubt that
19 would cause a reasonable person to hesitate to act. That --
20 basically I mean I will tell them at the very end if they're
21 firmly convinced that the defendant is guilty of the crime
22 charged, they may find the defendant guilty. If they're not
23 firmly convinced, they'd find him not guilty and give him the
24 benefit of the doubt.

25 Expert witnesses. That though I've qualified a person to

1 give their opinion, that doesn't give them any greater degree
2 of believability. That's still solely the job of the jury.
3 They weigh all the evidence, find all the evidence and weigh
4 it all to find that which they believe to be true.

5 Testimony of children. The same thing I've told them a
6 couple of times during the case about testimony of children.
7 I'll review that with them.

8 We went over criminal sexual conduct with a minor first
9 degree, lewd act on a minor, and now, the -- the actual charge
10 regarding the second one is attempting or committing --
11 committing or attempting a lewd act on a minor and, therefore,
12 I will define attempt to them in regards to the lewd act on a
13 -- on a minor.

14 And -- all right. Now, regarding first degree criminal
15 sexual conduct with a minor, again, that particular code
16 section there still is in existence as I understand it the --
17 it's sometimes requested by the State and I probably ought to
18 talk about it now and I don't know if you're asking for this,
19 Solicitor, so we need to talk about it.

20 That the testimony of a victim doesn't have to be
21 corroborated under a couple of those code sections. So CSC
22 with a minor first, second or third. Now, I'll be glad to
23 hear from you and hear from Mr. Brooker. If you're asking for
24 that, I don't know if you are asking for it, but whether or
25 not that's a -- actually something that should be charged to

1 the jury or not. I don't know that it's something. Anyway,
2 let me hear from you. Are you -- let's cover first, are you
3 asking me to say that to the jury?

4 MR. MCEACHIN: Yes, Your Honor. I believe that is the
5 law of the state and I intend ---

6 THE COURT: And I certainly believe it's the law of the
7 state. Mr. Brooker, do you object?

8 MR. BROOKER: Your Honor, I think it's -- you know, it's
9 the law of the state that -- that a person certainly can be
10 charged something on the -- on the allegations that's made
11 alone, but one of my concerns with respect to -- with respect
12 to charging the jury with that is, is that -- is that that
13 particular charge then basically tells the jury, you know, and
14 whether it is intentional or either unintentional, voluntary
15 or involuntary, and that is, is that -- is that -- is that the
16 crux of this case is in reference to, you know, whether or not
17 they believe what happened to -- what happened with these
18 young girls alleged happened -- it happened ---

19 THE COURT: All right. Well, let me -- and let me just
20 stop you here. I'm not going to charge it at this point in
21 time because I believe it would be a comment on the facts.
22 However, depending upon your closing argument, depending upon
23 what you say, understanding I'm not going to say it just
24 because you challenge the credibility and believability of the
25 witnesses, that's something valid to be asked, but depending

1 upon what you say, I may or may not then charge that because
2 if you make some argument that would indicate, well, the only
3 person that's testified to this is the child, then I think I
4 would have -- I'd be obligated to tell the jury that it's
5 proper to bring a charge based only upon the testimony of a
6 child. So I'll just tell you when you're fashioning your
7 closing argument, whether or not I charge that particular code
8 section depends on how you make your argument to the jury.
9 I'm not going to tell you how to make your argument.

10 MR. BROOKER: Yes, sir.

11 THE COURT: You make it however you want to. I'm just
12 telling you depending upon what you say, I may feel compelled
13 to then state that to the -- to the jury.

14 MR. BROOKER: My understanding is, is that, you know,
15 that you would be stating it to the jury it's proper to bring
16 the charge.

17 THE COURT: I would just -- basically what I would tell
18 them is that the State can and the -- the law allows that the
19 -- a charge to be brought based upon the testimony of a minor
20 victim and it need not be corroborated.

21 MR. BROOKER: And I think also, Your Honor, is that that
22 charge is given I think in that statute and I think it's
23 actually the very same statute and -- and says is, is that
24 that does not in any way -- in any way negates the obligation
25 of law enforcement to do with the girls ---

1 THE COURT: Well, it doesn't negate the obligation of the
2 State to prove the crime beyond a reasonable doubt. There's
3 no question about that.

4 MR. BROOKER: Yeah.

5 THE COURT: And I will tell them that. All that to say
6 is right now I don't intend to charge it, but depending upon
7 what you argue, I may very well charge it. So I'm just going
8 to leave it to you. You tailor your argument how you want to
9 understanding the Court may feel an obligation and compelled
10 then to give that instruction to the jury. All right? All
11 right. What else from the State that you want me to charge?

12 MR. MCEACHIN: Your Honor, I just wanted to put something
13 on the record and first with regard to your explanation to Mr.
14 Brooker about the corroborating -- need to corroborate the
15 child's testimony, I have no objection to the Court's
16 assessment of that and certainly if he doesn't go into the
17 fact that the child wasn't corroborated, I don't see any need
18 for it to be charged. But, of course, if it is raised, we
19 would ask that charge.

20 Your Honor, I just wanted to point out on the record that
21 this case is currently being tried in August 2013. The
22 incidents occurred back in 2004, 2007, and the charges were
23 brought in 2009. At that time, the State did actually have
24 codified a statute for lewd act on a minor. Since that time,
25 that particular statute has been repealed, but within the

1 Omnibus Crime Bill of August 2010, there was a savings clause.
2 This issue has been addressed before and that particular
3 charge is saved pursuant to that clause and I just wanted to
4 put that on the record, Your Honor.

5 THE COURT: That's fine. I assumed that. Well, I
6 honestly didn't think that was an issue because of the savings
7 clause and it wasn't raised by the defense. So I just assumed
8 that everybody was operating under the same assumption, but
9 I'm glad that you stated it for the record so there is no
10 question about that. And that's your understanding, too, Mr.
11 Brooker; correct?

12 MR. BROOKER: Yes, Your Honor. I don't disagree with
13 that.

14 THE COURT: All right. Very good. All right. So
15 anything else from the State then?

16 MR. MCEACHIN: Your Honor, if I could have two minutes to
17 use the restroom?

18 THE COURT: Well, we're going to take a very short break
19 to let y'all get organized. Anything else, Mr. Brooker?

20 MR. BROOKER: Nothing else, Your Honor.

21 THE COURT: All right. Very good. We'll take a short
22 break. Y'all get organized and we'll come in and do the
23 closing arguments.

24 MR. MCEACHIN: Thank you, Your Honor.

25 THE COURT: Okay.

1 (Whereupon, there is a break in the proceedings from
2 10:42 a.m. until 10:50 a.m.)

3 THE COURT: All right. Solicitor, is the State ready for
4 the jury to come in?

5 MR. MCEACHIN: Your Honor, the State is ready.

6 THE COURT: All right. Defense?

7 MR. BROOKER: Yes, Your Honor.

8 THE COURT: All right. Very good. Ask the jury to come
9 in, please.

10 (Whereupon, the jury enters the courtroom at 10:50 a.m.)

11 THE COURT: All right, ladies and gentlemen, as I
12 understand it, the defense will rest at this time. Is that
13 correct, Mr. Brooker?

14 MR. BROOKER: Yes, Your Honor.

15 THE COURT: All right. And there's no reply testimony
16 from the State; correct?

17 MR. MCEACHIN: None from the State, Your Honor.

18 THE COURT: All right. Very good. All right, ladies and
19 gentlemen, we have ended the evidentiary hearing portion of
20 the case. There will be no more evidence presented in this
21 particular matter. Obviously, that does not conclude the
22 matter. What remains are the closing arguments of the
23 attorneys and then I will give you the charge on the law, the
24 instruction on the law that you will apply to the facts and
25 evidence you find to be true in this case.

1 And remember what I told you about the opening and
2 closing arguments. Those arguments by the attorneys are not
3 evidence. We've heard all the evidence in the case, but those
4 arguments are important. It's each side's position -- their
5 position on the facts and evidence presented in this case,
6 remembering, of course, that you are the judges of the facts
7 and evidence in this particular case. And they are going to
8 be making their presentation as to what they want you to
9 consider, but remembering, of course, that you ultimately are
10 the judge of the facts and evidence in this case. So with
11 that, we'll turn it over to the attorneys for their closing
12 arguments. All right, Mr. Brooker.

13 MR. BROOKER: Thank you, Your Honor.

14 THE COURT: Yes, sir.

15 CLOSING ARGUMENT BY THE DEFENSE

16 MR. BROOKER: If -- if you can remember, ladies and
17 gentlemen, at the beginning of this trial during my opening
18 remarks, the first remarks I made to you was that this case
19 was a case of inconsistencies and contradictions. It was a
20 case of an incompetent, poor investigation and it is a case of
21 lack of credible evidence to substantiate the charges with.
22 Those were the first comments I made to you. Okay? You have
23 obtained all of the evidence or lack thereof in this
24 particular case and now you are just about at that stage where
25 you're going to assess as to whether or not those words were

1 correct or not.

2 Now, again, I'm going to review some important
3 principles. I'm going to review some very important
4 principles and I think that Judge John will review with you at
5 the conclusion of closing arguments that you are absolutely
6 required to honor in order for there to be a fair, just
7 verdict reached in this case.

8 The first principle and we talked about this at the
9 beginning of our -- of my opening arguments is innocent until
10 proven guilty. Innocent until proven guilty. If you can
11 remember, I told you that Daniel Owens as he sits in this
12 courtroom is just as innocent as any one of us. Absolutely.
13 He's just as innocent as any one of us. Every man, woman,
14 child in this country regardless of their age, whether they're
15 young or old, regardless of their culture, regardless of their
16 religion, regardless of their education, regardless of their
17 ethnicity, we all possess -- we all possess that cloak or that
18 robe of innocence.

19 And that before the State or the government can tear away
20 from us some of the most important civil liberties that we
21 have, life and freedom, before the government can take those
22 things away from us, and deprive us of those things, the
23 government has to remove that cloak of innocence and it is not
24 by -- it is not by a slender burden or a slight burden. It is
25 by the most highest burden that we have in our judicial

1 system. It is the highest burden that we have in our judicial
2 system and that is proof beyond a reasonable doubt.

3 Proof beyond a reasonable doubt. That is the only way
4 that Daniel Owens's cloak of innocence can be removed. It is
5 the only way that anyone's cloak of innocence within this
6 country can be removed and they be deprived of their civil
7 liberties. It's required by law. It's required by law.

8 Now, I am not going to go into great detail with respect
9 to what proof beyond a reasonable doubt means. Judge John is
10 going to instruct you on what it is. And if I say anything
11 that's contrary to what he says, he is the instructor of the
12 law. You are to listen to his instructions and listen to his
13 definitions. But, I believe that he's going to inform you is,
14 is that proof beyond a reasonable doubt is the type of proof
15 that what cause a reasonable person to act without hesitation
16 -- to act without hesitation. And the question in this case
17 is, is that whether or not you have reasonable reasons to act,
18 reasonable reasons to hesitate in finding Daniel Owens guilty
19 of attempted lewd act on a minor and criminal sexual conduct
20 in the first degree against a minor.

21 Was the evidence in this case strong enough? It does
22 mean meet all doubt; it means reasonable doubt. Do you have
23 reasonable doubt? Are there reasons to question his guilt?

24 Now, there is another important, important, important
25 principle that I discussed with you at the conclusion of this

1 trial -- in my opening arguments and that was the
2 responsibility and the duty or duties of a professional juror.
3 And if you can recall during voir dire that this room was
4 filled with people and if you can remember that process where
5 certain people were excluded for whatever reasons and finally
6 we reached -- we reached a jury of 12 people and an alternate.
7 That process is not a frivolous process. That's the process
8 that is designed to collect 12 people, 13 including the
9 alternate, who could sit down and listen to the evidence
10 without passion, without prejudice, without sympathy, and
11 decide the case based upon the evidence that was presented or
12 the lack of evidence that was presented. That is what your
13 job is.

14 There is no room for passion in courtrooms. There is no
15 room for passion in the jury room. There is no room for
16 sympathy. I would say to you that if you step in that jury
17 room and if you are guided by sympathy, if you are guided by
18 passion, if you are guided by anything other than the facts
19 and the evidence, then you are failing in your responsibility.
20 And that is -- that is probably more important in this type of
21 case than in any other. It's more important in cases in which
22 we have minors because I believe that there is a general
23 feeling within all human beings, even animals, is to have this
24 protective nature for our young.

25 Sometimes when we hear an event that happens or alleged

1 to have happened with an adult versus one that happens with a
2 minor, we feel it differently. We feel more protective. We
3 feel more sad. You can't fall into that trap. You are a
4 professional juror. When you stepped into this courthouse, at
5 the courthouse you have the front of the courthouse door, any
6 prejudice, passion and sympathy that you might have, you have
7 to check it at the door. You are a professional juror.
8 You're guided by the facts and lack thereof. Nothing else,
9 nothing more.

10 And I'll also remind you before I get into at least the
11 evidence that was presented or lack thereof on the stand, I'll
12 remind you of something that Judge John -- that Judge John
13 said to you at the beginning of this trial and that I also
14 repeated in my opening remarks, and that is my role in this
15 process, the state attorney's role in this process, and the
16 judge's role in this process.

17 I am not a witness in this case. Mr. McEachin is not a
18 witness in this case. We didn't see anything. We are simply
19 lawyers. Our job is, is to take what facts there might be or
20 what evidence there might be and also the lack of evidence and
21 facts and present that to you in a collective fair way so that
22 you can take that back into the jury room and hopefully reach
23 a verdict that complies with the requirements of the law that
24 requires -- that complies with proof beyond a reasonable
25 doubt. And if that's what you do, you know, then you have

1 satisfied your requirements as a juror.

2 Now, let's talk about the evidence in the case or lack
3 thereof. You heard a number of witnesses from the State.
4 You've heard a number of witnesses from the State and what I
5 want to do is to talk with you about each one because what
6 you're going to be doing when you're going back into that jury
7 room is, is that some of these people or probably all of them
8 are people that you never met before.

9 They are not like family and friends. They're not like
10 people that you have a trusted relationship with. They are
11 not people that you can say, I know this guy, I have known him
12 for 15 years, I've known him for 20 years, I know him to be
13 truthful. Unfortunately, you don't have that advantage the
14 same way you would, you know, with friends and family that
15 you've known for a lifetime. You're seeing and hearing a lot
16 of these people for the first time and you have to judge their
17 credibility. You have to judge whether or not you choose to
18 believe them, what you chose to believe or whether you chose
19 to believe it at all.

20 So what are some of the things that you're looking for?
21 In judging credibility, one of the things that you take a look
22 at is the consistency. Consistency. If an individual told
23 you something on day one and told you something different on
24 day two and told you something different on day three, and it
25 was inconsistent, that would probably be someone that you

1 would probably say, well, I don't know if I can trust that
2 guy. I don't know whether or not that fellow is telling me
3 the truth. So consistency -- consistency is extremely
4 important in judging veracity, credibility. It's extremely
5 important. Like I said, you don't have the advantages of
6 knowing these people for 15 or 20 years or your whole life.
7 You have to use your common sense and your good judgment. You
8 have to look at what you heard from that stand, listen to how
9 consistent it was or how inconsistent it was.

10 Logic is another thing that is a jury's friend in
11 deliberating. Reason and logic. One of the things I always
12 say to a jury is there may never be a camera around, there may
13 never be a photograph around, there may never be an eyewitness
14 around, but there is one thing that is always, always present
15 all the time and that's logic and reason and you can't escape
16 it. You're going to be looking at, you know, whether or not
17 some of what was said was logical, whether or not it was
18 reasonable, whether or not it's consistent. There are a
19 number of factors that you're going to have to rely on in this
20 case because, again, you don't have the advantages of knowing
21 these people.

22 So let's talk about at least some of the witnesses that
23 you heard. As you can remember, I believe the government
24 presented five witnesses and, if you can remember, the first
25 witness was Minor 1 [sic] and I'm sure you can

1 remember her. She was 16 years old. She's a young girl.
2 When she took the stand, she testified to certain things. And
3 also you heard on cross examination that this was not the
4 first time that she had told her story. That she had told it
5 before to an examiner at the Care House, an interviewer at the
6 Care House. And the purpose of that is, is to determine
7 consistency, to determine logic and reason. And there were
8 some things that just did not make sense and I don't care how
9 hard you try or how much sympathy that you have because she's
10 16 years old, it did not make sense and it cannot be made
11 consistent. Nothing was introduced on the stand that made it
12 consistent from her own testimony or either from the others
13 that testified afterwards.

14 If you can remember, she testified that her folks -- her
15 and her folks and her siblings that they came to stay at Uncle
16 Dan's house and she said that on the night I think in July of
17 2007 that they went to bed and she testified in the court that
18 she slept in a bedroom with Minor2 And Minor2 was her sister
19 who is also the same age but slightly older and I think I can
20 remember her saying that she's something like nine months
21 older, Minor2 is.

22 And if you can remember I asked her. I said, well, can
23 you remember testifying or do you remember talking to the
24 forensic examiner? Do you remember talking to that lady at
25 the Care House? Do you remember telling her that no one was

1 in the room with you? That she slept alone? Well, on Monday
2 she said no, Minor2 was in the room with her. And I said,
3 well, why did you tell the medical examiner that? When I said
4 did you tell the interviewer, it was either I don't know or I
5 don't remember.

6 How can you make those two consistent? They both can't
7 be the truth. Some might say, well, she's a young girl, you
8 know, and her memory might not be good. And do you remember I
9 asked her? I said is your memory better than in 2009 when you
10 talked with the interviewer or is it better now, August 12th of
11 2013, over four years ago. And if you can remember, she told
12 me her memory is better now and that her memory got better
13 with age. And we all know it doesn't. Sometimes we can't
14 even remember what we did three weeks ago and what we had for
15 dinner and what we had for lunch. It does not improve with
16 age. Was that inconsistency ever squared? It was not.

17 She testified that the room was pitch black and that she
18 could not see anything else in the room because it was pitch
19 black and that may have been a reason why that she didn't
20 notice Minor2 Pitch black. Then later she testified that
21 when her uncle allegedly got on top of her that she was able
22 to see his full body. She saw his body. She could see his
23 naked body. And I said, well, how is that consistent? How
24 can you see his naked body in a pitch dark room when you said
25 it was pitch black, that you couldn't see anything? All she

1 says is he's got fair skin. He's got real white skin.

2 Now, I don't know whether or not his skin complexion was
3 anything like it is right now. Even if it was, the human body
4 does not produce light, even if you're fair skinned in a pitch
5 black room. It just doesn't. Well, how do you square that
6 inconsistency? How do you square it? Boy, I want to believe
7 her. How do I square that inconsistency? I feel sorry for
8 her. I have sympathy for her, but how do I square that
9 inconsistency? Well, maybe I should just ignore it because
10 she's a young girl and I feel sorry for her. That's not what
11 professional jurors do.

12 She testified that she went to sleep on her side and that
13 she almost never changes positions and that that's how she
14 sleeps is on her side and she testified that when she woke up
15 that she was on her back, that Uncle Dan was on top of her. I
16 asked her. She testified that Uncle Dan allegedly put his
17 hand over her mouth and told her not to say anything or he
18 would hurt her or either she would not see her mom and dad.
19 And I asked her, why didn't you tell the forensic interviewer
20 that? It wasn't rationalized. I don't know or I don't
21 remember. Is your memory better now that it was then? It
22 gets better with age. But I want to believe her because she's
23 young and because I have sympathy for her. That's what the
24 government wants for you to ignore your obligation as a juror.
25 She testified that when she woke up that her uncle was on

1 top of her and she did not have any clothes on. And I asked
2 her, well, why did you tell -- why did you tell the forensic
3 interviewer that when you woke up that only your panties were
4 removed? Well, I don't know or I don't remember. Is your
5 memory better then than it is now? Oh, but I want to believe
6 her. She's young. That's what we're thinking when we see
7 her. So you know what I'm saying? And that's natural. But
8 it is natural. It's human. But that's one of the things that
9 jurors have to fight when you become a juror. You fight your
10 passion. You fight jury motion. You have to base it upon the
11 existence or nonexistence of the evidence and the
12 inconsistency of it and the logic of it.

13 She testified that no one knew about it when it happened
14 -- allegedly happened to her, that what Uncle Dan allegedly
15 did to her, that she didn't tell anyone until J.A.G. told
16 her Aunt Doris, you know, about two years later. Well, then I
17 asked her, well, why did you tell the forensic interviewer
18 that J.A.G. saw what had happened and that you asked
19 J.A.G. not to tell anybody because Uncle Dan had threatened
20 you? He's going to hurt you, you're not going to see your mom
21 and your papa again.

22 How do we square that inconsistency? Do we give her a
23 break on that? Do we just ignore it? She's a young girl. I
24 have sympathy for her.

25 She testified on the stand that when she woke up Uncle

1 Dan was allegedly on top of her and that Uncle Dan finished
2 his intercourse or his business or whatever it was he was
3 doing and that he then got up and left after he had finished.
4 Well, I asked her, well, why did you tell the forensic
5 interviewer -- did you not tell the forensic interviewer that
6 when you woke up that Uncle Dan got off you and left the room?
7 Well, I don't know or I don't remember. Do we forgive her for
8 that? Do we just ignore it? She's young. Maybe her memory
9 is better now than it was four years ago. Maybe her memory
10 does contradict -- you know, she contradicts medicine and
11 physics.

12 I also asked her whether or not it was her testimony that
13 Uncle Dan lifted her body up so he could pull the gown off
14 her. I think she testified she had on one of those pullover
15 gowns like a T-shirt, a long T-shirt, pullover gown. She says
16 one of those gowns that went down to her knees. That she was
17 sleeping on her side and I asked if you can remember is, is
18 that is it your testimony that Uncle Dan lifted up your body
19 so that he could take the gown from underneath your sleeping
20 body, pull it up and it would have had to go over her head
21 because it's on your arms, that he would have to turn her over
22 from her side onto her back, remove her panties, spread her
23 legs, and do his business, and not arouse or wake you up at
24 all. And she says she's a heavy sleeper.

25 I asked her could she tell whether or not Uncle Dan had

1 any tattoos, any scars, any marks or birthmarks or any
2 noticeable impressions on the body that she said she saw him
3 completely naked and she says she could not. And then, of
4 course, she testifies that the next day she woke up and that
5 her and Minor2 put the sheets in the dryer because she was --
6 you know, she had a problem with wetting the bed and that she
7 had wet the bed that night and that she didn't want to get in
8 trouble for that. And she said that she noticed some blood
9 spots.

10 And these are a great majority of the inconsistencies.
11 There are more, but the point that I'm trying to make to you
12 and the point that you have to take to you in the jury room
13 is, is that we all feel compassion. We all feel sympathy, but
14 the law is the law. Where do you draw the line? You have to
15 do that. It's called proof beyond a reasonable doubt.

16 Lady Justice is blind. You'll remember that famous image
17 of Lady Justice with a blindfold. Lady Justice sees not race,
18 not religion, not color, not age. Lady Justice just sees the
19 facts and doles out and delivers an impartial judgment.
20 That's what all of you are. When you sit as a juror, you're
21 sitting in a position of Lady Justice. That's your job.

22 Minor2 [sic] I think was the next to testify and
23 I'll speed up here. I don't want to put you to sleep because
24 it's important. I think Minor2 [sic] testified that in
25 July 2000 -- in July I think it was 2004 that her and her

1 folks went to Uncle Dan's -- went to Uncle Dave -- Uncle
2 David's house and her mom and dad took Uncle David to the
3 store and left Minor2 herself, Minor1 her sister, and also
4 David's son, who is autistic, with Uncle Dan in the house.
5 And she testified is they were in the living room and that
6 adjacent to the living room -- if you can remember, this is a
7 trailer, it's a mobile home, a trailer, and that you have a
8 living room and you have a bedroom.

9 And she said that Uncle Dan told her that there was some
10 toys in the other room. She said they were using it kind of
11 as a storage unit. It was a bedroom, but they were using it
12 kind of as a storage area and Uncle Dan says there's toys of
13 that other room. Go ahead and pick out some toys for y'all to
14 play with. And that she went in the room and that when she
15 went in the room, Uncle Dan came in the room behind her at
16 that time and closed the door and locked it and that she
17 testified that she said, Uncle Dan, where's the toys?

18 She said at that particular period of time, Uncle Dan
19 then dropped his pants and she said that then Uncle Dan --
20 that when she -- if I memory serves me correctly, that when
21 she tried to exit the room that Uncle Dan grabbed her with
22 both arms around her jeans and tried to pull her jeans down.
23 And I asked, well, was Uncle Dan standing up? Was he on the
24 side of you or in front of you and she said that he was in
25 front of her and, of course, she said that he reached down and

1 tried to pull her pants down with both of his arms. Then she
2 said, well, I kicked him in the groin, opened the door, and
3 ran out.

4 And I asked, well, okay, your sister was there,
5 Minor 1 She was in the adjacent room. She was right there
6 in the room right next to this bedroom. Did she witness --
7 did she witness you go into this room looking for toys? Did
8 she witness a conversation that allegedly happened between you
9 and Uncle Dan where Uncle Dan says there's toys in the other
10 room, Minor 2 why don't you go in there and get some? Did she
11 witness that? She was right there in the room. Did she
12 witness you going in there? Did she witness Uncle Dan going
13 in behind you? I don't know.

14 Minor 1 was here on the stand. She was void of any
15 testimony with respect to whether -- whether she witnessed
16 that at all. She was void of any testimony of witnessing any
17 of that at all.

18 Well, she says that -- that when mom and dad got back
19 with Uncle David that they all got in the car, including Uncle
20 Dan, and that they went home and then she said that when they
21 got home that Aunt Michelle came by and she told Aunt Michelle
22 and that Aunt Michelle then told mom and dad, and dad got mad
23 at Uncle Dan and made him go.

24 And if you can remember, the last witness that we had was
25 Aunt Michelle. And I asked Aunt Michelle, if you can remember

1 very briefly, whether or not Minor2 ever made allegations of
2 attempted sexual assault by Uncle Dan and she said no.
3 Whether in 2004 or ever, she said no.

4 Now, Minor1 [sic] also said that she was somewhat of a
5 witness with the allegations made by her sister, Minor1
6 which compounds the inconsistencies. If you can remember,
7 well, first of all, Minor1 just one other slight
8 inconsistency which calls into question at least the date.
9 That Minor2 testified that when this alleged event took place
10 that she was seven or eight and I asked her, well, why did you
11 tell the forensic interviewer that she was five or six. She
12 didn't have a response except she was seven or eight. That's
13 fine. And she had a specific recollection that it was 2004
14 and it's charged as being in 2004.

15 Now, with respect to the allegation involving Minor1
16 when Minor1 said that Uncle Dan straddled her that night in
17 the house, Minor1 along with her -- along with her sister
18 which was there, they were in the house. I'm taking you back
19 to the incident involving Minor1 when she alleged that
20 Uncle Dan straddled her. Well, if you can remember the
21 testimony that was made, the testimony from Minor1 well,
22 Minor2 testified -- testified on the stand that she was in the
23 room with Minor1 when Uncle Dan allegedly came in and
24 assaulted her and that she had made a kind of a bed or a
25 pallet on the floor and was sleeping on the floor next to the

1 bed. And I asked her why did she tell the forensic
2 interviewer that Minor1 was sharing a room with R.G. I
3 think R.G. is the youngest daughter. You didn't hear from
4 her name in this case at all and Minor1 did talk about
5 R.G. a little bit when she was on the stand and I asked
6 her, you know, where R.G. sleeps. She says normally she
7 would sleep with her parents. I think she's the youngest
8 daughter.

9 Well, it's simple. If it was you, Minor2 in there
10 sleeping next to Minor1 why did you tell the forensic
11 interviewer that Minor1 was sleeping with R.G. ? Well,
12 it -- that inconsistency was not fixed or rationally explained
13 away except that she don't know or she don't remember.

14 I asked her could she remember the clothing that
15 Minor1 was wearing that night -- allegedly wearing that
16 night and on the stand she testified that I don't know or I
17 don't remember. And I said to Minor1 well, why did you
18 tell the forensic interviewer that the next morning that y'all
19 woke up and -- and -- and noticed that Minor1 had no pants
20 on -- panties. She said Minor1 had no pants and panties.
21 Why? I don't know or I don't remember.

22 Now, I also asked her about something else that she had
23 told the forensic interviewer that was very important as well,
24 too. She testified -- if you can remember, Minor2 testified
25 that when they woke up the next morning that -- that they

1 noticed spots of blood on the sheets and that they washed the
2 sheets because they didn't want anybody to know and that she
3 said that she suspected something and she tried to talk to
4 Minor1 and Minor1 just wouldn't talk about it that day.
5 She didn't want to talk about it with her. I asked her, well,
6 then why did you tell the forensic interviewer that the next
7 morning when you noticed that Minor1 had no panties on that
8 you told the forensic interviewer that Minor1 sleepwalks --
9 Minor1 -- let me make sure I get this correctly. That she
10 has been sleepwalking and I think they originally thought that
11 she had been sleepwalking to the bathroom again and that she
12 had a habit of doing that and that's how maybe her panties got
13 off.

14 That's inconsistent with what she's testifying at this
15 time before the jury. It's inconsistent. And she said she
16 couldn't remember and that's how she rationalized
17 inconsistencies.

18 Now, that next testimony came from -- and, of course,
19 that's just a few of the inconsistencies and every question as
20 you can remember when we pointed out an inconsistency in the
21 testimony, it would be followed up by I don't know, I don't
22 remember, I don't know or I don't remember. Every time. I
23 know we feel for these kids. We have compassion and sympathy
24 for them, but that can only go so far.

25 The next person who testified was J.A.G. and if you can

1 remember J.A.G. is -- J.A.G. was very cheerful, at least
2 how that's how I remember it. Very straightforward and seemed
3 to be very strong-willed. And J.A.G. testified, if you can
4 remember, that she was sleeping in the room -- the living room
5 type area adjacent to the bedroom where Minor 1 was sleeping
6 and that that night she heard or saw Uncle Dan get up and walk
7 and that he walked past her. At some point in time, she saw
8 Uncle Dan go into the room that allegedly Minor 1 was
9 supposed to be in and closed the door and she said she went to
10 sleep.

11 And I asked her did you remember telling the forensic
12 interviewer that you never saw anyone do anything to your
13 sisters at all and that everything that she was testifying was
14 new. I asked her did you tell that to the forensic
15 interviewer? No. Did you tell that to any of the
16 investigators? No. For the first time, her entire testimony
17 -- after four years, the first time that we hear that is on
18 the stand. It's all new. And you're probably thinking, well,
19 how in the world do I rationalize that? Everything new.
20 Complete contradiction, and I'm pretty sure all of you think
21 that she's a sweet girl, but complete contradiction.

22 And I asked her whether or not she had saw Uncle Dan
23 doing anything. She'd already said that and I've already
24 brought it up that I asked her about her statement to the
25 forensic interviewer whether or not she had saw Uncle Dan

1 doing anything to -- to her sisters -- to Minor 1 and she
2 had said no and, again, that contradicts what Minor 1 had
3 said. Minor 1 said that J.A.G. saw and that the next
4 morning that she had begged J.A.G. not to say anything
5 because Uncle Dan said he was going to hurt her and she
6 wouldn't see her mommy or daddy anymore.

7 It was a complete contradiction, all new. I said, well,
8 why didn't you say it -- why didn't you tell the forensic
9 interviewer all of this new stuff that you're saying from the
10 stand the first time? She said, well, I didn't trust her. I
11 didn't trust her. I didn't trust nobody. That's a convenient
12 explanation. A four-year investigation and nobody knew this
13 testimony, not the forensic interviewer, not Detective Watson.
14 Yeah, not Detective Charlie Watson, not anybody. All of it
15 may be all made up. Maybe she's trying to support her sister.
16 Maybe they all are.

17 The next witness I believe that the State called, if my
18 memory serves me correctly, was Detective -- I think it may
19 have been Danna Collins. Danna Collins was the forensic
20 interviewer. She was the person at the Care House that we
21 talked about that all of these statements were made to. Her
22 testimony was very brief. I don't even think I cross examined
23 her. She got up and testified the date, time and place I
24 believe. She probably spent less than a minute on the stand.
25 And, of course, the State's final witness was

1 Investigator -- Detective Charlie Watson, which is very
2 important. And you remember Detective Watson testified that
3 he was the investigator and originally what he did is came up
4 and I think Detective Watson said that he talked with the
5 grandmother and he talked with the young girls briefly to just
6 understand what this was about and once that happened, that he
7 then send them over to have their statements taken by the
8 forensic interviewer because he's kind of a big guy, you know,
9 and these are, you know, little girls and he didn't want to
10 frighten them. That's his reason for at least not doing his
11 job there.

12 And I asked him, if you can remember, is that, well, did
13 you attend the forensic interview and is it normal that
14 investigators attend forensic interviews and he said, well,
15 yeah, they are usually there and that usually they are not in
16 the room when the girls are being interviewed, but they're
17 behind the screen where they can watch and look. Were you
18 there? You're the investigator. No, I don't believe I was
19 there. Why is that important? Why is that very important?
20 And the reason why is, is that what an investigator wants to
21 do in a case like this is to collect as much information as
22 possible, to identify all potential witnesses, to go talk with
23 them. He talked with no one. Other than sending the girls to
24 the Care House to be interviewed, that was it. No further
25 investigation at all.

1 Well, do you remember when Minor 2 said, well, --Minor 2 is
2 that one that alleged a lewd act, that Uncle Dan allegedly
3 tried to pull down her pants and she kicked him and ran away.
4 And that later on that she told Aunt Michelle and that Aunt
5 Michelle told mom and dad and then dad got mad with Uncle Dan
6 and made him go away. I said, well, did you attempt to talk
7 with Aunt Michelle? Try to look for her? No. Why? It's not
8 necessary.

9 It is very necessary. It's called an investigation. Did
10 you hear Aunt Michelle get on the stand and said that never
11 happened, that she never was told? Why does the defense have
12 to track down that witness and put them on the stand? That
13 was Detective Watson's job.

14 Did you get in touch with the mother and father to try to
15 ask them? He said that they -- Minor 2 said that they knew.
16 No. Why? I didn't think it was necessary.

17 With respect to Minor 2 allegations, -- excuse me,
18 Minor 1 allegations, if you can remember, and I'll jump
19 forward here, is that -- is that Ms. Grover, the grandmother,
20 testified that when she first heard this allegation, she took
21 both Minor 2 and Minor 1 to Dr. Wu so Dr. Wu could examine
22 them. And you heard Dr. Wu's testimony -- deposition
23 testimony being read to you. And I asked her did you go talk
24 to Dr. Wu. That would be relevant. Dr. Wu's a medical expert
25 who was alleged to have performed an examination that would

1 have been relevant to the investigation. No. Why? Because I
2 didn't feel the need to. Well, Dr. Wu was probably one of the
3 -- you know, he was a very important witness. No. I didn't
4 feel it was necessary.

5 Minor 1 said that she told Aunt Doris and that Aunt
6 Doris told grandma and grandpa. Did you try to talk to Aunt
7 Doris? Try to find her and locate her and ask her? No. Why?
8 I didn't think it was necessary. Did you talk to grandpa?
9 No. I didn't think it was necessary. He talked to the
10 grandmother, but briefly at the initiation of the process
11 before he sent the girls over to the Care House to be
12 interviewed.

13 Well, there probably was a reason why he didn't do these
14 things and, if you can remember, I asked him is that how long
15 had you been a detective and he said I've been a detective
16 four years, speaking from the day when he testified on the
17 stand. Well, this incident allegedly happened four years ago
18 so he had been fresh on the job as a detective. I said, well,
19 do you have any education, criminal justice degree,
20 criminology or anything like that that assists you in these
21 sort of complicated investigations? No. Do you have any
22 specialized certification training to be an investigator in
23 alleged criminal sexual conduct cases involving minors? No.
24 Special classes? No.

25 Fresh out as a detective and they put him on something

1 like this and probably the reason why is, is that there's no
2 other. There's no questions asked, there's no protocol
3 followed, and I asked him is there a protocol now for handling
4 CSC cases or allegations of criminal sexual conduct involving
5 a minor? Well, no. And I say this because of this important
6 reason, something I always say to jurors, and that is one of
7 the things that each and every juror is entitled to, each and
8 every citizen is entitled to, before your civil rights, your
9 freedom is threatened, before the government takes any
10 property away from you, the government has a right to do an
11 in-depth, thorough investigation. We're all entitled to that.
12 Every one of us. We're all entitled to that. No.

13 And, of course, that next witness -- and, of course, that
14 was the end of the State's witnesses, but if you can remember,
15 we put up Ms. Grover, the grandmother. She was very brief,
16 too. We only had a couple of questions that we wanted to ask
17 her. Of course, she testified to the fact that when she, you
18 know, heard this many years later, when she heard this, that
19 she, you know, then went to see Dr. Wu and that the same day
20 that she rushed over to law enforcement to make a complaint.
21 Now, it's not a big deal. You're going to have Dr. Wu's
22 records because they were admitted into evidence and they're
23 not that much. I submit to you they may be hard to read. Dr.
24 Wu does not have good handwriting. They're going to be hard
25 to read.

1 But I think she said she took them on the 22nd, July 22nd
2 of 2009. Well, he actually saw them on July 21st, which would
3 have been the day after they went to Dr. Wu. Now, that's not
4 really important. It's really not. She got her dates wrong.
5 She thought she took them on the same day; she took them on
6 the next day. And she said is, is that when she got there,
7 she talked to [REDACTED] Israel, which we called, too. These were
8 the witnesses that we called that were not called by the
9 State. And [REDACTED] Israel was a patrolman and [REDACTED] Israel
10 said that when Ms. Grover came up to -- to the Sheriff's
11 Department facility that he talked with her then. And I asked
12 her, well, you know, did you tell Detective -- did you tell
13 Deputy Israel that Minor 1 and Minor 2 had been assaulted?
14 She said yes. She said yes.

15 And I asked her where that information was based and she
16 said based upon what the girls had told her and that she said
17 she had also talked with Dr. Wu. And I'm not going to go into
18 Dr. Wu's deposition, but there's only one thing that -- that
19 I'm going to at least identify in Dr. Wu's deposition. And
20 that is, if you can remember Dr. Wu's deposition, Dr. Wu says
21 I never told Ms. Grover that these girls had been sexually
22 molested. I never said that. And, of course, he said I could
23 not make that determination. I could not make that
24 determination. He said no such thing. That's what was said.
25 That's another inconsistency.

1 And then, of course, Kathy Saunders was another witness
2 that we called and, if you can remember, is that Kathy
3 Saunders basically says is, is that at that particular period
4 of time that she worked at the Care House and that normally
5 when law enforcement and/or either DSS gets an alleged
6 allegation, then they would be sent over to the Care House
7 and, of course, for an interview and examination and, if you
8 can remember, is, is that it was the Police Department. It
9 was Detective Charlie Watson that referred her over there for
10 forensic -- forensic interviewing and, of course, the
11 examination.

12 It wasn't us. It wasn't the defense, but the State
13 didn't call -- the State did not call Kathy Saunders, even
14 though they made the referral to her. Well, why is that?
15 Well, maybe because is, is that because what Kathy Saunders
16 had to say her examinations didn't fit. Didn't fit. Their
17 theories didn't fit in a box that they had constructed.

18 Now, what did Kathy Saunders say that was so important?
19 One of the things that Kathy Saunders said with respect to
20 Minor 1 [sic] was, is that normally what they would
21 do is take a social history and she referred to that as a
22 review of symptoms. And, of course, one of the review of
23 symptoms is behavioral symptoms. Did they change in behavior
24 or anything like that? And she said that there was no
25 behavioral changes that were reported to her. And she said

1 that this information would have been coming from the
2 grandmother that brought them up there. What do they mean no
3 behavioral changes? It means that she acted the same way that
4 she always acted. She behaved the same way she always
5 behaved. Nothing different.

6 Physical review of systems she says was negative. And
7 then she said is, is that she performed a physical examination
8 and she went through a number of things that was checked, you
9 know, the eyes and ears and nose, throat and the lungs, heart,
10 the abdomen, you know, the anus. And all were within normal
11 -- limits of normal, and nothing remarkable there.

12 And she said that she next performed the female genitalia
13 examination on Minor 1 and she explained to you she used
14 what was referred to as a colposcope, C-O-L-P-O-S-C-O-P-E. A
15 colposcope and she explained to you that's almost like kind of
16 a magnifying instrument so they can look deep into the vaginal
17 area. And that she said that this examination was done in a
18 supine position and that is, is that where the individual is
19 laid on their back with their legs open. She noticed that the
20 hymen was annular, which means that it was round and annular
21 meets normal. She said generally is, is that she testified
22 that most hymens on most females are either -- are either
23 annular, which is kind of a round shape, or either oval kind
24 of shaped like him moon, an oval shape. And that those were
25 the normal or typical shapes that you would normally find and

1 it was annular. It means it was round.

2 And she said her -- her examination was she did an acute
3 and chronic examination and, of course, she explained that an
4 acute examination is an examination where you're looking for
5 injuries that occurred recently within a 72 hour period. A
6 chronic examination is for, you know, injuries that are
7 alleged to have occurred over a longer period of time.

8 And she said both her acute and chronic injury
9 examinations were normal and, if you can remember, I asked her
10 was, is that when she was using that scope and she's looking
11 deep -- deep into the vaginal area and she's looking at the
12 hymen, is she able to see, you know, the outer surface of the
13 hymen, the outer edges of the hymen to try to determine
14 whether or not there are any scars. And she said yes and she
15 said there were none. She said she could -- and I asked
16 whether or not there was any other vaginal scarring because,
17 if you can remember, is that she testified is not only is able
18 to see the hymen, but she's able to see -- see more
19 extensively, you know, into the vaginal opening and that there
20 was none.

21 Now, what the prosecutor is going to tell you and what he
22 brought out a cross examination was, is that he asked is that
23 whether or not it is possible for injuries to -- to heal over
24 a period of time and, of course, we're talking about a period
25 of two years and, of course, she said, well, it's possible.

1 It depends on the extent of the injuries and, if you can
2 remember, is I asked her is that whether or not she saw any
3 signs, you know, of tearing or either ripping of the hymen and
4 she said it was normal. It was an oval, annular shape, oval.
5 It was just a round shape.

6 Now, what does that mean? Basically is when -- when the
7 government asks, okay, does that mean that, you know, trauma
8 didn't happen, she said it's possible for it to heal. But
9 when she says it's possible for it to heal, she's speaking in
10 generic terms. She speaking about a generic patient, no one
11 in particular, and not necessarily about Minor 1 I'm not
12 concerned about the probability or the possibility; we're
13 concerned about Minor 1 and her examination.

14 And of course, what that was is, is that that's an
15 attempt to minimize the impact that there was nothing to
16 indicate trauma. She had a perfectly annular or round hymen.
17 There was no small scarring around the outer edges, you know,
18 of the hymen, which is probably something that you would
19 expect, you know, when you have penetration of a young girl
20 because obviously she says is, is what the hymen is, is that
21 the -- you know, the hymen opening is, is that -- you know,
22 that open area -- that open area she says that naturally all
23 women have. That does not encompass the hymen. The hymen
24 doesn't completely close up and I think the government's
25 attorney asked her, well, could you dispel that myth and she

1 said yes. The hymen is never completely close. It's always
2 open and it varies as to sizes and shapes on individuals. It
3 varies in sized and shapes.

4 And, of course, is, is that you were asked is that --
5 that whether or not -- I think the question was asked as to
6 whether or not it's possible to have intercourse and to not
7 damage or bruise the hymen or tear the hymen and, of course,
8 what she said is, is that damages and bruises and tears a lot
9 of times is based upon the size of the object and also whether
10 or not there was force. That whenever someone has intercourse
11 for the first time, it doesn't automatically mean that the
12 hymen is going to be broken or disrupted or going to be torn.
13 It's based upon the size of the object or in this case size of
14 the penis and it's also based upon force.

15 And this is not a case of consent. Minor 1
16 [sic] said that she woke up and that Uncle Dan was on top of
17 her. But it wasn't torn, not nary one bruise found, not nary
18 -- not a bruise because bruises would not have existed, not
19 what we saw at the time.

20 Well, that's the reason why they didn't call Kathy
21 Saunders, the reason why they didn't call Dr. Wu., but we did
22 so we can have all of the evidence. So is there a reason why
23 they didn't call Michelle -- Aunt Michelle, but we did? Is
24 there a reason why they didn't call Aunt Doris? Is there a
25 reason why they didn't call mom and dad?

1 Ladies and gentlemen, I am about to wrap up. I think we
2 went through all of the witnesses. I won't get a chance to
3 get back up and speak to you. Next, the State is going to get
4 up and the State's going to put his slant on the
5 interpretation of the witnesses and the evidence that has been
6 presented. But I say to you and I'll repeat it because it
7 bears repeating is this is no case for passion. The jury room
8 is no place for passion. Not one time have you heard the
9 judge saying -- Judge John instructing you and I don't believe
10 when he charges you he will instruct you to take your passion
11 into the jury room, to take your emotion to the jury room, to
12 take your sympathy in the jury room. That's the exact
13 opposite of what you're supposed to do. It's the existence or
14 nonexistence of evidence. It's Lady Justice. She's blind as
15 to age, race, religion, ethnicity, culture. She only hears
16 the evidence and the lack thereof. She only hears the
17 inconsistencies. She only hears the lack of logic. She only
18 considers ration and reason. That's what each and every one
19 of you represents.

20 Now, the judge is going to instruct you also is that this
21 verdict in this case has to be unanimous and what a unanimous
22 verdict means is all of you, but there's one important thing
23 that you have to understand. As a jury, you are a collective
24 unit, but each of you are individual decision-makers. You are
25 a collective unit of individual decision-makers and what that

1 simply means is, is that each and every one of you has to be
2 convinced, firmly convinced beyond a reasonable doubt, firmly
3 convinced without hesitation to act. Each individual has to
4 make that decision for yourself. You are a collective unit of
5 individual decision-makers. No one can make a decision -- no
6 one juror can make the decision for the other. That's how our
7 system works and I think it works pretty good. It's been
8 around for a long time. It's not perfect, but it's the best
9 system in the world. It's the best judicial system in the
10 world, but it does have its imperfections.

11 So I implore you to leave your passion and prejudice and
12 it should already be at the front door. You can pick them
13 back up as you leave after you do your service, if you choose,
14 but they have no place in the jury room.

15 And, again, ladies and gentlemen, at the beginning of
16 this case -- I'm about to sit down, I said that this was a
17 case of inconsistencies, that it was a case of incompetent
18 investigation, that it was a case that lacked credible
19 evidence, and I submit that to you right now the State has not
20 proven firmly. It has not proven guilt beyond a reasonable
21 doubt.

22 The judge will instruct you that the defense has no
23 obligation in any criminal case. If the defense choose to, we
24 don't even have to speak. We could sit at that desk and drink
25 water and draw and do puzzles. We don't have to do anything.

1 The defendant does not have to prove his innocence.

2 The government has to prove guilt beyond a reasonable
3 doubt. There is no obligation for the defense, none
4 whatsoever. So the last thing you should ever say in that
5 jury room, well, why didn't the defense prove this? We have
6 nothing to prove. Nothing at all. They have to prove
7 everything beyond a reasonable doubt and they have failed and
8 I would say they have failed considerably. And I would say
9 based upon what you heard in this courtroom over the last
10 couple of days, there is only one -- one true verdict and that
11 is not guilty on the grounds that the State has failed to
12 prove guilt beyond a reasonable doubt. Thank you very much.

13 MR. MCEACHIN: Your Honor, may we approach?

14 THE COURT: Yes, sir.

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

16 THE COURT: All right, ladies and gentlemen, I'm going to
17 let you go back in your jury room for about five minutes and
18 then we'll come back in here. Everyone else remain seated,
19 please.

20 (Whereupon, the jury exits the courtroom at 12:22 p.m.)

21 THE COURT: All right. Madame Court Reporter, if you
22 want to make a phone call you can now. All right. We'll be
23 at ease for five minutes. Thank you.

24 (Whereupon, there is a break in the proceedings from
25 12:22 p.m. until 12:28 p.m.)

1 THE COURT: All right. Solicitor, are you ready for the
2 jury?

3 MR. MCEACHIN: I believe so, Your Honor. Let me make
4 sure.

5 THE COURT: And the defense?

6 MR. BROOKER: Yes, Your Honor.

7 THE COURT: Ask the jury to come in.

8 (Whereupon, the jury enters the courtroom at 12:28 p.m.)

9 THE COURT: All right, Solicitor.

10 MR. MCEACHIN: Thank you, Your Honor, may it please the
11 Court.

12 THE COURT: Yes, sir.

13 MR. MCEACHIN: Counsel.

14 CLOSING ARGUMENT BY THE STATE

15 MR. MCEACHIN: Madame Forelady and ladies and gentlemen
16 of the jury, in June of 2004, little seven-year-old Minor 2
17 Grover was baited and lured into the back bedroom of Uncle
18 David's house. She was told toys were back there to get to
19 play with and with your cousin and your sister. She went in
20 there. There were no toys. And when she tried to leave,
21 standing in between her and her way out was the defendant. He
22 exposed himself. He grabbed her by her pants and tried to rip
23 them off of her body.

24 Fast-forward three years to July of 2007. Minor 2
25 has now moved with her sister and her parents to her Uncle

1 Dan's house and as 10-year-old little Minor 1 is
2 sleeping in her bedroom in that house, slipping through the
3 darkness is the defendant. He comes in, puts his hand over
4 her mouth, pulls her panties off, and he rapes her and he
5 threatens her. And he says if you tell anybody about what
6 I've done to you, if you tell anybody about what I've done to
7 you, you will never see your family again. He told a 10-year-
8 old little girl that she'd never see her family again. Now,
9 to us that may sound like, well, okay, we don't see our family
10 again. But to tell a 10-year-old little girl who the only
11 people she knows is her family that you'll never see them
12 again?

13 And what did Minor 1 do? She didn't tell anybody for
14 two years. She did exactly what he told her to do. She
15 didn't open her mouth. She didn't tell a single soul. She
16 carried that horrific experience with her by herself for two
17 years until her youngest sister or younger sister, J.A.G. ,
18 told their Aunt Doris. And then finally, both Minor 2 and
19 Minor 1 were able to shed this horrible burden that they had
20 been carrying. They were finally able to let people know what
21 that man had done to them.

22 Now, Mr. Brooker talked to you all about inconsistencies.
23 He talked to you for a long while about the inconsistencies in
24 the case and his memory of what was stated from this witness
25 stand and mine are not the same. Some of the things he said I

1 do not recall being said on this witness stand, but that
2 really doesn't matter, ladies and gentlemen, because it
3 doesn't matter what Mr. Brooker's memory of the facts are or
4 what my memory of the facts are. The only people that matter
5 are y'all. Y'all are the judges of the facts in this case.
6 So don't take what I say or what Mr. Brooker says as far as
7 the facts are concerned to heart because I can tell you I
8 don't remember a lot of what they got up here and talked
9 about. That's for y'all to decide as jurors in this case.

10 But let's talk about some of these inconsistencies. If
11 you think about all the ones he pointed out to you, all the
12 inconsistencies he pointed out to y'all, they were all about
13 peripheral things. None of the inconsistencies themselves
14 dealt with the act of rape, also known as criminal sexual
15 conduct, that's what you'll see on the indictment, or lewd
16 act. They all dealt with these peripheral facts, nothing that
17 really, really dealt with the substance of what the defendant
18 is charged with. And that's important. That's important.

19 And if I were defending the defendant, I'd argue the same
20 inconsistencies to you because if you focus on those things,
21 if you focus on those things and not on the substance and not
22 on what was done to these two girls right here, then maybe,
23 just maybe, you can find the defendant not guilty. But if you
24 focus on their testimony and what they told y'all happened to
25 them, then you don't come to that same conclusion.

1 Mr. Brooker said it doesn't make sense. There are too
2 many inconsistencies. Well, Mr. Brooker is a grown man and
3 I'm a grown man and y'all are all grown adults in this case
4 and the way we think about things and the way our memories
5 work as adults isn't the same way as a seven-year-old's memory
6 works. It's not the same way a ten-year-old's memory works
7 and what we would think are important and what we would think
8 are important to remember may not be the same as what a seven
9 and a ten-year-old think may be important to remember.

10 And that's why the judge before each of those three young
11 girls took the stand told y'all about a child's testimony.
12 Y'all remember that. The judge said something to you all when
13 each of those witnesses testified and the reason is because
14 they are child witnesses. They're not the same as adult
15 witnesses. You still have to determine credibility, but
16 they're children. They are not adults. And to hold them to
17 the same standard that we would hold ourselves as far as
18 memory is concerned creates an issue.

19 So remember that when you're back there. What does a
20 seven-year-old and a ten-year-old remember? The seven-year-
21 old remembers his pants were down. The seven-year-old
22 remembers he tried to rip her pants off. The ten-year-old
23 remembers she was laying in her bed and a hand came across her
24 mouth and he was moving on top of her body and her exact words
25 were that his private part was in my private part.

1 Mr. Brooker said, well, maybe even the reason these
2 sisters all got up and said what they did was because they
3 were trying to support their other sister. I don't really
4 know where that argument is coming from because I've seen and
5 I've heard no motive in this case why these girls would lie
6 about their uncle. No motive whatsoever. Nothing. Why would
7 -- why would they make this stuff up?

8 And here's the more pertinent thing that I want you to
9 think about when you're in that jury room. If it was in fact
10 made up, wouldn't it be way easier to make up a case where it
11 wasn't five and two years ago that these acts happened, where
12 it wasn't in two separate places where this happened, where it
13 wasn't one of us got raped and one of us our clothes were
14 tried to be taken off? Wouldn't it be easier to say if they
15 were going to fabricate, yeah, it happened to both of us, it
16 happened last weekend, and we both got raped.

17 Those are the things you want to look at. You want to
18 talk about consistency and inconsistency, that lends
19 credibility to a case. The fact that these incidents did
20 occur on two separate times, that the facts were different,
21 and you've got to different victims telling you what happened
22 to them. Those things are pertinent and they're critical for
23 you to think about.

24 Is there any corroborating evidence of this?
25 Corroborating evidence is simply evidence that corroborates or

1 also states what another witness said. Well, we know that all
2 three of the girls at least testified that the morning after
3 Minor 1 was raped, they found blood on the sheets. Is there
4 anything else in the testimony that y'all heard that
5 corroborates that? Anything at all?

6 During that direct examination of Dr. Wu, Mr. Brooker
7 asked the following question. Okay. And, of course, is that
8 -- did you reach any conclusion or finding that a result of
9 that? Dr. Wu's response was the conclusion is the hymen had
10 been penetrated. A medical doctor, an expert witness, an
11 OB/GYN, the conclusion is that the hymen had been penetrated.
12 That -- who does that corroborate? That young lady sitting
13 right there with the Gamecocks shirt on. That's who that
14 corroborates. That's who that corroborates.

15 What about Kathy Saunders? I specifically asked Kathy
16 this morning, there's a normal finding on a medical exam, is
17 that still consistent with Minor 1 having been sexually
18 assaulted? Yes. Ladies and gentlemen, that is evidence that
19 corroborates other evidence in this case. That is what you
20 use to determine credibility in a case.

21 And it's critical that you, as jurors, take those things
22 into account. Absolutely critical. Mr. Brooker says, well,
23 it doesn't make sense. It doesn't make sense the way the
24 State's presented it. They didn't do what they were supposed
25 to do. He talked a good bit of time about Detective Watson

1 and the people he didn't interview, and Detective Watson said,
2 look, the reason I didn't interview them is they weren't
3 eyewitnesses. They weren't eyewitnesses and that's a critical
4 thing because eyewitnesses are the ones who see what actually
5 happened. They're the ones who can testify to what actually
6 happened.

7 All the people that Mr. Brooker went through, none of
8 them saw Minor1 get raped. None of them saw the defendant
9 try to rip off Minor2 clothes. None of those people saw
10 that. So when he said they weren't necessary, he said they
11 weren't necessary because they weren't eyewitnesses in the
12 case. Does that mean he didn't do his job as an investigator?
13 Absolutely not. Absolutely not.

14 He talked to you about the inconsistencies. He talked to
15 you about it for a while, but I submit to you the
16 inconsistencies that he spoke about are not the critical issue
17 in this case. The thing that doesn't make sense in this case
18 is why a fifty-year-old man, a fifty-year-old uncle, would
19 sexually assault and abuse his seven-year-old and his ten-
20 year-old niece. That doesn't make sense.

21 I told you in the beginning of this case that family are
22 the people that are there to protect you and look out for you
23 and, unfortunately for Minor2 and Minor1 in
24 June of 2004 and July of 2007, there was nobody there to
25 protect them. There was nobody there to protect them when he

1 tried to strip the clothes off of her body. There was nobody
2 there to protect them when he got on top of Minor 1 and he
3 covered her mouth and he threatened her. There was nobody
4 there to protect these girls and that's what I'm asking you to
5 do, ladies and gentlemen.

6 I'm asking you not to base your verdict on any sort of
7 sympathy or any sort of passion because that's not proper.
8 What I am asking you to do is to base your verdict on the
9 facts of this case and what the facts of this case show is
10 that Dan Owens had a pattern of sexually assaulting and
11 abusing his two young nieces and the evidence shows that he is
12 guilty of CSC with a minor in the first degree with regard to
13 what he did to Minor 1 and that he's guilty of lewd act or
14 attempted lewd act because of what he did Minor 2 and that's
15 what I'm can ask you 12 folks to do. I'm going to ask you to
16 return a verdict of guilty as to both counts of this
17 indictment because this State has proven its case and we
18 believe that you should be firmly convinced. Thank you.

19 CHARGE ON THE LAW BY THE COURT

20 THE COURT: All right, ladies and gentlemen, it's now my
21 responsibility to give you the law that you will apply to the
22 facts and evidence you find to be true in this case. I told
23 you at the very beginning that the State had charged the
24 defendant with two crimes. That means you will be making two
25 decisions, two separate decisions, because there are two

1 crimes that you will have to render a verdict on. The
2 decision in one does not affect the decision in the other.
3 They can be the same; they can be different. But you have to
4 examine each one differently because the elements of proof of
5 one crime are not the same as the elements of proof of the
6 other. So you will need to examine the facts and evidence
7 presented on each of these matters separately.

8 Now, in looking at your duties and responsibilities in
9 this particular case, I told you at the very beginning that
10 one of your jobs, duties and responsibilities is to be the
11 judges of the facts, and part of that is judging the
12 credibility and believability of the witnesses that have come
13 before you and testified in this particular case. You can
14 believe one witness against several, several against one. You
15 can believe a portion of what a witness says and disregard the
16 remaining portion of it. If you've got a good and sound
17 reason for doing so, you can disregard in its entirety the
18 testimony of a particular witness.

19 You look at whether or not the witness has exhibited to
20 you any kind of motive, prejudice, bias that they might have
21 in giving you the testimony they gave you. Obviously, the
22 opportunity for knowledge. How did they come about that
23 information that they gave you from the witness stand?

24 In this particular matter, your job is to examine the
25 evidence and find that evidence which convinces you of its

1 truth. It doesn't matter from which witness or combination of
2 witnesses or documents that it comes from. You cannot use
3 passion, prejudice, sympathy to arrive at your verdict. Your
4 verdict has to be an examination of the facts and evidence and
5 find that evidence which convinces you of its truth.

6 Now, there are two types of evidence which are generally
7 presented during the trial, direct and circumstantial
8 evidence. Direct evidence, that's the testimony of a person
9 who asserts or claims to have actual knowledge of a fact.
10 That is what they saw, what they heard, what they observed,
11 what actually happened in their presence. Circumstantial
12 evidence, that's proof of a chain of facts indicating the
13 existence of a fact.

14 The law doesn't make any distinction between the two. A
15 greater degree of certainty of one over the other is not
16 required. However, regarding to the extent that the State
17 relies on circumstantial evidence, all the circumstances must
18 be consistent with each other when taken together and point
19 conclusively to the guilt of the accused beyond a reasonable
20 doubt.

21 You weigh all the evidence. You look at all the evidence
22 in this case. If you are not firmly convinced of the guilt of
23 the defendant beyond a reasonable doubt after looking at all
24 the evidence, you must find the defendant not guilty.

25 In this particular matter, the defendant did not testify.

1 That is not -- and I emphasize to you, it is not a factor to
2 be considered by you in arriving at your decision. You can't
3 talk about it in the jury room. You can't use it mentally to
4 make your decision. This goes with the State's burden to
5 prove the case beyond a reasonable doubt, the State's burden
6 to produce the evidence.

7 Defendants are not required to prove their innocence.
8 That's the presumption of innocence. Every defendant is
9 presumed innocent of the crimes levied or brought against them
10 by the State of South Carolina. That presumption of innocence
11 didn't end at the beginning of the trial and it hasn't ended
12 now. It only ends if and when you believe the State has
13 presented to you evidence which you believe to be true which
14 convinces you of the guilt of the defendant beyond a
15 reasonable doubt.

16 Defendants have nothing to prove to you in this case or
17 any case. Presumption of innocence is not just some legal
18 theory or legal phrase. It's a substantial right to which
19 every defendant is entitled unless you, the jury, collectively
20 are satisfied that the -- from the evidence you find to be
21 true the guilt of the defendant beyond a reasonable doubt. So
22 what's reasonable doubt? The kind of doubt that would cause
23 an ordinary, reasonable person to hesitate to act. Proof
24 beyond a reasonable doubt is proof that leaves you firmly
25 convinced of the defendant's guilt.

1 Now, there are a few things we can know with absolute
2 certainty. The law doesn't require the State of South
3 Carolina to give you the kind of proof. What is required is
4 if based upon your consideration of the evidence, the evidence
5 you find to be true, you are firmly convinced the defendant is
6 guilty of the crime or crimes charged, you must find the
7 defendant guilty. On the other hand, if you are not firmly
8 convinced of the defendant's guilt based on the evidence you
9 find to be true, you must give the defendant the benefit of
10 the doubt and find him not guilty.

11 In this case, I qualified I believe two witnesses as
12 experts or to give their opinion. We don't normally allow
13 people to give their opinion. They have to tell you what they
14 saw, what they heard, what actually happened, but some
15 witnesses by their education and training we'll allow them to
16 give their opinion. That doesn't give them any kind of
17 special status. You evaluate all the witnesses the same. You
18 look at all the evidence the same. If you find based upon all
19 of the evidence you find that evidence which convinces you of
20 its truth and then you weigh that against the State's burden
21 to prove the defendant guilty beyond a reasonable doubt.

22 Now, regarding the testimony of children, I'll tell you
23 again briefly the same thing I told you every time we had a
24 minor or a child testify. Not only the things that I already
25 talked to about about credibility and believability, but when

1 you have a minor or a child, you consider the age of the
2 child, the child's ability to observe and remember, the
3 child's ability to understand and answer questions. Because
4 some young children may not fully understand what is happening
5 in a criminal proceeding, it's up to you to decide whether or
6 not the child or the minor understood the seriousness of
7 appearing as a witness in a criminal case, whether the child
8 understood the questions, whether the child understood the
9 difference between lying and telling the truth, and
10 understanding that sometimes children may be influenced by the
11 way questions are asked. It's up to you to decide, as with
12 all the other facts in this case, whether or not the child or
13 the minor understood the questions and answered those
14 questions truthfully.

15 I told you the defendant is charged with two crimes. One
16 of them is criminal sexual conduct with a minor first-degree
17 and the other is committing or attempting to commit a lewd act
18 on a minor. So what does the State of South Carolina have to
19 prove to you?

20 We'll look at criminal sexual conduct with a minor first-
21 degree first. The State has to prove to you beyond a
22 reasonable doubt that the defendant engaged or committed a
23 sexual battery on the victim, the minor. Now, sexual battery,
24 that's sexual intercourse or it could be cunnilingus,
25 fellatio, anal intercourse. Here, it's alleged to be sexual

1 intercourse. It could be a part of a person's body or any
2 object inserted into the genital or anal openings of another
3 person except when it's done for medical purposes.

4 The State also has to prove to you beyond a reasonable
5 doubt that the victim, the minor, was less than eleven years
6 old at the time the battery is alleged to have taken place.
7 Consent, willingness, indifference, ignorance on the part of
8 the minor or the child, if any, as to what was taking place
9 does not affect the charge of criminal sexual conduct with a
10 minor first degree because a minor under the age of fourteen
11 cannot by law consent to sexual intercourse.

12 The other charge, lewd act on a minor. The State has to
13 prove to you beyond a reasonable doubt that the defendant, the
14 person that allegedly committed the lewd act on a minor, was
15 over fourteen. Next, the State has to prove to you beyond a
16 reasonable doubt that the defendant willfully and lewdly
17 committed or attempted a lewd or lascivious act on or with the
18 body or its parts of a child under the age of sixteen with the
19 intent to arouse or appeal or gratify the lust or the passion
20 or the sexual desires of the defendant or the minor child.

21 Willfully, that means voluntarily, intentionally, with
22 specific intent to do something that the law would forbid.
23 Lewd, that's obscene, lustful, indecent. Lascivious, that
24 means intending to incite lust or lewd, obscene and indecent
25 activities. All right?

1 So an attempt. The charge on the second one is
2 committing or attempting to commit a lewd act on a minor.
3 What does an attempt to meet? An attempt means you have an
4 act that is done in partial execution of the commission of the
5 crime. There must be an intent that the act be committed. An
6 act done, maybe not full execution, but in pursuit of what was
7 intended to be done. The law does not punish the mere
8 entertainment or thought of criminals to bring the charge into
9 action. It's necessary that some act should be done pursuing
10 the intent. So intent means to intend the result which
11 actually occurs, not accidentally, not involuntarily. And
12 intent can be shown by acts and conduct of the defendant or
13 other circumstances from which you could reasonably infer the
14 intent.

15 Now, that's the basic law that you have to apply to the
16 two charges. Now, you've got two verdict forms and it's very
17 straightforward. It's got the caption of the case. We'll
18 start with the first charge, criminal sexual conduct with a
19 minor first degree. On the charge of criminal sexual conduct
20 with a minor degree -- with a minor in the first degree, we,
21 the jury, by unanimous consent find the defendant -- and
22 there's two choices. I've got to put one before the other.
23 Don't assign anything to that. Not guilty or guilty.

24 So, Madame Forelady, once your jury has well and truly
25 deliberated on that particular charge and reached its

1 unanimous decision, you check the appropriate block and
2 thereafter you sign your name and put today's date indicating
3 that that is the unanimous verdict of the jury on that
4 particular charge.

5 The verdict form on the second one, straightforward.
6 Caption of the case, committing or attempting a lewd act on a
7 minor. On the charge of committing or attempting a lewd act
8 on a minor, we, the jury, by unanimous consent find the
9 defendant -- two choices, not guilty or guilty. Again, Madame
10 Forelady, when the jury has well and truly deliberated and has
11 reached its unanimous decision on that charge, you check the
12 appropriate box, sign your name, and then put today's date on
13 there.

14 And once both of the matters have been resolved by a
15 unanimous verdict, y'all knock on the door and let the
16 bailiffs know that you have reached a unanimous verdict on
17 both matters. Unanimous means exactly what you think it
18 means, twelve zero. It doesn't mean eleven one, ten two, any
19 combination thereof. Whatever the verdict is, whatever it is,
20 everybody's got to agree.

21 So, Madame Forelady, you check that box, you sign your
22 name, and you say every member of the jury agrees that's their
23 verdict. So if you come back in the court and if requested
24 the clerk of court will ask each of the jurors is that your
25 verdict and they will be able to answer, yes, that's my

1 verdict. So what I'm going to ask that you do, Madame
2 Forelady, is take your jury back to the jury room. Mr.
3 Alternate, you stay with us. Do not -- do not begin your
4 deliberations until the bailiff hands to you the verdict forms
5 and the exhibits. Then you start your deliberations. Verdict
6 forms and the exhibits go in the jury room.

7 Now, Madame Clerk has ordered some lunch for y'all. I
8 assume it's here by now.

9 THE CLERK: Yes, sir, it's here.

10 THE COURT: All right. So they'll bring it into you in
11 just a minute or two. My suggestion is y'all enjoy that and
12 then you start your deliberations. You do it however you want
13 to, but please do not begin your deliberations until we send
14 this information in to you. Madame Forelady, if you would,
15 take your jury to the jury room, please. Thank you very much.

16 (Whereupon, the jury exits the courtroom at 12:58 p.m.)

17 THE COURT: All right. As to Mr. Hardwick, the
18 alternate, is there any reason that -- from the State that the
19 Court should not excuse the alternate at this point in time?

20 MR. MCEACHIN: No, sir. We're fine to allow him to
21 leave.

22 THE COURT: From the defense?

23 MR. BROOKER: We consent, Your Honor.

24 THE COURT: All right. Very good. All right, Mr.
25 Hardwick, I appreciate your work in this case. Your job was

1 to step into the shoes of one of the members of the regular
2 jury. They all seemed ready, willing and able to do that.
3 You're excused, not only from your service in this case but
4 from your service for the rest of the week. You're done and
5 you've got a three-year exemption from coming back to serve
6 again.

7 THE ALTERNATE: Can I see the rest of it or ---

8 THE COURT: Sir, you can -- you're free. You know, it's
9 your choice. You can do whatever you want to. All right,
10 sir. All right. Exceptions, deletions, additions to the
11 charge from the State of South Carolina?

12 MR. MCEACHIN: None, Your Honor.

13 THE COURT: Exceptions, deletions, additions to the
14 charge from the defense?

15 MR. BROOKER: Let me -- let me -- I think -- let me say
16 this, Your Honor, is I don't think there is, but I do want to
17 at least express a concern on the record.

18 THE COURT: Well, please tell me.

19 MR. BROOKER: It's obviously is, is that when I think you
20 instructed the jurors in reference to the -- to the testimony
21 of -- of the minors when they testified, is that they have to
22 take into consideration their age, you have to take into
23 consideration when they -- when -- when their memory is
24 considered, then their memory has to be taken into
25 consideration, you know, and that sort of stuff. One of the

1 things that I was concerned and I expressed this earlier, but
2 not before Your Honor is that my concern is I don't want the
3 jury to think that because a minor is testifying, you know,
4 that the -- that the burden on a minor witness is any
5 different than on an adult witness. I think underneath --
6 what is it? -- 604 and 605 is, is that it establishes what the
7 competency of the witness to testify and basically says is, is
8 that a witness is competent to testify if that witness
9 understands the difference between the truth and a lie and if
10 that witness also can express him or herself in a way in which
11 they can be understood by the jury. And it provides no
12 allowances for or at least it makes no exceptions or either a
13 diminished requirement, you know, for youthful witnesses.

14 THE COURT: All right. Well, I don't think the Court's
15 instruction diminished the requirements. I think it enhanced
16 the requirements, obviously, if -- if anything, but what I
17 think it did is properly explain to the jury their role in
18 understanding the testimony of children, but they have to make
19 the decision and I think it's -- again, I made it perfectly
20 clear to them that in addition to what I've already said to
21 them about credibility and believability of the witnesses,
22 there's additional things they need to look at. So taking the
23 charge as a whole, I think it's proper. Solicitor, do you
24 have anything to say?

25 MR. BROOKER: Thank you, Your Honor.

1 MR. MCEACHIN: I concur with the Court's decision to
2 charge it, Your Honor.

3 THE COURT: All right, sir.

4 MR. BROOKER: Thank you, Your Honor.

5 THE COURT: Anything else?

6 MR. BROOKER: No, sir.

7 THE COURT: All right. Very good. All right. Here's
8 the verdict forms, Madame Court Reporter, and y'all look at
9 the evidence and make sure we've got all the evidence. Have
10 we gotten it all together?

11 MR. MCEACHIN: Yes, sir, your honor.

12 THE COURT: All right. Hand that to the -- to the
13 bailiff with the verdict forms there.

14 MR. MCEACHIN: Your Honor, on behalf of the State, all
15 the evidence that has been admitted in the case is going back
16 to the jury.

17 THE COURT: Mr. Brooker?

18 MR. BROOKER: The defense concurs, Your Honor.

19 THE COURT: All right. Very good. Go ahead and take --
20 take it back to the -- to the jury room, please. Yes, sir,
21 they can start, but I know the clerk's bringing the food, too.
22 So it'll be up to them. All right. We'll be at ease until
23 the jury needs us. Thank you.

24 (Whereupon, the jury deliberations begin at 1:02 p.m.)

25 THE COURT: Mr. Brooker, did you talk to -- is he out on

1 bond from a bonding agency or how -- how's he on bond?

2 MR. BROOKER: I think he's out on bond from a bonding
3 agency.

4 THE COURT: Okay. Did you communicate with them and ask
5 them to stay on the bond throughout the entirety of the --
6 entirety of the trial?

7 MR. BROOKER: I haven't talked with them, Your Honor.

8 THE COURT: All right. Very good. The defendant is
9 remanded to the custody of the Marion County Sheriff's Office.
10 Thank you very much.

11 MR. MCEACHIN: Thank you, Judge.

12 (Whereupon, there is a break in the proceedings from 1:03
13 p.m. until 2:35 p.m.)

14 THE COURT: All right. As I understand it, Solicitor and
15 Mr. Brooker, the jury has reached a verdict in this matter.
16 Is that -- is the State ready to proceed?

17 MR. MCEACHIN: Yes, sir, your honor.

18 THE COURT: And the defense?

19 MR. BROOKER: Yes, sir.

20 THE COURT: All right. I know it goes without saying
21 that we asked this jury to do a very difficult thing and that
22 is to arrive at a unanimous verdict in this particular matter.
23 I do not know what the verdict is. We'll all receive it at
24 the same time. The verdict will be received with respect and
25 silence. Thank you very much. Ask the jury to come in,

1 please.

2 (Whereupon, the jury enters the courtroom at 2:36 p.m.)

3 THE COURT: All right. Madame Forelady, has your jury
4 returned a verdict in these matters?

5 THE FOREPERSON: Yes, sir.

6 THE COURT: All right. Could you hand the verdict form
7 to the bailiff, please, ma'am?

8 (Whereupon, the foreperson complies.)

9 THE COURT: All right. Madame Clerk, you may publish the
10 verdict.

11 VERDICT OF THE JURY

12 THE CLERK: Thank you, sir. The State of South Carolina,
13 County of Marion, in the Court of General Sessions, Twelfth
14 Judicial Circuit, 2010-GS-33-0050. State of South Carolina
15 versus Daniel Owens, Jr., defendant. Verdict form. Criminal
16 sexual conduct with a minor first degree. On the charge of
17 criminal sexual conduct with a minor in the first degree, we,
18 the jury, by unanimous consent find the defendant guilty.
19 Signed Vickie J. Nichols, foreperson signature. August 14th,
20 2013. Marion, South Carolina.

21 State of South Carolina, County of Marion. State of
22 South Carolina versus Daniel Owens, Jr., defendant. In the
23 Court of General Sessions, Twelfth Judicial Circuit, 2010-GS-
24 30-0050. Verdict form. Committing or attempting a lewd act
25 upon a minor. On the charge of committing or attempting a

1 lewd act on a minor, we, the jury, by unanimous consent find
2 the defendant guilty. Signed Vickie J. Nichols, foreperson,
3 August 14th, 2013. Marion, South Carolina.

4 If this is your verdict by unanimous vote, please
5 indicate so by raising your right hand.

6 (Whereupon, all jurors raise their right hands.)

7 THE CLERK: Thank you.

8 THE COURT: The jury having affirmed their verdict by the
9 raising of their right hands, does the State wish the jury
10 polled?

11 MR. MCEACHIN: No, sir, Your Honor.

12 THE COURT: Does the defense wish the jury polled?

13 MR. BROOKER: Yes, Your Honor.

14 THE COURT: All right. Madame Clerk, if you would,
15 please poll the jury now.

16 THE CLERK: Okay. Vickie J. Nichols, is this your
17 verdict?

18 JUROR NICHOLS: Yes, ma'am.

19 THE CLERK: Was this your verdict and is this still your
20 verdict?

21 JUROR NICHOLS: Yes, ma'am.

22 THE CLERK: Charles M. Reaves, is this your verdict?

23 JUROR REAVES: Yes, ma'am.

24 THE CLERK: Was this your verdict and still your verdict?

25 JUROR REAVES: Yes, ma'am.

1 THE CLERK: Barbara J. Anderson, was this your verdict?
2 JUROR ANDERSON: Yes, ma'am.
3 THE CLERK: Is this still your verdict?
4 JUROR ANDERSON: Yes, ma'am.
5 THE CLERK: Portia N. Phillips, was this your verdict?
6 JUROR PHILLIPS: Yes, ma'am.
7 THE CLERK: Is this still your verdict?
8 JUROR PHILLIPS: Yes, ma'am.
9 THE CLERK: Eric W. Larrimore, was this your verdict?
10 JUROR LARRIMORE: Yes, ma'am.
11 THE CLERK: Is this still your verdict?
12 JUROR LARRIMORE: Yes, ma'am.
13 THE CLERK: Marvin L. Genwright, was this your verdict?
14 JUROR GENWRIGHT: Yes, ma'am.
15 THE CLERK: Is this still your verdict?
16 JUROR GENWRIGHT: Yes, ma'am.
17 THE CLERK: Sean J. Gilchrist, was this your verdict?
18 JUROR GILCHRIST: Yes, ma'am.
19 THE CLERK: Is this still your verdict?
20 JUROR GILCHRIST: Yes, ma'am.
21 THE CLERK: Rebecca B. Owens, was this your verdict?
22 JUROR OWENS: Yes, ma'am.
23 THE CLERK: Is this still your verdict?
24 JUROR OWENS: Yes, ma'am.
25 THE CLERK: Teresa M. Samuels, was this your verdict?

1 JUROR SAMUELS: Yes, ma'am.

2 THE CLERK: Is this still your verdict?

3 JUROR SAMUELS: Yes, ma'am.

4 THE CLERK: Tyrell T. Phillips, was this your verdict?

5 JUROR PHILLIPS: Yes, ma'am.

6 THE CLERK: Is this still your verdict?

7 JUROR PHILLIPS: Yes, ma'am.

8 THE CLERK: Watt Byrd, was this your verdict?

9 JUROR BYRD: Yes, ma'am.

10 THE CLERK: Is this still your verdict?

11 JUROR BYRD: Yes, ma'am.

12 THE CLERK: Thank you.

13 THE COURT: All right. The jury having affirmatively

14 polled -- been polled and affirmed their verdict, is there

15 anything further as to the jury from the State?

16 MR. MCEACHIN: No, sir, Your Honor.

17 THE COURT: From the defense?

18 MR. BROOKER: Nothing from the defense, Your Honor.

19 THE COURT: All right. Ladies and gentlemen and Madame

20 Forelady, ladies and gentlemen of the jury, I appreciate your

21 service in this particular case. You did exactly what the

22 Court asked you to do, that is to well and truly deliberate

23 and find a true and just verdict in this matter, and by the

24 verdict you have rendered, you have done so.

25 The Court understands, everyone involved understands we

1 asked you to do a very difficult thing, that is to arrive at a
2 unanimous verdict, and understand that, you know, that is
3 often times difficult. When you're in a relationship, husband
4 and wife, whatever, to get two people to agree, so we
5 understand having twelve people to agree on a particular
6 matter is a -- a big task and we appreciate your service.

7 I will tell you that your service -- jury service for
8 this term of general sessions court for Marion County has now
9 ended. I will be glad for you to be excused or if you wish --
10 the Court is going to proceed on to sentencing. If you wish
11 to be part or witness that, you're welcome to go back out in
12 the jury area back out there and have a seat, but your service
13 has now ended and you are now excused. Thank you very much.

14 THE CLERK: If you need a work excuse for your work, you
15 can go across the street to the Clerk's Office and we'll
16 furnish you with one. Thank you.

17 (Whereupon, the jury is released at 2:41 p.m.)

18 THE COURT: All right. Mr. Brooker, are there any
19 motions on behalf of the defense?

20 MR. BROOKER: Your Honor, no motions at this particular
21 period of time. I guess, if I'm not mistaken, I think if we
22 have any ---

23 THE COURT: Well, I appreciate that and I understand it's
24 with the Court's discretion to be able to file a motion at a
25 later date, but the rules give that discretion to the Court.

1 Especially since I'm a visiting judge, I would ask you to go
2 forward with your motion for a new trial at this time.

3 MR. BROOKER: Your Honor, we would -- we would move that
4 the Court set aside the verdict and grant a new trial based
5 upon the fact, Your Honor, is, is that we don't believe that
6 the evidence in this particular case was sufficient in order
7 for the jury to make -- to reach a decision beyond a
8 reasonable doubt. With respect to -- and I'll be brief, Your
9 Honor.

10 THE COURT: Yes, Sir.

11 MR. BROOKER: With respect to the medical evidence in
12 connection with this case, there was two witnesses and that
13 was Dr. Wu and also Dr. -- also Kathy Saunders, who was the
14 nurse practitioner, and both testified that they did forensic
15 examinations and that the forensic examinations either was
16 inconclusive with respect to Dr. Wu, which means that is he
17 could not make a finding nor could Kathy Saunders. There was
18 absolutely no evidence to suggest that there had been any
19 penetration. I think Kathy Saunders says the hymen was
20 completely intact and, of course, completely intact there was
21 nothing to suggest, you know, that she had never suffered any
22 trauma to the time. The statements in which the young girls
23 gave obviously was littered with inconsistencies. Obviously,
24 a lot of it was contradictory to each other.

25 With respect to the lewd act on a minor, I think -- Miss

1 Minor2 I think testified that she provided -- that immediately
2 after the alleged incident occurred that she notified her
3 aunt, who again notified the parents and, of course, is, is
4 that none of that has been corroborated. I understand Your
5 Honor is what the rules is that, you know, that testimony does
6 not have to be corroborated, but there has been such a level
7 of inconsistency in connection with the testimony that's been
8 given in connection with this particular case. You know,
9 there is no credible evidence I think for a reasonable jury
10 who is absent passion and prejudice, you know, and emotion
11 could have returned a verdict of guilty I think on either of
12 these particular offenses.

13 And, of course, we would also renew our argument is, is
14 that there was insufficient evidence at least for criminal
15 sexual conduct in the first degree that a jury could actually
16 find penetration because the testimony that was given by the
17 girl was vague and, of course, is, is that I think she said
18 that, you know, that Mr. Daniel, you know, when she woke up
19 was on top of her and that he was moving, but not provided
20 any, you know, substantial direct evidence in which a jury
21 could find proof beyond a reasonable doubt that actual
22 penetration took place. Thank you, Your Honor.

23 THE COURT: Thank you. Does the State wish to respond?

24 MR. MCEACHIN: Your Honor, I believe that the evidence
25 was clear in this case. I'll address specifically the fact

1 that Ms. Minor 1 did, in fact, state that his private
2 part entered her private part, Your Honor. Furthermore, it
3 was the testimony of Dr. Wu that he did make a finding that
4 penetration occurred. Ms. Minor 1 also testified her
5 age was ten years of age at the time, which is also within the
6 -- or meets the requirement of the statute stating that the
7 victim has to be less than eleven years of age. And, Your
8 Honor, I believe that that establishes the required elements
9 so the jury would have been able to find -- had they believed
10 that, they would have been able to find the defendant guilty
11 as to count one of the indictment.

12 With regard to count two of the indictment, Your Honor,
13 Ms. Minor 2 stated the facts and circumstances
14 surrounding the case. Certainly, the argument could be made
15 that a lewd act did in fact occur, but at a bare minimum
16 attempted lewd act occurred by the fact that the defendant
17 trying to remove the victim's clothing while he himself was
18 exposed, which would also show -- or would go to show the lewd
19 and lascivious nature of the act. Based on that testimony,
20 Your Honor, I believe that a jury could find him guilty on
21 count two as well and the State would ask the verdict be
22 upheld.

23 THE COURT: All right. Very good. Regarding the
24 defense's motion for a new trial, I find having previously
25 denied the defendant's motion for directed verdict at the end

1 of the State's case and at the end of the criminal or at the
2 end of the defense's presentation also, that there was more
3 than sufficient competent evidence presented, if that evidence
4 was to be believed by the jury and by their verdict they have
5 so stated that they believe that evidence, to sustain the
6 jury's verdict of guilt of the defendant of both crimes beyond
7 a reasonable doubt.

8 Therefore, the Court respectfully declines to grant your
9 motion for a new trial. Is the State ready to proceed with
10 sentencing?

11 MR. MCEACHIN: If I may have just about thirty seconds,
12 Your Honor?

13 THE COURT: Yes, sir.

14 MR. MCEACHIN: Your Honor, we're ready to proceed.

15 THE COURT: All right. Solicitor, I'll be glad to hear
16 anything from the State that you'd like to present.

17 MR. MCEACHIN: Thank you, Your Honor. As the Court's
18 aware, the defendant was just tried and the jury returned a
19 verdict on today's date, August 14th, 2013, with regard to
20 counts one and two on Indictment Number 2010-GS-33-50, guilty
21 as to both counts in that indictment.

22 The first count is criminal sexual conduct with a minor
23 in the first degree, Your Honor. The second count is
24 committing or attempting a lewd act on a minor. The victim's
25 ages is in this case respectively at the time of the offenses,

1 Your Honor, were ten years old for the CSC victim and as a
2 matter fact had just turned ten years old, and seven years old
3 for the lewd act, Your Honor. Based on the age of the
4 victims, based on the severity of the crime, based on the
5 facts and circumstances surrounding the case, Your Honor, the
6 State would recommend a life sentence for the defendant with
7 regard to this matter. I'd ask that you hear from Detective
8 Charlie Watson, if he'd like to add anything.

9 THE COURT: All right, sir. Detective, do you wish to
10 add anything to what this State has said, Sir?

11 DETECTIVE WATSON: No, Your Honor. I'll just go with
12 what is before you. The solicitor said everything.

13 THE COURT: All right, sir. Very good. All right.
14 Solicitor, have you inquired -- did you inquire of the
15 representatives of the victims or the victims if they would
16 like to address the Court at this time?

17 MR. MCEACHIN: I have, Your Honor. I've spoken briefly
18 with the victims and explained they had an opportunity. The
19 young girls d not care to comment or say anything further,
20 Your Honor. They do want the defendant to go to prison is
21 what they indicated to me. And as far as the other family
22 members, I find that they would echo that sentiment as well,
23 Your Honor. It's been a very trying matter for all of them
24 and it's been a long time and this -- obviously, this began
25 back in 2004 and it's now 2013 and the matter has been

1 disposed of. So they're ready to have closure in the case,
2 Your Honor.

3 THE COURT: Very good. All right, Mr. Brooker, I'd be
4 glad to hear from you, sir.

5 MR. BROOKER: Your Honor, is, is that we would
6 respectfully request the Court to consider at least the -- the
7 minimum in connection with I guess count one of the
8 indictment, which is criminal sexual conduct with a minor,
9 which is severe in and of itself. I think it carries a
10 minimum penalty of 25 years.

11 Mr. Owens right now as he stands is fifty-four years of
12 age -- excuse me, fifty-five years of age. I apologize.
13 Fifty-five years of age. He is a lifelong resident I believe
14 of Marion County, South Carolina. That this is where the
15 majority of his or long majority of his friends and family
16 stays. His mother still works -- still lives in Marion County
17 and she is of, you know, considerably advanced age and
18 obviously he lives with and cares for her.

19 He is void of any significant criminal record and I think
20 that was something that was mentioned, you know, by the State.
21 The State agreed with that prior to him making a determination
22 as to whether or not he would testify and obviously is, is
23 that he held true to his innocence. He asked for a trial in
24 connection with this case and that he was unsuccessful and --
25 and one of the things that sometimes we have a concern with

1 this is, is that when sometimes when an individual exercises
2 their constitutional rights ---

3 THE COURT: There's no need for you to even make that
4 argument.

5 MR. BROOKER: Yes, Judge.

6 THE COURT: Yes, sir. First, I don't know if any plea
7 bargains were were offered by the State prior to this and if
8 there were, I am unaware of them and I have no idea what was
9 offered. Secondly, I do not and have never punished a
10 defendant for exercising their constitutional rights for
11 having a jury trial. The sentence will reflect the Court's
12 belief as to the proper sentence for the crimes for which he
13 was convicted. Continue on, please, sir.

14 MR. BROOKER: Thank you, Your Honor. Thank you, Your
15 Honor. You know, obviously, is, is that now this is -- even a
16 twenty-five year sentence, which is the minimum that's
17 available in this particular case, is devastating, you know.
18 If that sentence were to be handed down, when he was -- when
19 he is potentially released from prison -- I think none of it
20 can be -- none of it is suspendable. You know, that roughly
21 is that he can expect to do almost a day-to-day time in
22 connection with this case, which means is, is that he would be
23 roughly eighty years old at the time in which he is released
24 from prison and obviously at that particular period of time,
25 the -- what's left of his life I think will have been

1 diminished and probably the only thing that he will probably
2 have is -- and I'm assuming that his mother, who is of
3 advanced age, would be deceased. This may be -- some sisters
4 and brothers that might still be available, you know, but
5 other than these particular offenses, is that he has no
6 significant record at all, none whatsoever. Thank you, Your
7 Honor.

8 THE COURT: Thank you very much. Solicitor, could you
9 give me the benefit, if any, of the criminal record of Mr.
10 Owens?

11 MR. MCEACHIN: Your Honor, I believe the only convictions
12 maybe in the late '70s, early '80s for -- I think it was a
13 magistrate level offense.

14 THE COURT: Very good, sir. Thank you very much.

15 MR. MCEACHIN: It was a destruction of property charge,
16 Your Honor.

17 THE COURT: That's fine. Thank you.

18 (Whereupon, there is a pause in the proceedings.)

19 SENTENCE OF THE COURT

20 THE COURT: Anything else, Mr. Brooker?

21 MR. BROOKER: No, sir, Your Honor.

22 THE COURT: All right. Very good. 2010-GS-33-50, State
23 of South Carolina, County of Marion, versus Daniel Owens, Jr.,
24 regarding the crime of criminal sexual conduct with a minor
25 first degree. The Court having heard the evidence in this

1 matter, the jury having found the defendant guilty beyond a
2 reasonable doubt of this crime, the sentence is the defendant
3 is committed to the State Department of Corrections for a
4 determinate term of 35 years.

5 The defendant shall be placed on the child abuse registry
6 and the sex offender registry.

7 2010-GS-33-50 regarding lewd act on a minor, the sentence
8 is the maximum sentence for that particular crime of 15 years
9 to run concurrent with 2010-GS-33-50. Thank you very much.

10 MR. MCEACHIN: Thank you, Your Honor.

11 MR. BROOKER: Thank you, Your Honor.

12 (Whereupon, the proceedings end at 2:57 p.m.)

13

14 --- END REQUESTED TRANSCRIPT ---

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4

5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 General Sessions for Marion County, South Carolina, on the 12th
12 through 14th days of August, 2013.

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

16 Krystal J. Smith

17 Court Reporter
18

19 Florence, South Carolina
20 January 26, 2014
21
22
23

24 STATE OF SOUTH CAROLINA V. DANIEL OWENS, JR.
25 CASE NUMBER 2010-GS-33-00050

FORM 5

STATE OF SOUTH CAROLINA)

2015-CP-33-434
IN THE COURT OF COMMON PLEAS

COUNTY OF)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LIEBER CELL INST.
2. Name and location of Court which imposed sentence MALDEN COUNTY COURT OF GENERAL SESSIONS.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-65-33-0050. SC CODE § 16-15-140.
 - (b) 2010-65-33-0050. SC CODE SS 16-3-655.(1).
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 8-14-2013. 16-15-140 15 YEARS.
 - (b) 8-14-2013 16-3-655 35 YEARS.

BOOK
PAGE
FILED
JUL 23 A 10 30
CLERK OF COURT
REVISED 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS.
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: SEE ATTACHMENTS.

- (a) _____
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) SEE ATTACHMENTS
 (b) _____
 (c) _____
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? DIRECT APPEAL.
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. DIRECT APPEAL.
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. SOUTH CAROLINA COURT OF APPEALS.
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. _____
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) FIRST APPLICATION.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? YES.
- (c) your sentencing? YES.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO.

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. TRIAL & SENTENCING. THURMOND BROOKS ESQ PO BOX 1450 FLORENCE SC 29503.
 - ii. BENJAMIN J. TRIPP. SCCID. PO BOX 11589. COLUMBIA SC 29211-1589.
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. TRIAL & SENTENCE.
 - ii. DIRECT APPEAL.
 - iii. _____

19. State clearly the relief you seek in filing this application:

VACATE SENTENCE ORDER NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO.

STATE OF SOUTH CAROLINA

County of

)
)
)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Daniel Owens

SWORN to and subscribed before me this 31st
day of March, 2015.

Lillian S. Glover (L.S.)
Notary Public

My Commission Expires: 03-04-2025

FILED
BOOK _____ PAGE _____
2016 APR 28 A 10:31
CLERK OF COURT
RICHLAND COUNTY SC

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Daniel Owens
Applicant

SWORN or affirmed to and subscribed before me this
31st day of March, 2015.

Lillian B. Blower
Notary Public

My Commission Expires: 03-04-2025

FILED
BOOK PAGE
MAR 28 A 10:31
HIV SC
RHODES
COURT

APPLICANT WOULD HEREIN ALLEGE THAT HE IS BEING HELD UNLAWFULLY BY RESPONDENT DUE TO HIS BEING DENIED HIS CONSTITUTIONALLY GUARANTEED RIGHT TO HAVE "EFFECTIVE ASSISTANCE OF COUNSEL DURING CRITICAL CRIMINAL PROCEEDINGS

THAT APPLICANTS ATTORNEY FAILED TO PROVIDE SUCH IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION, APPLICABLE TO THE STATES BY AND THROUGH THE FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; AND IN VIOLATION OF THE SOUTH CAROLINA STATE CONSTITUTION ARTICLE 1 SECTIONS 3 AND 14 ACCORDINGLY.

APPLICANT WOULD SHOW THIS COURT, GIVEN THE OPPORTUNITY OF AN EVIDENTIARY HEARING, THAT HE WAS DENIED HIS CONSTITUTIONAL RIGHT TO HAVE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

APPLICANTS COUNSEL WAS INEFFECTIVE AND DEFICIENT WHEN COUNSEL FAILED TO:

1. DO THE NECESSARY PRE-TRIAL INVESTIGATIONS. THAT WOULD HAVE PROVIDED COUNSEL WITH INFORMATION AND DATA TO PREPARE AN EFFECTIVE DEFENSE FOR THE APPLICANT.
2. FORMULATE AN EFFECTIVE LINE OF DEFENSE AGAINST THE CHARGES.

HAD THE APPLICANT BEEN AFORDED EFFECTIVE ASSISTANCE OF COUNSEL, THERE IS A HIGH PROBABILITY THAT THE OUT-COME OF APPLICANTS TRIAL WOULD HAVE BEEN DIFFERANT.

COUNSEL FAILED TO TAKE CERTAIN MEASURES THAT APPLICANT SPECIFICALLY REQUESTED. AND BY THESE OMISSIONS RENDERED DEFICIENT COUNSEL THAT DID PREJUDICE THE APPLICANTS DEFENSE AND MADE THE APPLICANTS CRIMINAL TRIAL UNFAIR ~~AND~~ AND UNCONSTITUTIONAL.

COUNSEL'S FAILURE TO INVESTIGATE APPLICANT'S CASE AND DILIGENTLY WORK TO DEFEND THE APPLICANT WAS IN FACT DEFICIENTCY AND THAT DEFICIENTCY DID CAUSE PREJUDICE TO APPLICANT AND THEREFORE APPLICANT SHOULD BE GRANTED A NEW TRIAL ACCORDINGLY.

APPLICANT WILL BE AMENDING THIS APPLICATION PURSUANT TO SCRCR RULE 15(b) AFTER POST CONVICTION RELIEF COUNSEL IS APPOINTED.

Dear Marie;

H-H-2013

How are you & the family doing? I am well for the most part. I Miss you all very much and hope this will all be over soon.

Inclosed in this packet you will find the PCR form already filled out. What needs to happen now is this packet along with what you have pick out of the Transcript needs to go to a lawyer so they can incorporate what you ~~for~~ found, into a legal format and added to Don's PCR.

If you haven't found a lawyer, then go ahead and file the PCR as is, with the Clerk of Court in Marion County Court house. They will "Clock stamp" the PCR.

That just means they acknowledge it and set it for a hearing. then they will appoint Don a lawyer sweetie.

Once that happens you can turn over what you have to that lawyer and the lawyer can add your stuff to the PCR at that time. The second copy goes to the Attorney General's office. I have place sticky notes on the top right corner of each copy so you know who gets what.

I Thank you very much Marie for helping Don out with all of this.

Love you Miss You

Don

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARION	)	TWELFTH JUDICIAL CIRCUIT
	)	
Daniel Owens, Jr., #356538,	)	2015-CP-33-0434
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION FOR A
	)	MORE DEFINITE STATEMENT
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on April 28, 2015,¹ Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Marion County Clerk of Court's orders of commitment. Applicant was indicted by the February 2010 term of the Marion County Grand Jury for one count each of criminal sexual conduct with a minor, first degree (2010-GS-33-0050) and committing or attempting a lewd act on a minor (2010-GS-33-0050). Thurmond Brooks, Esquire, represented him. On August 12-14, 2013, Applicant proceeded to trial before the Honorable Steven H. John and a jury. Applicant was found guilty as indicted on both charges. Judge John sentenced Applicant to thirty-five years in prison for criminal sexual conduct, first degree, and fifteen years on committing or attempting to commit a lewd act on a minor. The sentences are to be run concurrently.

Applicant filed a timely notice of appeal. An appeal was perfected by Benjamin John Tripp, Esquire. The South Carolina Court of Appeals dismissed Applicant's appeal by Order

¹ Respondent did not receive a copy of the application until January 8, 2017.

filed March 18, 2015. State v. Owens, Op. No. 2015-UP-154 (S.C. Ct. App. 2015). The Remittitur was returned on April 3, 2015.

Attached hereto and incorporated herein by reference are the records of the Marion County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. "Failed to do the necessary pre-trial investigations that would have provided counsel with information and data to prepare an effective defense for the applicant."
- b. "Failed to formulate an effective line of defense against the charges."

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only person authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the

record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

V.

Each and every allegation not expressly admitted, qualified, or explained is hereby denied.

VI.

WHEREFORE, the Respondent requests that an evidentiary hearing be held solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRISON JAMESON
Senior Assistant Deputy Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General

By: Jessica E. Givens
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

4.19.17, 2017

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Marion	)	Case No. 2015-CP-33-00434
	)	
Daniel Owens, Jr.,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

November 15, 2017
Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

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

Jonathan Waller, Esquire
Attorney for the Plaintiff/Applicant

Lindsey McCallister, Esquire
Attorney for the State

Krystal J. Smith
Circuit Court Reporter

I N D E X

	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
1		
2		
3		
4	Daniel Owens, Jr.	
5	Direct by Mr. Waller.....	6
6	Doris Bryant	
7	Direct by Mr. Waller.....	19
8	Cross by Ms. McCallister.....	21
9	Thurmond Brooker	
10	Direct by Mr. Waller.....	23
11	Direct by the Court.....	35
12	Direct by Mr. Waller.....	38
13	Direct by the Court.....	41
14	Direct by Mr. Waller.....	43
15	Applicant Rests.....	44
16	Margaret Grover	
17	Direct by Ms. McCallister.....	46
18	State Rests.....	48
19	Arguments of Counsel.....	48
20	Ruling.....	51
21	Court Reporter Certification.....	53

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes -- intentional or purposeful interruption
 or change in thought

ellipses . . . trailing off

[ph] phonetically written

[sic] written as said

1 NOVEMBER 15, 2017

2 (WHEREUPON, the proceedings began at 1:31 p.m.)

3 MS. MCCALLISTER: Your Honor, may I approach --

4 THE COURT: Yes.

5 MS. MCCALLISTER: -- with the packet?

6 THE COURT: All right. Yes, ma'am. If you can, put the
7 caption of the case on the record, and we'll recognize Mr.
8 Waller.

9 MS. MCCALLISTER: Thank you, Your Honor.

10 This is Daniel Owens versus the State of South Carolina,
11 2015-CP-33-0434. Your Honor, Mr. Owens was indicted in
12 February 2010 for one count of first-degree CSC with a minor
13 and one count of attempt or commission of a lewd act on a
14 minor. He was represented on those charges by Thurmond
15 Brooker.

16 Your Honor, he proceeded to trial on August 12th through
17 the 14th of 2013 before Judge John. He was convicted as
18 indicted at the conclusion of that trial, and Judge John
19 sentenced him to a term of 35 years for the CSC, concurrent
20 with a term of 15 years for the lewd act.

21 Your Honor, he filed a timely notice of appeal, and an
22 appeal was perfected on his behalf by Benjamin Tripp. That
23 appeal was dismissed pursuant to Anders on March 18th, 2015.

24 He filed this PCR action on April 28th, 2015. Your
25 Honor, he is represented by Mr. Jonathan Waller, and both Mr.

1 Owens and Mr. Waller are present in the courtroom here today.

2 THE COURT: Mr. Waller, you're recognized. If we could,
3 set forth for the record the grounds of the application.

4 MR. WALLER: Thank you, Your Honor.

5 Your Honor, Mr. -- Mr. Owens has alleged in his
6 application ineffective assistance of counsel for failure to
7 properly investigate the facts and circumstances surrounding
8 his case. I think there's going to be testimony regarding
9 several instances of facts that were easily available or
10 readily available to Mr. Brooker, had he done the
11 investigation, that could have been presented at trial in Mr.
12 Owens' defense, including a witness -- the testimony of a
13 witness who was not contacted.

14 THE COURT: All right. Very good.

15 MR. WALLER: Thank you, Your Honor.

16 I would -- the applicant would call Daniel Owens.

17 THE COURT: Mr. Owens, if you could, come forward and
18 I'm going to ask, if you could, to place your left hand on
19 the Bible and raise your right hand as the clerk administers
20 the oath.

21 THE CLERK: Do you swear or affirm that the testimony
22 you give will be the truth, the whole truth, and nothing but
23 the truth, so help you God?

24 THE APPLICANT: I do.

25 THE CLERK: Thank you. Have a seat and state your name

DANIEL OWENS -- DIRECT BY MR. WALLER

1 for the record.

2 THE APPLICANT: Daniel Owens.

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

5 THE COURT: Yes.

6 DANIEL OWENS, being first duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. WALLER:

10 Q: Good afternoon, Mr. Owens. How are you today?

11 A: Fine.

12 Q: All right. Mr. Owens, I want to take you back, if I
13 can, to when you were arrested on these two charges. Do you
14 remember that?

15 A: Yes, sir.

16 Q: Okay. Did -- who was your lawyer on these charges?

17 A: Brooker.

18 Q: Okay. Thurmond Brooker?

19 A: Yes. Thurmond Brooker.

20 Q: Okay. How did you -- how did Mr. Brooker come to be
21 your lawyer?

22 A: I had found out from an inmate in the county jail.

23 Q: Okay.

24 A: He had -- he referred me to Brooker.

25 Q: Okay.

DANIEL OWENS -- DIRECT BY MR. WALLER

1 A: An inmate.

2 Q: A recommendation from somebody you were in jail with?

3 A: Right.

4 Q: Okay. And if you -- when did you first have a chance to
5 meet with Mr. Brooker?

6 A: It was later on that summer. I don't know what exact
7 month it was.

8 Q: Okay. And --

9 A: But my sister would know more about it. She's the one
10 that went ahead and done the process and everything, you
11 know, getting him and all that for me.

12 Q: Okay. Because you were in the county jail?

13 A: I was still incarcerated, yes.

14 Q: Okay. And you met with Mr. Brooker a few times?

15 A: Yeah.

16 Q: Okay. And at some point, you made the decision you were
17 going to go to trial; is that right?

18 A: That's right.

19 Q: Okay. Mr. Owens, when you and Mr. Brooker met -- and
20 you don't have to recall exactly when it was, but did y'all
21 discuss your case?

22 A: Yes, we did.

23 Q: Okay. Did y'all discuss the allegations against you?

24 A: Excuse me?

25 Q: Did y'all discuss what was being said that you did?

DANIEL OWENS -- DIRECT BY MR. WALLER

1 A: Yeah.

2 Q: Okay. And there were -- there were two separate

3 allegations; is that right?

4 A: That's right.

5 Q: Okay. Involving two separate victims?

6 A: Right.

7 Q: From one in 2004 and one in 2007?

8 A: Right.

9 Q: And you weren't arrested until sometime years later?

10 A: 2009.

11 Q: 2009?

12 A: Yeah.

13 Q: And your trial was years after that; is that right?

14 A: Right.

15 Q: Okay.

16 A: Yes, sir.

17 Q: When you and Mr. Brooker met, what did y'all talk about?

18 A: We talked about both of the incidents.

19 Q: Okay.

20 A: To start with, the first one in 2007, I didn't know

21 nothing about it until, you know, they came to arrest me.

22 Then they also came back with one saying it happened in 2004,

23 another charge.

24 Q: Okay. The 2007 one, was that the first one that was

25 disclosed that you understood?

DANIEL OWENS -- DIRECT BY MR. WALLER

1 A: Yeah.

2 Q: The first one you heard about?

3 A: Yeah.

4 Q: Okay. And I want to start -- just to keep the time
5 right, let's start with the one in 2004, if we can. Did you
6 and Mr. Brooker discuss the facts surrounding what the State
7 said you did?

8 A: Yeah.

9 Q: Okay. And Judge Nettles has a copy of the transcript up
10 there and -- but I want to just kind of go over a few things
11 with you as it related to Mr. Brooker's investigation.

12 That incident allegedly took place at your brother
13 David's house; is that right?

14 A: That's what they're saying.

15 Q: Okay. Did you and Mr. Brooker talk about --

16 THE COURT: This is the 2007?

17 MR. WALLER: The 2004, Your Honor.

18 THE COURT: 2004.

19 BY MR. WALLER:

20 Q: Did you and Mr. Brooker discuss where that incident
21 allegedly took place?

22 A: Well, I -- again, I don't remember because I don't know
23 nothing about no lewd act on a minor.

24 Q: Okay.

25 A: I don't know nothing about it.

DANIEL OWENS -- DIRECT BY MR. WALLER

1 Q: Okay. Did you tell Mr. Brooker anything about your
2 relationship with your brother, David, at that time?

3 A: Yeah, I did.

4 Q: Okay. What did you tell him?

5 A: I told Mr. Brooker that me and my brother could not get
6 along and he had to move out. He used to live with me, but
7 we had to separate because me and him couldn't get along
8 together.

9 Q: Okay. So in 2004, you and your brother were not getting
10 along?

11 A: No, sir.

12 Q: Okay. And you told Mr. Brooker that?

13 A: Yes, sir.

14 Q: Okay. And would there have been any reason for you to
15 be at your brother David's house in 2004?

16 A: No, sir. Because at that time, I had my own trailer
17 then.

18 Q: Okay. Did -- and you told Mr. Brooker all of those
19 things?

20 A: Right.

21 Q: Do you know -- and if you don't, that's fine. Do you
22 know if Mr. Brooker contacted your brother, David?

23 A: He might have, but I don't -- I don't know nothing about
24 it.

25 Q: Okay.

DANIEL OWENS -- DIRECT BY MR. WALLER

1 A: I don't remember.

2 Q: Okay. Did you ever see any statement or anything like
3 that where law enforcement contacted your brother, David?

4 A: No.

5 Q: Okay. Let's fast-forward a little bit to the 2007
6 allegations. Those allegedly took place at your -- in your
7 house?

8 A: Right.

9 Q: Okay. It was alleged that the -- that you had a key to
10 all the doors in the house?

11 A: That's for the hearsay.

12 Q: Okay. Did you and Mr. Brooker ever discuss that?

13 A: As far as I know, we did.

14 Q: Okay. What did you tell him?

15 A: I told him the only key was -- for that house was the
16 two back doors and I had put a lock on the master bedroom,
17 but that's the room I had slept in. The other rooms did not
18 carry no key.

19 Q: Okay. So not where the incident was alleged to have
20 taken place?

21 A: It didn't -- no, sir. It didn't have no -- it didn't
22 have no type of key or nothing, just a regular old doorknob,
23 trailer doorknob. That's all it had.

24 Q: Okay. At the time you were arrested and the time you
25 hired Mr. Brooker, did you still own that -- that -- it was a

DANIEL OWENS -- DIRECT BY MR. WALLER

1 trailer; right? A single-wide?

2 A: I had got rid of it before I had -- before they --

3 before I had got arrested.

4 Q: Okay.

5 A: A man came from Charleston and bought it.

6 Q: Okay. Did you know who that was though?

7 A: Not right off.

8 Q: Okay.

9 A: See, I'm not cutting you off or nothing, but see, the

10 plan was they was supposed to buy the trailer. My niece and

11 her husband was supposed to buy the trailer. I give them the

12 trailer to live in to help her and them four kids, and I

13 moved out after they moved in. I gave them the master

14 bedroom and all. But after I moved out, they turned right

15 back around and moved somebody else in.

16 Q: Okay. So after you moved out, someone else moved in?

17 A: They moved a cousin and their niece in.

18 Q: Okay. And that was -- that was in the --

19 A: That was in --

20 Q: Well, let me just --

21 A: -- the last month of July.

22 Q: Okay. Did you and Mr. Brooker discuss that?

23 A: Yes, sir, we did.

24 Q: Okay. There was an allegation made or a fact was

25 testified to that the morning following the 2007 incident

DANIEL OWENS -- DIRECT BY MR. WALLER

1 that the sheets were washed by the victims in this case. Did
2 you and Mr. Brooker discuss anything about the utilities or a
3 washer and dryer that your -- your house did or did not have?
4 A: Well, at the time, it didn't have no -- it didn't have
5 no dryer or no washer because the only washer that was in
6 there was mine.
7 Q: Okay. Where was yours?
8 A: I had took it out.
9 Q: You took it out?
10 A: I put it in the garage.
11 Q: So in July of 2007, there was no washing machine?
12 A: There wasn't no washing machine or no dryer in there at
13 the time.
14 Q: And what about a clothesline?
15 A: There wasn't no clothesline at the time because I was
16 putting one up.
17 Q: All right. So how would you have washed clothes? When
18 you were still living there, how would you wash clothes?
19 A: I would go to my mother's and wash mine.
20 Q: Okay. Do you --
21 A: My mother lived on the same lot.
22 Q: Did anybody wash clothes at -- at your house while --
23 while you lived there?
24 A: No.
25 Q: Okay. Did you and Mr. Brooker discuss that?

DANIEL OWENS -- DIRECT BY MR. WALLER

1 A: Yeah.

2 Q: Okay. At some point, you made the decision to go to
3 trial; right?

4 A: Right.

5 Q: What did you and Mr. Brooker talk about as far as
6 getting ready to go to trial? What was -- what was your
7 strategy and what conversations did y'all have?

8 A: Well, the way I thought he -- the way he said everything
9 was -- you know, looked good. I thought we had a good case.

10 Q: Okay.

11 A: We talked about where they -- where they carried them to
12 the halfway house where they've got them on the CDs. We sat
13 -- we seen all that. We sat and watched that together.

14 Q: The Care House?

15 A: Yeah.

16 Q: Okay.

17 A: Where they -- where they interviewed the kids and all
18 that. We seen all that together.

19 Q: Okay. So y'all had gone over what the allegations the
20 State had against you?

21 A: Right.

22 Q: Okay. What else -- what else did you ask Mr. -- what
23 other information did you give Mr. Brooker that he could have
24 followed up on, investigation-wise?

25 A: Well, I heard the allegations got started from one of

DANIEL OWENS -- DIRECT BY MR. WALLER

1 the -- my nieces, one of them. As far as I know, it was

2 J.A.G. . That's how the rumor got started by boys and all
3 that. They said that she talked to her Aunt Doris and told
4 Aunt Doris what happened, and that's how the rumor and all
5 this here got started.

6 Q: Okay. So it was -- it was alleged that -- that the
7 report was first made to -- to Aunt Doris?

8 A: Right.

9 Q: Okay. Do you know -- do you know an Aunt Doris?

10 A: I don't know her.

11 Q: Do you know someone named Doris?

12 A: I got a sister named Doris.

13 Q: You've got a sister named Doris?

14 A: Right.

15 Q: Did anyone named Doris ever testify at your trial?

16 A: No, sir.

17 Q: Okay. Do you know -- these people were living with you.
18 Do you know of any other Aunt Doris they may have had?

19 A: No, sir.

20 Q: Okay. Do you know and did you and Mr. Brooker -- did
21 you and Mr. Brooker discuss any investigation law enforcement
22 had done into who Doris was?

23 A: No, sir. Sure didn't.

24 Q: Okay.

25 A: They didn't do nothing.

DANIEL OWENS -- DIRECT BY MR. WALLER

1 Q: Other than the two victims in the case, do you know if
2 you saw any statements or anything from anyone else that law
3 enforcement interviewed?

4 A: No, sir.

5 Q: Okay. What was you and Mr. Brooker's, I guess, main
6 point of your defense?

7 A: Well, the way he told me that when they had the test
8 results back on the first charge on the first girl,
9 Minor 1 that everything was still intact. There wasn't
10 nothing. Everything was fine. So I thought we was -- I was
11 going from that point, you know. I thought everything was
12 good.

13 Q: Okay.

14 MR. WALLER: I beg the Court's indulgence, please?

15 THE COURT: Yes.

16 MR. WALLER: Mr. Owens, I have no further questions for
17 you. Please answer --

18 THE APPLICANT: But I had one more, if I could. I meant
19 to bring it up.

20 MR. WALLER: Well, all right. Let me ask you this that.

21 BY MR. WALLER:

22 Q: Is there anything that you think I have left out that
23 the judge needs to be aware of your -- of Mr. Brooker's
24 representation of you?

25 A: Well, I know he's aware of it, but I don't think you

DANIEL OWENS -- DIRECT BY MR. WALLER

1 are. But the first charge on me about that lewd act of the
2 first one, Jay had give Mr. Brooker a written statement. I
3 hadn't never been left with them girls. I had never been
4 left around them or never babysitted them.

5 Q: Who had been given a written statement?

6 A: Brooker.

7 Q: By who?

8 A: By the daddy, Jay Grover.

9 Q: The father of --

10 A: The father.

11 Q: -- of the alleged --

12 A: Of the kids, yeah.

13 Q: Okay.

14 A: He give a written statement to Brooker.

15 Q: Okay. Do you know if any -- when was that? Do you
16 know?

17 A: That's when I was still incarcerated.

18 Q: Okay.

19 A: He had came to my -- to the house to see him, where I
20 lived at.

21 Q: Okay. Do you know what else was done after Mr. Brooker
22 got the -- got the written statement from him?

23 A: No, no. Nothing that I know of.

24 Q: Okay. All right. Is there anything else that the judge
25 needs to be aware of?

DANIEL OWENS -- DIRECT BY MR. WALLER

1 A: The only thing I can think of is the allegation -- the
2 charges that was brought up on me is all lies I mean, you
3 know, because I wouldn't stoop that low. And also, I had --
4 I mean I had a girlfriend that was coming to see me and
5 everything. She came over every day and, you know, hung out
6 with me and everything. The girls -- they -- they hung out
7 with us too all out in the yard and everything. Everything
8 was fine.

9 MR. WALLER: Thank you, Mr. Owens. Please answer any
10 questions Ms. McCallister has.

11 THE APPLICANT: All right.

12 THE COURT: Ms. McCallister, you're recognized for
13 cross-examination.

14 MS. MCCALLISTER: Your Honor, I don't have any questions
15 for this witness.

16 THE COURT: You may step down.

17 You may call your next witness.

18 MR. WALLER: Thank you, Your Honor. The applicant would
19 call Doris Bryant.

20 THE COURT: Very good. Ms. Bryant, please come forward.
21 I'm going to ask you, if you could, to place your left hand
22 on the Bible and raise your right hand as the clerk
23 administers the oath.

24 THE CLERK: Do you swear or affirm that the testimony
25 you give will be the truth, the whole truth, and nothing but

DORIS BRYANT -- DIRECT BY MR. WALLER

1 the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Thank you. Have a seat and state your name
4 for the record.

5 THE COURT: Have a seat in the witness chair. Pull up
6 real close to that microphone and speak loudly, clearly, and
7 slowly --

8 THE WITNESS: Okay.

9 THE COURT: -- in order that we can hear everything that
10 you have to say, and let's start with your full name.

11 THE WITNESS: Okay. Doris Ann Owens Bryant.

12 THE COURT: Thank you.

13 Mr. Waller?

14 MR. WALLER: Thank you, Your Honor.

15 DORIS BRYANT, being first duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. WALLER:

19 Q: Ms. Bryant, how are you this afternoon?

20 A: Fine.

21 Q: Ms. Bryant, what is your relation to Daniel Owens?

22 A: He's my brother.

23 Q: Okay. Do you -- are you related to anyone else that you
24 know of named Doris?

25 A: No, sir, I'm not.

DORIS BRYANT -- DIRECT BY MR. WALLER

1 Q: Okay. Are you -- how are you related to the two victims
2 in this case?

3 A: They are my great-nieces.

4 Q: Okay. Are you -- are you aware of anyone else related
5 to them -- and you may not know -- named Doris or who would
6 be their Aunt Doris?

7 A: No, sir. I've asked my sister and my other kinfolks,
8 and they said they ain't had no --

9 MS. MCCALLISTER: Objection to hearsay.

10 THE COURT: Sustained.

11 BY MR. WALLER:

12 Q: Did either of the two victims involved in this case ever
13 make an allegation to you that Mr. Owens had sexually
14 assaulted either one of them?

15 A: No, sir. It was never talked about to me.

16 Q: Okay. Did you ever tell the children's grandparents
17 that they -- that they told you you were -- they were
18 sexually assaulted?

19 A: No, sir, they didn't.

20 Q: Okay. Did law enforcement ever speak with you about
21 this case?

22 A: No, sir.

23 Q: Did Thurmond Brooker or anyone on Mr. Owens' behalf ever
24 speak to you about this case after he was arrested?

25 A: My sister and my mother and me went to his office one

DORIS BRYANT -- DIRECT BY MR. WALLER

1 day and he showed us some tapes that had been on the children
2 where they're giving their testimony, but other than that,
3 no, sir.

4 Q: When you say his office, who do you mean?

5 A: Brooker.

6 Q: Mr. Brooker?

7 A: Yes, sir.

8 Q: Okay. So he spoke with you at some point?

9 A: Uh-huh.

10 Q: And you were never called to testify?

11 A: No, sir. He didn't never ask us anything about it. He
12 just showed us the tapes. That's all.

13 Q: Okay. Do you know if you were there as just a family
14 member or were you there with him conducting any
15 investigation?

16 A: Just a family member.

17 Q: Okay.

18 MR. WALLER: No further questions. Thank you for being
19 here.

20 THE COURT: Cross-examination?

21 MS. MCCALLISTER: I beg the Court's indulgence, Your
22 Honor.

23 CROSS-EXAMINATION

24 BY MS. MCCALLISTER:

25 Q: Okay. This meeting where you went to Mr. Brooker's

DORIS BRYANT -- CROSS BY MS. MCCALLISTER

1 office, that -- I don't want to make an assumption. That was
2 before the trial; correct?

3 A: Yes, ma'am. I think it was.

4 Q: Okay. Did you ever tell Mr. Brooker that the girls had
5 not made these allegations to you?

6 A: No. That's not -- I told him they had never spoke to me
7 about this.

8 Q: Okay. You told him that before the trial?

9 A: Uh-huh.

10 Q: Okay. And you told him that one time at his office?

11 A: Yeah.

12 Q: Is that the only time you ever talked to Mr. Brooker?

13 A: Yeah.

14 Q: Okay.

15 A: As far as I know, it is.

16 Q: Were you -- were you present during the trial?

17 A: No, ma'am.

18 Q: Okay. Do you live in this area?

19 A: No, ma'am. I stay in Darlington County.

20 Q: In Darlington County? Okay.

21 MS. MCCALLISTER: Thank you.

22 THE COURT: Any redirect?

23 MR. WALLER: Nothing further, Your Honor.

24 THE COURT: You may step down. Thank you.

25 Mr. Waller, you may call your next witness.

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 MR. WALLER: Thank you, Your Honor. The applicant would
2 call Thurmond Brooker.

3 THE COURT: All right. Mr. Brooker, please come
4 forward.

5 THE CLERK: If you'll place your hand on the Bible and
6 raise your right hand?

7 THE WITNESS: Sure.

8 THE CLERK: Do you swear or affirm that the testimony
9 you give will be the truth, the whole truth, and nothing but
10 the truth, so help you God?

11 THE WITNESS: Yes.

12 THE CLERK: Thank you.

13 THE COURT: Have a seat and pull up real close to that
14 microphone and speak loudly, clearly, and slowly --

15 THE WITNESS: Sure.

16 THE COURT: -- in order that we can hear everything that
17 you have to say.

18 THE WITNESS: Okay.

19 THE COURT: Thank you, Mr. Brooker. Your full name?

20 THE WITNESS: Thurmond Brooker.

21 THE COURT: Very good.

22 MR. WALLER: Thank you, Your Honor. May it please the
23 Court.

24 THURMOND BROOKER, being first
25 duly sworn, testified as follows:

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURTDIRECT EXAMINATION

1
2 BY MR. WALLER:

3 Q: Good afternoon, Mr. Brooker. How are you today?

4 A: I'm fine. And yourself?

5 Q: I'm doing well. Thank you for asking.

6 Mr. Brooker, how did you come to represent Daniel Owens?

7 A: I am -- I believe it was his family that got in contact
8 with me and then, of course, is is that retained me to
9 represent him.

10 Q: Okay. Do you recall, I guess, how long after he was
11 arrested that you were retained?

12 A: I don't know specifically. I know at the time in which
13 they contacted me, I think he was in -- he was incarcerated,
14 I believe.

15 Q: Okay. About how long after you were retained did the
16 trial take place?

17 A: I think -- and like I said, is is that I don't want to
18 say specific because I don't want to say anything that's
19 false. I know it would have at least been six months to a
20 year. I know that -- that when I was retained, he was
21 incarcerated. I think, at some point in time, we were able
22 to -- I met him, I think, while he was incarcerated and, of
23 course, at some point in time, we were able to get him, I
24 think, released on pretrial incarceration. Of course, I met
25 with him a number of times, I think, before the trial. So I

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 know I had at least six months or a year before this thing
2 went to trial.

3 Q: Okay. And you said he was able to make -- be granted a
4 bond and make that bond at some point?

5 A: That's correct. He was released.

6 Q: So access to him and y'all getting together would've
7 been a little easier at that point?

8 A: Yes. That's correct.

9 Q: Do you recall, I guess, how long prior to the trial he
10 made bond?

11 A: I can't recall. I know that it wasn't -- I know that
12 there wasn't -- I know that -- that the trial did not come
13 about immediately after he made bond. I know that he was out
14 on bond for quite some time before the trial came because I
15 know that we -- we met on a number of occasions and I never
16 got the impression that after he was released from -- from
17 trial that there was insufficient enough time for me to meet
18 with him and prepare for trial. So from my recollection was
19 is is that it was well in advance of trial.

20 Q: Okay. Mr. Brooker, when you and Mr. Owens met, did
21 y'all go over the allegations that were against him?

22 A: We did. Customarily, what I normally do is is that
23 whenever we get discovery is that at some point in time the
24 Rule 5 and Brady discovery that we received from the
25 prosecutor's office, it's my practice is generally is is that

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 I bring that client into my office and then, of course, is is
2 that we go over everything that we've received from the
3 prosecutor's office in connection with that case, and that
4 includes, in his particular case, reviewing the -- the video
5 tapes of the forensic interviews and then, of course, is is
6 that all of the documentary evidence, I think, in the case as
7 well.

8 Q: Okay. In this case, will you -- what were the
9 allegations? What were your -- your understanding of the
10 allegations?

11 A: Is is that there was -- there was basically two
12 allegations and, of course, is is that they were two sisters.
13 One made an allegation that -- that Mr. Owens had -- had
14 attempted to sexually assault her on, I think, one day while
15 her parents and her other uncle had left the home. That they
16 were there with Mr. Owens and that -- that Mr. Owens pulled
17 down his pants and exposed himself to her, attempted to pull
18 down her pants, but, of course, is that she was able to get
19 away from him.

20 The other allegation was at a different location and
21 time, and I think it was alleged by the other sister that one
22 night when they were sleeping that Mr. Owens had came into
23 the bedroom that they were in and that Mr. Owens had -- had
24 sexually assaulted her. And I think her allegations was that
25 there was penetration.

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 Q: Okay. What was your understanding of how -- how these
2 allegations came to light, how they became known by law
3 enforcement?

4 A: My understanding is is that -- that -- that the -- the
5 -- the -- I think it's the paternal grandparents and
6 specifically the paternal grandmother I think had contacted
7 law enforcement and, of course, is is that made -- made this
8 report to law enforcement and also took the two girls to Dr.
9 Wu so that they could be examined by Dr. Wu, I think who was
10 an OB/GYN, I think, at that time in Marion.

11 Q: Okay. Do you recall if the allegation was made directly
12 to the grandparents or did it come from a third party?

13 A: I think that the allegations -- and, of course, is is
14 that from my recollection was made to a third party that --
15 that -- and then, of course, those allegations eventually was
16 communicated to -- and I think it all depends on which
17 allegation.

18 I think the -- the allegation involving the full-blown
19 sexual assault versus the allegation that involves more of
20 exposure, I think that allegation -- I think one of the girls
21 alleged that after Mr. Owens had exposed himself to her and
22 she was able to get away that when -- when her parents
23 returned -- and, of course, is is that at some point in time
24 later that she told one of her aunts and that one of her
25 aunts also told the parents.

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 I think the allegation involving --

2 Q: And let me kind of just stop you right there.

3 A: Sure.

4 Q: Just to -- so Judge Nettles' understands. The first
5 allegation would have involved the telling of Aunt Michelle;
6 is that correct?

7 A: That's correct.

8 Q: And you -- and Aunt Michelle or who we know as Aunt
9 Michelle testified at the trial; is that correct?

10 A: That's correct.

11 Q: For the defense?

12 A: That's correct.

13 Q: Okay. The 2007 allegation was made to a different aunt?
14 Is that your recollection?

15 A: My understanding is that that's correct.

16 Q: Okay. And was that Aunt Doris?

17 A: I believe so.

18 Q: Okay. Did you ever see anything in your discovery, your
19 Rule 5 and Brady motions, that had any statements from Aunt
20 Doris or Aunt Michelle for that matter?

21 A: No. There was no statements in the Rule 5 and Brady
22 from Aunt Michelle or Aunt Doris to my recollection.

23 Q: Were there statements from anyone except the alleged
24 victims in this case or, you know, maybe medical -- medical
25 testimony?

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 A: Not that I am aware of. My understanding is is that --
2 is is that it was the paternal grandparents that reported to
3 law enforcement, and I think the grandmother had talked with
4 the law enforcement officer and then, of course, from that
5 point in time, I think they were sent to the Care House for
6 forensic interviews.

7 Q: Okay. Did you ever have a copy of a written statement
8 that the grandmother had given to law enforcement?

9 A: I believe so. I believe -- and I'm trying -- and I
10 don't want to say anything that's -- that's false. I know
11 the grandmother had given a statement. I recall asking -- I
12 think during the trial asking the grandmother about that
13 statement when she testified. I may have also asked the law
14 enforcement officer, but I believe that she did give a
15 statement to law enforcement.

16 Q: Okay. Getting back to the 2007 incident --

17 A: Uh-huh.

18 Q: Did you ever have any contact with Doris?

19 A: My recollection is that I've never had any contact with
20 Doris and, of course, is is that I understand that Doris
21 testified here today and I was a little bit perplexed by
22 that.

23 And if you can allow me to elaborate, is is that when --
24 when I talked with Daniel Owens and talked with his family
25 and one of the strategies that we had was is to try to

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 identify anybody that could -- that could contradict or
2 either counter the statements that the young girls had made.

3 That they provided me with the names of, I think, the
4 parents of the young girls. Those were individuals in which
5 we tried to get in contact with and, of course, we did at
6 least talk with one of the parents, I think the father. I
7 think -- and I know we talked about Aunt Michelle, and I
8 asked them to try and get me in contact with Aunt Michelle.

9 Usually, what I do -- and I'll say this and I'll be
10 finished. Usually, when I -- when I have a client and that
11 witnesses are family members or people that I don't have a
12 relationship and they have a relationship, normally what I
13 generally do is is to tell them to -- at least family to go
14 to those individuals and ask those individuals will they
15 speak with me about the allegation.

16 And I know we did talk about an Aunt Doris. Like I
17 said, I don't want to say anything false. I don't know -- I
18 think the statement that Aunt Doris made when she was here
19 that she came to my office, I can't verify that or not
20 because I don't recollect whether or not I talked with Aunt
21 Doris.

22 I know that we did talk about her as being a potential
23 witness, and we talked about them trying to get me in contact
24 with Aunt Doris, the same way that we talked about them
25 trying to get me in contact with the mother and father, get

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 me in contact with Aunt Michelle, and get me in contact with
2 anyone else that might be a fact witness.

3 Q: Okay. You were, at least prior to the trial, aware that
4 Aunt Doris had allegedly been the person who these
5 allegations were disclosed to or at least the 2007 incident?

6 A: Yeah. I'm aware of that.

7 Q: Do you have anything in your file or any notes or
8 anything like that that you -- where you tried to contact
9 Doris?

10 A: No, I don't. And like I said, normally, I don't contact
11 them. Normally, what I do when I am dealing with family
12 members -- and I do this and I've been doing it for a long
13 time and still do it today. I'll generally ask them that if
14 they have a relationship with the individual, that if they
15 would reach out to that individual and ask that individual
16 would that individual talk with me, you know, about the
17 incident. And that's been my practice, I think, ever since
18 I've been practicing, and it's still my practice and I
19 recently did that on a recent case where I've had someone
20 reach out.

21 And the reason why I do that is is that a lot at times
22 is is that I have no relationship with a potential witness.
23 If there's someone else that has a relationship with them, I
24 always ask that person if you could contact them first, as
25 opposed to me simply, a lawyer, trying to contact that person

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 and asking that person to provide me with information. I
2 always tell them to make the introduction.

3 Q: Okay. How -- in your Rule 5 and Brady disclosures, was
4 there any written statement or anything about Aunt Doris'
5 statements to law enforcement or anything like that?

6 A: I don't believe so. I think the only thing, to my
7 recollection, that was in there about Aunt Doris is is that
8 there was a statement that, I think, in the -- in the
9 forensic interviews that -- that the girl first reported to
10 Aunt Doris and then, of course, I guess it went from Aunt
11 Doris to -- to the grandparents, and then the grandparents
12 was the one that then reported it to law enforcement.

13 Q: Okay. How did you get in touch with Michelle?

14 A: I think through the family. I think the family got me
15 in contact with Michelle, and the family also got me in
16 contact with the -- with the father, who I had spoke with
17 previously.

18 I think anyone that I talked with in reference to that,
19 I relied on the family to help me get in contact because this
20 was kind of a -- like I said, this involved a family. They
21 had relationships. So I would ask them please get me in
22 contact with the family. And for the people that I did talk
23 with is is that the father and then also the Aunt Michelle is
24 is that they were instrumental in getting me in contact with
25 those -- with those two witnesses.

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 Q: Okay. If you recall, where did Aunt Michelle live in
2 relation to Florence County or Marion County?

3 A: I think that's the aunt that lives in North Carolina. I
4 don't want to say anything false. I know one aunt lived in
5 North Carolina. I think it was Michelle. I'm not certain.

6 Q: Okay. As you got closer and closer to the trial and you
7 still had not heard from any of these family members, what
8 steps did you take after that to try to get in contact with
9 them, because obviously the family wasn't getting it done?

10 A: Yeah. There were two family members that -- that I was
11 in constant contact with and, of course, is is that I was in
12 contact -- constant contact with Daniel Owens' sister.

13 Now, she was not a witness, but I probably talked with
14 her probably just as much as Daniel. She was instrumental in
15 helping me get in contact with these people.

16 And then, of course, is, like I said, I did get in
17 contact with the father and talked with the father. I got --
18 I think I talked with Michelle I'm pretty sure by phone
19 before the trial. She testified at the -- at the trial.

20 And then, of course, is is that if -- and like I said, I
21 don't know whether or not this is prudent practice, but this
22 is my practice is that normally is is that -- and I usually
23 explain this -- explain this to the clients.

24 Normally, if we have witnesses that don't want to talk
25 with me or don't want to cooperate, I will not send them a

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 subpoena to come and testify at trial if they don't come
2 forth voluntarily. And the reason why I don't do that is is
3 that I was taught -- and then, of course, is is that it's
4 always been -- at least my opinion is is that if you have a
5 witness that's not cooperating or have a witness that doesn't
6 want to be there or have a witness that you have a -- that
7 you haven't previously talked with and know what that witness
8 is going to testify to, then it's always a danger to send a
9 subpoena to that witness and put them on the stand and have
10 them testify on the stand for the first time because that
11 witness could say something devastating at that case that
12 could end your case at that particular period of time.

13 So if I had talked with the mother -- if I had not
14 talked with the mother, for example, and I didn't -- and, of
15 course, we made multiple attempts, the family did, to have
16 the mother come and talk with me or talk with me by phone and
17 my understanding is she never did, only the father. But I
18 would not have sent her a subpoena and put her on the stand
19 because had I done that and not know what she was going to
20 say, if she gets on the stand and says my daughter told me
21 that -- that Daniel Owens did touch me or molest with me,
22 then my case is over at that particular point in time.

23 So I don't put a witness on the stand unless I know what
24 they're going to say, unless they want to talk with me.

25 Q: Okay. Just to clarify a few things so we can have a

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 clear record, when you referred to the mother, you're
2 referring to the mother of the alleged victims?
3 A: I apologize. Yes, the mother of the alleged victims.
4 Q: And the father would be the father of the alleged
5 victims?
6 A: Absolutely. I apologize.
7 Q: The sister you spoke with, that's a sister of Mr. Owens?
8 A: That would be --
9 Q: And not Michelle or Doris?
10 A: Not -- not -- not Michelle. Not Michelle.
11 Q: Marie possibly?
12 A: Yeah. I think it was. I think it was. It was. It was
13 Marie. She was the one that constantly, I think, called and,
14 of course, is is that was helping out trying to get
15 everything coordinated.
16 Q: Okay. Did you ever speak to Mr. Owens' brother, David?
17 A: I never spoke with David, I don't believe. I don't have
18 a recollection of ever speaking with David.
19 Q: Okay. Did you and Mr. Owens discuss he and his brother
20 David's relationship at the -- in 2004?
21 A: I can't say specifically. There is probably a
22 probability that we did because we talked a lot about --
23 about his case and a lot about the family relationships and
24 the family dynamics. And so I don't have a specific
25 recollection of that, but I cannot dispute that and it's

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 possible because we did talk a lot about the family dynamics
2 and the family relationships and that sort of stuff in
3 preparation for his trial.

4 THE COURT: While he's looking for that, you'd -- of
5 course, if they had had Doris come here and testify and say
6 that -- put it in context and said that the report was
7 initially made to her, she's come here today and said that
8 the report was never made to her and that she -- I think she
9 said she did talk to you about it, but I want you to explain,
10 first of all, is that your understanding of the facts is that
11 the report said it was initially made to Aunt Doris?

12 THE WITNESS: Yeah. My understanding is, Your Honor --
13 and I think it's also contained within -- in the -- one of
14 the young lady's Care House statements that they talked with
15 Doris and -- and made the statement to Doris.

16 THE COURT: All right.

17 THE WITNESS: And then, of course, from Doris, it went
18 to the grandparents.

19 THE COURT: All right. Now, did -- did you ever talk to
20 Doris before the case was tried?

21 THE WITNESS: And that, Your Honor -- and that's why I
22 don't want to say anything that's false. I don't have a
23 specific recollection of talking with Doris, but if I had
24 talked with Doris -- and I'm almost certain that I would have
25 had Doris or at least requested Doris to testify because I

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 was trying to get as many family members that could -- that
2 could contradict the statements that the girls had made to
3 appear for court. And then, of course, the only ones that we
4 were able to get to appear for court -- I think Aunt Michelle
5 was the only one, I think, that showed up for court.

6 That the father -- I never -- I talked with the father.
7 I never talked with the mother. It was my understanding from
8 communicating with the family members that they would come
9 forth and talk with me. Only the father did and then, of
10 course, is is that we made attempts to try to get him to come
11 -- come to the stand -- come to trial and testify at trial
12 and, of course, is is that he declined to do that and, of
13 course, also the mother.

14 And I think -- and so if -- if Doris had provided me
15 with information that contradicted that report, I would've
16 asked Doris to testify, but I can't say it from my specific
17 recollection because I don't have a specific recollection.

18 But I can tell you is is that at that time, we were
19 trying to get any witness, family member, that could
20 contradict the statements of the family -- of these two
21 girls, trying to get -- trying to get them to come and
22 testify at trial. So it would shock me that if Aunt Doris
23 told me that she had -- her statements had contradicted the
24 statements of these young girls, that I would not have asked
25 her to come to trial and be a witness. And that's just, like

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 I said, unusual to me.

2 THE COURT: Okay. Very good.

3 MR. WALLER: Your Honor, just for -- to point you to the
4 transcript. The grandmother testifies, and on page 238, line
5 3, is where she -- at least one instance of describing the
6 disclosure made by her husband's sister, Doris. I believe
7 there were others earlier in the trial, but that's at least
8 one of them.

9 BY MR. WALLER:

10 Q: Mr. Brooker --

11 THE COURT: And what you're maintaining is is that that
12 clearly was never disclosed to you. If it had been, you
13 would have spoken to her and subpoenaed her to court?

14 THE WITNESS: I certainly would have -- would have --
15 would have had her in court. Like I said, the only -- the
16 only way that I would not have had her in court is -- is
17 unless I reached the conclusion that she was not a willing
18 witness.

19 And like I said, normally, my practice is that if I get
20 a witness that is not a willing witness or, if I get a witness
21 that won't talk with me in advance of trial, I will not
22 subpoena them for trial and find out what their statements is
23 for the first time on trial because it could doom the trial.

24 THE COURT: Right.

25 BY MR. WALLER:

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 Q: Mr. Brooker, let me ask you a few things because I just
2 want to make sure everybody is clear.

3 A: Sure.

4 Q: You were aware that -- through discovery that the State
5 contended that the disclosure had been made to Aunt Doris.
6 You just weren't aware that she contends that no one ever --
7 that she never received any such disclosure?

8 A: Yeah. I don't have a specific recollection of that and,
9 like I said -- and I wish I did because, like I said, had --
10 had Aunt Doris said that I have a specific -- that this never
11 was told to me, I would've asked Aunt Doris to be a witness
12 and, of course, Aunt Doris didn't testify.

13 But like I said, I don't want to say anything that's
14 dishonest because I'm going off my memory. I don't have a
15 specific recollection of having that conversation with Aunt
16 Doris because, otherwise, if I had, I believe I would have
17 asked Aunt Doris to come to trial and be a witness.

18 Q: Sure.

19 A: The same with Aunt -- I asked Aunt -- or Michelle to be
20 a witness.

21 Q: I'm just trying to clarify so our finder of fact is
22 clear. I'm just trying to make sure that the allegations
23 were known that they had been made to Aunt Doris, but you
24 didn't -- your testimony is that you didn't have the
25 information that she's testified to today?

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 A: Yeah. I don't -- I don't recollect having that
2 conversation with Aunt Doris.

3 Q: Okay.

4 A: Okay.

5 Q: All right. You testified that you spoke to the father?

6 A: I did.

7 Q: Okay. What -- why did you speak to the father?

8 A: I had spoke with the father because it was my
9 understanding that at some point in time that these young
10 ladies -- that the young girls, the alleged victims -- and I
11 think it was -- and I can't remember whether or not it was
12 contained within their forensic interviews, but it was my --
13 excuse me.

14 It was my understanding at some point in time that --
15 that I think with respect to the first incident involving the
16 -- the sexual exposure or the nude exposure to one of the
17 girls, it was my understanding is is that it was alleged that
18 -- that the young lady reported it to Aunt Michelle and then,
19 of course, somehow then, of course, is is that it was then
20 became known to the parents.

21 So I wanted to talk with the parents and to -- and to
22 ask them whether or not -- whether or not the young girls had
23 discussed that with them or whether or not they had any
24 knowledge of that or either whether or not at any point in
25 time these young girls had came to them and says Uncle -- you

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 know -- you know, Uncle Dan, you know, did these horrible
2 things to me.

3 And so -- and the reason why I reached out to them was
4 is is that because I was being told by the family that they
5 had information that could be useful, that they had
6 information that could potentially contradict -- contradict
7 the statements of the young girls.

8 Q: Okay.

9 A: And so that's why I wanted to talk with them.

10 Q: And that was the 2004 incident?

11 A: Yeah. I think that was the 2004 incident in which he
12 was alleged to have exposed himself.

13 Q: And subsequent -- subsequently to that, the entire
14 family, the two victims and some of their other siblings and
15 the mother and father moved in with Mr. Owens? Is that your
16 understanding?

17 A: That's -- that's my understanding. That they stayed
18 with Mr. Owens for -- for I don't know how long, but for a
19 brief period of time or some period of time.

20 MR. WALLER: I beg the Court's indulgence?

21 THE COURT: Yes.

22 Do you feel like you properly investigated this case and
23 were properly prepared to go to trial?

24 THE WITNESS: I did. I did. And the reason why I say
25 that, Your Honor, is is that -- is is that I collected all of

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 the Rule 5 and Brady discovery. I met with my clients on a
2 -- my client on a number of occasions. We went over all of
3 that. I interviewed him about -- about his version of the
4 facts.

5 When I was told by these potential witnesses that were
6 family members is is that I made attempts through the family
7 to get in touch with those witnesses and talk with the ones
8 who was willing to talk with me. Two of them was
9 cooperative, at least initially, and that was the father of
10 the -- of the minor victims and also Aunt Michelle.

11 The father -- I think I went out to -- to their home. I
12 made efforts and drove out to their home and I think talked
13 with the -- with the father, but, of course, is is that the
14 father did not want to appear for trial and did not show up
15 for trial. Aunt Michelle did.

16 So for all of the witnesses that was willing to
17 cooperate and talk with me, I did attempt to reach out to
18 them because we were trying to contradict the -- the
19 allegations of the -- you know, of the two victims.

20 THE COURT: In your opinion, what was the most damning
21 evidence presented against the applicant?

22 THE WITNESS: Obviously, the most damning evidence that
23 was presented against the applicant was the statements of the
24 -- of the two victims that -- that alleged that these
25 incidents took place, and that's why I thought at least

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 wherever we could contradict or either discredit those
2 statements, that that would be the best way to attack this.

3 And that's why I wanted to talk with any family member
4 that might have any evidence and, of course, once we learned
5 that -- that -- that they were, I think, taken to Dr. Wu
6 immediately thereafter, we even took the steps to obtain the
7 medical records from Dr. Wu and then, of course, is also
8 depose Dr. Wu because from my reading of the -- of Dr. Wu's
9 records that Dr. Wu's records -- my understanding was is is
10 that they were unremarkable, that there was nothing that --
11 that was unremarkable about the examination. So we were
12 trying to collect any evidence that was available to
13 discredit the -- you know, the allegations.

14 THE COURT: Very good.

15 MR. WALLER: Just very briefly, Your Honor.

16 BY MR. WALLER:

17 Q: Mr. Brooker, outside of the -- the alleged victims and
18 one of their other siblings and law enforcement, was there
19 any other evidence presented by the State?

20 A: Are you talking about at trial?

21 Q: Yes, sir.

22 A: My recollection at trial is is that they presented two
23 witnesses and then, of course, is those was the -- the two
24 minor victims and then, of course, is is that they presented
25 the testimony of the investigating officer. I forget his

THURMOND BROOKER - DIRECT BY MR. WALLER AND THE COURT

1 name, but there was three witnesses that they called to
2 testify at trial.

3 MR. WALLER: Nothing further. Thank you. Please answer
4 any questions --

5 THE COURT: Cross-examination?

6 MR. WALLER: -- Ms. McAllister has.

7 MS. MCCALLISTER: Your Honor, I don't believe I have
8 questions for Mr. Brooker.

9 THE COURT: Very good. You may step down.

10 THE WITNESS: Thank you, Your Honor.

11 MR. WALLER: Nothing further from the applicant, Your
12 Honor.

13 THE COURT: All right. I'll be glad to hear from the
14 State.

15 MS. MCCALLISTER: Your Honor, I may have a witness.
16 Could I just have a moment? I'm trying to ascertain about
17 this issue of Doris and --

18 THE COURT: Okay.

19 MS. MCCALLISTER: -- I may call a witness.

20 THE COURT: Okay. Very good. We will -- we will take
21 about a -- how many more cases do we have today?

22 MS. MCCALLISTER: One more.

23 THE COURT: Okay. We will take about a five-minute
24 recess.

25 MS. MCCALLISTER: Thank you, Your Honor.

1 THE COURT: Very quickly.

2 (WHEREUPON, there was a break in the proceedings from
3 2:22 p.m. until 2:30 p.m., after which the proceedings
4 resumed as follows.).

5 THE COURT: Ms. McMillan [sic], you're recognized.

6 MS. MCCALLISTER: Thank you, Your Honor. The State
7 would call Margaret Grover.

8 THE COURT: Very good.

9 Ms. Grover, please come forward. I'm going to ask you
10 if you could place your left hand on the Bible and raise your
11 right hand as the clerk administers the oath.

12 THE WITNESS: Okay. Do I --

13 THE COURT: Left hand on the -- on the Bible.

14 THE WITNESS: Wait a minute. This is my right.

15 THE COURT: Okay.

16 THE WITNESS: My left?

17 THE COURT: Yeah. Raise your right hand.

18 THE WITNESS: Thank you.

19 THE COURT: Very good.

20 THE CLERK: Do you swear or affirm that the testimony
21 you give will be the truth, the whole truth, and nothing but
22 the truth, so help you God?

23 THE WITNESS: Yes.

24 THE CLERK: Okay. Have a seat in this --

25 THE COURT: All right. Watch your step. All right.

MARGARET GROVER - DIRECT BY MS. MCCALLISTER

1 Have a seat in the witness chair. Pull up real close to that
2 microphone.

3 THE WITNESS: Okay.

4 THE COURT: Speak loudly, clearly, and slowly in --

5 THE WITNESS: All right.

6 THE COURT: -- order that we can hear everything that
7 you have to say.

8 THE WITNESS: Okay.

9 THE COURT: All right. Pull up close to the microphone.

10 THE WITNESS: I'll pull it to me.

11 THE COURT: There you go. All right. Now, your full
12 name?

13 THE WITNESS: Margaret R. Grover.

14 THE COURT: Thank you, Ms. Grover.

15 Yes, ma'am?

16 MARGARET GROVER, being first
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. MCCALLISTER:

20 Q: Ms. Grover, are you related to the victims in this case?

21 A: Yes.

22 Q: How are you related to them?

23 A: I'm their mother now. I was their grandmother.

24 Q: Okay. And you've been present in the courtroom for the
25 testimony here today; correct?

MARGARET GROVER - DIRECT BY MS. MCCALLISTER

1 A: Yes.

2 Q: Okay. And you were present and testified at trial;
3 correct?

4 A: Correct.

5 Q: And your testimony at trial was that you found out about
6 these allegations against Mr. Owens from an Aunt Doris?

7 A: Right.

8 Q: Is that correct?

9 A: That's correct.

10 Q: Okay.

11 A: That's my husband's sister, Doris.

12 Q: Your husband's sister, Doris?

13 A: On the Grover side.

14 Q: Okay. Is the person who got up here today and
15 identified herself as Doris -- is that the person who told
16 you about the allegations?

17 A: No.

18 Q: Do you know that person?

19 A: I've never seen her before.

20 Q: Okay.

21 MS. MCCALLISTER: That's all I have, Your Honor.

22 THE COURT: Very good. All right.

23 MR. WALLER: No questions for this witness.

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

25 THE WITNESS: Thank you.

1 THE COURT: All right. Anything further, Ms. McMillan?

2 MS. MCCALLISTER: No, Your Honor.

3 THE COURT: Any reply from the State? I mean from the
4 applicant?

5 MR. WALLER: No reply, Your Honor.

6 THE COURT: Very good. All right. I'll be glad to hear
7 -- hear any closing comments from you, Mr. Waller.

8 MR. WALLER: Thank you, Your Honor.

9 Your Honor, I believe the fact that there's potentially
10 two different Dorises from Mr. Brooker's perspective makes
11 him contacting them all that more important. It's my
12 understanding from his testimony he knew an Aunt Doris was
13 the one that this disclosure was made -- made to, and he
14 didn't do any investigation as far as whether that actually
15 happened and who this Aunt Doris was. He called a different
16 aunt to testify. That that aunt said that the first
17 disclosure was false that was made to her back in 2004. It
18 allegedly took place on the day of the incident, and he
19 didn't follow up on the 2007 one.

20 Your Honor, furthermore, I believe he testified he
21 didn't contact Mr. Owens' brother, David. Again, in 2004,
22 supposedly where the incident took place, Mr. Owens has
23 testified that he and his brother didn't get along. He
24 wouldn't have been over there on that day. Mr. Brooker
25 testified that he did not contact Mr. Owens' brother.

1 Your Honor, I think that the -- the investigation was
2 done to some extent, but it wasn't done as far as key
3 witnesses that could have potentially -- not provided an
4 alibi, but provided contradictory testimony and contradictory
5 evidence in the defense for Mr. Owens.

6 THE COURT: All right. Very good.

7 Yes, ma'am, Ms. McMillan?

8 MS. MCCALLISTER: Thank you, Your Honor. I think Mr.
9 Brooker explained in detail his investigative process. I
10 mean he was aware of the existence of a Doris to whom these
11 disclosures were made, and I think he testified quite clearly
12 what his investigation was and how he went about trying to
13 make that contact and, you know, that he -- he leaves that up
14 to the family, and the family was able to put him in contact
15 with the other aunt, but was not able to put him in contact
16 with -- with Doris.

17 And, Your Honor, I think --

18 THE COURT: If they would have gotten -- if he would've
19 looked into it and he would've gotten Doris, that would've
20 just been one more witness for the State, wouldn't it?

21 MS. MCCALLISTER: Well, exactly. I don't think that
22 this Doris who's here today, who says the girls didn't
23 disclose to her, is the Doris that Mr. Brooker was trying to
24 track down. So the Doris, as far as we know, that Mr.
25 Brooker was trying to track down may or may not have even

1 been a helpful witness for him. We don't know because we
2 don't have testimony from her. It's two different people.

3 THE COURT: Right.

4 MS. MCCALLISTER: So -- so there's that issue, Your
5 Honor, and I think he explained his -- you know, his strategy
6 for why he doesn't just -- yes, he knew that there was this
7 other Doris out there who could potentially be helpful, but
8 he doesn't just send out a subpoena and have someone show up
9 that he's never talked to. And I think that's a reasonable
10 strategy and a reasonable way to -- to conduct himself.

11 And, you know, as far as -- as far as David, I think
12 it's the same issue, Your Honor. You know, he's explained.
13 He's explained in detail that he relies on the family to get
14 in contact with these -- with these family members. He tried
15 to contact some of them. Some of them were responsive and
16 some of them were not, and he can't force somebody's
17 cooperation on Mr. Owens' behalf.

18 MR. WALLER: Your Honor, may I respond briefly?

19 THE COURT: Yes.

20 MR. WALLER: Your Honor, I understand Mr. Brooker relies
21 on the family and, to a certain extent, I don't disagree with
22 him. This is a -- particularly in these facts and
23 circumstances, this was an allegation of an older family
24 member assaulting younger family members. Obviously, there's
25 very sensitive issues at play.

1 However, as we get closer and closer and the family that
2 Mr. Brooker has asked to help is not getting the job done, he
3 has -- has the duty to step in and conduct his own
4 investigation. He's the one bound by our rules of ethics,
5 not the family members of Mr. Owens.

6 THE COURT: What do you think -- of course, we don't
7 know what the other Doris would have said, do we?

8 MR. WALLER: We do not, Your Honor.

9 THE COURT: All right.

10 MR. WALLER: She didn't testify and no statement.

11 THE COURT: And hasn't testified here today.

12 MR. WALLER: No, sir. No statement was ever given to
13 law enforcement that we're aware of.

14 THE COURT: All right. And how about David? Do we know
15 what he would say? Whether it would be helpful or not?

16 MR. WALLER: Your Honor, we don't. No, sir.

17 THE COURT: All right. All right.

18 These -- these are very difficult questions that have
19 been presented here today, but taking the testimony in --
20 into consideration that's been presented here today, I do
21 indeed find that Mr. Brooker adequately investigated this
22 case.

23 It's unfortunate from the applicant's standpoint that
24 the minor children testified and the jury seemed to believe
25 them, but in order for me to grant a post-conviction relief,

1 number one, it would have to be a very high bar, and I think
2 it would be incumbent upon the applicant to produce witnesses
3 with specificity as to what they would say and whether or not
4 it would have made a difference.

5 I believe that Mr. Brooker's strategy was reasonable,
6 and the motion for post-conviction relief is denied. I'm
7 going to ask that the State prepare in order to that effect.

8 Ms. McMillan, I'm going to ask that you forward a copy
9 -- forward the order to Mr. Waller prior to submitting it to
10 me to ensure that it accurately reflects my ruling.

11 MS. MCCALLISTER: Thank you, Your Honor.

12 THE COURT: Very good.

13 MR. WALLER: Thank you, Your Honor.

14 (WHEREUPON, the proceedings ended at 2:38 p.m.)

15

16 --- END REQUESTED TRANSCRIPT ---

17

18

19

20

21

22

23

24

25

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

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 52, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Marion County, South Carolina, held in Florence, South Carolina, on the 15th day of November, 2017.

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

17 s/Krystal J. Smith

18	Court Reporter

20	Florence, South Carolina

21	December 24, 2018

STATE OF SOUTH CAROLINA
COUNTY OF MARION

Daniel Owens, Jr., #356538,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-33-0434

ORDER OF DISMISSAL

FILED
2018 SEP 19 AM 10:11
CLERK OF COURT
MARION COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed by Daniel Owens, Jr. (Applicant) on April 28, 2015, and received by Respondent on January 8, 2017. Respondent made its Return on April 19, 2017. An evidentiary hearing into the matter was convened on November 15, 2017, at the Florence County Courthouse before the undersigned. Jonathan Waller, Esquire, represented Applicant. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Applicant's sister, Doris Bryant, and trial counsel Thurmond Brooker, Esquire (Counsel), also testified. Margaret Grover, the grandmother of the victims, testified on behalf of Respondent. This Court also had before it a copy of the records of the Marion County Clerk of Court, records from the South Carolina Department of Corrections, the application, Respondent's Return, the trial transcript, and Applicant's appellate records.

PROCEDURAL HISTORY

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Marion County Clerk of Court's orders of commitment. Applicant was indicted by

the February 2010 term of the Marion County Grand Jury for one count each of first-degree criminal sexual conduct with a minor (2010-GS-33-0050), and committing or attempting a lewd act on a minor (2010-GS-33-0050). Thurmond Brooker, Esquire, represented him. On August 12-14, 2013, Applicant proceeded to trial before the Honorable Steven H. John and a jury. Applicant was found guilty as indicted on both charges. Judge John sentenced Applicant to thirty-five years' imprisonment for first-degree criminal sexual conduct and fifteen years' imprisonment for a lewd act on a minor. The sentences are to be run concurrently.

Applicant filed a timely notice of appeal. An appeal was perfected by Benjamin John Tripp, Esquire. The South Carolina Court of Appeals dismissed Applicant's appeal by Order filed March 18, 2015. State v. Owens, Op. No. 2015-UP-154 (S.C. Ct. App. filed March 18, 2015). The Remittitur was returned on April 3, 2015.

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Failed to do the necessary pre-trial investigations that would have provided counsel with information and data to prepare an effective defense for the applicant."
 - b. "Failed to formulate an effective line of defense against the charges."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688 (1984)). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable

probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

“[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014)). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” Wiggins v. Smith, 539 U.S. 510, 521-22 (2003). Further, “[d]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include ‘which jurors to accept or strike, which witnesses should be called on the defendant’s behalf, what evidence should be introduced, whether to object to the admission of evidence, [and] whether and how a witness should be cross-examined.’” Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (quoting Sexton v. French, 163 F.3d 874, 885 (4th Cir.1998)).

Applicant testified his sister retained Counsel for him, and Counsel came to meet with him at the jail. Applicant testified he was charged with two separate incidents, which occurred in 2004 and 2007, with two separate victims. According to Applicant, he and Counsel met several times to discuss the case, including Applicant’s version of the facts. Applicant testified he and Counsel

watched the victims' forensic interviews together and discussed the medical reports, which found no physical evidence of sexual abuse.

Applicant also testified the State alleged first incident took place at his brother, David's, house, and Applicant told Counsel he and his brother did not get along and did not have a relationship in 2004. Applicant also testified he discussed the 2007 incident with Counsel, which the State alleged took place at Applicant's trailer home. Applicant testified he told Counsel to investigate the use of a key to unlock the bedroom door, because according to Applicant, only the front and back doors could be locked or unlocked with a key. Applicant further testified he told Counsel the victim could not have washed the sheets the next morning as she claimed because the trailer home did not have a washer and dryer at the time. However, Applicant conceded he had sold the trailer "to a man in Charleston" by the time of his arrest in 2009.

Applicant also testified he obtained a statement from the girls' father attesting that Applicant had not been around the children, but he did not know what was done with the statement, if anything. Further, Applicant testified the case arose because one of the girls reported the abuse to "Doris," and Applicant has a sister named Doris who did not testify at trial.

Doris Bryant testified she is Applicant's sister and is the only Doris in their family. Ms. Bryant testified the victims were her great-nieces, and neither of them had ever disclosed any abuse to her. Further, Mrs. Bryant testified law enforcement never interviewed her. Mrs. Bryant also testified she went to Counsel's office to watch the girls' forensic interviews, and she told Counsel the girls had never disclosed abuse to her. Finally, Mrs. Bryant testified she lives in Darlington and was not present at Applicant's trial.

Counsel testified this case arose when two sisters made separate allegations against Applicant — one from a 2004 incident and one from a 2007 incident. Counsel testified the

disclosures made to two aunts; the 2004 allegations were disclosed to "Aunt Michelle," who testified at trial, and the 2007 allegations were disclosed to "Aunt Doris," who did not testify at trial. According to Counsel, Michelle then reported what the girls said to their paternal grandmother, who made a report to law enforcement and took the girls to the doctor.

Counsel testified the girls were then given forensic interviews at Care House, which were recorded, and which he reviewed with Applicant. Counsel testified there was a statement in discovery from the victims' grandmother, but no statement from either Doris or Michelle, and he asked for them, specifically, prior to trial. Counsel further testified he was "perplexed" by Mrs. Bryant's testimony, and he had not been told of her existence prior to trial. Counsel testified he specifically discussed possible witnesses who could help counter the allegations with Applicant, who gave him the names of Michelle and the girls' mother and father. Counsel further explained it is his standard practice to have his client or other family members contact potential witnesses and ask the witnesses to call Counsel's office. Counsel testified this method usually works better than attempting to contact witnesses himself when the family has a relationship with them. Counsel further testified the family was instrumental in putting him in contact with the mother, father, and Michelle, but no one named Doris ever contacted him.

Counsel testified if Doris had contacted him with this information, he would have asked her to testify. However, he testified it is his practice not to subpoena uncooperative witnesses because they can devastate a trial, and he will not put a witness on the stand if he does not know what the witness will say.

Margaret Grover testified she is the victims' biological grandmother, now mother, as she is raising them. Ms. Grover testified the Doris to whom the girls first disclosed the abuse is her husband's sister, not Ms. Bryant.

This Court finds Applicant has failed to prove Counsel's performance was deficient in any way. Counsel investigated the existence of an "Aunt Doris" to the best of his ability. Counsel credibly explained why, as a matter of course, he does not subpoena witnesses who have not shown an interest in participating in the defense and when he does not know what they will say at trial. This Court finds Counsel's strategy is valid, and Counsel made a reasonable decision not to subpoena a witness whose testimony he had never heard. Additionally, the Court finds the witness called by Applicant at the evidentiary, Doris Bryant, is not the same "Aunt Doris" described and discussed at trial. See Tr. pp. 115-16, 238. Therefore, this Court further finds Applicant has failed to prove he was prejudiced by any deficiency in Counsel's investigation of Doris because he has failed to produce the witness he alleges should have been called to testify. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (holding a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence in order to prove counsel was ineffective for failing to call a witness.). Applicant's speculation as to the existence of helpful witnesses and/or testimony is insufficient to meet his burden on this allegation. Accordingly, this allegation is denied and dismissed.

CONCLUSION

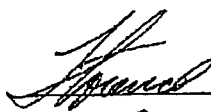
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

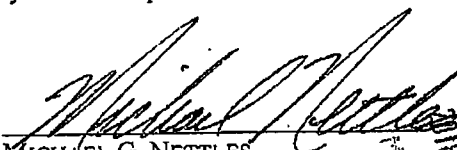
The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.

, 2018
9-7-, South Carolina


 MICHAEL G. NETTLES
 Presiding Circuit Court Judge
 Twelfth Judicial Circuit

FILED
 18 SEP 19 AM 10:11

WITNESSES

CHARLIE WATSON
Sheriff

Marion County

DOCKET NO. 2010-GS-33-0050

The State of South Carolina

County of

MARION

COURT OF GENERAL SESSIONS

FEBRUARY

TERM

2010

THE STATE

vs.

DANIEL OWENS JR

ARREST WARRANT NUMBER

J966388

J966389

ACTION OF GRAND JURY

Tue B:11

Robert D. Hareline

Foreperson of Grand Jury

Date:

2-18-2010

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR, 1ST DEGREE;
COMMITTING OR ATTEMPTING A LEWD
ACT ON A MINOR

FILED
BOOK PAGE
2010 FEB 19 A 9 18
MARION COUNTY

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF MARION)

CRIMINAL SEXUAL CONDUCT WITH A MINOR,
1ST DEGREE;
COMMITTING OR ATTEMPTING A LEWD ACT ON
A MINOR

At a Court of General Sessions, convened on FEBRUARY 18, 2010 the Grand Jurors of
MARION County present upon their oath:

COUNT ONE- CRIMINAL SEXUAL CONDUCT WITH A MINOR, 1ST DEGREE

That DANIEL OWENS JR did in Marion County, State of South Carolina, on or about July, 2007, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who is less than eleven (11) years of age, to wit: _____, whose date of birth is _____ in violation of Section 16-13-655(A)(1), [formerly Section 16-3-655(1)], S. C. Code of Laws, 1976, as amended.

COUNT TWO- COMMITTING OR ATTEMPTING A LEWD ACT ON A MINOR

That DANIEL OWENS JR, being over fourteen years of age, did in Marion County on or about June 2004, willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, to wit _____; with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, including but not limited to: exposing his penis and attempting to remove her clothes, in violation of Section 16-15-0140, 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.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Marion
 STATE VS.
Daniel Owens

AKA: _____

Race: W Sex: M Age: 55

DOB: _____ SS#: _____

Address: SPRINGVILLE RDCity, State, Zip: MARION, SC 29571

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

INDICTMENT/CASE#: 2010-GS-33-0050A/W#: J966388Date of Offense: 8/14/2009S.C. Code § : 16-03-0655(1)CDR Code #: 0385

SENTENCE SHEET

in violation of § 16-03-0655(1) of the S.C. Code of Laws, bearing CDR Code # 0385
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
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.ATTEST: 75437 Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 35 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:☒ 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: Sex Offender Registry Required☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____ days/hours Public Service EmploymentTotal: \$ _____ plus 20% fee: \$ _____ Obtain GED ☐

Payment Terms: _____ Attend Voc. Rehab. or Job Corp. _____

☐ Set by SCDPPPS _____ May serve W/E beginning _____Recipient: _____ Substance Abuse Counseling ☐*Fine: _____ Random Drug/Alcohol testing ☐

§ 14-1-206 (Assessments 107.5 %) \$ _____ Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 pmts. of \$ _____ beginning _____

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ Other: _____

§ 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/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90Clerk of Court/ Deputy Clerk Kristal Smith Presiding Judge [Signature]Court Reporter: [Signature] Judge Code: 129SCCA/217 (03/2011) Sentence Date: 8/14/13

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Marion
 STATE VS.
Daniel Owens

INDICTMENT/CASE#: 2010-GS-33-0050A/W#: J966389Date of Offense: 8/14/2009S.C. Code §: 16-15-0140CDR Code #: 2468

AKA: _____

Race: W Sex: M Age: 55

DOB: _____ SS#: _____

Address: SPRINGVILLE RDCity, State, Zip: MARION, SC 29571

DL#: _____ SID#: _____

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (1996)

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468
☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
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.ATTEST: McLachlin, Fitzlee H75457
SC Bar#☒ Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 ~~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: 2010-68-33-50
☒ 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	\$ <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 (SCCJA 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 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 \$ _____ beginning _____

\$ _____ 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: Crystal Smith

SCCA/217 (03/2011)

Presiding Judge

Judge Code: _____

Sentence Date: 8/14/13