

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dillon County

Honorable Larry B. Hyman, Circuit Court Judge

SAMMY LEE SCARBOROUGH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001898

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
SAMMY LEE SCARBOROUGH	)	
<u>DEFENDANT</u>	)	

November 4-6, 2013
Dillon, South Carolina
Volume 01 of 03

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

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NATASHA FUNDERBURK,
MAGGIE MOORE,

Minor 2

SHARON MURPHY,

Minor 1

HOPE OWENS,

Minor 3

Minor 5

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VALERIE WILLIAMS, Attorney General's Office
SALLY WILLIAMSON,

HATTIE O. GORDON
Circuit Court Reporter

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COLLOQUY

MR. DANIEL: The State calls the case of Sammy Lee Scarborough. 2013-GS-17-292, C.S.C. with a minor in the first degree; 293, dissemination of pornographic material; 328, C.S.C. with a minor in the first degree; 294, dissemination of pornographic material; 290, C.S.C. WITH A minor in the first degree; 291, dissemination of pornographic material; and finally, 710, engaging a child under the age of 18 for sexual performance.

These are seven indictments that the State has had true billed against Mr. Scarborough. The first thing I would do is ask if we could inquire of the people in the courtroom, just to make sure there are no jurors here. They are supposed to report at two o'clock. Before we start talking about this it might be prudent to make sure nobody is here.

THE COURT: Any potential jurors in the courtroom if you will raise your right hand. Seeing none.

MR. DANIEL: Thank you. Judge, there are several pretrial motions that we need to cover. First is the matter of consolidation, and I'm passing up a memo in support of consolidations. The Defense has a copy of that.

And I'll briefly go through that motion. Obviously, as I just said there are seven indictments that the State

1 has against Mr. Scarborough. They involve three different
2 victims. Two of them are brothers. These charges are
3 interconnected, and of course, the same general nature.
4 The witness -- the victims here are necessary witnesses in
5 the other victims' cases, so the testimony of each witness
6 will be required in the other case.

7 And, obviously, pursuant to State v. Smith most
8 significantly the State requests consolidation because
9 these are connected transactions which are closely related
10 in kind, place and character. Of course, the State law is
11 clear. And this is necessary because the victims, **Minor 2**
12 **██████████** and **Minor 1** and **Minor 3** are minor
13 children who live near the defendant. The defendant
14 having had multiple opportunities to be alone with these
15 victims.

16 Also, as I said, each victim is a necessary and
17 material witness in establishing the defendant's physical
18 proximity and access to the other victims on the dates of
19 these alleged offenses. Initially, as I said, some of
20 these victims may have to testify or will certainly be
21 testifying that they either witnessed or participated in
22 other acts involving the defendant for which he has been
23 indicted.

24 These are closely related in time, place and
25 character. All of the victims were between the age of

1 five and eight when this abuse occurred. All were subject
2 to acts of abuse by the defendant to include oral and anal
3 sex. All of them where shown pornographic material by the
4 these so these cases are certainly related closely in
5 kind.

6 They were all lured into the backyard or barn area of
7 the defendant's home, thus, they are closely related in
8 place. And then, finally, they all had similar
9 relationships with the defendant. They all lived close by
10 him. He lived in the neighborhood. He was known as Mr.
11 Sammy throughout the neighborhood. So these cases are
12 closely related in character.

13 And so finally, Judge, I would just say in conclusion
14 that consolidation is proper here. The case law fully
15 supports this consolidation. Of course, the State
16 believes that these charges are of the same general
17 nature. They involve a pattern of sexual abuse which
18 expanded to include all the victims.

19 And, again, State v. Jones is the case that the State
20 will cite as 325 S.C. 310. And so we would ask that the
21 Court allow us to go forward with all seven of these
22 indictments at once.

23 THE COURT: Counsel.)

24 MR. HOBBS: Thank you, Your Honor. It would be the
25 Defense's position that allowing these cases to be

1 consolidated would create a substantial prejudice against
2 my client. Your Honor, the State would contend that all
3 of these instances and all of these accusations arise from
4 one chain of circumstances. However, Your Honor, as you
5 will get the chance to review some of the facts in this
6 case none of those children allege that they were actually
7 sexually battered.

8 Also, Your Honor, you would notice that some of them
9 recount incidents that the other children weren't there.
10 They recount instances where they weren't actually on the
11 premises. And, Your Honor, the net which the State has
12 thrown as far as a time period is very large. We're
13 looking at two and a half years in some instances. And I
14 do have a motion regarding that whenever the time is
15 appropriate.

16 But the primary concern here, Your Honor, is with all
17 these children denying that they were actually sexually
18 battered the cumulative affect of their testimony in
19 saying, "It wasn't me. It was him. It wasn't me. It was
20 him" would have the jury -- would invoke emotion in the
21 jury to believe that something had occurred and wrongfully
22 convict my client.

23 Again, Your Honor, when we're looking at State v.
24 Jones, the case that the State has cited, "Offenses which
25 are of the same nature but do not arise out of the single

1 chain of circumstances are not provably by the same
2 evidence may not properly be tried together." Again, Your
3 Honor, that case cites State v. Tate holding that joint
4 trials on identical but unrelated forgeries violated
5 defendant's right to a fair trial.

6 In this case, Your Honor, when we're interpreting the
7 accusations of the victims we see that these victims
8 recount different circumstances, different dates where
9 they allege that either someone was sexually assaulted,
10 they saw someone sexually assaulted. Two out of the three
11 victims make mention of a pornographic magazine. One
12 victim does not.

13 These factual assertions by the victims are so
14 different in character and represent different occurrences
15 that to consolidate these cases together would create an
16 undue prejudice on my client that would lead the jury to
17 find a conclusion that somehow even though no one says it
18 happened to them it must have happened to someone.

19 THE COURT: Anything else?

20 MR. DANIEL: If you need some more I'll give you some
21 more. Judge, the indictment is prejudicial. Anything is
22 prejudicial. The fact that the Defense claims that it's
23 going to be prejudicial to bring about more than one
24 charge at the same time, yes, it's prejudicial. But is it
25 more probative than prejudicial, and it certainly is. And

1 in the interest of judicial economy and all these other
2 reasons that people consolidate the case law is clear.
3 Mr. Hobbs says a couple of interesting things. He says
4 that this kids don't ever say the things they say happened
5 to themselves didn't happen when somebody else was around.

6 And I'm not sure what he means by that. I know that
7 he's going by the forensic as part of his argument, and
8 the forensic interviews, which we will have a motion on
9 that in a minute. But in these forensics the boys say
10 that certain things happened that they witnessed to the
11 other boys. These boys at the time were five -- well, now
12 they're five, six, seven and eight cause there is a Lyle
13 victim who is eight. So five, six, and seven, these
14 indicted victims.

15 And we're going to have expert testimony to talk
16 about why these kids may or may not have said certain
17 things in their forensic versus what they're saying now
18 which is very clear. And, of course, the Court will hear
19 that later. But as for consolidation, which is what we're
20 talking about right now, Judge, the cases are clear.
21 The -- these kids don't have to be able to identify the
22 exact date that it happened. They can't. They're five
23 and six and seven. Those kids don't know the difference
24 between last week and last year. And we have expert
25 testimony to address that.

1 They don't have to be able to say that the exact same
2 thing happened to Kid A as to Kid B as to Kid C. That's
3 not the requirement. The requirement is that they are
4 closely related in it time, closely related in place, and
5 closely related in character. Not exactly, but closely.
6 And we certainly have met that threshold of closely
7 related in kind, closely related in place and in character
8 in this case.

9 MR. HOBBS: Briefly, Your Honor. What we're looking
10 for is a single chain of circumstances. And when I refer
11 to what I believe the State will present all I can do is
12 look to the statements of the victims. To propose that we
13 should consider testimony that has not been presented to
14 the Court or has not been presented to a finder of fact I
15 believe is a little off putting, Your Honor.

16 It's about what they intend to show, and what they
17 intend to show is that these children, through their
18 forensic interview, I.d.'d the defendant as the
19 perpetrator in the instances. And when I talk about no
20 one said it was them C.S.C. with a minor first degree.
21 Your Honor, requires a sexual battery.

22 A sexual battery is a very specific legal term that
23 generally refers to some sort of penetration. Your Honor,
24 none of these children say a sexual battery occurred to
25 them. And in one of the recounts this child says he was

1 there by himself, and then in another he recounts that he
2 saw these children -- this happening to these other
3 children.

4 Your Honor, again without them claiming that these
5 sexual batteries, which is what we are here to litigate.
6 Your Honor, we are here because he is charged with C.S.C.
7 with a minor which requires a sexual battery. None of
8 those children say a sexual battery occurred against them.

9 And we have a two and a half year timeframe here that
10 creates such an ambiguous sort of chain of circumstances
11 and unclear chain of circumstances that it's next to
12 impossible for my client to maintain his defense when all
13 three of these children are being tried in one case and
14 are pointing the finger at each other.

15 MR. DANIEL: I would just like to reserve comment on
16 the sufficiency of the indictment as it relates to the
17 time period since Mr. Hobbs brought that up. I didn't
18 know that was going to be argued. Mr. Hobbs didn't tell
19 us that was going to be an issue this morning. And we are
20 happy to argue it and we're already, but I'll deal with
21 that later if the Court wants me to.

22 THE COURT: All right. State understand that this is
23 a two edged sword. If the case goes south on you you put
24 the padlocks on your arsenal for later on. You understand
25 that?

1 MR. DANIEL: Yes, sir, and we have a lot of witnesses
2 as backup if we need them.

3 THE COURT: Which is no concern of mine, but just
4 from discussion it appears from the Jones case and much so
5 in the interest of judicial economy the State is entitled
6 to have it's motion granted. We'll get it all together
7 here and we'll try it.

8 MR. DANIEL: Sir?

9 THE COURT: I said we'll get it all together here and
10 we'll try it.

11 MR. DANIEL: Thank you, Judge. I would also add just
12 for the record that we are also relying on State v. Harry,
13 468 S.E.2d 76, which just -- and again this is all for the
14 record for appeal purposes, but all the charges are
15 properly tried together when they arise out of a single
16 chain of circumstances or proved by the same evidence or
17 of the same general nature. And then no real right of the
18 defendant has been jeopardized. So that's just another
19 case that we're relying on. Thank you, Judge.

20 The next issue that we have is Lyle. There is a
21 fourth victim who is Minor 4 who is now eight years
22 old. Minor 4, Young Minor 4, went to his mother in
23 2009 and claimed that he had been abused by Uncle Sammy.
24 There is some relation to the victim or to the defendant.
25 And in this particular situation, because he was three or

1 four at the time, law enforcement neglected to sign a
2 warrant. This case was handled in the Family Court. We
3 asked at this time that his testimony be admitted under
4 Lyle. And before we argue Lyle you may want to hear that
5 testimony. He is back in the jury room ready to go;
6 however the Court wants to handle that.

7 THE COURT: We better hear from him.

8 MR. DANIEL: Okay. State calls Minor 4.

9 Minor 4, after being duly sworn,
10 testified as follows:

11 CLERK OF COURT: State your full name for the Court.

12 MR. DANIEL: Say your whole name.

13 THE WITNESS: Minor 4.

14 MR. DANIEL: Let's pull that chair up a little bit so
15 you can be close over the microphone.

16 DIRECT EXAMINATION

17 BY MR. DANIEL:

18 Q. Okay, Minor 4 how old are you?

19 A. Eight.

20 Q. Okay. Let's say that again.

21 A. Eight.

22 Q. Where do you live, Minor 5

23 A. Cheraw.

24 Q. Did you used to live in Dillon?

25 A. Yes, sir.

- 1 Q. What grade are you in?
- 2 A. Third.
- 3 Q. What school do you go to?
- 4 A. Cheraw Intermediate.
- 5 Q. Cheraw Intermediate.
- 6 A. Yes, sir.
- 7 Q. Whose your teacher?
- 8 A. Miss Midgley and Ms. Owens.
- 9 Q. Ms. Midgley and?
- 10 A. Ms. Owens.
- 11 Q. Owens. What is your favorite thing to study in
- 12 school?
- 13 A. Math.
- 14 Q. You make good grades in math?
- 15 A. Yes, sir.
- 16 Q. Who lives at home with you?
- 17 A. My little brother, my sister, and my step daddy and
- 18 my mom.
- 19 Q. What is your little sister's name?
- 20 A. B
- 21 Q. What is your brother's name?
- 22 A. P
- 23 Q. What's is your momma's name?
- 24 A. Natasha.
- 25 Q. Is she in the courtroom right now?

1 A. Yes, sir.

2 Q. Who is sitting with your momma?

3 A. My grandma.

4 Q. What's her name?

5 A. Denise.

6 Q. All right, Minor 4 what -- is it good or good to
7 tell a lie?

8 A. Bad.

9 Q. Is it good or bad to tell the truth?

10 A. Good.

11 Q. If you told a lie at school you think you might get
12 in trouble?

13 A. Yes, sir.

14 Q. If you told a lie to your mom or grandmomma you think
15 you would get in trouble?

16 A. Yes, sir.

17 Q. If you told a lie in Court what do you think the
18 Judge might do?

19 A. I don't know.

20 Q. Would that be a good thing or a bad thing?

21 A. Bad thing.

22 Q. Okay. Can you tell the truth today?

23 A. Yes, sir.

24 Q. That's the Judge. That's Judge Burch. Okay. I'm
25 going to show you --

1 MR. DANIEL: Well, as for competency, Judge, I think
2 that **Minor 4** is more than competent, but if the Defense
3 requests additional voir dire.

4 MR. HOBBS: Your Honor, I would reserve my questions
5 regarding competency or my issues regarding competency for
6 the cross-examination.

7 THE COURT: Okay.

8 MR. DANIEL: Okay, the problem with that is if he
9 testifies right now, because I think he's competent, so if
10 it comes in and then he has competency questions later you
11 can't unring that bell once the jury hears the direct
12 testimony.

13 MR. HOBBS: Your Honor, there is no jury in here.
14 This is an in camera hearing. I can reserve competency
15 argument until after he's had a chance to be
16 cross-examined.

17 MR. DANIEL: So long as that's what he's talking
18 about doing right now. But, obviously, later we can't do
19 it that way.

20 THE COURT: Okay.

21 BY MR. DANIEL:

22 Q. Okay. **Minor 4** let me show you this picture. You've
23 seen this before?

24 A. Yes, sir.

25 Q. Okay. I'm going to point out some things and you

1 tell me what they are, okay? All right?

2 A. Yes, sir.

3 Q. What are these?

4 A. Feet...

5 Q. What are these?

6 A. Legs.

7 Q. What is this?

8 A. Face.

9 Q. What are these?

10 A. Arms.

11 Q. What is this?

12 A. Backbone.

13 Q. What is that ---

14 THE COURT: Neck bone?

15 MR. DANIEL: Backbone.

16 THE COURT: Backbone. Yeah.

17 BY MR. DANIEL:

18 Q. Just make sure you talk in there. You're good. What
19 are these?

20 A. Feet.

21 Q. What's that?

22 A. Legs.

23 Q. What is that?

24 A. Private.

25 Q. Private? What is that?

- 1 A. Arms.
- 2 Q. What is that right there?
- 3 A. Belly button.
- 4 Q. How about those?
- 5 A. Chest.
- 6 Q. Okay. What's that?
- 7 A. Lips.
- 8 Q. What's that?
- 9 A. Nose.
- 10 Q. What about those?
- 11 A. Eyes.
- 12 Q. Okay. And that's a picture of a little boy, right?
- 13 A. Yes, sir.
- 14 Q. Okay. Show you one more. This is a picture of an
- 15 older man, right?
- 16 A. Yes, sir.
- 17 Q. What are these?
- 18 A. Legs.
- 19 Q. What is that?
- 20 A. Arm.
- 21 Q. Right there?
- 22 A. Butt cheeks.
- 23 Q. What are these?
- 24 A. Eyes.
- 25 Q. Okay. What's that?

- 1 A. Backbone.
- 2 Q. What's that?
- 3 A. Hair.
- 4 Q. Okay. What's that?
- 5 A. Face.
- 6 Q. All right. What is that?
- 7 A. Lips.
- 8 Q. What's that?
- 9 A. Nose.
- 10 Q. How about those?
- 11 A. Arms.
- 12 Q. What's that?
- 13 A. Private.
- 14 Q. What are those?
- 15 A. Legs.
- 16 Q. And that?
- 17 A. Feet.
- 18 Q. All right. Okay, now, Minor 4 do you know Mr.
- 19 Sammy?
- 20 A. Yes, sir.
- 21 Q. What do you call him?
- 22 A. Uncle Sammy.
- 23 Q. Uncle Sammy?
- 24 A. Yes, sir.
- 25 Q. So he's related to you?

1 A. I don't know.

2 Q. Have you always called him Uncle Sammy?

3 A. Yes, sir.

4 Q. And did you used to live in Dillon?

5 A. Yes, sir.

6 Q. And when you lived in Dillon did you see Uncle Sammy
7 a lot?

8 A. No, sir.

9 Q. Did you see him sometimes?

10 A. Yes, sir.

11 Q. Okay. Were your ever alone with Mr. Sammy, just you
12 and him?

13 A. Yes, sir.

14 Q. When you were alone with him did he ever touch you in
15 your privates?

16 A. No, sir.

17 Q. Did he ever touch you on this private?

18 A. No, sir.

19 Q. Did he ever make you touch you -- I mean touch him on
20 his private?

21 A. Yes, sir.

22 Q. Okay. Where were you when that happened?

23 A. At a store.

24 Q. At a store?

25 A. Yes, sir.

1 Q. Were you inside the store?

2 A. No, sir.

3 Q. Were you outside on the street?

4 A. No, sir...

5 Q. Where were you?

6 A. In his truck.

7 Q. In his truck. Do you remember what color his truck
8 was?

9 A. No, sir.

10 Q. Was it just the two of you in the truck?

11 A. Yes, sir.

12 Q. Okay. Me made you touch his private?

13 A. Yes, sir.

14 Q. Did you touch it with your hand?

15 A. No, sir.

16 Q. What did you touch it with?

17 A. My hands. I mean my mouth.

18 Q. Your mouth?

19 A. Yes, sir.

20 Q. Did he make you put that in your mouth?

21 A. Yes, sir.

22 Q. His private, when that happened, were his pants
23 pulled down?

24 A. No, sir.

25 Q. Was his private sticking out of his pants?

1 A. Yes, sir.

2 Q. And what did it look like? Was it ---

3 MR. HOBBS: Your Honor, we're in an in camera hearing
4 so I think we can relax the Rules of Evidence just a
5 little bit, but I would ask the State to refrain from
6 leading questions.

7 MR. DANIEL: The State is allowed to lead a juvenile
8 witness, and I'll be glad to brief that at lunch if I need
9 to.

10 THE COURT: You're fine. Go ahead. I'll overrule
11 the objection.

12 BY MR. DANIEL:

13 Q. His private, when this happened, when he made you put
14 his private in your mouth was it hard or soft?

15 A. Soft.

16 Q. Was it a long time that he made you do it or a short
17 time?

18 A. Short time.

19 Q. And did you see anything come out of it when you did
20 it?

21 A. No, sir.

22 Q. And you said this happened how many times? One or
23 more?

24 A. One.

25 Q. And you were outside of the store?

1 A. Yes, sir.

2 Q. And did you tell anybody that this happened?

3 A. Yes, sir.

4 Q. And who did you tell?

5 A. My sister.

6 Q. Okay. All right. Hang on just a second.

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

8 BY MR. DANIEL:

9 Q. All right, Minor 4 I don't have any more questions
10 for you. Stay right there because Mr. Hobbs is going to
11 ask you some questions, okay?

12 A. Okay.

13 CROSS-EXAMINATION

14 BY MR. HOBBS:

15 Q. Minor 4 do you recall how old you were when this
16 happened?

17 A. Yes, sir.

18 Q. Will you tell us?

19 A. Three.

20 Q. You were three years old. Okay. Do you remember
21 going and talking to somebody after this happened?

22 A. Yes, sir.

23 Q. Okay. And do you remember how many times you spoke
24 to them?

25 A. No, sir.

1 Q. Okay. Do you remember what you told that person when
2 you went and spoke to them?

3 A. No, sir.

4 Q. No. Okay. That's fine. Do you remember saying that
5 this happened at a church?

6 A. No, sir.

7 Q. Okay. That's fine. Do you remember ever saying that
8 Uncle Sammy peed on his clothes?

9 A. No, sir.

10 Q. Okay. That's fine. That's fine. And going back is
11 it hard to remember stuff from three years or four years
12 ago?

13 A. Yes, sir.

14 Q. Okay. That's fine. When you spoke to the person you
15 said something about Mr. Sammy or Uncle Sammy making
16 contact with your butt. Do you remember that?

17 A. No, sir.

18 Q. Okay. So you don't remember saying that Mr. Sammy
19 made any accusations -- I'm sorry. Mr. Sammy stuck
20 anything in your butt?

21 A. No, sir.

22 Q. Okay. That's fine. **Minor 4** thank you for your time
23 and thank you for answering my questions. Okay, buddy?

24 A. Yes, sir.

25 MR. DANIEL: No redirect. You're good, buddy. You

1 can go back there. I'll come get you in a few minutes.

2 Good job. I got it. Don't worry about it. Thank you.

3 (WHEREUPON, the witness leaves the courtroom.)

4 COLLOQUY

5 Judge, as it relates to Lyle, 401 is the first
6 consideration. Relevance, I don't think that there is any
7 question that the testimony here is relevant. If it's
8 relevant then we go to 404(b). Does it fall under an
9 exception. In this case, of course, we arguing common
10 scheme and plan. And for it to be admissible the bad act
11 must logically relate to the crime for which the defendant
12 has been charged.

13 If the defendant has not been convicted of this
14 testimony, essentially, then I have to prove that it's
15 clear and convincing. Here, of course, the defendant was
16 not convicted. So the first question is is that clear and
17 convincing that it happened. The Court can take notice
18 here that the Family Court, even though it is a different
19 standard, has found by a preponderance of the evidence
20 that Mr. Scarborough did commit this crime. He was,
21 therefore, placed on the central registry.

22 And I think, even though the testimony speaks for
23 itself, but an eight year old who gave more specifics
24 actually right after this happened at his forensic
25 interview four years ago. So, therefore, a four or --

1 three or four year old in my mind has no frame of
2 reference to make this kind of thing up. I mean a three
3 or four year old doesn't know what's going on in life much
4 less does he know what it means to suck something and
5 to -- the sorts of things that he described.

6 So according to the Wallace case, which of course, is
7 our trademark case here as it relates to Lyle. When
8 determining if this evidence is admissible as a common
9 scheme or plan the Court must analyze the similarities and
10 dissimilarities and the similarities must outweigh the
11 dissimilarities. So here the similarities between the
12 testimony you just heard and the evidence that we are
13 presenting at trial with the three victims that are
14 indicted it's a similar type of abuse.

15 It's oral sex. The age of the victims are similar..
16 They're very young individuals. The sex of the victims is
17 the same. They are all little boys. And, finally, there
18 is a position of authority to some degree over these
19 victims. In this case Sammy Scarborough was the uncle or
20 great uncle by marriage of **Minor 4** In the other cases
21 there are no relationship by blood. But Mr. Sammy, is
22 what they called him in the neighborhood, he kept them
23 throughout the neighborhood. It was very common to go
24 over to his house to play. It was a very common thing.

25 And, actually, it was a very common thing in this

1 family as well. There is going to be testimony from
2 **Minor 4**'s mother that they were together almost every day.
3 The only real dissimilarity here is the location of abuse.
4 In **Minor 4**'s case he says it happened in the truck, in
5 Sammy Scarborough's truck outside of a store. The other
6 little boys will testify that it happened somewhere else.
7 All the same place.

8 So with -- again, with the Wallace factors, the age
9 of the victims, and here that's similar; relationship
10 between the victim and the perpetrator, that's similar;
11 location where the abuse occurred, that's not similar.
12 Use of coercion or threats, there were no real -- well,
13 there was some coercion in the other cases. And that will
14 be flushed out with the testimony of the other three boys.

15 And then, finally, the matter of occurrence. That is
16 certainly -- I mean we're dealing with almost the exact
17 same type of abuse. The only difference is that it gets a
18 little bit worse with the other three boys than it did
19 with **Minor 4**.

20 And then, finally, assuming the similarities outweigh
21 the dissimilarities and in this case it does. And, again,
22 that's 404(b) under Wallace and Partucci.

23 403, does the prejudicial affect outweigh the
24 probative value in this case. I would argue that under
25 the litany of cases that deal with Lyle that in this case

1 the probative value is significant and it outweighs the
2 prejudicial affect. You know, like I said earlier even an
3 indictment is prejudicial, but if we went solely on what's
4 prejudicial and what's not then Lyle evidence would never
5 be admitted.

6 And in this case we've got another little boy who is
7 sexually abuse at the hands of somebody who had -- was in
8 a position of authority over him. And I think that this
9 is pretty much textbook Lyle.

10 MR. HOBBS: First of all, Your Honor, with the
11 State's contention that they intend to call the mother to
12 bolster this child's testimony he would also be included
13 in this Lyle consideration. I would ask that the Court
14 proffer her testimony. Allow the Court to examine what
15 she would say about this incident because that's -- again,
16 the issue here is that he is calling people to show
17 propensity. He is calling witnesses to show propensity,
18 and he's going to bolster this for -- she's going to
19 testify as to what happened to **Minor 5** then I would ask
20 the Court to proffer her testimony for cross-examination
21 and consideration of this Lyle issue.

22 Your Honor, I have prepared my motions in regard to
23 disclosure of this evidence. It's two copies. Your
24 Honor, I would pass us -- I do apologize that I don't have
25 an extra copy. I didn't realize there were two

1 Solicitors.

2 MR. DANIEL: Here. We can share one.

3 MR. HOBBS: I think I've got one for your law clerk
4 as well, Your Honor. Your Honor, within this packet I
5 have also included a memorandum in opposition to the
6 State's admission of this evidence. That has been filed
7 with the Court this morning. Your Honor, there are
8 several issues here as far as this Lyle testimony. The
9 first of which would be this gentleman's competency to
10 stand trial and testify or -- I'm sorry. Appear at trial
11 and testify.

12 Your Honor, State v. Needs sums up that just beyond
13 knowing the duty to tell the truth and fearing that he may
14 be punished if he were to tell a lie they also articulate
15 the Pennsylvania Supreme Court factors in adopting that
16 the victim or the testimony should be able to proceed the
17 event with substantial degree of certainty or accuracy,
18 remember it, communicate about it intelligibly and be
19 mindful of the duty to tell the truth.

20 Your Honor, in this case we have a child trying to
21 remember events that happened to a three year old. Your
22 Honor, I think we would all admit and common sense would
23 stand to reason that a three year old's memory is not
24 developed in a way in which we can all recall what
25 happened when we were three years old. Actually, Your

1 Honor, I can't remember anything that happened to me when
2 I was three years old.

3 Further, Your Honor, I would represent to the Court
4 that the forensic interview presented for **Minor 4**
5 **██████████** which taken shortly after even occurred taken from
6 an impartial interviewer, asked him the same situation
7 that we're seeing here today. The State actually provided
8 me with a copy of that interview.

9 Your Honor, in that interview he states several
10 different recounts of what actually happened as with
11 Mr. Scarborough, with Uncle Sammy. He states in one
12 recount that it happened at a market. He states in
13 another that it happened at a church, and there are
14 several aspects of this statement, Your Honor, that lack
15 any sort of coherency or competency to be making these
16 statements.

17 And, again, Your Honor, now the State purports that
18 his memory has actually gotten better since this forensic
19 interview was taken. Now, that being a different issue
20 all together from what we consider for Lyle but it does
21 show, Your Honor, that he made different statements in the
22 time closer in proximity to the alleged event. And that
23 these differences would show a lack of coherence in his
24 statement.

25 Your Honor, I would also present to you that now

1 coming into Court and dismissing some of those prior
2 accusations that he made in the forensic interview would
3 further show that he lacks the capacity to recall the
4 events correctly and to recount them to the Court and
5 communicate them intelligently. Your Honor, also within
6 that packet that I passed up you will see a couple
7 photocopied pages regarding what coercion is and also what
8 clear and convincing evidence is.

9 Your Honor, clear and convincing evidence is a
10 heightened level of evidence that would show, and I quote,
11 "Indicating that the thing to be proved is highly probable
12 or reasonably certain."

13 Further, Your Honor, I have attached State v. Taylor,
14 and State v. Wilson. The two of these cases. First, the
15 State v. Wilson stands for the fact that I think as the
16 State admitted that this sort of evidence needs to be
17 shown by clear and convincing evidence. And the second,
18 State v. Taylor, purports that a high degree of similarity
19 needs to be reached between these two alleged events for
20 it to come in.

21 Your Honor, I would adamantly disagree with the
22 State's position as to these matters being related and
23 being highly similar. If I might point the State and the
24 Court to my memorandum in opposition I would present that
25 the allegations in the current case include **Minor I**

1 Through **Minor 1**'s forensic examination
2 it is said that Mr. Scarborough lured him to his house
3 with balloons and once there showed him pornographic
4 magazines. And that his -- he or someone else was forced
5 to perform sexual acts on him.

6 Second, Your Honor, let me get this quote a little
7 bit better. "**Minor 1** denies Mr. Scarborough sexually
8 abused him but says that Mr. Scarborough sexually abused
9 **Minor 3** by making him perform fellatio." It also states that
10 Mr. Scarborough showed the boys pornography, pornographic
11 magazines and exposed himself."

12 Then we have **Minor 3**. **Minor 3** went in for a forensic
13 interview, Your Honor, and he testified to sum it up that
14 he witnessed or heard about Mr. Scarborough sexually
15 abusing **Minor 1** and **Minor 2** through fellatio performed on
16 the defendant, fellatio performed by the defendant,
17 humping, jacking it, touched his butt, humping a wall and
18 penis to penis contact.

19 Your Honor, then we have **Minor 2** come in who is
20 another four year old who is testifying against my client.
21 And he says that he saw the defendant kissing the victims
22 on the mouth, victims kissing the defendant's butt,
23 humping, fellatio, bondage and peeing into his brother's
24 mouth.

25 Your Honor, at the case at hand when we're looking at

1 **Minor 4** what he's come here and presented to the Court
2 today is that he was told or he performed oral sex on Mr.
3 Scarborough. Again, when we're looking at competence and
4 the reliability of this evidence I present to the Court
5 that it goes against reason that he's now stating that Mr.
6 Scarborough was flaccid when these actions occurred.

7 Your Honor, when we're looking into these, elements
8 these factors, what we're going to consider -- excuse me.
9 I'll go over to the page here -- are the factors that
10 Wallace tells us to look at. And the age of the victim
11 when the abuse occurred is the first factor.

12 Your Honor, for C.S.C. with a minor it has to be a
13 minor under ten years-old. So we have to throw out the
14 notion that because the charges are similar, the
15 allegations are similar that the ages are necessarily
16 similar. We do have three years old through six ,
17 years-old, and I would present to the Court that these
18 differences in the psychological and physical differences
19 of a three year old versus a six year old are significant
20 especially when it comes to their cognitive and linguistic
21 skills in their social and emotional development.

22 Secondly, Your Honor, we would look to the
23 relations -- the relationship between the victim and the
24 perpetrator. Your Honor, there is simply not similarity
25 between the relationships of the victims in this case and

1 **Minor 4** Your Honor, **Minor 4** is the grand nephew of Mr.
2 Scarborough. Mr. Scarborough, as admitted by the State,
3 was put in a position as a caregiver and was in charge of
4 taking care of this child at the time of the alleged
5 abuse.

6 Your Honor, that was also supported by the State
7 putting in the D.S.S. action or mentioning it showing that
8 he was in a position of care when this incident occurred.
9 Despite the State's contention that living in the same
10 neighborhood is a relationship which can be parallel to
11 being a family member. And being charged with being a
12 caregiver I would state that it doesn't pass the
13 similarity test on that factor.

14 Third, Your Honor, the location of the alleged sexual
15 battery are completely different. Your Honor, we have a
16 nephew that alleges that it happened -- at one point he
17 said at the church. At one point he said at a store. At
18 one point he said at his truck. Regardless, all of the
19 accusations in the present case occurred in the backyard
20 of Mr. Scarborough.

21 Fourth, Your Honor, there is no evidence whatsoever,
22 either the prior or present allegations, that Mr.
23 Scarborough used threats or coercion. However, Your
24 Honor, in **Minor 2**'s statement he says that his brother,
25 **Minor 1** was bound by tape and the ankles and at the wrist

1 and that this was part of the sexual abuse allegations for
2 Mr. Scarborough. Paralleling that with the accusations of
3 **Minor 4** we have no coercion, no force. We only have a
4 relationship between the great uncle and the nephew that
5 would show any sort of relationship at all between Mr.
6 Scarborough and **Minor 4**

7 Your Honor, also the presenting a pornographic
8 magazine as an act of enticing the children is
9 significantly different in this case. We have two
10 children saying that Mr. Scarborough showed them a gay,
11 pornographic magazine and in this case with **Minor 5** we
12 have no pornographic magazine.

13 Your Honor, further, we have the notion that these
14 children in the present case were lured into the backyard;
15 that they were given balloons and given footballs. And in
16 this case with **Minor 4** there is no such luring.

17 Your Honor, as I presented State v. Taylor it's not
18 that one of the factors needs to be considered. All of
19 those factors need to be weighed, and needs to be put the
20 standard of clear and convincing evidence as to whether
21 these factors have been satisfied and the weight that each
22 factor should be given.

23 Your Honor, I would present to you that at a minimum
24 four out of the five factors are dissimilar. The only
25 thing we can say is that these children were boys of the

1 same age. Now, the State would also contend that the act
2 of fellatio is repeated throughout the accusations of
3 these present children.

4 Your Honor, but I would present to you the other
5 accusations proposed by these children. Again, shown
6 pornographic magazines, exposure, fellatio performed by
7 the defendant, humping of the children, jacking it,
8 touching of the butt, humping of the wall, penis to penis
9 contact, bondage and coercion, penis in the defendant's
10 mouth and kissing the defendant on the mouth.

11 So when we throw out the notion that we need to
12 consolidate these cases cause they come from one chain of
13 events, Your Honor, we're then forced to look at which
14 case is the most dissimilar to **Minor 4's** case because,
15 Your Honor, when all of those cases are being tried
16 together the privilege that flows from one will flow to
17 all three charges.

18 Your Honor, I would ask that you review our
19 memorandum in opposition of the State's and also **Minor 4's**
20 prior statements.

21 MR. DANIEL: Judge, Mr. Hobbs is arguing two
22 different -- completely different motions here. One is
23 Lyle which I thought we were doing. The other is
24 competency. Let me deal with competent first. Competency
25 in this case or in any case goes to weight that the jury

1 can give. Not to admissibility. Just because a child
2 can't remember every single detail of something that may
3 have happened to the child when they were -- three or four
4 years ago or even yesterday when he was talking about the
5 kids of this age. That's stuff that I'm sure Mr. Hobbs
6 will do a fantastic job dealing with in his close
7 argument. But that doesn't go to admissibility. It only
8 goes to weight.

9 Also, it doesn't matter, for purposes of competency,
10 it doesn't matter what they said on their forensic
11 interview. What matters is what they're saying right now
12 because their testimony right here is what this Court has
13 to judge. Nothing else is in evidence. There is nothing
14 else to talk about except for what they're saying right
15 now.

16 And, finally, just as a matter of public policy, you
17 can't allegedly abuse little boys and then hide behind
18 their age when it comes time for you to be held
19 accountable for those actions. And so competency is
20 something that we can deal with later, but I needed to
21 address it since Mr. Hobbs addressed it to the extent that
22 he did.

23 As to the mother's testimony, we intend to call the
24 mother. She's on our witness list assuming this evidence
25 comes in. We're going to call the mother, and I'm sure

1 that Mr. Hobbs said that we were going to call her to,
2 "Bolster **Minor 4**'s testimony" and then, "To testify what
3 happened to **Minor 4** Well, I'm sure Mr. Hobbs knows that
4 we can't ask the momma what happened to **Minor 4**

5 We can only ask her time and place. Were you told by
6 **Minor 4** that he was being abused? Yes. Were you -- did
7 he tell you when it happened? Yes. When did his say?
8 Did he tell you where it happened? Yeah. Where did he
9 say? That's the only things we can get into on the stand
10 with any time and place witness as it relates to what
11 happened. We can't talk about the details, but I'm sure
12 Mr. Hobbs knows that.

13 Finally, this testimony or testimony in cases like
14 this or any case doesn't have to be corroborated. His
15 testimony alone, if we were to try just his case, we can
16 put up just his testimony and we could -- the law is very
17 clear. We could take that to a jury and get by D.B. and
18 get to beyond a reasonable doubt. So if testimony that is
19 non-corroborated is good enough for beyond a reasonable
20 doubt then it's certainly good enough for clear and
21 convincing which is all we're dealing with right now.

22 As to the factors Mr. Hobbs said something about the
23 difference in a child age three to age six and something
24 about their psychological differences. Who cares about
25 the difference between something three to six. We're

1 talking about little boys. That's simpler. Little, young
2 boys.

3 And the relationship to the victims, again as I said
4 earlier, he had a relationship of authority over these
5 victims. The other boys will testify as will their
6 parents that sometimes that Sammy Scarborough had
7 authority over them in the sense that we're going to leave
8 the kids with him before school or right when they come
9 home from school before the parents get home from home and
10 things like that. Same situation with **Minor 4**

11 And, again, ultimately, the similarities must
12 outweigh dissimilarities. It doesn't have to be ten
13 similarities to one dissimilarity. It's just got to
14 outweigh, and that's all we're saying. We've got little
15 boys who were abused in a very similar method by the same
16 man.

17 MR. HOBBS: Briefly, Your Honor. Competency is
18 always going to be a threshold determination that the
19 Court needs to make regarding a person's ability to
20 testify. "A person can be disqualified as a witness if
21 the Court determines that the proposed witness in
22 incapable of understanding the duty to tell the truth."
23 That comes from Rule 601(b)2, South Carolina Rules of
24 Evidence.

25 Your Honor, the contention that this victim could go

1 up on the stand and he doesn't need to be corroborated and
2 then they can get a conviction is very, very far off, Your
3 Honor, because my client has never been charged with the
4 actions that **Minor 4** is testifying to. And he certainly
5 is not charged with it today. So, Your Honor, the notion
6 that his statement would somehow help prove this current
7 accusation against him is very, very incorrect, Your
8 Honor.

9 What we have is essentially the attempt to show a
10 propensity of a prior bad act in making my client seem
11 like he was a bad guy then so he must be a bad guy now,
12 Your Honor. And when we're looking at the factors we
13 weigh all of the factors and the Court requires prior
14 proof that is clear and convincing and proof that shows a
15 high degree of similarity.

16 And, Your Honor, if you were to go through the
17 factors again we have the accusation that these children
18 are three to six years old and that that's the same age.
19 Well, given, if we say that this is all the same, the ages
20 are the same, every other factor fails. And, Your Honor,
21 I cannot see how the State can put on the burden of a
22 caregiver to Mr. Scarborough because he lives in the
23 neighborhood. And now he's saying that he intends to get
24 evidence in that he was a caregiver or that he took care
25 of these children.

1 Your Honor, I have seen no evidence and purporting
2 that you're going to put evidence in the future that
3 supports that he was somehow in a relationship of
4 responsibility for these children is incorrect. Your
5 Honor, in considering the factor that this similarity
6 outweighs the similarities in this case and, Your Honor,
7 again, when we consolidate three different cases we have
8 to look at the accusations of those children individually
9 and compare them to the Lyle evidence because if it is
10 similar to one but very dissimilar to the other then the
11 prejudice is going to flow between all three charges.

12 So we have to look at this in the light most
13 favorable to the defendant with the charge that is most
14 dissimilar. And, Your Honor, the similarities are few.
15 The dissimilarities are great and many.

16 THE COURT: Okay. After hearing the testimony of the
17 minor child it appears to the Court that he is a very
18 intelligent individual. In the third grade in school.
19 Apparently doing well in math. He was very concise, very
20 straight forward and clear in his testimony. I disagree.
21 with -- well, I agree with the Defense that all children
22 are different. Some children probably don't remember
23 various aspects of their third year of life.

24 I differ from Defense counsel in that I very well
25 remember my third birthday and many things that went on

1 when I was three years-old. So everybody is different.
2 So with everything taken into consideration I'm going to
3 find him at this time competent to testify. The State's
4 motion to allow the Lyle evidence I think they made a good
5 case there, and that motion is granted.

6 And I'll also add this that over the past 22 years
7 I've tried several cases similar to this and sometimes
8 there are problems and sometimes there are not. And I
9 don't see any real problem with this. And, you know, as
10 far as the Court's point of view as far as the clear and
11 convincing aspect of it the child was straight forward and
12 concise.

13 As I said as far as the Court's point of view I think
14 that clear and convincing argue has been met. Of course,
15 what a trial jury does is up for grabs.

16 MR. DANIEL: Thank you, Judge.

17 MR. HOBBS: And, Your Honor, to elaborate that and to
18 preserve the record and I know it to be a little bit
19 unorthodox could the Court articulate the Wayne Test found
20 in State v. Wallace and tell us how's it's appropriate in
21 this case and how it's applied.

22 THE COURT: Well, you got your similarities there.
23 You've got young children. I agree with the State that
24 you've got the degree of control, degree of authority by
25 an adult male over children that apparently had children

1 put in his care. And I don't think I need to go any
2 further than to say that. What's been said and what's
3 been argued is enough for appellate review.

4 MR. DANIEL: Thank you, Judge. Judge, next Miss Hall
5 will take this next issue which passing up the motion or
6 the memo for the motion Mr. Hobbs has.

7 MS. HALL: Your Honor, State will be offering Sally
8 Williamson who is a forensic interviewer at the Care
9 House. She performed forensic interviews on **Minor 2**
10 **██████████**, **Minor 1** and **Minor 3**. Your Honor, we're
11 offering these videos pursuant to the hearsay exception
12 which was codified as SC 17-23-175 also known as Jessie's
13 Law.

14 Your Honor, any out of Court statement made by a
15 child under the age of 12 is admissible in the Court of
16 General Sessions provided we are able to satisfy the
17 factors laid out in 17-23-175.

18 Your Honor, I do want to briefly address. We intend
19 to make this motion after the forensic interviewer
20 testifies, and you've already heard the testimony of the
21 individual children. We do intend to call the forensic
22 interviewer individual following each child so that we put
23 that evidence in one at a time. And, obviously, we will
24 make that motion out of the presence of the jury, but we
25 did want to go ahead and give Your Honor the motion as

1 well as copies of the three DVDs so that you will have the
2 opportunity to review those prior to the middle of trial.

3 Your Honor, there are three minor children. As I
4 mentioned [redacted] Minor 2 [redacted], date of birth [redacted].
5 [redacted] Minor 1 [redacted], date of birth [redacted] and [redacted] Minor 3
6 [redacted] [redacted] date of birth [redacted].

7 Your Honor, all of the statements made in those
8 videos were given in response to questioning which was
9 conducted during an investigative interview of the
10 children. That's 17-23-175(A)1. Audio and visual
11 recordings of the statements have been preserved by
12 electronic means. That's right there in front of you.
13 17-23-175(A)2. We do expect all three children to testify
14 at trial, and they will all be subject to
15 cross-examination by Mr. Hobbs on the elements of the
16 offense in the making of out of Court statements. Again,
17 pursuant to 17-23-175(A)3.

18 Your Honor, 175(B) discusses the factors that are to
19 be considered; whether the statements were elicited by
20 leading questions, whether the interviewer was trained in
21 conducting these types of interviews, whether the
22 statements contained a detailed account of the offense,
23 whether the statements have internal coherence, and sworn
24 testimony of any participants which may be determined as
25 necessary by the Court.

1 Again, Your Honor, some of this, obviously, we won't
2 be able to take up until after the child has testified and
3 the forensic interviewer has testified. But we do want
4 Your Honor to have the opportunity to view those videos,
5 and wanted to go ahead and provide a copy of our motion to
6 you, to the Court and to the Defense attorney.

7 Also, I want to briefly mention pursuant to State v.
8 Crumler, the State has no intention of offering the
9 forensic interviewer as an expert in this case. She will
10 merely be offered for the purposes of laying foundation
11 for us to admit those out of Court statements.

12 And if Your Honor has any questions about that I'll
13 be glad to elaborate or you may wish that we wait until we
14 are ready to offer those videos.

15 THE COURT: Okay.

16 MR. HOBBS: Thank you, Your Honor. If the Court
17 would reference the Defendant's opposition to stated
18 admission of out of Court statement pursuant to 17-23-175,
19 Your Honor, I made several arguments against the
20 constitutionality and validity of 17-23-175.
21 Specifically, Your Honor, I do present to the Court that
22 admission of video forensic interview in this case is in
23 direct conflict of the provisions of Crawford v.
24 Washington.

25 Your Honor, the Crawford Court looked and discussed

1 the admissibility of out of Court statements of a witness
2 and concluded that the right of confrontation is violated
3 by admission of such statements except in very limit
4 circumstances. Your Honor, those limited circumstances
5 for admission exist only when the witness is unavailable,
6 when the out of the Court statements are considered
7 testimonial, and the defendant had a prior opportunity for
8 cross-examination.

9 Your Honor, as you know in this case I did not have
10 the availability to cross examine the child at the time
11 these arguments were made. Further, Your Honor, I would
12 present to the Court that S.C. 17-23-175 violates Maryland
13 v. Craig in that the constitutional testimony of the child
14 witness incurring inside the presence of defendants --
15 outside the presence of the defendants must be under oath
16 with an opportunity for contemporaneous cross-examination.

17 Your Honor, beyond the unconstitutionality as applied
18 to Crawford v. Washington I would point the Court to the
19 fact that it is in violation of the Sixth Amendment of the
20 United States Constitution in that he does not have the
21 opportunity to cross-examine and confront his accuser.

22 Further, Your Honor, in South Carolina 17-23-175, it
23 does again stand in the face of the conclusions that the
24 Court drew in Maryland v. Craig. Your Honor, again, these
25 extreme circumstances or these compelling circumstances to

1. allow someone to testify via videotape are not met under
2 South Carolina Code Section 17-23-175. I would ask the
3 Court to refer to my arguments as to the constitutionality
4 provided in the motion that I filed with the Court.

5 Your Honor, moving beyond the constitutionality of
6 17-23-175 I would point to the Court that the Court is
7 required under the statute to have a hearing conducted
8 outside the presence of the jury; that the totality of the
9 circumstances surrounding the making of the statement
10 provides particularized guarantee of trustworthiness.

11 As the State pointed out those are articulated in
12 175(B) which state that the Court needs to consider, but
13 is not limited to whether the statement was elicited by
14 leading questions, whether the interviewer has been
15 trained in conducting investigative interviews of
16 children, whether the statement represents a detailed
17 account of the alleged offenses, whether the statement has
18 internal coherence, and sworn testimony of participate
19 which may be determined as necessary by the Court.

20 Your Honor, in this case, first of all, we don't have
21 any swearing of these children. This was not a Court
22 proceeding that required them to be sworn, however, that
23 is for the Court's determination. Your Honor, I would
24 also ask the Court to consider whether or not the children
25 appear to be competent when they're making this video

1 testimony. Your Honor, as I articulated earlier, the
2 State v. Needs case shows that the beyond the ability to
3 remember and know the right from wrong the children need
4 to be able to intelligibly recount what happened. They
5 need to intelligibly be able to convey with some coherence
6 what they're alleging occurred.

7 Your Honor, I feel that you cannot address these
8 issues until you have had a chance to review the videos
9 yourself. Your Honor, I would also present to the Court
10 and also preserve my argument that many of these
11 statements were elicited by leading questions. In
12 particular tactics of the forensic interviewer. Your
13 Honor, the statute speaks directly to this because this is
14 a very serious issue when it's no opportunity for
15 cross-examination.

16 In this case I would not there. I did not have the
17 chance to talk to the child or ask him about what he was
18 saying, and the forensic interviewer time and time again
19 asked the child leading questions. Your Honor, also as a
20 threshold determination as to admissibility of the
21 evidence the Court needs to look to see if there is any
22 internal coherence with these statements.

23 Your Honor, in reviewing these statements you will
24 see that they are all over the place. At one time they
25 will say that this happened at and so and so was present.

1 At another time they will say that something else
2 happened, and that the aren't present. Your Honor, these
3 statements are only going to serve to be highly
4 prejudicial against my client and not probative as they
5 will be available to testify in Court.

6 Again, I would ask that the Court hear these
7 arguments after they have had the chance to review these
8 statements so that we can make these determinations as to
9 these particularized guarantees of trustworthiness.

10 And, Your Honor, I would also ask to be considered
11 the constitutionality arguments that I made regarding the
12 Code 17-23-175 as contained in my Defendant's opposition
13 to State's admission of out of Court statement.

14 MS. HALL: Your Honor, very briefly. There are
15 several cases that the South Carolina Supreme Court has
16 considered regarding forensic interviews particularly in
17 their admission under 17-23-175. State v. Bryant, State
18 v. Russell and State v. Cromont were all examined by our
19 State's highest court, and nothing in these cases
20 indicated that the Supreme Court felt that these
21 statements were constitutional or that they violated the
22 defendant's constitutional right to confront the witnesses
23 against him.

24 Contrary to Mr. Hobbs's interpretation of the statute
25 the State's position is that the statute requires the

1 Defense have the opportunity to cross-examine the children
2 about the elements of the offenses and any other thing
3 that they wish to question the children about. There is
4 nothing in the statute that says the Defense has the
5 opportunity to examine the child during the interview.

6 Interviews are conducted every day by law
7 enforcement, Your Honor, for any victim for any case. And
8 defense attorneys are usually not there to cross-examine
9 defendants in the situation or victims or any witnesses.
10 Neither is the State, Your Honor.

11 These are law enforcement and investigative tactics
12 that are used to essentially get an interview that law
13 enforcement made. They are designed for very young
14 children, but there is nothing in the statute that
15 requires that the Defense have the opportunity to cross
16 examine the children at the interview.

17 Again, Your Honor, the children will take the stand,
18 and he will have the opportunity to cross-examine them
19 about anything that he wishes to cross-examine them about.

20 MR. HOBBS: Thank you, Your Honor. Very briefly.
21 The fact that I did not have a chance to cross-examine
22 these children and the statute does not provide for it is
23 exactly why I would say that it violates the Sixth
24 Amendment of the United States as interpreted by Crawford
25 v. Washington. That was my contention as far as the

1 constitutional of the statute I would argue that it is
2 unconstitutional. Our highest court has not had an
3 opportunity as to evaluate the constitutionality of this
4 code because it has never been properly preserved in res.

5 Your Honor, also as for the statute itself I
6 understand I do not have the entitlement to
7 cross-examination, but when an investigator cooperates
8 with a forensic interviewer to take testimony from an
9 individual they are acting on behalf of the State. And I
10 do not had an opportunity to cross-examine. They wouldn't
11 cross-examine if the State was working for -- if the
12 forensic interviewer and the investigator are working on
13 their behalf there wouldn't be a cross-examination.

14 Your Honor, further, I believe the Court really needs
15 to look at these statements to determine whether or not
16 this child is competent to make the statements that he's
17 making and whether or not the questions are leading as
18 presented by the forensic interviewer and if they have
19 coherence.

20 Your Honor, I would present that none of these
21 statements do. They're highly prejudicial because I don't
22 have the opportunity to cross-examine these kids in the
23 video about what they're saying.

24 Your Honor, also the video represents something that
25 can be replayed in the jury room, and that can be reviewed

1 over and over again. And the results of that video is
2 highly prejudicial especially considering that the State
3 is going to have the opportunity to get this testimony.
4 The same say they say I'll have an opportunity to
5 cross-examine they will have an opportunity to examine
6 these children and get these statements on the record.

7 They do not need this video. The code itself is
8 unconstitutional. I would stand by that argument, and
9 then Your Honor, if you're to find that the code is
10 constitutional and passes constitutional vigor then I
11 would present to the Court that it fails to provide
12 particularized guarantees of trustworthiness.

13 THE COURT: Okay. I'll take a look at them. How
14 long are these interviews?

15 MS. HALL: They're about an hour apiece, Your Honor.
16 There are three of them. So roughly about 55 minutes
17 apiece.

18 THE COURT: All right. Do y'all want to be present
19 when I view them?

20 MS. HALL: No, sir, Your Honor.

21 MR. HOBBS: Your Honor, I don't need to be present.
22 I would like to reserve arguments until the manner of the
23 interviewing and to the coherence of their statements
24 until after you have had a chance to review them.

25 THE COURT: Good. That's fine. Okay.

1 MR. DANIEL: Judge, the only other issue, very brief
2 issue, that we have and we don't think this will come up,
3 but there has been -- there is a significant body of law
4 that deals with a Court's ability to allow the State --
5 allow the victims, the little children, to testify via
6 closed circuit television should that be necessary based
7 on the accusations and when they've got an alleged
8 perpetrator sitting in the room. We are not asking for
9 that at this time.

10 We don't think it will be necessary, but we would
11 like to reserve our right to discuss that in the future,
12 tomorrow, if that becomes necessary. We don't think it
13 will be, but just putting you on notice. That will be the
14 State's motion.

15 THE COURT: All right.

16 MR. HOBBS: Your Honor, many of my motions were
17 responsive to the State, but I do have a couple of motions
18 that I would like to present at this time. Your Honor, I
19 would reiterate my discovery, Rule 5, Brady motion that I
20 presented to the State. Your Honor, and ask that any
21 evidence that falls within the Rule Five of the South
22 Carolina Rules of Criminal Procedure, Brady v. Maryland,
23 be turned over to me.

24 Your Honor, I filed a motion asking for them to
25 disclose the alleged victim's counseling records. Your

1 Honor, I'm not positive that these exist because I don't
2 have them in my file. What I can present is that after
3 the forensic interviewer's -- interviews were complete
4 that she recommended therapy to follow up with what they
5 had said and what she believed they were dealing with.

6 Your Honor, if there are any such records exist I
7 would ask this Court allow me to examine them as I do
8 think they would be highly probative as to the nature and
9 substance of their allegations.

10 MR. DANIEL: Judge, first of all, of course, the
11 State complies with every rule that we're supposed to
12 comply with. We did get the request by the Defense for
13 these counseling records. I got it about four o'clock
14 Friday afternoon. To our knowledge the three named
15 victims in these indictments never received counseling.

16 How, I'll ask them again when we meet with them in
17 the morning or whatever, but to our knowledge they never
18 had any kind of counseling. I do know that **Minor 4** the
19 young man who testify that -- who you heard testify
20 earlier he did go to counseling for a very brief time. He
21 is no longer in counseling.

22 I don't know who saw -- I have not seen any reports.
23 We don't have any records. So the fact that our indicted
24 victims, to my knowledge again, don't have any counseling
25 records. And, again, the fact that I didn't get them

1 until four o'clock Friday afternoon sort of presents us
2 from having anything today.

3 THE COURT: Double check on it.

4 MR. DANIEL: Okay.

5 MR. HOBBS: Your Honor, I also ask that they provide
6 the same counseling records as to the Lyle victim in this
7 case for the same reasons. It's going to go to his
8 consistency and his ability to recount and keep his story.

9 MR. DANIEL: Withholding objections to admissibility
10 because I think it's going to be admissible, I certainly
11 will find that out. I'll work with **Minor 4**'s mother this
12 morning or over the lunch break, but again, this is 12:30
13 on the morning of trial. I mean it's kind of tough for us
14 to get stuff together. What if the office is -- I have no
15 idea. What if the counseling office is closed today and
16 tomorrow. I don't know. This is what happened. I didn't
17 get this until four o'clock Friday afternoon.

18 THE COURT: Well, do the best you can.

19 MR. DANIEL: Yes, sir.

20 MR. HOBBS: Thank you, Your Honor. I would reserve
21 my motion for competency until the children are actually
22 here and they can be evaluated by the Court. Your Honor,
23 I understand the state's position that everyone is
24 presumed competent, but again, as State v Needs shows us
25 there is the need for the Court to make that determination

1 when the challenge is brought.

2 Your Honor, I would present to you that after looking
3 over these videos you're going to see a strong basis for
4 considering whether or not these children are competent to
5 testify and whether they can essentially address all of
6 these concerns that are in State v. Needs.

7 Again, Your Honor, when we're looking at State v.
8 Needs we're considering their ability to testify and to
9 speak intelligibly about what the accusations are. And I
10 point out to the Court again that those competencies
11 are -- the competency considerations are the ability to
12 perceive the event with a substantial degree of accuracy,
13 remember it, communicate about it intelligibly and be
14 mindful of the duty to tell the truth under oath.

15 Your Honor, once you see these videos you're going to
16 see several issues with these factors as far as they're
17 ability to perceive the event with a substantial degree of
18 accuracy, remember it, communicate about it intelligibly.
19 I do believe that we need to have an in Court
20 determination as to the competency of these children given
21 their age and the statements and the nature of what is
22 contained in these statements as you have an opportunity
23 to review.

24 MR. DANIEL: Judge, again, the presumption is
25 competence and just as we did the voir dire with **Minor 5**

1 we will do the same thing with the other boys, and I would
2 invite Mr. Hobbs as I think the rules allow him, to
3 question the witnesses as to competency as well.

4 I think this Needs case, I don't know about
5 Mr. Hobbs. Mr. Hobbs, he didn't give me a copy of this
6 case. It's a Pennsylvania case he's arguing.

7 MR. HOBBS: No. no. no. no. Your Honor, State v.
8 Needs, Court of Appeals, South Carolina, heard 1996. They
9 adopt the Pennsylvania factors that I'm referring to.

10 MR. DANIEL: In his brief Mr. Hobbs mentions a case
11 of Michael H. and he relies heavily on that case. In that
12 case the child had heard voices, and the counselor had
13 called them auditory hallucinations. If mental health
14 were some issues that we thought we here, then of course,
15 we would be all about getting a competency evaluation
16 before we went and had this trial or before they
17 testified. But that's not what we have here.

18 And the fact that -- and, again, this is very
19 important. The fact that the children said something to
20 some degree different than on their forensic interview
21 versus what they may testify to in trial doesn't matter.
22 It doesn't matter that their recantations are different,
23 and there is going to be expert testimony why that is
24 actually the norm for those things to be different.

25 As for competency we think the presumption is

1 competence, and we'll be glad to voir dire each young man
2 as he testifies.

3 THE COURT: Okay.

4 MR. HOBBS: Your Honor, State v. Needs, 333, 134. I
5 apologize for not providing the Court with copies of that.
6 It does adopt the test from Pennsylvania into that, and
7 Your Honor, the reason that I state in res Michael H. is
8 because the Court in extraordinary circumstances can do an
9 independent examination for competency. I would ask the
10 Court to consider that. If the Court is not inclined to
11 do that, Your Honor, we do have some competency issues and
12 you will see that when you hear the statements of these
13 children.

14 And, Your Honor, also in light of these statements I
15 need to make sure that they can perceive these events with
16 a substantial degree of accuracy, remember it, communicate
17 about it intelligibly and be mindful of the duty to tell
18 the truth. I think we lack that, but I would ask to
19 reserve the argument on that until you have had an
20 opportunity to review the tapes.

21 THE COURT: Okay.

22 MR. DANIEL: Briefly. So if -- well, in summation of
23 fact, of argument, I think that's -- Mr. Hobbs keeps
24 coming back to these videos. They said videos. Well,
25 that's not what determines competency here. It's what

1 they say on the stand. So we'll deal with that when the
2 time arises.

3 THE COURT: I'll look at the videos, and we'll get
4 into all that before we get into the children.

5 MR. HOBBS: Your Honor, just like any testimony, the
6 videos and the children making these statements needs to
7 be competent when they're testifying. This is out of
8 Court testimony that they're trying to admit, and when the
9 child makes it they need to be competent when they make
10 that or else it fails the threshold determination that
11 they were competent to make the testimony in the first
12 place.

13 THE COURT: Anything else?

14 MR. HOBBS: Your Honor, if I may just have one
15 moment. Your Honor, I do have one motion regarding when
16 these videos should be played if they are admitted, but
17 again, I will state that and reserve that until you've
18 made the determination that the videos should be admitted
19 at all. I did make a motion to sequester the witnesses.
20 I was told earlier today that we had the State's consent
21 on that, but I'll be happy to argue it if we need to.

22 MR. DANIEL: Victims, and under the Victim's Bill of
23 Rights, when the victims are children their parents are
24 allowed in the courtroom. So we have two investigators in
25 this case. I know the rules typically allow us to just

1 have one of them in the room. If Mr. Hobbs has an
2 objection to me having both of them in the room. One of
3 them is my first witness anyway. He's here. One of them
4 is my next to last witness. We can accommodate Mr. Hobbs
5 with that, and we have an expert who will not be in the
6 courtroom. And we have also no objection to the forensic
7 interviewer remaining outside the courtroom.

8 THE COURT: Okay.

9 MR. HOBBS: Your Honor, I would ask that the alleged
10 victims themselves be sequestered. The parents can remain
11 in the courtroom.

12 MR. DANIEL: That is contrary completely to the
13 Victim's Bill of Rights. Victims are allowed to be in the
14 courtroom when their case is called for trial for the
15 whole thing if they want. Now, I will say for the record
16 we're not going to have our kids sit in the courtroom the
17 whole time, but they are certainly entitled to under the
18 Victim's Bill of Rights.

19 MR. HOBBS: Your Honor, there needs to be a case by
20 case determination as to whether sequestration is needed
21 once a defendant makes the request. Essentially the
22 purpose of sequestering the witnesses is to prevent the
23 witnesses from, you know, essentially lying together and
24 corroborating each other's statements. And in this case
25 we have the alleged victims making multiple different

1 statements.

2 And I would point to the Court to State v. Huckabee.
3 That is 694 SC 2d 781 which states, "The purpose of the
4 exclusion rule is, of course, to prevent the possibility
5 of one witness shaping his testimony to match that given
6 by other witnesses at trial. The question of exclusion of
7 testimony of any witness, however, depends upon the
8 particular circumstances and lies within the sound
9 discretion of the Court."

10 Your Honor, that determination is going to lie within
11 your determination. However, I will present that by
12 sequestering these children we would be able to afford my
13 client the means of discovering discrepancies in the
14 different accounts. This is even more important because
15 we have a consolidation of these cases, and these
16 statements are so didn't in nature that I believe it's
17 imperative that we sequester them from being able to view
18 each other's statements and now allow them to conform
19 their testimony based on the testimony of another
20 individual.

21 THE COURT: All right. This is the way we'll do it.
22 Keep them out. Once they testify they can stay in.

23 MR. DANIEL: Okay. I would say for the record,
24 please, for the Court to note that Statute 16-3-1550(b)
25 which says, "The victims must not be sequestered."

1 THE COURT: Well.

2 MR. DANIEL: They're not going to be in here anyway.

3 THE COURT: That's fine. The best way to handle it
4 they stay in here once they testify.

5 MR. HOBBS: Your Honor, I just have one more motion,
6 and then my pre-trial motions will be done. This is a
7 matter that I believe the State correctly put. I did not
8 file a motion for, but in consideration I do believe it's
9 a motion that needs to be made.

10 Your Honor, I would ask that the State quash the
11 indictment due to their inadequacies as far as the date
12 alleged. Your Honor, our Court in State v. Wade. That is
13 409 -- I'm sorry. 306 SC 79, declined to take a per se
14 viewpoint that two years was too broad of a time period
15 for the client to make his alibi and maintain a defense.

16 Your Honor, in this case we have a time period of two
17 and a half years, okay. This makes this highly
18 prejudicial to my client because I'm unable to defend the
19 charges and he is unable to defend the charges against him
20 because it is impossible for him to establish an alibi
21 defense when the time periods are so broad of two and a
22 half years.

23 Your Honor, in this case as opposed to somebody who
24 lives with these children my client was the next door
25 neighbor. My client is alleged that somewhere between, at

1 least far **Minor 2** and **Minor 1** some two and a half year
2 period that he essentially sexually battered these
3 children and exposed them to obscene material.

4 Your Honor, the indictment needs to be sufficient
5 when judged from a practical standpoint with all
6 circumstances of the particular case in mind. That is
7 State v. Wade citing State v. Adams, 277 SC 115.

8 Your Honor, my client has maintained that he would
9 never had an opportunity to be in the backyard with these
10 children, and he was not -- has not committed these
11 alleged facts. And if we were able to know when the
12 actual time frame was it is very possible that Mr.
13 Scarborough was out of town working or not available to
14 have actually committed these offenses.

15 Now, the State I anticipate will say, "Well these
16 children are so young that they can't even imagine to
17 figure out when this actually happened. Your Honor, in
18 many cases the State -- I'm sorry. The Courts have upheld
19 that argument that a child shouldn't be or an indictment
20 shouldn't be precluded because the child was too young to
21 remember exactly when it happened.

22 However, Your Honor, as you will see when you review
23 the statements the children all say that as soon as this
24 happened they went and reported it to their parents. So
25 if a parent is told that their child was sexually

1 violated, sexual battered or exposed to obscene material
2 then the State can very much pinpoint the date and time
3 when this occurred. Instead, Your Honor, the State has
4 cast a large net of two and a half years stating that my
5 client must account and alibi for every one of those days
6 for the accusation that is being made here today.

7 Your Honor, the State knows when this occurred
8 because the State has competent evidence from the parent
9 which would say when this allegation was made. Instead in
10 an attempt to preclude my client from availing a defense
11 of alibi and to bring an adequate defense as to these
12 accusations they have cast this two and a half year time
13 span.

14 Your Honor, as for **Minor 3** we look at a timeframe of
15 November 1st 2011 to May 25th 2012. Again, Your Honor,
16 all of these children maintain that as soon as this
17 incident happened they reported it to their parents.
18 Again, Your Honor, I believe that the State knows when
19 this happened and is instead creating a larger time period
20 to prejudice my client in his ability to maintain a
21 defense and present an alibi against these accusations.

22 MR. DANIEL: We wish we knew when this happened.
23 Judge, again, we're arguing well settled law here in the
24 State of South Carolina. State v. Tumbleson, 654 SE 2d
25 849, "Indictments in a criminal sexual case -- conduct

1 case with a minor were not required to specify precise
2 time of each offense charged because time was not a
3 material element." A three year, in that case, a three
4 year time period covered by indictments was sufficient.
5 The Court noted that, "The stealth and repetitive nature
6 of the conduct compels the broader time period." The
7 victim is a young child who one cannot reasonably expect
8 to recall the exact dates of the sexual abuse.

9 Next, Mr. Hobbs cites State v. Wade. Actually,
10 interestingly, Mr. Hobbs cites a case that supports our
11 position. State v. Wade, 409 SE 2d 780, "An Indictment
12 alleging sexual abuse which occurred between 1984 and 1985
13 is permissible." Supreme Court upheld the sufficiency of
14 the indictment wherein, "The victim could have
15 legitimately had real difficulty on remembering the date
16 on which the defendant committed his offense. Instead
17 only being capable of remembering that it happened
18 sometime in 1984 or 1985. And the defendant was not
19 adversely affected by the indictment", period according to
20 that Court in State v. Wade.

21 Further, State v. Wingo, 403 SE 2d 322, "Time is not
22 a material element of child sexual abuse. Where time is
23 not an essential element of the offense the indictment
24 need not specifically charge the precise time the offense
25 allegedly occurred.

1 Judge, these are three cases that are landmark cases
2 in our State for this issue. It is more common than not
3 for C.S.C. cases involving children to have broad time
4 periods in the indictment. And, finally, as to Mr. Hobbs'
5 contention that, well, the State knows when this happened
6 because as soon as this happened the kids went and told
7 their parents.

8 Well, in one of the case we know that the kid did go
9 and tell his mom, and the mom is going to testify that she
10 didn't call the police because -- for several reasons, but
11 because she had some issues and because the kid was young
12 when it happened and she said, "Well, I'm not real sure
13 what's going on with this kid -- with my kid." And so we
14 actually know -- actually, it's going to come out that she
15 didn't go straight to the police. She did once she found
16 out the other kids came forward saying the same thing.

17 So, Judge, this is well settled and our indictments
18 are fine.

19 MR. HOBBS: Your Honor, I cite the State v. Wade
20 because that would be the argument that I would expect the
21 Court -- the State to make. Your Honor, they state that
22 sufficiency of an indictment must be judged from a
23 practical standpoint with all the circumstances particular
24 case -- to that particular case in mind. The reason they
25 say that is because they don't want to say two years is

1 over broad.

2 In this case they urged him to adopt a per se or the
3 Court should adopt a per se rule that two year indictment
4 was constitutionally over broad. They declined. They say
5 it has to be a case by case evaluation. In the case at
6 hand, Your Honor, all of these children, as you will see
7 from the statement, say that this happened one time. Not
8 a repetitive nature. This is not something where he lived
9 we these children and the abuse occurred again and again
10 and again.

11 We have, and to the State's own admission, the child
12 said, and in the forensic report it says, "The mother
13 heard this accusation in November 2011," but yet she then
14 casts this net of November of 2011 to May 25th 2012. As
15 for the other two children, again, we told our mom
16 immediately therefore. Okay. So now we're creating a two
17 and a half year timeframe.

18 And it's not that time should never be considered in
19 an indictment. It's that there should be a case by case
20 review of the indictment from a practical standpoint with
21 all the circumstances kept into mind.

22 Your Honor, in this case the children state that
23 these told their parents. They state that this happened
24 one time so we don't have repetitive nature. We have a
25 one time event where the parents were told, and instead of

1 sticking to what the parent says when they were told and
2 when this happened we have created an overly broad
3 timeframe to prejudice my client and not allow him to make
4 a defense for these accusations.

5 THE COURT: Motion to quash is denied.

6 MR. DANIEL: Thank you, Judge.

7 THE COURT: We're in recess until 1:45. That clock
8 is a little bit fast, but 1:45.

9 MR. DANIEL: Thank you, Judge.

10 MR. HOBBS: Thank you, Your Honor.

11 THE COURT: So if anybody is going to get lunch let's
12 get it done.

13 (WHEREUPON, Court was in recess at 12:35 and
14 reconvened at 2:15 p.m.)

15 (WHEREUPON, other Court-related business was
16 conducted on the record but not related to the trial
17 of this case and not included in this transcript of
18 record.)

19 (WHEREUPON, the jury pool was sworn in at 2:45 p.m.)

20 (WHEREUPON, qualification of the jury was conducted.)

21 THE COURT: We're going to take a 15 minute break.

22 I'm going to ask that everybody step out. You can scatter
23 around the court house, but we do need you out of the
24 courtroom. We've got to protect the record for a few
25 minutes. Please do not come back in until the bailiff

1 lets you in.

2 (WHEREUPON, the jury pool is excused from the
3 courtroom at 3:13 p.m.)

4 THE COURT: All right. Going forward or we got
5 something worked out here?

6 MR. HOBBS: No. Your Honor, at this moment he would
7 like to go forward with the selection of jury panel. I do
8 feel like he's strongly considering if he actually wants
9 to move forward with this trial. I would ask the Court to
10 allow us to select the jury panel and then essentially we
11 can get this resolved this afternoon if possible.

12 THE COURT: Okay. No problem.

13 MR. HOBBS: Your Honor, I do know -- I was believing
14 that we were close to resolution, and so I in good faith
15 stepped out. Might I still be able to present a witness -
16 list to the Court for their consideration. I do have some
17 requests for voir dire as well. I ask that the Court at
18 least review it to see if it would be appropriate to ask.

19 THE COURT: Okay.

20 MR. DANIEL: State has the same -- some requests as
21 well.

22 (WHEREUPON, the jury pool enters the courtroom at
23 3:30 p.m.)

24 VOIR DIRE OF THE JURY

25 THE COURT: Solicitor.

1 MR. DANIEL: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. DANIEL: Your Honor, State calls it's case
4 against Sammy Lee Scarborough for the following
5 indictments: 2013-GS-17-292, criminal sexual conduct with
6 a minor in the first degree; 2013-GS-17-293, disseminating
7 harmful material to a minor; 2000-GS-17-329, criminal
8 sexual conduct with a minor in the first degree;
9 2013-GS-17-294, disseminating harmful material to minors;
10 2000-GS-17-290, criminal sexual conduct with a minor in
11 the first degree; 2013-GS-17-291, disseminating harmful
12 material to minors; and finally, 2013-GS-17-710, engaging
13 a child under 18 for sexual performance. All seven of
14 these indictments have gone to the grand jury. The State
15 is here and prepared for trial.

16 THE COURT: Ladies and gentlemen of the jury, you've
17 heard the case that has been called for trial before this
18 Court. The defendant, Sammy Lee Scarborough, is present
19 in Court represented by Mr. Hobbs of the local Bar. At
20 this time I need it pose some questions concerning
21 kinship, business relationship, and questions to that
22 regard. At this time I'm going to ask Mr. Scarborough to
23 turn and -- stand and turn and face the jury so they can
24 see you to make sure we're not having any kinship on the
25 jury panel. Thank you, sir. You may be seated.

1 That's the first question. Do I have anybody on the
2 jury panel who is related by blood or connected by
3 marriage or has any business or social relationship with
4 Sammy Lee Scarborough? If so we need you to stand at this
5 time. Okay. I'm going to call some witnesses names out.
6 Pay close attention, please. I may repeat some. If you
7 have any kinship by marriage or by blood or you have any
8 social, business, religious or fraternal relationship with
9 any of these individuals we're going to need for you to
10 stand after I pose the question.

11 Gaye Allen Cook, Natasha Funderburk, Maggie Moore,
12 Minor 2, Sharon Murphy, Minor 1, Hope Owens,
13 Minor 3, Minor 4, Jason Turner with the Dillon
14 Police Department, Valerie Williams with the Attorney
15 General's Office, Sally Williamson, Russell White, Rachel
16 White, Samantha Roberts, Barbara Scarborough, Catherine
17 Johnson, Ricky Turner. Did I overlook anybody, counsel?

18 MR. DANIEL: You called all of ours, Judge.

19 MR. HOBBS: That's all of ours, Your Honor.

20 THE COURT: If so we need you to stand at this time.
21 Is anyone on the jury panel or anyone in your immediate
22 family currently or in the past been prosecuted by the
23 Fourth Circuit -- I'm sorry. Back up. Yes, sir.

24 PROSPECTIVE JUROR: Yes, sir. Stand for if you knew
25 someone that stood?

1 THE COURT: Okay. Your name, please.

2 PROSPECTIVE JUROR: Ronald Bullard.

3 THE COURT: And your number?

4 PROSPECTIVE JUROR: Number 24.

5 THE COURT: Number 24. How does that question apply?

6 PROSPECTIVE JUROR: Maggie Murphy is my first cousin.

7 THE COURT: First cousin. Thank you, sir. Yes.

8 PROSPECTIVE JUROR: Tarsha Dixon, Number 41. Tarsha
9 Dixon.

10 THE COURT: Number 41?

11 PROSPECTIVE JUROR: Yes, and I know Maggie Murphy.

12 THE COURT: Okay. You just know her?

13 PROSPECTIVE JUROR: Well, I have a relationship with
14 her.

15 THE COURT: What is that relationship?

16 PROSPECTIVE JUROR: What relationship?

17 THE COURT: All right. Are you related by blood or
18 by marriage?

19 PROSPECTIVE JUROR: No, sir. We're not married, but
20 we've been together for 14 years.

21 THE COURT: Okay. Thank you. Anyone else? Anybody
22 on the jury panel or your immediate family member been
23 prosecuted by the Solicitor's Office or by the Attorney
24 General's Office? Has any member of the jury or immediate
25 family member or close friend been ordered by a Court to

1 be registered as a sex offender? Has any member of the
2 jury panel or had an immediate family member ever been
3 investigated for charged with an incident involving child
4 abuse or a sexual assault? Your number?

5 PROSPECTIVE JUROR: Fifty-four.

6 THE COURT: If you will come up, please. Counsel may
7 approach. How does that question apply?

8 PROSPECTIVE JUROR: My husband is a sex offender.

9 THE COURT: Okay. You're presently with him?

10 PROSPECTIVE JUROR: No, we separated.

11 THE COURT: You're separate. Okay. Where does he
12 live now?

13 PROSPECTIVE JUROR: Mt. Cavalry.

14 THE COURT: In Dillon County?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: Any questions, gentlemen?

17 MR. DANIEL: I'm aware of the case.

18 MR. HOBBS: No, thank you.

19 THE COURT: Anyone else?

20 PROSPECTIVE JUROR: Thomas Carter, Number 26. My
21 friend, my next door to me is in prison for child
22 pornography.

23 THE COURT: Okay. This is Thomas Carter, Number 26.
24 Would the fact that you have a neighbor that's serving
25 prison time under those circumstances would that affect

1 your ability to be a fair and impartial juror in this
2 case?

3 PROSPECTIVE JUROR: No, sir. I don't think so. No,
4 sir.

5 THE COURT: Any questions?

6 MR. DANIEL: No, sir.

7 MR. HOBBS: No, sir.

8 THE COURT: Anyone else? Has any member of the panel
9 or an immediate family member -- I don't think I posed
10 this one. I'm going to repeat it. Ever been investigated
11 for or charge with an incident involving any child
12 pornography? Have you or any member of your family ever
13 been the victim of a crime of a sexual nature? Number Two
14 I'm going to modify a little bit. Have you or any member
15 of your family been the victim of any serious crime? Yes.

16 PROSPECTIVE JUROR: I was raped.

17 THE COURT: Okay. And your number again?

18 PROSPECTIVE JUROR: 106.

19 THE COURT: Based on that prior experience, Madam
20 Juror, if you were chosen on this panel would that affect
21 your ability to be a fair and impartial juror?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Have any of you or immediate family
24 member ever sought assistance from, been employed by or
25 performed volunteer work for any center or program whose

1 primary purpose is treating the victims of sexual assault?

2 Does any juror have any personal knowledge about this
3 case? Read any newspaper or any written report or heard
4 anything over the news? Basically, has anybody got any
5 personal knowledge about this case? Or does anybody
6 already formed an opinion about this case? If so we need
7 you to stand but don't make any comments.

8 Are any of you or present -- that are present or
9 your -- any family member or close friends, police
10 officers, that include S.L.E.D. officers, employees of the
11 Solicitor's Department or Solicitor's Office, the Attorney
12 General's Office or any federal agency, state agency or
13 any other prosecutor's office? Your name, please?

14 A. Daniel Caulder.

15 THE COURT: How does that apply?

16 PROSPECTIVE JUROR: Uncle is a S.L.E.D. agent.

17 CLERK OF COURT: Twenty-seven.

18 THE COURT: Uncle is a S.L.E.D. agent. Your number
19 again?

20 PROSPECTIVE JUROR: Twenty-seven.

21 THE COURT: Twenty-seven?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Anybody on the panel or have an immediate
24 family member or close friend who is affiliated or makes
25 contribution to any auxilliary police organizations or

1 citizen's group whose primary aim is the prosecution or
2 pursuit of individuals involved in criminal activity or in
3 the pursuant of victim's rights. For example, S.A.D.D.,
4 M.A.D.D., C.A.V.E. or any such group as that?

5 Has anybody discussed this case with you with the
6 fact that in a case before you as a juror there are
7 allegations being made by a child witness affect your
8 ability to be fair and impartial in that case. If so we
9 need you to stand but don't make any comments.

10 Does anybody know of any reason whatsoever why you
11 could not be a fair and impartial juror in this case?
12 Please stand at this time but don't make any comment. Any
13 additional questions?

14 MR. DANIEL: Just inquire as to knowledge of the
15 lawyers.

16 THE COURT: Okay. I'm going to ask all the attorneys
17 to introduce themselves where you get a good look at them.
18 We need to ask if you have ever been represented by anyone
19 involved as far as the attorneys.

20 MS. HALL: I'm Kelly Hall. I work for the Attorney
21 General's Office in Columbia, and I'm here to assist Mr.
22 Daniel in the prosecution of this case.

23 MR. DANIEL: My name is Shipp Daniel, and I work for
24 the Fourth Circuit Solicitor's Office. And I'm primarily
25 responsible for prosecuting criminal cases in Dillon

1 County.

2 MR. HOBBS: I am Kyle Hobbs, and I'm here today on
3 behalf of Mr. Scarborough. I am a member of the South
4 Carolina Bar, and a sole practitioner.

5 THE COURT: Anybody presently represented by any of
6 these attorneys or by their employers in the past or
7 present? Anything else from the Defense?

8 MR. HOBBS: Nothing, Your Honor.

9 MR. DANIEL: Nothing from the State.

10 THE COURT: Let's see. Five and ten?

11 MR. DANIEL: Yes, sir.

12 THE COURT: All right. Had one jury that had blood
13 relationship, and I think it was Number 24.

14 MR. DANIEL: Yes, sir.

15 MR. HOBBS: Yes, Your Honor.

16 THE COURT: That one is out. All right.

17 SELECTION OF THE JURY

18 (WHEREUPON, State's Exhibit Nos. ONE THROUGH THREE
19 were marked for identification only.)

20 THE COURT: Ready whenever y'all are. As your name
21 is called if you will come around. Come right here in
22 front of Ms. Hyatt, turn and face both tables and let both
23 tables get a good look at you and we will seat a jury.

24 CLERK OF COURT: Number 92, Ashley Legette. What
25 says the State.

1 MR. DANIEL: Please present Ms. Legette.

2 CLERK OF COURT: Defendant.

3 MR. HOBBS: Your Honor, please seat this juror.

4 CLERK OF COURT: Have a seat in the jury box to my
5 right, please, ma'am. Number 54, Yolanda Gibson. What
6 says the State.

7 MR. DANIEL: May we approach, Judge?

8 (WHEREUPON, a bench conference was held off the
9 record in the presence of the jury, but out of the
10 hearing of the jury.)

11 CLERK OF COURT: What says the State.

12 MR. DANIEL: Please excuse Ms. Gibson from service in
13 this case.

14 CLERK OF COURT: You're excused, ma'am. Number 155,
15 Vernice Strickland, Jr. What says the State.

16 MR. DANIEL: Please present Mr. Strickland.

17 CLERK OF COURT: Defendant.

18 MR. HOBBS: Please excuse Mr. Strickland from the
19 trial of this case.

20 CLERK OF COURT: You're excused, sir. Number 109,
21 Tamela McGill. What says the State.

22 MR. DANIEL: Please present Miss McGill.

23 CLERK OF COURT: Defendant.

24 MR. HOBBS: Please excuse Miss McGill from the trial
25 of this case.

1 CLERK OF COURT: You're excused, ma'am. Number 65,
2 Willis Teen Hamilton. What says the State.

3 MR. DANIEL: Please present Miss Hamilton.

4 CLERK OF COURT: Defendant.

5 MR. HOBBS: Please excuse Miss Hamilton from the
6 trial of this case.

7 CLERK OF COURT: You're excused, ma'am. Thank you.
8 Number 175, Shirley Zimmerman. What says the State.

9 MR. DANIEL: Please present Miss Zimmerman.

10 CLERK OF COURT: Defendant.

11 MR. HOBBS: Please excuse Miss Zimmerman from the
12 trial of this case.

13 CLERK OF COURT: You're excused. Number 133, Monica
14 Peele. What says the State.

15 MR. DANIEL: Please present Mrs. Peele.

16 CLERK OF COURT: Defendant.

17 MR. HOBBS: Please excuse Miss Peele from the trial
18 of this case.

19 CLERK OF COURT: You're excused, ma'am. Number Four,
20 Kenneth Allen. Kenneth J. Allen. What says the State.

21 MR. DANIEL: Please present Mr. Allen.

22 CLERK OF COURT: Defendant.

23 MR. HOBBS: Please excuse Mr. Allen from the trial of
24 this case.

25 CLERK OF COURT: You're excused, sir. Number 19,

1 robin Bracey. What says the State.

2 MR. DANIEL: Please present Mr. Bracey.

3 CLERK OF COURT: Defendant.

4 MR. HOBBS: Please seat Mr. Bracey.

5 CLERK OF COURT: Have a seat in the jury box, please,
6 sir. Number 158, Julie Tailor. What says the State.

7 MR. DANIEL: Please present Miss Tailor.

8 CLERK OF COURT: Defendant.

9 MR. HOBBS: Please seat this juror.

10 CLERK OF COURT: Have a seat in the jury box, please,
11 ma'am. Number 125, Brittany Nichols. What says the
12 State.

13 MR. DANIEL: Please present Miss Nichols.

14 CLERK OF COURT: Defendant.

15 MR. HOBBS: Please excuse Miss Nichols from the trial
16 of this case.

17 CLERK OF COURT: You're excused, ma'am. Number 26,
18 Thomas Carter. What says the State.

19 MR. DANIEL: Present please Mr. Carter.

20 CLERK OF COURT: Defendant.

21 MR. HOBBS: Please seat Mr. Carter.

22 CLERK OF COURT: Have a seat in the jury box, please,
23 sir. Number 18, Dwain Boatwright. What says the State.

24 MR. DANIEL: Please excuse Mr. Boatwright from
25 service on this case.

1 CLERK OF COURT: You're excused, sir. Number 37,
2 James Davis, Jr. What says the State.

3 MR. DANIEL: Please seat Mr. Davis.

4 CLERK OF COURT: Defendant.

5 MR. HOBBS: Please seat Mr. Davis.

6 CLERK OF COURT: Have a seat in the jury box, please,
7 sir. Number 169, Betty G. Williams. What says the State.

8 MR. DANIEL: Please present Miss Williams.

9 CLERK OF COURT: Defendant.

10 MR. HOBBS: Please seat Miss Williams.

11 CLERK OF COURT: Have a seat in the jury box, please,
12 ma'am. Number 98, Larry J. Williams -- Manning. What
13 says the State.

14 MR. DANIEL: Please present Mr. Manning.

15 CLERK OF COURT: Defendant.

16 MR. HOBBS: Please seat Mr. Manning.

17 CLERK OF COURT: Have a seat in the jury box, please,
18 sir. Number 63, Beulah Grice.. What says the State.

19 MR. DANIEL: Please present Miss Grice.

20 CLERK OF COURT: Defendant.

21 MR. HOBBS: Please seat Miss Grice for the trial of
22 this case.

23 CLERK OF COURT: Have a seat in the jury box, please,
24 ma'am. Number 35, Fred Davis, Jr. What says the State.

25 MR. DANIEL: Please present Mr. Davis.

1 CLERK OF COURT: Defendant.

2 MR. HOBBS: Please excuse Mr. Davis from the trial of
3 this case.

4 CLERK OF COURT: You're excused, sir. Number 129,
5 Barbara A. Page. What says the State.

6 MR. DANIEL: Please present Miss Page.

7 CLERK OF COURT: Defendant.

8 MR. HOBBS: Please seat Miss Page.

9 CLERK OF COURT: Have a seat in the jury box, please,
10 ma'am. Number 67, Donna Hargrove. What says the State.

11 MR. DANIEL: Please present Miss Hargrove.

12 CLERK OF COURT: Defendant.

13 MR. HOBBS: Please excuse Miss Hargrove from the
14 trial of this case.

15 CLERK OF COURT: You're excused, ma'am. Number 27,
16 Daniel Caulder. What says the State.

17 MR. DANIEL: Please present Mr. Caulder.

18 CLERK OF COURT: Defendant.

19 MR. HOBBS: Please excuse Mr. Caulder from the trial
20 of this case.

21 CLERK OF COURT: You're excused. Number 174, Aaron
22 Young. What says the State.

23 MR. DANIEL: Please present Mr. Young.

24 CLERK OF COURT: Defendant.

25 MR. HOBBS: Yes, Your Honor, please seat the juror.

1 CLERK OF COURT: Have a seat in the jury box, please,
2 sir. Number 106, Martina McDonald. What says the State.

3 MR. DANIEL: Please present Miss McDonald.

4 CLERK OF COURT: Defendant.

5 MR. HOBBS: Please excuse Miss McDonald.

6 CLERK OF COURT: He's out of strikes.

7 MR. HOBBS: No cause.

8 CLERK OF COURT: Have a seat in the jury box, please,
9 ma'am. Number -- you want two alternates, Your Honor?

10 THE COURT: We're only at 12.

11 CLERK OF COURT: Oh, okay.

12 THE COURT: But the answer is yes.

13 CLERK OF COURT: Number 34, Charles Davis. What says
14 the State.

15 MR. DANIEL: Please excuse Mr. Davis from service in
16 this case.

17 THE COURT: You're excused, sir. Number Two, Kenneth
18 A. Allen. What says the State.

19 MR. DANIEL: Please present Mr. Allen.

20 CLERK OF COURT: Defendant.

21 MR. HOBBS: No cause.

22 CLERK OF COURT: Have a seat in the jury box to my
23 right.

24 THE COURT: Two alternates. Strikes one and two per
25 alternate.

Selection of the Jury

89

1 CLERK OF COURT: Number 85, Kimberly S. Johnson.

2 What says the State.

3 MR. DANIEL: Please present Miss Johnson.

4 CLERK OF COURT: Defendant.

5 MR. HOBBS: Please excuse Miss Johnson.

6 CLERK OF COURT: You're excused. Number 14, Amanda
7 Bethea. What says the State.

8 MR. DANIEL: Please present Miss Bethea.

9 CLERK OF COURT: Defendant.

10 MR. HOBBS: Please seat Miss Bethea.

11 CLERK OF COURT: Please have a seat in Alternate's
12 Seat Number One, please, ma'am. Number 41, Tarsha Dixon.
13 What says the State.

14 MR. DANIEL: Please present Miss Dixon.

15 CLERK OF COURT: Defendant.

16 MR. HOBBS: Please seat Miss Dixon.

17 CLERK OF COURT: Please have a seat in our Alternate
18 Seat Number Two, please, ma'am.

19 THE COURT: Any matters concerning jury selection
20 from the State?

21 MR. DANIEL: Beg the Court's indulgence. Nothing
22 from the State, Judge.

23 THE COURT: From the Defense?

24 MR. HOBBS: Nothing from the Defense, Your Honor.

25 COLLOQUY

1 THE COURT: Thank you, gentlemen and ladies. All
2 right. Now that you've got a few minutes to reflect on
3 all that has gone on, all the questions been posed to you,
4 and now that you are seated in the jury box, does any
5 juror know of any reason at this time why you should not
6 serve on this jury or you now have a feeling that you
7 cannot be a fair and impartial juror, please raise your
8 right hand. Okay. Gentlemen, let me talk to you about
9 the panel.

10 (WHEREUPON, a bench conference was held off the
11 record in the presence of the jury, but out of the
12 hearing of the jury.)

13 THE COURT: Ladies and gentlemen of the jury panel,
14 thank you so much for coming and helping us today. I
15 apologize for having you do this, but it saves the
16 taxpayers of Dillon County a lot of money and I really
17 appreciate the Dillon County Council and the Clerk's
18 office for setting up this phone in system. That way we
19 can sort of monitor when we may need you back. We are
20 going to ask that you call in between 6:00 and 7:00 this
21 evening to get an update.

22 It may tell you to call back later. It may tell you
23 to report at a certain date and time this week or it may
24 tell you that your service is now over. Don't know what
25 it will be, but we have got to get our timing about our

1 next cases and get all of our schedules straightened out.
2 We've got this case ready to go, and the jury is seated to
3 try this one. So with that we're going to send y'all on
4 home. Once again, thank you very much.

5 (WHEREUPON, the jury pool was excused from the
6 courtroom at 4:15 p.m.)

7 THE COURT: All right, ladies and gentlemen on the
8 panel, please do not discuss this case with anyone. Don't
9 even discuss it amongst yourselves. The time for
10 discussion will be at the end of the case when you're
11 asked to deliberate. I'll go ahead and tell you now.
12 Tonight after we break don't discuss this case with
13 anyone. Do not allow anybody to contact you in any form,
14 shape, whether it be phone, in person, over the internet,
15 whatever, don't discuss this case with anyone.

16 Please do not leave -- please do not review or read
17 any local news coverage or listen to any local news
18 coverage until this case is over with. National news is
19 fine, but just leave local coverage alone. Don't even
20 discuss this case with family members. Keep it to
21 yourself until time to deliberate.

22 Now, should anybody try to contact you in any way
23 immediately notify the Sheriff's Department of any such
24 attempt. Now, if that happens during court hours you let
25 me know, okay. All right. I'm going to ask y'all to step

1 back to the jury room for a few minutes. I may have to
2 bring you back in and talk with you a little bit further
3 but we won't be going too late this evening. If y'all
4 will just sit back there, relax, get to know each other,
5 but don't talk about the case.

6 Anything before I send them back?

7 MR. DANIEL: Nothing from the State.

8 MR. HOBBS: Nothing from the Defense.

9 THE COURT: All right. We're going to take a brief
10 recess cause we've been going at it all day, all
11 afternoon. If y'all will just step back, relax a few
12 minutes we'll let you know something in a few minutes.

13 (WHEREUPON, the jury panel was excused from the
14 courtroom at 4:17 p.m.)

15 THE COURT: All right. All the jurors are clear, but
16 that brought back memories. The last time we had somebody
17 leave a personal item up there somebody stole it. All
18 right. We'll be in a brief recess.

19 MR. HOBBS: Thank you, Your Honor.

20 (WHEREUPON, Court was in recess at 4:19 p.m.)

21 THE COURT: Any progress on working this matter out?

22 MR. HOBBS: No, Your Honor. Mr. Scarborough would
23 like to proceed with the trial of this case.

24 THE COURT: He wants a trial, he's going to get a
25 trial.

1 MR. DANIEL: Judge, if Mr. Hobbs and I can talk very,
2 briefly about the videos there might be an agreement with
3 that.

4 MR. HOBBS: Yes. Thank you.

5 MR. DANIEL: Your Honor, a Jessie's Law issue, we are
6 not going to introduce the videos, and by agreement of
7 Defense the Defense is not either. Obviously, that allows
8 or still both parties have the right to question the
9 forensic interviewer and the victims as to their
10 involvement in the forensic interview. Obviously, there
11 is some significant rules as to you can't get into the
12 context necessarily from another witness like a forensic
13 interviewer.

14 But the State is going to withdraw its motion to
15 introduce the videos so long as the Defense agrees on the
16 record to also not introduce. Cause we don't want to sit
17 up here and say, "We don't want interviews in" and then
18 Kyle comes up tomorrow and says, "Oh, I want to introduce
19 them in my case." So I think we've agreed. Not going to
20 happen.

21 MS. HALL: Saves you three hour's tonight, Your
22 Honor.

23 MR. DANIEL: You don't have to watch anything. It
24 knocks three hours off of our trial, also, our case. And
25 that's one less issue for the Appellate Court to have to

1 deal with.

2 MS. HALL: Well, don't feel like because of
3 scheduling or anything, now, we'll be glad.

4 MR. DANIEL: No. It has nothing to do with the Court
5 schedule at all. Sorry, but we didn't really care so much
6 about that as we our case.

7 MR. HOBBS: Your Honor, I will consent to that. One
8 issue, and I'm not trying to create -- I haven't got to
9 see **Minor 4**'s tape yet. I imagine they reflect what I'm
10 reading in the forensic interview report. It that's the
11 case then I will take -- likely take the same stance with
12 **Minor 4** But I would reserve **Minor 4** -- the issue of
13 **Minor 4** just not to the alleged victims.

14 MR. DANIEL: We have not made a motion to admit
15 **Minor 4** tapes anyway.

16 THE COURT: All right. 9:30?

17 MR. DANIEL: Sounds good.

18 MR. HOBBS: Yes, sir, Your Honor.

19 (WHEREUPON, the jury panel enters the courtroom at
20 4:48 p.m.)

21 THE COURT: Ladies and gentlemen of the jury, thank
22 you very much for your patience with us. We're ready to
23 go in the morning. It's almost 5:00 now, so we're going
24 to stop now. We'll fire up at 9:30 in the morning. So if
25 you will be here, report to the room from whence you just

1 came. We'll get started as promptly as possible. We may
2 work a little later tomorrow evening than we normally do,
3 so please make appropriate arrangements in case you have a
4 child or whatever that you need to pick up in the
5 afternoon or a loved one that you need to take care of as
6 far as picking up from work or school or whatever.

7 We may go well past 5:30. We normally try to stop by
8 5:30. We may work a little bit longer tomorrow. We just
9 have to see how it goes. All right. Y'all have a good
10 night. Remember everything I talked to you about.

11 (WHEREUPON, the jury panel was excused from the
12 courtroom at 4:50 p.m.)

13 MR. DANIEL: Judge, we're done with the panel if
14 Madam Clerk wants to put on the message machine that we're
15 done with them. And I would ask that Mr. Scarborough's
16 bond be revoked at this time. He does have a bond. I
17 don't know what it is, but he's got a bond out there. I
18 would ask that since we've got a jury empaneled but not
19 sworn that that be revoked. He is in the Department -- or
20 he is at the jail, but in the event they win the lottery
21 tonight.

22 MR. HOBBS: Your Honor, I would object to the
23 revocation of the bond. One of the conditions of his bond
24 is electronic monitoring. I think if he was able at this
25 late hour to post bond it would be on a condition that he

1 would be monitored. So I would ask the Court to keep his
2 bond in place throughout the trial.

3 THE COURT: No, I can't do that with the possibility
4 if he's convicted by the jury and the nature of the
5 possible sentences, I'm not going to take that risk
6 because I don't trust this electronic monitoring matters.
7 We had one saw one off and put it in a mailbox, and I
8 don't know if they've caught him yet over in Marlboro
9 County.

10 So you will be secured for the night. All right.
11 See you in the morning.

12 MR. HOBBS: Thank you, Your Honor.

13 MR. DANIEL: Thank you, Judge.

14 END OF TRANSCRIPT OF RECORD .

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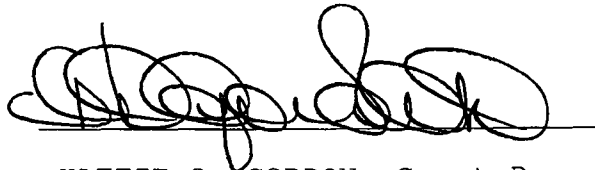
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Dillon County, South Carolina, on the 4th day of November,
2013.

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

February 3, 2014

A handwritten signature in black ink, appearing to read 'Hattie O. Gordon', written over a horizontal line.

HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
<u>COUNTY OF DILLON</u>	)	2013-GS-17-0290
		2013-GS-17-0291
		2013-GS-17-0292
		2013-GS-17-0293
		2013-GS-17-0294
		2013-GS-17-0328
		2013-GS-17-0710

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
SAMMY LEE SCARBOROUGH	)	
<u>DEFENDANT</u>	)	

November 4-6, 2013
Dillon, South Carolina
Volume 02 of 03

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

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

SHIPP DANIEL, ASSISTANT SOLICITOR
Attorney for the State

KELLY W. HALL, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KYLE M. HOBBS, ESQUIRE
Attorney for the Defendant

COLLOQUY

THE COURT: All right. Anything before we get started?

MR. DANIEL: Nothing from the State.

MR. HOBBS: Yes, Your Honor, briefly. I would renew my request to the State to produce any counseling records of these children that are testifying. Specifically as I noted yesterday the forensic interviewer actually recommended follow-up treatment for the three children.

Minor 1, Minor 2 and Minor 3.

Your Honor, I asked the State yesterday, and I believe the said they would do their best to get me that information. I wanted to follow up and again present that request to the Court at this time.

Further, Your Honor, as far as Minor 4 is concerned we had a hearing concerning his testimony, the Lyle testimony, yesterday and within that report it cites a medical examination. I've never been produced this medical examination for him. Now that he is -- the Court has ruled that he is relevant and is coming into trial I would ask that the State produce that medical examination for any review.

MR. DANIEL: There are no counseling records as it relates to the three juveniles that Mr. Hobbs just listed. They didn't go to counseling despite the recommendation in

1 the report.

2 As for the medical information, we don't have that.
3 We could see about getting that before his testimony this
4 afternoon. Anticipate that being this afternoon, but we
5 don't have the information.

6 THE COURT: You don't have it. Law enforcement
7 doesn't have it?

8 MR. DANIEL: Correct.

9 THE COURT: You don't have any duty to have to do his
10 job for him. If he wants it he can subpoena it from the
11 medical provider. If you want to be nice about it and get
12 it for him, that's fine, but I'm not ordering you to do
13 it.

14 MR. DANIEL: Thank you, Judge.

15 MR. HOBBS: Thank you, Your Honor. The next matter I
16 would have is I would, before we get into opening
17 statements and before I imagine the State makes comments
18 on the admission of **Minor 4** as a witness in this case I
19 would renew my prior motions regarding the Lyle 404(B)
20 evidence being introduced in this case.

21 Your Honor, I do believe under State v. Wallace, in
22 consideration of the factors, these cases are dissimilar
23 and highly dissimilar.

24 Further, Your Honor, under Rule 403 they are far more
25 prejudicial than they are probative. I would renew that

1 and ask the Court if they would make a final determination
2 on the ruling of the admission of the Lyle evidence prior
3 to the State's opening statements so that I don't have to
4 renew it every time Lyle evidence comes in.

5 MR. DANIEL: We already ...

6 THE COURT: I'll stand by my ruling yesterday. I'm
7 not going to change it.

8 MR. HOBBS: Thank you, Your Honor.

9 THE COURT: And let me say something.

10 MR. HOBBS: Yes, sir.

11 THE COURT: There are some things went on yesterday I
12 didn't -- I should have said something at that time, and
13 I'm sensitive to this since I just got back from a seminar
14 on court house security. There will be no more of this
15 coming up to the rail and physical contact between the
16 defendant and anybody.

17 MR. HOBBS: Yes, Your Honor.

18 THE COURT: You understand that, sir?

19 MR. SCARBOROUGH: I understand, Your Honor.

20 THE COURT: Everything back there in that courtroom
21 understand that? Visiting hours are over.

22 MR. HOBBS: Thank you, Your Honor. The last matter
23 that I believe that I would present to the Court was
24 renewing of the motion that I filed with the Court to
25 exclude testimony of the alleged victims for lack of

1 competency to testify. I did file this motion with the
2 Court. I have copies of that motion, and yesterday I
3 actually had a copy of State v. Needs, the case I kept
4 referring to and I failed to pass it up to the Court. So,
5 now, at this point I'd like to pass up that motion as well
6 as State v. Needs, the case that I kept referring to.
7 Thank you, Your Honor.

8 Your Honor, in regards to competency, despite the
9 State's contention that witnesses are presumed, competent,
10 I would present to the Court that after review of their
11 forensic interview there are inconsistencies and
12 incoherencies that are created with the story which would
13 directly conflict with their ability to be confident to
14 testify in this trial.

15 Your Honor, as I pointed out yesterday in State v.
16 Needs looked beyond just the ability to and knowing the
17 duty to tell the truth when he states that he knows that
18 it is right to tell the truth and wrong to tell a lie and
19 that he will tell the truth if permitted to testify.
20 Again, I would point to the factors which I highlighted on
21 the third page considering that in order to be competent
22 to testify a witness must have the ability to perceive the
23 event with a substantial degree of certainty or
24 accurately, remember it, communicate about it intelligibly
25 and be mindful of the duty to tell the truth under oath.

1 Your Honor, in all of these children's statement,
2 including **Minor 4**'s, we have inconsistencies about the --
3 where the location of the incident, who was present during
4 the incident, the time of the incident, and a lack of
5 coherence when we're considering what they're saying now
6 versus what they're saying then.

7 Your Honor, also as far as competency goes I spoke a
8 little bit about **Minor 5** yesterday and his competency and
9 his ability to recall what he ---

10 THE COURT: No, sir. I've already ruled on his
11 competency.

12 MR. HOBBS: Okay.

13 THE COURT: I'm not hearing anything else about it.

14 MR. HOBBS: That's fine, Your Honor.

15 THE COURT: We are going to get this case tried.
16 Your client wants a trial, and we are going to give him a
17 trial. The Solicitor is competent in what he's doing.
18 I'll decide whether competent or not. I've heard enough
19 about it.

20 MR. HOBBS: Your Honor ---

21 THE COURT: We're not going to stall this case all
22 week long with all this motions and all this paperwork.

23 MR. HOBBS: I would simply ---

24 THE COURT: Don't argue with me.

25 MR. HOBBS: I'm not, Your Honor. I would simply ---

1 THE COURT: You know the rule about arguing with me
2 after I've ruled?

3 MR. HOBBS: Yes, sir.

4 THE COURT: Well, sit down.

5 MR. HOBBS: Your Honor, I would need ---

6 THE COURT: Sit down.

7 MR. HOBBS: I'm not arguing with you, Your Honor.

8 THE COURT: Sit down. Anything you'd like to put on
9 the record concerning what he's passed up?

10 MR. DANIEL: Judge, I would briefly, and I know. I
11 agree that the Court has already ruled and I'm confused as
12 to why we're arguing this again, but State v. Needs is a
13 South Carolina case that deals with a woman, an adult
14 woman, who the defense claimed was not competent because
15 she lied several times. And they said she was a
16 pathological liar. Had nothing to do with children.

17 And in that case the part that Mr. Hobbs doesn't read
18 for the Court, "Rule 601(a), every person is competent to
19 be a witness except as otherwise provided by statute or
20 these rules. Courts presume a witness to be competent
21 because bias or other defects in a witness' testimony
22 affect a witness' credibility and may be weighed by the
23 fact finder," of course, the jury.

24 And it goes on to say, "The party opposing the
25 witness has the burden of proving a witness is

1 incompetent," and that's a Pennsylvania case that is
2 referred to by Mr. Hobbs. And then and finally, "After
3 the trial court properly determined the witness is
4 competent the resolution of the credibility of the witness
5 is within the province of the jury." And in this case Mr.
6 Hobbs talks about these forensic interviews.

7 Well, he is free to cross-examine these victims on
8 those forensics as much as he can and the rules allow it
9 considering Jessie's Law, but this is an issue for the
10 jury. And what they may have said in statements before
11 has nothing to do with their competency today. We're
12 talking about their competency of this witness to testify
13 and the Court has made its ruling.

14 THE COURT: Counsel, come back to chambers. (

15 (WHEREUPON, a short break was taken.)

16 THE COURT: Sit down, please. Be seated. Bring the
17 jury in.

18 (WHEREUPON, the jury panel enters the courtroom at
19 9:57 a.m.)

20 THE COURT: Good morning. Thank you for your
21 patience this morning. All right. Let's see here.
22 Miss Robin Bracey.

23 JUROR: Here.

24 THE COURT: Mr. Robin Bracey Juror Number Nine. All
25 right. Mr. Bracey is going to be the foreperson of the

1 jury. Mr. Bracey, when we take a break if you will take
2 the end seat. You're fine where you are now, but once we
3 do that if you will take that seat and just keep it for
4 the rest of the trial. The rest of you it doesn't matter
5 where you sit except the alternates. They need to keep
6 their same seats. And the foreperson needs to keep that
7 same seat.

8 (WHEREUPON, the jury panel was sworn in at 9:59 a.m.)

9 THE COURT: That oath you just took basically
10 explains to you what your job as jurors will be; that is
11 to well and truly try the case. This is a criminal case.
12 The burden of proof is on the State of South Carolina to
13 prove the guilt of the defendant beyond a reasonable
14 doubt. Every defendant in the United States and in South
15 Carolina that comes into a criminal court of law is
16 presumed innocent until proven guilty.

17 So, once again, the burden of proof is on the State
18 of South Carolina. You are the triers of the facts in
19 this case. I don't get involved in the facts and will not
20 get involved in the facts. I am the judge of the law of
21 the case. It's my job to assist counsel in getting this
22 case tried, to make sure that the Rules of Evidence are
23 followed and the Rules of Procedure are followed.

24 From time to time there may be objections entered.
25 Don't take any or give any weight to how I might rule on

1 an objection; that's just the procedure we have to go, and
2 it doesn't indicate to you in any kind of way that I have
3 an opinion about the actual facts of this case. Now, the
4 end result of any trial, whether it be criminal or civil,
5 is to reach a verdict. Verdict is a Latin derivative word
6 which means in effect a true saying or it can be said a
7 search for a true saying. So, therefore, a trial is a
8 search for the truth.

9 How do you reach a verdict? You the jury will listen
10 to that evidence and observe the evidence, and then you
11 will decide what is the truth out of that evidence and
12 then apply that to the law of the case that I will provide
13 you in the Judge's charge of the law and, thus, reach
14 verdict.

15 Now, this holds true more so in criminal cases than
16 it does civil cases. From time to time I'm going to have
17 to send you out and handle matters of law. So that means
18 we will probably be playing musical chairs with you a good
19 bit. Be sending you out for a few minutes. Bringing you
20 back in for a few minutes. That holds true in about all
21 cases. So when that happens those are matters of law that
22 I have to decide. And then when you're back in here then
23 you as your duty as jurors is to hear the evidence that is
24 presented and thus seek the truth.

25 Several different phases we will go through. Both

1 sides will be given the opportunity to argue or not argue,
2 basically, but give you an outline. Proper way I guess I
3 should say it, in their opening remarks. Now, you don't
4 have to make an opening statement. It's not required, but
5 most of the time you will hear an opening statement from
6 both side, and it's basically an outline more so than an
7 argument.

8 Then will come the actual evidentiary portion of the
9 trial where you will receive the evidence and hear the
10 actual testimony and observe and view the evidence to be
11 presented. So with that said keep in mind what the
12 attorneys say to you is not evidence. Now, they may refer
13 to something that's going to be presented or has been
14 presented. They may quote it to you or review that with
15 you. But what the attorneys say is not evidence. You
16 have to decide that from the witness stand and the
17 exhibits.

18 After the evidentiary portion of the case will come
19 the time for closing arguments where both sides will be
20 given an opportunity to try to persuade you to see the
21 evidence as they see it. After that will come the Judge's
22 charge on the law where I will give you the law of the
23 State of South Carolina concerning this case.

24 Only after all those phases are completed will you be
25 asked to deliberate. I ask you to remember what I talked

1 with you about yesterday; don't discuss this case even
2 amongst yourselves until that time comes. Whenever you
3 are asked to deliberate your verdict, whatever it may be,
4 will have to be a unanimous verdict. All 12 deliberating
5 jurors will have to be in agreement on what the verdict
6 might be.

7 We're dealing with several indictments here so,
8 obviously, there will be more than one verdict to be
9 reached, and I'll cover those aspects with you when we get
10 to the Judge's charge.

11 Don't usually have any problem with this in the
12 morning hours, but after lunch sometimes you're tempted to
13 fall asleep or take a snap. Please don't do that to me.
14 If you feel like you're going to fall asleep for some
15 reason let us know. We'll take a break, get some coffee
16 or Coca-Cola, whatever. All right. Cause if you fall
17 asleep causes problems. So don't do that to me.

18 If you need a restroom break when we don't normally
19 take a break or something comes up let us know and we'll
20 take a break. All right. In closing I just ask you to
21 listen and observe and use your common sense. Sometimes I
22 think common sense is becoming a rarity in today's
23 society, but that's the critical issue in being a juror is
24 to be reasonable and to use your good common sense.

25 All right. State's got the burden of proof. They

1 can go forward with their opening.

2 MR. DANIEL: Judge, if it pleases the Court before we
3 do that we have secured a room downstairs with the help of
4 the Clerk to sequester our witnesses pursuant to the
5 Court's ruling. So if the victims in this case will head
6 out. Thank you, Judge. State is ready to proceed.

7 OPENING STATEMENT BY MS. HALL

8 MS. HALL: May it please the Court, Mr. Hobbs. If
9 you look up the word, 'neighbor' in the dictionary you're
10 going to find that it says that it's a person living near
11 or next door to another person. Many of us have great
12 memories of times spent with our neighbors especially as
13 little children. Playing in a treehouse, maybe having a
14 picnic, hide and go seek between one another's houses,
15 jumping rope, dressing up our dollies, building forts,
16 riding bikes, tossing the football around.

17 But what happens when a neighbor uses fun and games
18 to lure little children to his home and then becomes a
19 predator? When a neighbor takes advantage of trusting
20 little children and molests them. The Defendant, Sammy
21 Lee Scarborough, is just such a predator. He lured little
22 children to his home including [Minor 1], [Minor 2]
23 [] and [Minor 3]. He offered them things that they
24 would enjoy like colorful balloons or candy. And then he
25 showed them pornographic magazines and took advantage

1 sexually of those little boys.

2 He sought his own gratification by taking their
3 innocence, and today we begin the process of holding him
4 accountable for my actions. My name is Kelly Hall and I
5 along with Shipp Daniel represent the State of South
6 Carolina through the Office of the Attorney General and
7 the Fourth Circuit Solicitor's Office. We appreciate you
8 being here today and probably tomorrow. Even though you
9 realize you have many other things you would probably
10 rather be doing.

11 This case is important. It's important to a lot of
12 people. It's important to those little children and to
13 their families. It's also important to the Defendant,
14 Sammy Scarborough, and the State of South Carolina. Mr.
15 Scarborough is indicted with three counts of criminal
16 sexual conduct with a minor in the first degree, three
17 counts of dissemination of obscene material and one count
18 of engaging a child for sexual performance.

19 Now, that's a lot of legal terms, but the elements of
20 the charges are straight forward and fairly simple
21 especially as to what Mr. Scarborough is accuse of doing.
22 The first charge I mentioned was criminal sexual conduct
23 with a minor in the first degree. And there are two
24 things you need to be listening for in testimony. The
25 first is evidence that the three children were under the

1 age of 11. That's what makes this first degree.

2 The second thing you need to listen for is evidence
3 of a sexual battery. The sexual battery can be a lot of
4 different things under South Carolina law, but in this
5 case there are two main types of sexual batteries that
6 you're probably going to hear about. One is what's called
7 fellatio which is the Latin term for oral sex on a man.
8 And the other is anal intercourse.

9 The second charge that you're going to be listening
10 to testimony about is disseminating obscene materials.
11 And this is when someone knowingly gives obscene material
12 or makes available anything obscene to any group or
13 individual. And simply put you're going to be listening
14 for testimony that the children are going to tell you that
15 Mr. Scarborough, the defendant, showed them dirty
16 magazines, dirty pictures.

17 The third charge that I mentioned is engaging a child
18 for sexual performance, and that's when somebody employs,
19 authorizes or induces a child under 18 to engage in a
20 sexual performance. And, essentially, you're going to be
21 listening for testimony that the children were not only
22 made to participate in sex acts with the defendant, but
23 they were also induced to do things with one another.

24 Now, we must prove these elements to you beyond a
25 reasonable doubt. That sound like a really high burden,

1 but it is a burden that's met in states across -- courts
2 across the State of South Carolina every day. It doesn't
3 mean proof beyond any doubt, but it does mean that Mr.
4 Daniel and I must establish the elements of these crimes
5 we believe this defendant has committed. And we must
6 establish them beyond a reasonable doubt.

7 How do we do that. Well, in this case you're going
8 to hear from the young victims themselves, **Minor 1** **Minor 2**
9 and **Minor 3** You're also going to hear from the fourth child,
10 and his name is **Minor 4**. He was also a victim at
11 the hands of Sammy Scarborough who happened to be is great
12 uncle by marriage.

13 You're also going to hear from **Minor 4**'s mother and
14 **Minor 3**'s mother.

15 THE COURT: Counsel, I'm sorry to interrupt. You
16 need to step out?

17 JUROR: Yes, sir.

18 THE COURT: Okay. If you will just hold up just a
19 second, please. I'm going to do something that I don't
20 normally do. Madam Alternate, if you will take that seat.
21 Jurors, if you will all move down. You will be a little
22 bit more comfortable there, and that way you can get my
23 attention as well. Okay. Sorry.

24 MS. HALL: Before we took a break I was talking about
25 our burden of proof which I said was beyond a reasonable

1 doubt. And it's not proof beyond any doubt, but it is
2 proof that will leave you firmly convinced of the
3 defendant's guilt. And I was telling you how we're going
4 to go about establishing our proof beyond a reasonable
5 doubt.

6 First thing I said is that you're going to hear from
7 the young victims themselves. From **Minor 1** from **Minor 2**
8 and from **Minor 3** You're also going to hear from a fourth
9 little boy, and his name is **Minor 4**. He was also a
10 victim at the hands of Sammy Scarborough who happened to
11 be his great uncle by marriage. You will also hear from
12 **Minor 4**'s mother as well as **Minor 3**'s mother. You will not,
13 unfortunately, be able to hear from **Minor 1** or **Minor 2**
14 mother as she recently passed away a few months ago from
15 an unrelated medical condition.

16 You will hear from **Minor 1** and **Minor 2** grandmother
17 and aunts, however. And all of these adults are going to
18 tell you what they observed about the access the defendant
19 had to each of these children and how this case came to
20 light. You will hear from an expert witness who will
21 explain to us why child sex abuse cases are unique. And
22 will help us to understand some of the issues that go
23 along with these types of cases.

24 I ask that you pay special attention when you hear
25 from **Minor 1** **Minor 2** **Minor 3** and **Minor 4** cause they're going

1 to tell you their story. They're now ages five to eight
2 years old so they are little boys. They are not going to
3 be able to communicate to you like an adult would be able
4 to communicate with you, but they will be able to tell you
5 about Mr. Sammy, their neighbor. **Minor 4**'s uncle. A
6 predator. A predator who took advantage of little boys
7 every chance he got.

8 And I submit to you, ladies and gentlemen of the
9 jury, once you have listened to and viewed the evidence in
10 this case you will know beyond a reasonable doubt that the
11 defendant, Sammy Scarborough, is guilty. Thank you.

12 THE COURT: This chair is broken? Solicitor, can we
13 pull one of the chairs, or Mr. Hobbs, if you've got an
14 extra chair back there we can swap out with Madam Juror
15 because she's sitting in one of these metal chairs. That
16 better? Counsel.

17 OPENING STATEMENT BY MR. HOBBS

18 MR. HOBBS: Thank you, Your Honor. May it please the
19 Court.

20 THE COURT: Yes, sir.

21 MR. HOBBS: Madam Solicitor and Sir Solicitor. My
22 name is Kyle Hobbs. I'm here today on behalf of Mr. Sammy
23 Scarborough, the defendant in this case. Before you were
24 sworn in as the jury in this case you were asked a series
25 of questions. Those questions included whether or not you

1 could be impartial. Whether or not you could hear
2 testimony of children and still weigh their testimony and
3 consider and be partial. Whether or not you could hear
4 about terrible accusations brought against my client, Mr.
5 Sammy Scarborough, and remain impartial.

6 Now, admittedly, this is a tall task for all of us.
7 We have instincts. Instincts that tell us to protect
8 those who can't protect themselves. Instincts that would
9 have us look at a child and relate that child may be
10 someone that you care about and have you want to reach out
11 and take care of that child, to protect that child. And
12 that's the exact emotion that the State wants you to
13 concentrate on.

14 They would have you check your common sense at the
15 door. Common sense is so important in evaluating evidence
16 in a case. And have you focus on those instincts, on
17 those emotions that you feel about these children. They
18 would have you focus on those instincts and inclinations
19 and then not focus on the weaknesses of their case.

20 Not focus on the lack of forensic medical competent
21 evidence against my client. Not focus on the fact that
22 these children made inconsistent statements when
23 questioned about this incident about, approximately, a
24 little bit over a year ago. Not focus on the fact that
25 these children denied Sammy Scarborough ever having

1 touched them when asked multiple times. Time and time
2 again they denied it. And they would also like for you to
3 disregard what is apparently an incomplete investigation
4 and one that was not done zealously and competently.

5 Instead they want you to focus on those emotions.
6 And I will present to you and request of you that your job
7 as jurors is to check those emotions at the door at least
8 when you come into the courtroom. And I would ask you to
9 do so for the next two days. In considering this
10 testimony, in weighing the statements of these witnesses,
11 in considering the weakness of the State's case.

12 Now, as the Madam Solicitor told you there are three
13 victims in this case. That's [Minor 1], [Minor 2]
14 and [Minor 3]. Now, my client is being charged with a
15 variety of charges including having sexually battered
16 these children as well as disseminating pornographic
17 material to them. There is also a charge for all three of
18 those children for the exploitation.

19 However, you also heard about a fourth child, a [redacted]
20 [Minor 4]. And [Minor 4] who is going to
21 attempt to recount something he believes happened to him
22 five years ago. A child whose accusations were never
23 brought to Mr. Scarborough by way of a charge, an
24 indictment, or a conviction. Accusations that are only
25 meant to arise and create and provoke emotions in you and

1 make you believe that despite all the weaknesses in the
2 State's case that we should throw it all out the window
3 because these are children.

4 Now, I'm not coming here today to tell you that these
5 children are liars. I'm not here to tell you that these
6 children got together and propagated some scheme against
7 Mr. Sammy Scarborough. Instead it would present to you
8 that these children are victims, but not victims by the
9 hands of Mr. Scarborough. Victims at the hands of a
10 malicious investigation. A malicious prosecution that
11 predisposed his guilt from the moment it started.

12 Instead of zealously investigating and taking the
13 steps that needed to be taken to look into this case. It
14 was a foregone conclusion in their minds.. But, again, I
15 ask you to put aside those instincts of protecting and
16 listen to these inconsistencies. List to these children
17 and the fact that they denied that Mr. Scarborough had
18 ever touched them when asked multiple times a year ago if
19 this happened.

20 We have an interesting situation here where the
21 primary source of the evidence in this case is going to
22 come from the children. As I told you there is a lack of
23 medical information. That's a lack of tangible evidence
24 that we can look at. Instead we have the testimony of
25 those young children, and much like any crime scene these

1 children's minds have been contaminated through the
2 continued propagation of these accusations from the people
3 who they trust most.

4 Through family members, through authorities asking,
5 prodding, going in, again, again, again. Bringing up
6 these accusations until these children believe them to be
7 fact. Again, these children, they're not liars. They're
8 not going to come up here and lie to you. They're going
9 to tell you what they believe. But much like many beliefs
10 of a children they're influenced by those external
11 factors, those life experiences, and what they have seen,
12 what they have been told, and what they believe to be true
13 based on all of their life experiences.

14 So, again, I would ask you all to help me and do your
15 job as a jury. To put aside these instincts and weigh the
16 testimony and hold the State to their heavy burden of
17 proof beyond a reasonable doubt that Sammy Scarborough
18 committed these crimes. Put aside your instincts and
19 protect the man who is presumed innocent and not the
20 accusers.

21 MR. DANIEL: Your Honor, if it pleases the Court the
22 State calls Jason Turner.

23 THE COURT: Come around and be sworn, please.

24 JASON TURNER, after being duly sworn, testified
25 as follows:

1 CLERK OF COURT: Be seated in the witness box. State
2 your full name for the Court spelling your last.

3 THE WITNESS: My full name is Larry Jason Turner.
4 T-U-R-N-E-R.

5 DIRECT EXAMINATION

6 BY MR. DANIEL:

7 Q. Mr. Turner, good morning?

8 A. Good morning.

9 Q. By whom are you employed?

10 A. City of Dillon Police Department.

11 Q. And what is your role with the City of Dillon?

12 A. I'm a criminal investigator for the Police
13 Department.

14 Q. And what's your title?

15 A. I carry the title of detective. I carry the rank of
16 sergeant.

17 Q. All right. Detective Turner, what sort of experience
18 do you have in law enforcement? How long have you worked
19 with the Police Department?

20 A. Eighteen and a half years.

21 Q. And how long have you been in investigations?

22 A. Since May the 18th of 1999. Thirteen, 14 years.

23 Q. What sort of training to you have for criminal
24 investigations?

25 A. For criminal investigations once you get beyond the

1 basic academy you go for Detective Level One. You can't
2 take any advanced investigations class until you take
3 Detective Level One. Back in 2000 I took Detective Level
4 One Advanced Crime Scene, Crime Scene Level One, Interview
5 and Interrogations. I've taken -- I've also taken about
6 four or five different types of interview interrogation
7 techniques. I've taken Beginning Detective Level Two
8 through the -- through Charlotte/Mecklenburg. I can go on?

9 Q. All right. That's enough. Have you worked all sorts
10 of crimes?

11 A. Yes, sir I have.

12 Q. Have you worked any crimes involving child sex abuse?

13 A. I have. Yes, sir.

14 Q. Did you work the case of child sex abuse involving
15 Sammy Scarborough?

16 A. I did. Yes, sir.

17 Q. How did law enforcement come to know about the
18 allegations made against Mr. Scarborough?

19 A. On Friday, May 25th of 2012 Queena Murphy came to the
20 Police Department to file a report.

21 Q. Who is Queena Murphy?

22 A. Queena Murphy is the biological mother of **Minor 1** and
23 **Minor 2**.

24 Q. Okay.

25 A. She came to the police department and requested to

1 meet with me, and I met her and she let her two boys in
2 the lobby and wanted to talk to me about something back in
3 the office. We met back in the office, and she disclosed
4 to me that she had information that she heard her two boys
5 may have been sexually assaulted or molested, in her
6 words.

7 And so once she started that conversation I
8 immediately told her that I needed to hear it from the
9 boys; that I wasn't going to get into taking a statement
10 because I wasn't trained to do that, but I did need to
11 hear enough from them to initiate an investigation.

12 Q. You're not trained to do what?

13 A. I'm not trained to do forensic interviews on
14 children.

15 Q. What is a forensic interview?

16 A. A forensic interview is someone who is trained,
17 specifically trained to do interviews on children based on
18 psychology, based on how the trauma, different
19 sensitivities. I'm trained with adults. I can
20 communicate with adults, but with children I'm not trained
21 to do children that young.

22 Q. Okay.

23 A. Well, I still needed to get enough information to see
24 if there was a complaint, to file a complaint. Sp o
25 instructed Queena that I didn't need any reaction. I told

1 her I just needed her to sit in the room, make no
2 expression or outburst. I was going to ask them a couple
3 of questions to kind of see what they were going to say.
4 And I just need her to sit. Don't make any faces. Don't
5 make any gasps. Don't do anything.

6 So I brought Minor 1 in, Minor 1 in. Went
7 through the introductions. Told him who I was.
8 Identified myself. I always wear my badge around my neck
9 so that way I can easily identify myself. I identified
10 the roles of what I did in law enforcement. I asked him
11 if he understood and he did. And I asked him a couple of
12 open ended questions. Do you know why you're at the
13 police department, and I asked him, you know, why he was
14 here. And as a result of that conversation.

15 Q. Let me stop you right there. The rules prevent you
16 from telling the jury what he told you, but I can ask you
17 these two questions.

18 A. Okay.

19 Q. At that point did Minor 1 indict to you that she had
20 been sexually abused?

21 A. He did.

22 Q. Did he tell you where it happened?

23 A. He did. Yes, sir.

24 Q. And where did he say?

25 A. At Mr. Sammy's house on South Eighth Avenue.

1 Q. Did he tell you when it happened?

2 A. He wasn't completely clear on the exact date. We
3 were trying to isolate may be to a specific date. We were
4 trying to isolate it to a season or some type of event.
5 But the best we could do is I asked Miss Murphy when she
6 moved into the house beside Mr. Scarborough or
7 perpendicular to Mr. Scarborough's house, and it was
8 January of 2010. That's the best we could do.

9 Q. As a start date?

10 A. As a start date.

11 Q. Okay. That was **Minor 1** you said?

12 A. Yes, sir.

13 Q. Okay. So was that -- did that pretty much complete
14 your conversation with **Minor 1**

15 A. That did. At that point I had enough to initiate an
16 investigation.

17 Q. Okay. And then what did you do next?

18 A. So we took **Minor 1** back into the lobby and brought we
19 **Minor 2** which is the younger brother in, and **Minor 2** is
20 really energetic and he is really vibrant. So we had to
21 be really quick with what we were going to ask him. And
22 **Minor 2** disclosed -- as a result of that conversation
23 **Minor 2** disclosed a sexual battery.

24 Q. So **Minor 2** told you he had been sexually abused?

25 A. Yes, sir.

1 Q. Okay. Did he tell you where it happened?

2 A. He did.

3 Q. And where did he say?

4 A. Mr. Sammy's house on South Eighth Avenue. It was on
5 South Eighth Avenue just perpendicular to where he lives.

6 Q. And did he tell you when it happened?

7 A. And there again, he wasn't specific on the date. He
8 couldn't -- we were trying to isolate seasons again.

9 Isolate specific events, football season, fall, school.

10 But there again the best we could do is come up with the
11 start date of when Miss Murphy moved in that location.

12 Q. Now, in your experiences as a law enforcement
13 investigator of 18 years is it unusual for a very young
14 child such as this to not be able to identify an exact
15 date of abuse?

16 A. It's not uncommon.

17 Q. In fact is it more common than not for a child to be
18 confused as to what day?

19 A. It is. Unless it's a specific isolated event like a
20 family reunion or something that is a big event or a
21 family event. More times than not you're not going to get
22 a specific date or a specific time.

23 Q. All right. When you were in the room talking the

24 **Minor 1** that's the one you talked to first, when you were
25 in the room talking to **Minor 1** was **Minor 2** in the room?

1 A. He was not in the room.

2 Q. And was Queena, his mother, in the room?

3 A. She was sitting in there, but Queena was sitting --
4 the office we were in was probably, maybe, the size from
5 that wall to here. It's kind of a smaller office, but
6 it's one all patrol officers use. Queena actually sat
7 behind **Minor 1** and **Minor 2** each time they were in that.

8 **Minor 1** and **Minor 2** both were in between me and Queena. So
9 they couldn't see her. She was behind me. And I posed in
10 that position for that reason.

11 Q. Okay. When **Minor 2** disclosed to you what had happened
12 what did you do next?

13 A. Immediately we brought -- I told -- I asked **Minor 1**
14 because, you know, children. Once they get started on a
15 topic they want to talk. So I asked **Minor 2** to stop
16 talking. We would talk about it a little bit more in
17 depth a little bit later, but I had enough information
18 right now that I needed. We brought **Minor 1** in. We
19 brought them both in, and I collected some information
20 from them.

21 While they -- while Queena and **Minor 1** and **Minor 2** were
22 sitting in the room I called the Care House in Florence,
23 which is a facility that does forensic interviews for
24 children.

25 Q. Is that the facility that your agency commonly uses

1 or conduct forensic interviews?

2 A. We do. We try and balance between the Durant Center
3 which is also a forensic interviewing facility. We trying
4 a spread it out. We try not to overload one more than the
5 other. We just kind of go back and forth.

6 Q. Okay. So you set up a forensic interview?

7 A. Yes, sir.

8 Q. And then what happened?

9 A. We got all the information. We filed an initial
10 report. We set up forensic interview. Was set up for
11 Tuesday, May 29th. That would have been the 29th; that
12 Tuesday. It was set up for that morning. May -- Tuesday,
13 May 29th, that morning, I took **Minor 1** **Minor 2** and Queena
14 to the Care House in Florence and did the forensic
15 interview.

16 Q. All right. Did you observe the forensic interviews?

17 A. I did.

18 Q. Okay. And by where about -- were you in the room
19 with them?

20 A. No, sir. The way it's set up is the child and a
21 forensic interviewer are going to a room and it's closed
22 off. I -- it is all done on video. The interviews are
23 videotaped. I sit in another room through a two way
24 mirror and I'm actually watching a monitor so the kid
25 doesn't see me. But, now, the interviewer does instruct

1 the child that there is a camera and that it's recorded
2 and that law enforcement is watching.

3 So I was in another room out of sight and out of
4 mind.

5 Q. And that's standard procedure for a forensic
6 interview?

7 A. It is.

8 Q. So did they in fact give forensic interviews to the
9 lady at the Care House?

10 A. They did.

11 Q. Okay. And we'll get into all that later. What
12 happened next?

13 A. As a result of the forensic interview we learned of a
14 third child, [Minor 3] or referred to as [Minor 3]
15 They call him [Minor 3] We learned about [Minor 3] And while we
16 were leaving the Care House in Florence we actually called
17 [Minor 3]'s mother, Hope. And when we got to the police
18 station, [Minor 3], Hope and [Minor 3]'s father, Drunta Sampson, Sr.
19 were waiting on us at the police station so I can
20 interview him.

21 Q. Okay. And did you in fact interview him?

22 A. I did. I performed the same style of interview with
23 [Minor 3] as I did [Minor 1] and [Minor 2]

24 Q. All right. And in your interview with [Minor 3] did he
25 disclose that he had been victim of sexual abuse?

1 A. He did.

2 Q. Did he tell you where it happened?

3 A. He did.

4 Q. Where did he say?

5 A. At Mr. Sammy's on South Eighth.

6 Q. And did [Minor 3] tell you when it happened?

7 A. D.J, we got closer to [Minor 3] because [Minor 3] actually
8 disclosed to his mother the sexual abuse. This would have
9 been in November of 2011. But, now, she did not report.
10 When the child disclosed this to his mother she did not
11 disclose. So we were able to get a little bit closer with
12 [Minor 3] because of that.

13 Q. Okay. So in light of the information that you
14 received from [Minor 1] [Minor 2] and [Minor 3] what did you do?

15 A. On June the 13th, after completing case file and
16 doing review and reviewing the videos and reviewing the
17 notes I signed warrants on Sammy Scarborough for three
18 counts of criminal sexual conduct first degree with a
19 minor and three counts of disseminating pornographic
20 material to a child.

21 Q. Okay. Did you go and immediately arrest him?

22 A. We tried, but we did not immediately arrest him.

23 Q. Okay. Tell the jury about that?

24 A. When we signed the warrants we got a team of people
25 together to go around to Mr. Scarborough's house to

1 attempt to serve him. Our guys got around and surrounded
2 the house. We searched the house. We went through the
3 house. Did not locate him. We went back several times.
4 His wife, Barbara, came to the police station and met with
5 me. She was upset we were searching the house. She
6 wanted to see all the case file. She wanted to see
7 statements. She wanted to see videos, and she wanted to
8 know why we were harassing her husband.

9 We put him on the news. We put his picture on t.v.
10 We put his picture in the paper. We put him in N.C.I.C.
11 as wanted that way if he went through a road check or if
12 he got stopped in a road check he would be immediately
13 detained.

14 Q. Now, so his wife is aware of what was going on?

15 A. She was.

16 Q. And this was in June of 2012?

17 A. Yes, sir.

18 Q. Okay. I'm going to show three photos. I'm showing
19 you what's been premarked as State's One. You recognize
20 that photo?

21 A. I do. Yes, sir.

22 Q. And what is that a photo of?

23 A. This is a photo of -- actually, a straight shot to
24 the house where Sammy Scarborough lived at the time of
25 this incident.

1 Q. Is that in Dillon County, by the way?

2 A. That is in Dillon County.

3 Q. All right. And is that a true and accurate depiction
4 of that street and that house?

5 A. It is.

6 Q. Okay?

7 MR. DANIEL: Judge, I would ask that State's One be
8 admitted into evidence?

9 MR. HOBBS: No objection, Your Honor.

10 THE COURT: In without objection.

11 (WHEREUPON, State's Exhibit No. 1 was admitted into
12 evidence.)

13 BY MR. DANIEL:

14 Q. All right. I'm going to do the same thing with
15 what's been premarked as State's Two.

16 A. I got you.

17 Q. Can you identify that?

18 A. Yes, sir.

19 Q. And is that a true and accurate depiction of the same
20 street?

21 A. It is. Yes, sir.

22 MR. DANIEL: Judge, I would ask that State's Two be
23 admitted?

24 MR. HOBBS: No objection, Your Honor.

25 THE COURT: In without objection.

1 (WHEREUPON, State's Exhibit No. 2 was admitted into
2 evidence.)

3 BY MR. DANIEL:

4 Q. Finally, State's Three. What is that a picture of?

5 A. That is a side shot of the house where Sammy
6 Scarborough lived at the time of this -- during the time
7 of this incident.

8 Q. Okay?

9 MR. DANIEL: Judge, I would ask that State's Three be
10 admitted?

11 MR. HOBBS: No objection, Your Honor.

12 THE COURT: In without objection.

13 (WHEREUPON, State's Exhibit No. 3 was admitted into
14 evidence.)

15 BY MR. DANIEL:

16 Q. Now, let's talk about the details of these photos.
17 And ask you to speak up, please, so the -- cause you're
18 turning from the microphone here. All right. This is
19 State's One, and can you point out and this is -- you
20 said -- what's the address here?

21 A. This would be [REDACTED].

22 Q. Okay. Who lived there?

23 A. That's where Sammy Scarborough lived at the time.

24 Q. All right. Do you know who lived in this house?

25 A. I didn't at the time. I didn't know who lived in

1 that middle house.

2 Q. Do you know who lived in this house?

3 A. This house on the corner would have been where **Minor 3**,
4 Hope and **Minor 3** would have lived.

5 Q. And do you happen to know who lived in this house?

6 A. I sure don't.

7 Q. Okay.

8 A. I'm not for sure.

9 Q. All right. Now, State's Two which is a -- just taken
10 from a different angle. What is that house?

11 A. This last house, that is just a different shot of --
12 that would be Sammy Scarborough's house at the time of the
13 incident.

14 Q. All right. And these houses we just talked about.
15 This, I believe, is the third house on that street. Who
16 lived there?

17 A. That would be where **Minor 3** -- this, the last shot you
18 saw was like this. This shot was from a different,
19 opposite angle. This would be **Minor 3**'s house and that's
20 where Sammy lives.

21 Q. And who lived in this house?

22 A. That would be where Queena Murphy lived along with
23 **Minor 1** and **Minor 2**.

24 Q. Okay. Finally, showing you what's been marked and
25 introduced as State's Three. This is a close up of whose

1 house?

2 A. That could be a close up -- side shot of where Mr.
3 Scarborough lived at the time.

4 Q. Okay. Now, is there anything behind his house?

5 A. No, sir, there is nothing there now.

6 Q. Was there something a one time that you observed?

7 A. There was a little shed there at one time.

8 Q. So you were saying that you went to that house, Mr.
9 Scarborough's house looking for him. Talked to his wife.
10 What happened next?

11 A. So we put him in N.C.I.C. We went through all
12 provisions that you would go try to serve the warrant.
13 Put him on t.v.

14 Q. N.C.I.C. again is what?

15 A. National Crime Information Center. That is the
16 system that the F.B.I. has put in place. The national
17 system that the F.B.I. has put in place to put offenders,
18 stolen vehicles, stolen cars, missing persons. And,
19 basically, what happens is for all law enforcement
20 agencies across the world that have access to N.C.I.C. if
21 someone goes through a road check, if you go to a port, if
22 you go to an airport, if you go through any type of
23 detention through law enforcement or customs it's going to
24 red flag and stop you.

25 Q. Okay. So you put Mr. Scarborough in N.C.I.C. because

1 of the outstanding warrants in June?

2 A. Yes, sir.

3 Q. All right. What happened next?

4 A. What we did next was went through a series of
5 investigations trying to figure out how to get our hands
6 on Mr. Scarborough. He evaded us for a pretty good while.
7 And around November ---

8 MR. HOBBS: Your Honor, I would object to the
9 evidence of any sort of alleged flight against Mr.
10 Scarborough. There is no substance to the accusations
11 that he actually knew these charges were pending against
12 him. So words such as 'evading' and 'flight' are very
13 prejudicial given the lack of evidence.

14 BY MR. DANIEL:

15 Q. Please don't use the word, 'evading'.

16 MR. DANIEL: But jury is certainly entitled to know
17 how he came to arrest Mr. Scarborough.

18 THE COURT: All right. Go ahead.

19 THE WITNESS: Sorry. We started receiving
20 information in November of 2012 about Mr. Scarborough's
21 location. We were following or trying to track him for a
22 couple of months. Around February of 2013, this year, we
23 were finally able to secure a good cell phone for Mr.
24 Scarborough. We were able to call in U.S. Marshalls and
25 they tracked and trace his cell phones and we were able to

1 track him to South Boston, Virginia where he was arrested.

2 Q. Okay. And did Dillon Police Department go pick Mr.
3 Scarborough up from Virginia?

4 A. We did.

5 Q. At that time did you ask Mr. Scarborough if he wanted
6 to give a statement?

7 A. As a rule we -- I, as the lead investigator, did not
8 go on the transport for a lot of reasons. But we always
9 tell our officers that we want to talk to him -- ask him
10 if he wants to talk, do you want to give a statement, do
11 you want to tell your side of the story. And Mr.
12 Scarborough -- and I don't want to misquote him, but what
13 was told to me was he told our officers that he actually
14 tried to talk ---

15 MR. HOBBS: Your Honor, I never heard of any sort of
16 statements being offered by the defendant, and also, Your
17 Honor, we would need a Jackson v. Denno hearing to
18 determine its admissibility.

19 MR. DANIEL: That's okay. If he can finish his
20 answer you will see there is no need for a hearing.

21 BY MR. DANIEL:

22 Q. Did he talk to you?

23 A. No, sir. He did not give a statement.

24 THE COURT: That takes care of that.

25 BY MR. DANIEL:

1 Q. All right. Did you -- can you point out for the
2 record Mr. Scarborough in this courtroom?

3 A. Yes, sir. That's Sammy Lee Scarborough sitting at
4 the table right there with the green shirt on.

5 MR. DANIEL: Please let the record reflect that the
6 witness has pointed out the defendant. Your Honor, at
7 this time I would ask permission to publish these three
8 photos to the jury.

9 MR. HOBBS: No objection, Your Honor.

10 THE COURT: In without objection.

11 MR. DANIEL: Judge, I have no further questions.

12 BY MR. DANIEL:

13 Q. Investigator, if you would please answer any
14 questions the defendant may have.

15 THE COURT: Your witness.

16 MR. HOBBS: Thank you. Your Honor. May it please
17 the Court.

18 CROSS-EXAMINATION

19 BY MR. HOBBS:

20 Q. Investigator Turner, how long have you been with the
21 Dillon County Police Department?

22 A. About 18 and a half years.

23 Q. Eighteen and a half years. And what training did you
24 have to partake in to become an investigator?

25 A. When you say, 'have to'?

1 Q. What required training?

2 A. I'm sorry.

3 Q. Your fine.

4 A. Well, obviously, you've got to go through the
5 Academy, the basic academy, to become a certified law
6 enforcement officer. Once you have a Class One
7 Certification, pretty much Department policy and
8 procedures in South Carolina govern the training
9 requirements for being an investigator or detective within
10 the Department.

11 But with ours we require Detective Level One, which
12 you can't take any advanced classes beyond that until you
13 have Detective Level One. Detective Level One you -- they
14 want you to do Basic Crime Scene and Advanced Crime Scene
15 in our Department.

16 Q. So you went to the Academy?

17 A. Yes, sir.

18 Q. And how long were you at the Academy?

19 A. When I went it was only eight. I think it's 12 now,
20 but it was eight or nine weeks.

21 Q. Okay. And they essentially taught you how to be a
22 police officer, right?

23 A. That's right.

24 Q. Taught you how to shoot a gun?

25 A. Yes, sir.

1 Q. How to drive a car?

2 A. Yes, sir.

3 Q. Defensive tactics?

4 A. Yes, sir.

5 Q. They taught you how to conduct an investigation?

6 A. Yes, sir.

7 Q. Taught you how to interview witnesses?

8 A. Yes, sir.

9 Q. Taught you a basic understanding of the law?

10 A. Right, yes, sir, basic.

11 Q. Okay. Taught you how to write a report?

12 A. Yes, sir.

13 Q. Okay. Taught you how to write a supplemental report?

14 A. Yes, sir.

15 Q. Now, in your number of years -- I believe you said 18
16 and a half?

17 A. Yes, sir.

18 Q. What other positions have you had as a police
19 officer?

20 A. I worked the streets for about three and a half
21 years, and then I went to -- they made me an investigator.

22 Q. And ---

23 A. I've been an investigator ever since.

24 Q. And now you're a sergeant?

25 A. Yes, sir.

1 Q. Okay. And did you have to go to any continuing
2 education classes, any sort of follow up training?

3 A. Yes, sir. And you're right. Every year -- I may
4 have left that out earlier. Every year we have to do
5 mandatory updates, mandatory C.D.V. And there is X number
6 of hours beyond that. It's eight to 16 hours of other
7 type training that you have to have each year. That's
8 every year.

9 Q. And over your 18 and a half years you have written
10 hundreds of incident reports?

11 A. It would be more than that. On one case I wrote up
12 373 reports on one case. So it would be a lot higher.

13 Q. 373 on one case?

14 A. Right.

15 Q. Okay. Thousands of reports?

16 A. It would be thousands.

17 Q. Okay. And thousands of supplemental reports?

18 A. That would be accurate.

19 Q. Okay. And so what is the point -- excuse me. Let me
20 rephrase that. The point of this incident report is to
21 document your investigation, correct?

22 A. Yes, sir.

23 Q. Okay. And you would want your incident report to be
24 as extensive and complete as possible, is that correct?

25 A. On some cases, yes, sir.

1 Q. So you don't want your incident report to be complete
2 and extensive?

3 A. See, you use the words 'incident reports'. Incident
4 reports are public record, and due to the sensitive nature
5 of some things there are some things that we leave off of
6 normal incident reports because of that. Anybody can walk
7 in our department with \$5 and get a copy of any report in
8 our system.

9 Q. Well, if something was to happen to you as an officer
10 and somebody was to have to pick up behind you they would
11 look to that incident report to see what work you had
12 done, correct?

13 A. Yes, sir.

14 Q. So in light of that possibility you would want to
15 document your thorough investigation; is that correct?

16 A. Yes, sir.

17 Q. Okay. So in this case you wrote an incident report;
18 is that correct?

19 A. Yes, sir.

20 Q. Okay. Do you have a copy of that incident report on
21 you?

22 A. Not with me, no, sir.

23 Q. Okay. Let me, since you don't have a copy of that
24 incident report, let you look at it. And let me grab you
25 a copy. I figured you might have had your incident report

1 since you're testifying here today.

2 MR. HOBBS: Court's indulgence?

3 THE COURT: Yes, sir.

4 BY MR. HOBBS:

5 Q. All right. Very good. All right. Now, that's the
6 incident report that you wrote regarding the accusations
7 of **Minor 1** and **Minor 2**?

8 A. Yes, sir.

9 Q. Is that correct?

10 A. Yes.

11 Q. Okay. Tell me how many pages is that incident report
12 and supplemental incident report?

13 MR. HOBBS: Your Honor, my apologies. I didn't
14 incident present that to the Solicitor that he may
15 examine.

16 MR. DANIEL: I just want to make sure what I'm
17 looking at. Great. Thanks. Thank you, Mr. Hobbs.

18 MR. HOBBS: No problem.

19 BY MR. HOBBS:

20 Q. The report itself is seven pages, okay. And some of
21 those pages include him being entered into the N.C.I.C; is
22 that correct?

23 A. Yes, sir.

24 Q. Another page is notifying central dispatch; is that
25 correct?

1 A. Yes, sir.

2 Q. Okay. And then there is another page talking about
3 him being extradited; is that correct?

4 A. Yes, sir.

5 Q. Okay. So four pages other than those three that I
6 just mentioned?

7 A. Yes, sir.

8 Q. Okay. Very good. And looking at your incident
9 report it states that, on the supplemental report, that
10 you conducted an extensive follow up investigation of this
11 incident. Where is the information about that extensive
12 follow up investigation contained in your report?

13 A. I'm not sure what you're asking.

14 Q. Where is the information regarding the extensive
15 follow up investigation contained in your report?

16 A. Well, that would be when we take them to the forensic
17 interviewer the forensic interviewer generates a report of
18 the conversation. There is also a video of that
19 interview. And there is also an intake form. There is
20 also -- there would be one done for **Minor 1** **Minor 2** and
21 **Minor 3**

22 Q. Like we talked about earlier you want your incident
23 reports to be complete and extensive, correct?

24 A. Right.

25 Q. Okay. So you cite an extensive follow up

1 investigation?

2 A. Right.

3 Q. Where is the information in these reports regarding
4 that extensive follow up investigation?

5 A. Like I was saying earlier due to the sensitive nature
6 of children and this being a public record, anyone can pay
7 \$5, we do not put that sensitive information. It would be
8 contained in another document besides the incident report
9 or supplemental report.

10 Q. So the incident report does not contain any of the
11 details of this extensive follow up investigation?

12 A. No, sir.

13 Q. Okay. What was this extensive follow up
14 investigation?

15 A. We took the three children -- we took **Minor 1** and
16 **Minor 2** to the forensic interviewer on Tuesday, May 29th.
17 And we had a forensic interview done with a professional,
18 Miss Sally Williamson, with the Care House. As a result
19 of that interview we learned of a third person, **Minor 3**
20 **Minor 3**

21 We called **Minor 3** **[REDACTED]** mother on the way back from
22 Florence, and we had her to meet us at the police
23 department. And whenever we got back D.J, his mom and his
24 dad were waiting on us in the police department. We took
25 them and conducted a similar type -- I conducted a similar

1 type interview with **Minor 3** in the police department that I
2 did we **Minor 1** and **Minor 2**

3 Q. Okay.

4 A. And as a result of that we set up forensic interview
5 with **Minor 3** on Thursday, May 31st.

6 Q. Okay. So the follow up involved the forensic
7 interview and speaking to D.J; is that correct?

8 A. Right. There was nothing else to do.

9 Q. Nothing else to do. Okay. Very good. So in your
10 extensive investigation you went and you searched Sammy's
11 house; is that correct?

12 A. I didn't, no, but my officers did.

13 Q. Your officers did. When did they search his house?

14 A. I don't know.

15 Q. Was it before or after his warrant had already been
16 signed out?

17 A. They searched the house for him was to serve the
18 arrest warrant.

19 Q. Okay?

20 A. It wasn't after June 3rd -- either the evening of
21 13th or the next day.

22 Q. So they searched this house looking for Sammy?

23 A. Yes, sir.

24 Q. Okay. Did you search the house to look for these
25 obscene materials?

1 A. No.

2 Q. Did you search the house to look for these balloons?

3 A. No.

4 Q. Did you search the house to look for the footballs or
5 any items that these children alleged Mr. Sammy lured them
6 in with?

7 A. No.

8 Q. Did you search Sammy's car to see if any of these
9 materials were in there?

10 A. No.

11 Q. Did you go to local store owners to see if any of
12 them knew Sammy to purchase pornographic material?

13 A. No.

14 Q. So in your extensive investigation, in investigating
15 this case you did not feel the need to search Sammy's
16 house to look for these materials?

17 A. No.

18 Q. And, therefore, we have no materials to present to
19 the jury here today?

20 A. Right.

21 Q. Did you ever talk to the neighbors about seeing Sammy
22 with any sort of obscene material?

23 A. No.

24 Q. Okay. Instead we took the children and conducted a
25 forensic interview?

1 A. Absolutely.

2 Q. You had a pretty thorough memory of these forensic
3 interviews, correct?

4 A. Yes, sir.

5 Q. Okay. And you told the Court that on May 29th 2012
6 you took **Minor 2** and **Minor 1** to have their forensic
7 interview done?

8 A. Right?

9 Q. And they both got their forensic interview done that
10 day?

11 A. They did.

12 Q. But that's not correct, is it? Because **Minor 2** has
13 his forensic interview done on June 11th 2012. Some 13
14 days after **Minor 1** interview; is that correct?

15 A. I don't recall that.

16 Q. You don't recall going there twice?

17 A. I don't.

18 Q. Okay. And you were present during these forensic
19 interviews?

20 A. I sat in the room in the observation unit.

21 Q. Okay. Before the forensic interview was conducted
22 did you talk to the forensic interviewer?

23 A. No. There is a screening process where they come in
24 and ask some health questions and some basic health
25 questions and I sat in on that. But to ---

1 Q. Okay?

2 A. No.

3 Q. Did you ever tell the forensic interviewer that Sammy
4 was charged with prior C.S.C.s?

5 A. I don't recall if I did or not.

6 Q. But you told Queena Murphy that he was charged with
7 prior C.S.C.s; is that correct?

8 A. I don't know if I told Queena, but she may have prior
9 knowledge of her own because she made comments that -- she
10 made comments.

11 Q. Because it's -- this interview is routh with the
12 accusations that he has two prior charges of C.S.C. with a
13 minor; isn't that correct?

14 A. You talking about Mr. Scarborough?

15 Q. Yes, sir.

16 A. Yes, sir.

17 Q. Has he has -- does he have any prior charges of
18 C.S.C. with a minor?

19 A. He has been charged in the past.

20 Q. Has he ever been formally charged and presented a
21 warrant for C.S.C. with a minor?

22 A. Are we talking about **Minor 5** Are you asking prior?

23 Q. Prior to the offenses we are here for today. Has
24 Sammy Scarborough ever been formally charged with a C.S.C.
25 with a minor?

1 A. I think there may be something in 2001 or 20002 you
2 may want to look at on that.

3 Q. I've never seen any charges, and I would challenge
4 the Court that his charges were never presented to him.

5 MR. DANIEL: Judge, if Mr. Hobbs wants to ask Mr.
6 Turner a question that's fine, but he doesn't need to be
7 introducing evidence.

8 MR. HOBBS: Your Honor, I withdraw the previous
9 question.

10 THE WITNESS: I have never charged him. I have never
11 charged Mr. Scarborough.

12 BY MR. HOBBS:

13 Q. But you would admit that Queena Murphy was presented
14 information about Mr. Scarborough in prior instances?

15 A. Queena knew about some thing in Mr. Scarborough's
16 past.

17 Q. And you confirmed and told her about that, did you?

18 A. I'm not sure. Yeah. Yes.

19 Q. Yes, you did.

20 A. Yes, I did.

21 Q. Yes, you did.

22 A. I did.

23 Q. You told her that there were prior accusations,
24 correct?

25 A. Right. Right. Right. I wasn't sure. Yes, sir, I

1 did. I did.

2 Q. You told the victim in the case, the parents of the
3 children, that Sammy had been charged with prior criminal
4 sexual conduct charges?

5 A. Right.

6 Q. Were you ever concerned that this might taint their
7 viewpoint of the case?

8 A. This would have been done after -- this would have
9 been done after the fact. This would not -- this would
10 not have happened in the room where we talked the very
11 first day. This would have been after all this would have
12 been over with. This would have been after charges would
13 have been filed. We would have -- this wouldn't have been
14 a conversation we would have had in the beginning.

15 Q. Then how is this information presented by the
16 forensic interviewer?

17 A. We don't withhold anything from the forensic
18 interviewer. We tell -- you have to, if they ask, we to
19 tell them. That way they can have good information or
20 background on what we're dealing with.

21 Q. Tell them what?

22 A. Anything they choose to ask us. If there is any --
23 there is a whole battery of questions that they ask of any
24 prior -- is there any prior history in the house. Is
25 there any prior history of D.S.S. involvement. Is there

1 any prior history of abuse from the father. Is there any
2 prior history of abuse from the mother. Has there been
3 anyone in the house ever been investigated by D.S.S. I
4 mean it's like a five or six page questionnaire. It's not
5 just one particular group of questions. It is very
6 extensive.

7 Q. You say that you told Queena about these prior
8 accusations?

9 A. We talked about it. Yes, sir.

10 Q. You talked about it?

11 A. I'm not sure. You keep saying that I told Queena.
12 I'm not sure that I'm the original source that told her.
13 But I do know that Queena and I had conversations about
14 prior -- his prior acts.

15 Q. You did tell her?

16 A. We talked about it. Yes, sir.

17 Q. Very good. Was there any concern that this
18 information might be passed around the community?

19 A. It had already been passed around the community. It
20 wasn't a secret.

21 Q. What happened a secret?

22 A. His accusations from the past, it wasn't a secret.

23 Q. What about charges? What about indictments? Have
24 there ever been any presented on Mr. Sammy?

25 A. I can speak for me. I have never charged him .I have

1 never charged or indicted him or present an indictment on
2 him.

3 Q. Giving information about prior bad acts to a victim
4 may influence what they have to say; isn't that correct?

5 A. To a victim, yes, sir.

6 Q. Okay. Any doubt that these children were presented
7 with this information?

8 A. Is there doubt? In my mind? Prior to the case being
9 investigated? There is no doubt in my mind that these
10 kids did exactly the way they were supposed to. They were
11 not told any information or led or misled in any way. And
12 if the kids, the victims, the three boys, did find out
13 about any prior acts or accusations against Mr.
14 Scarborough it would have happened well after any of this.
15 If any even knew about it at all.

16 Q. It wouldn't have happened before **Minor 3** was called in.
17 It would have happened before **Minor 3** was called in, correct?

18 A. No, sir. We would not have told the children this.

19 Q. How is this information contained in the reports
20 prepared days before D.J?

21 A. Right.

22 Q. How were these accusations contained in the report
23 then?

24 A. I typed them in there. I'm not sure what you're
25 asking.

1 Q. Okay. You presented this information as a fact that
2 he had been charged with prior C.S.C. crimes; is that
3 correct?

4 A. I presented to who as a fact? I'm not sure what
5 you're talking about.

6 Q. To Queenena?

7 A. There again let me be clear. You're trying to make
8 it presented that I went to Queenena and said, "Hey, look,
9 Sammy's been charged, you know, been accused in the past
10 of doing bad acts."

11 Q. You say ---

12 A. But that's not true.

13 Q. (talking over each other).

14 A. Right.

15 Q. You say --

16 A. We talked. We talked about it. Yes, sir.

17 Q. Okay. You told the forensic interviewer?

18 A. Right.

19 Q. That he had been charged in the past?

20 A. I don't have that document.

21 MR. DANIEL: Asked and answered, Judge. This has
22 been going on long enough.

23 THE COURT: Sustained. Sustained.

24 MR. HOBBS: Thank you, Your Honor. Withdraw the
25 question.

1 BY MR. HOBBS:

2 Q. This entire investigation was done under the
3 understanding that you thought Sammy had done this before;
4 is that correct?

5 A. My opinion, yes, sir.

6 Q. This entire investigation and the statements of the
7 victims were done with their belief that Sammy had done
8 this before; is that correct?

9 A. That is not correct.

10 Q. But you say you talked to the victim's mother about
11 these accusations?

12 A. After the investigation would have began.

- 13 Q. Began?

14 A. No. When you say began, there again you're trying to
15 isolate it to the point when the mother brought the two
16 children in, and that is not accurate. Let me be clear.
17 That is not accurate. That conversation would not have
18 taken place until after forensic interview and after
19 warrants would have been signed. Then the mother, who
20 already had knowledge of things in the community, brought
21 it to my attention.

22 And then we talked. Yes, I did talk about it with
23 the mother. Not with the children. At no point in time
24 were the children ever discussed about Sammy Scarborough's
25 prior accusations.

1 Q. You said that you type it up for the forensic
2 interviewer. The fact that he had been charged before
3 with C.S.C. crimes?

4 A. When you say, 'typed up'?

5 Q. Well, that was what you said, correct? You said that
6 you had typed it up for the forensic interviewer?

7 A. No, I didn't say that.

8 Q. How did you present that information to the forensic
9 interviewer?

10 A. What we do is we sit in a room. We go to a facility
11 and we sit in a room at a table. The forensic interviewer
12 had a sheet of questionnaires that she asked the mother
13 about prior history, medical, psychological. And I sit in
14 the room with the mother and we talk about different
15 things and aspects of the case.

16 If I don't tell the forensic interviewer what this
17 case is about the forensic interviewer will not know what
18 questions to ask. So to answer your question, yes, I did
19 have to give snippets of what the little boys told us,
20 **Minor 1** and **Minor 2** told me. But, now, to type up a
21 thought for the forensic interviewer, that did not happen.

22 Q. Did you present to the forensic interviewer that
23 Sammy had been charged before with similar crimes?

24 MR. DANIEL: Judge, that's about the fifth time he's
25 asked that same question.

1 MR. HOBBS: Your Honor, I'm not getting a very direct
2 answer here, and I certainly don't want to repeat my
3 question.

4 THE COURT: Go ahead and answer it again.

5 THE WITNESS: I don't recall, but if the forensic
6 interviewer asked me about his past I would have told the
7 forensic interviewer about Sammy's past.

8 Q. Thank you. And, again, just for clarification, it's
9 your belief that [Minor 2] only made one statement to
10 the forensic interviewer?

11 A. Right.

12 Q. And so it would go against your understanding that he
13 came in 13 days later for his forensic interview?

14 A. If he did I don't recall it. I'm not saying he
15 didn't. I just don't remember it.

16 Q. Okay. That's fine. And, again, can we present to
17 the jury any pornographic or obscene material that you
18 collected from Mr. Scarborough's residence?

19 A. No, sir.

20 Q. Did you ever execute a search warrant on Mr.
21 Scarborough's premises?

22 A. No, sir.

23 MR. HOBBS: No further questions, Your Honor.

24 MR. DANIEL: Briefly.

25 REDIRECT EXAMINATION

1 BY MR. DANIEL:

2 Q. Investigator Turner, just to be clear again, they
3 came to you, Queena, [Minor 1] [Minor 2] on what day?

4 A. Date, Friday, May 25th 2012.

5 Q. Okay. Any conversation you may have had with Queena
6 about any prior allegations involving the defendant would
7 have happened before or after they all showed up at the
8 police station claiming abuse?

9 A. Right. Any conversation Queena and I would have had
10 would have been:

11 A, out of the presence of the children.

12 B, well after the investigation was at a place where
13 we felt like we had probable cause to charge him.

14 And it would have been done well out of any ear shot
15 of any children.

16 MR. DANIEL: No further questions.

17 THE COURT: That it?

18 RE CROSS-EXAMINATION

19 BY MR. HOBBS:

20 Q. You were required to present these allegations of
21 prior acts to the forensic interviewer, correct?

22 A. Required? I'm not sure if I'm required, but if she
23 would have asked I would have answered it.

24 Q. Okay. And you did answer it?

25 A. If she asked a question I told her.

1 Q. Okay. And this was before a warrant was signed out
2 against Mr. Scarborough in this case?

3 A. That's correct.

4 MR. HOBBS: No further questions.

5 THE COURT: You may step down. Thank you.

6 MR. DANIEL: Judge, can we take a five minute recess?

7 THE COURT: Sure. Members of the jury, we're going
8 to take a brief recess. You may step back to your room.

9 (WHEREUPON, the jury panel was excused from the
10 courtroom at 11:08 a.m.)

11 (WHEREUPON, Court was in recess at 11:08 a.m. and
12 reconvenes at 11:28 a.m.)

13 (WHEREUPON, the jury panel enters the courtroom at
14 11:28 a.m.)

15 THE COURT: All right.

16 MS. HALL: State calls Maggie Moore.

17 MAGGIE MOORE, after being duly sworn, testified
18 as follows:

19 CLERK OF COURT: Have a seat in the witness box.
20 State your full name for the Court spelling your last,
21 please.

22 THE WITNESS: My name is Maggie Virginia Murphy
23 Moore. M-O-O-R-E.

24 DIRECT EXAMINATION

25 BY MS. HALL:

1 Q. Ms. Moore, where do you live?

2 A. I live at [REDACTED] in Dillon.

3 Q. Is that in Dillon County?

4 A. Yes, ma'am.

5 Q. Who lives with you?

6 A. My son, my daughter, Sharon, and eight grandchildren.

7 Q. Eight grandchildren?

8 A. Um. hum.

9 Q. Is that all your grandchildren?

10 A. No.

11 Q. How many children do you have total?

12 A. Fourteen.

13 Q. And what do you do for a living?

14 A. I don't work now. I'm laid off. I was working at
15 Davis of Dillon.

16 Q. All right. And who takes care of the grandchildren
17 that live in your home?

18 A. I help my children take care of their children.

19 Q. Okay. And of the eight grandchildren that live in
20 your home how many belong to your daughter, Sharon?

21 A. One.

22 Q. And how many belong to your son?

23 A. Three.

24 Q. And so what about the others?

25 A. They belong to my daughter, Queenena. I just got them

1 to live with me since she passed away.

2 Q. When did Queena pass away?

3 A. She passed away September the 20th of 2013.

4 Q. And what did she pass away from?

5 A. She had an asthma attack.

6 Q. And so all of her children live with you now?

7 A. All except one, her baby.

8 Q. And where is her baby?

9 A. He stay with his father.

10 Q. Okay. Of the grandchildren that belong Queena do two
11 of those include **Minor 1** and **Minor 2**?

12 A. Yes.

13 Q. And how old is **Minor 1**

14 A. **Minor 1** is seven.

15 Q. He's seven?

16 A. He's six. He will be seven in January -- February.

17 Q. Okay. What is his birthday?

18 A. [REDACTED].

19 Q. Okay. And what is -- how old is **Minor 2**

20 A. **Minor 2** is five. He will be six in [REDACTED].

21 Q. Okay. And do you know what year? It's okay if you
22 don't.

23 A. [REDACTED] I think.

24 Q. Okay. And what schools do **Minor 1** and **Minor 2** attend?

25 A. They attend South Elementary School.

1 Q. And how long have your children -- your grandchildren
2 lived with you?

3 A. They just started living with me a month. Back with
4 me a month.

5 Q. Okay. And do you know whey they lived prior to
6 living with you?

7 A. They have lived on Eighth Avenue. I didn't know -- I
8 don't know the number of the house. I know they lived on
9 Eighth Avenue from 2000 -- I think -- I don't know. I
10 know it was in 2000.

11 Q. Sometime in the 2000s?

12 A. Yes.

13 Q. Okay.

14 A. They lived on Eighth Avenue.

15 Q. On Eighth Avenue. I am going to show you what's been
16 previously marked and entered into evidence as State's
17 Exhibit Two. Would you take a look at that for me?

18 A. Um hum.

19 Q. Do you recognize that?

20 A. Um hum.

21 Q. Could you identify for the jury where your daughter,
22 Queena, lived with her children?

23 A. She lived in this house.

24 Q. Okay. And do you know who lived in the other houses?

25 A. D.J, my brother, and Mr. Sammy.

1 Q. Okay. So who is Mr. Sammy?

2 A. He was my daughter neighbor.

3 Q. And is he in the courtroom today?

4 A. Yes.

5 Q. Would you please identify him?

6 A. That's Mr. Sammy.

7 MS. HALL: Let the record reflect that the witness
8 has identified the defendant as Mr. Sammy.

9 BY MS. HALL:

10 Q. Without going into what anybody said to you was there
11 a time period when you became aware that something
12 inappropriate may have happened to your grandsons, **Minor 1**
13 and **Minor 2**

14 A. I'm being honest. No, I didn't because at the time
15 when this be was going I would be at work. I was working
16 during that time.

17 Q. Okay.

18 A. My daughter came to me.

19 Q. All right. So was there a time period when your
20 daughter came to you and told you something had happened?

21 A. Yes. She came. She told me ---

22 Q. Don't tell me what she said. Did she say something
23 had happened?

24 A. Yes. She talked to him. That's all.

25 Q. All right. What did she want you to do?

1 A. She just wanted me to talk and make sure he telling
2 the truth. To be honest.

3 Q. All right. Who is he?

4 A. **Minor 1** and **Minor 2**

5 Q. So she wanted you to talk to **Minor 1** and **Minor 2**

6 A. To both of them. Yes.

7 Q. Had she already talked to them?

8 A. She said she did.

9 Q. Okay. Were you present when she talked to them?

10 A. No, I wasn't.

11 Q. Okay. Did you talk to **Minor 1** and **Minor 2**

12 A. Yes.

13 Q. First I'm going to ask you about **Minor 1** okay. What
14 did you ask **Minor 1**

15 A. I began like this. I said, "**Minor 1** be honest. This
16 is somebody life you playing with, baby. Don't lie on
17 nobody."

18 Q. Okay.

19 A. I said, "Anybody touch you."

20 Q. And don't tell me what he said. Did **Minor 1** disclose
21 to you any type of sexual abuse?

22 A. No.

23 Q. Tell me what he did?

24 A. He looked down like he was scared.

25 Q. All right. And when you say he looked down where did

1 he look?

2 A. He just looked down and was playing with his hands
3 like I was going to get made with him or something.

4 Q. Who was present when you were talking to **Minor I**

5 A. I talked to him in front -- I call him so nobody at
6 the house would know cause ---

7 Q. So was it just you and **Minor I**

8 A. Me and **Minor I** at that time.

9 Q. Okay. So he did not make a disclosure?

10 A. Uh um.

11 Q. Did you ask him again?

12 A. I keep asking him because this is someone's life he's
13 playing with.

14 Q. Okay. And at some point did **Minor I** disclose to you
15 that he had been touched inappropriately?

16 A. Yes, ma'am.

17 Q. And without telling me what he said did he tell you
18 where the abuse has occurred?

19 A. Yes, ma'am.

20 Q. Where did he tell you it occurred?

21 A. He said Mr. Sammy's house.

22 Q. Okay. Did he tell you when?

23 A. No, he did not.

24 Q. All right. When you were talking with **Minor I** you
25 mentioned that he looked down the first time, and you

1 believed he was scared?

2 A. Yes, ma'am.

3 Q. What other behaviors did you observe of **Minor 1** while
4 you were talking with him?

5 A. He was twisting his hand, and just act real nervous
6 like. That's the way he do when he gets scared.

7 Q. He fidgets. When you asked **Minor 1** and he finally
8 made a disclosure to you did you observe any behavior at
9 that time?

10 A. It's certain things I looked at. The way he look
11 at -- he won't look at a person. Some people, you know,
12 he don't be around people like the other children.

13 Q. Okay. What about **Minor 2** Did you have a
14 conversation **Minor 2**

15 A. I asked **Minor 2**

16 Q. And what did you ask **Minor 2**

17 A. I said, "**Minor 2** did anyone touch you."

18 Q. And without telling me what he said did **Minor 2** make a
19 disclosure of sexual abuse?

20 A. He did not.

21 Q. What can you tell me about **Minor 1** and **Minor 2**
22 exposure of anything of a sexual nature at your house?
23 Like t.v. Are they exposed to anything sexual on t.v?

24 A. No.

25 Q. What about pornographic magazines? Do they have

1 access to that?

2 A. Not at my house. No.

3 Q. All right. What about the internet? Are they able
4 to get on the internet?

5 A. No, not at my house. No.

6 Q. Okay. What about Quinae's house? Are you aware of
7 any access they may have had.

8 A. I know they didn't have any internet. I don't, you
9 know, I don't know what she let them look at at t.v.
10 because I didn't visit that much.

11 Q. Were you aware of any pornographic material in
12 Quinae's home?

13 A. No, I was not.

14 Q. Okay. What general behaviors have the boys exhibited
15 since the incident that you're aware of?

16 A. Well, **Minor 1** he began to act like a girl, you know.
17 And, **Minor 2** he love to flirt around little girls a lot.

18 Q. Okay. What about any behaviors of a sexualized
19 nature? Have you observed either of the boys exhibiting
20 any behaviors of a sexualized nature? You need to say yes
21 or no.

22 A. No, I haven't.

23 Q. All right. What about any behaviors that the
24 children are still exhibiting? Let me ask you about

25 **Minor 1** first. Is there anything going on with him at

1 night or anything else?

2 A. Yes, he screams at night. And screams and say,
3 "Stop. Get away." Stuff like that.

4 Q. All right. What about **Minor 2** Does he exhibit any
5 behaviors at night or anything else?

6 A. They get up and look around like they in a different
7 place.

8 Q. Could some of that have to do with the fact that
9 their mother recently passed away?

10 A. Well, they would stay the weekends with me, anyway,
11 sometimes, you know, during when their mother was living.

12 Q. And was **Minor 1** screaming out at night prior to his
13 mother passing away?

14 A. No.

15 Q. So that happened ---

16 A. He was doing that before it happened.

17 Q. He was doing that before?

18 A. Um hum. .

19 Q. Okay. All right. Did you ever when you -- when the
20 boys were living with Queena at the previous location did
21 you ever go by the house?

22 A. Every once in a while I would go by.

23 Q. All right. And did you ever see your grandsons or
24 any of the grandchildren with Mr. Sammy?

25 A. Once. Only one time.

1 Q. Tell me about that one time?

2 A. They were in the lot between the houses. They were
3 playing like, playing. Just playing. That's all.

4 Q. Who was out there?

5 A. [Minor 1] [Minor 2] and [Minor 3] and Mr. Sammy.

6 Q. And what kind of playing were they doing?

7 A. Just playing. Like a kick ball or something like
8 that.

9 Q. So Mr. Sammy was playing kick ball with the children?

10 A. Yes. That's all, and I didn't pay it no attention.

11 Q. Okay. What was your daughter's opinion of Mr. Sammy?
12 Did she like him?

13 A. Yeah, she liked him. He helped her out around the
14 house. He would -- built -- I know he built a dog pin for
15 her to put the dog in.

16 Q. What about the boys? Did they ever tell you how they
17 felt about Mr. Sammy?

18 A. They liked Mr. Sammy. They never said nothing bad
19 about him.

20 Q. Okay. All right.

21 MS. HALL: Court's indulgence.

22 BY MS. HALL:

23 Q. No further questions, but please answer any questions
24 Mr. Hobbs may have for you.

25 MR. HOBBS: May it please the Court.

CROSS-EXAMINATION

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BY MR. HOBBS:

Q. Could you tell us who all lives -- name the residents of your house currently?

A. My residence is [REDACTED], Dillon.

Q. Yes, ma'am. And that's the same address as a Mr. Stefan Murphy?

A. Not now. Stefan moved out.

Q. And when did Stefan move out?

A. Stefan been moved from my house over four months.

Q. Four months ago?

A. Yeah.

Q. But prior to him moving out [Minor 1] and [Minor 2] would come stay with you on the weekends?

A. They would stay one night with me.

Q. Okay. You mentioned that [Minor 1] and [Minor 2] were not exposed to any obscenity or sexuality around you; is that correct?

A. They weren't.

Q. Okay. Is it true that Stefan Murphy had been charged in and accused of fondling young adolescent girls before?

A. Yes, but not my grandchildren.

Q. Okay. And ---

A. They wasn't at my house when it happened.

Q. So when Stefan lived with you he was accused of

1 fondling minor children?

2 A. Yes.

3 Q. Okay. During the statement of **Minor I** he states that
4 he once witnessed his cousin having relations with his
5 sister?

6 A. No. That never happened at my house.

7 Q. Whose cousin -- who would his cousin -- who would he
8 be referring to?

9 A. I ain't never see that happen. I don't even know
10 what cousin he's talking about because my grandchildren
11 tell me everything, and they didn't never tell me that.

12 Q. Okay. They have a their sisters; is that correct?
13 Two sister?

14 A. They have a little sister, yes. And a big sister
15 that's 15 and one four years-old.

16 Q. Okay. Do they live with you?

17 A. Yes, they do.

18 Q. Okay. Have you ever witnessed **Minor I** touching ---

19 A. No, I haven't.

20 Q. ---, any of his sisters?

21 A. No, I haven't.

22 Q. Okay.

23 MR. HOBBS: Thank you, Your Honor. No further
24 questions.

25 MS. HALL: Very briefly.

REDIRECT EXAMINATION

1
2 BY MS. HALL:

3 Q. Hang on just one second. You said that Stefan was
4 accused of fondling little boys or little girls?

5 A. A little boy and a little girl.

6 Q. Okay. And were they your grandchildren?

7 A. No, they were not.

8 Q. Okay. And prior to Minor 1 and Minor 2 moving into
9 your home where did Stefan go?

10 A. Stefan left like about four or five months ago. He
11 moved down on Hudson Street with his momma ex-boyfriend.

12 Q. When you were speaking with Minor 1 and Minor 2 about
13 the abuse that they had experienced did they ever tell you
14 that it was Stefan that had touched them?

15 A. No, they did not.

16 Q. Okay.

17 MS. HALL: No further questions.

RECROSS-EXAMINATION

18
19 BY MR. HOBBS:

20 Q. Ms. Moore, has any of the children in your house
21 other than Minor 1 and Minor 2 ever made accusations that
22 they had been touched inappropriately?

23 A. No. Because when this happened with Stefan I
24 approached Stefan. I did. My sister was in the hospital
25 at the time, and Stefan was at the house. But I haven't

1 heard nothing about Stefan being charged with no
2 molesting. I know they was in, you know, D.S.S. was about
3 it.

4 Q. Right. But there was accusation that he had fondled
5 ---

6 A. Oh, yeah, he have a problem of touching children, but
7 there are too many people around my house.

8 Q. Including a little boy?

9 A. Yes, sir.

10 Q. And you just said too many people around your house.
11 How many children live at your house?

12 A. Eight.

13 Q. Eight. So is it difficult to monitor the children at
14 all time?

15 A. No, it ain't -- it ain't difficult to monitor
16 somebody cause somebody always -- I always, when I'm not
17 working, I always be home. Always.

18 Q. I thank you for your time.

19 MS. HALL: State calls Sharon Murphy

20 SHARON MURPHY, after being duly sworn, testified
21 as follows:

22 CLERK OF COURT: Be seated in the witness box. State
23 your full name for the Court spelling your last, ma'am.

24 THE WITNESS: My name is Sharon LaShondell Murphy.

25 M-U-R-P-H-Y.

DIRECT EXAMINATION

BY MS. HALL:

Q. Hi, Ms. Murphy. Ms. Murphy, where do you live?

A. I live at [REDACTED].

Q. Who do you live with?

A. My mother.

Q. Your mother, Maggie?

A. Yes.

Q. Who else lives at that home?

A. It's me, my brother, my sister.

THE COURT: Okay. We need you to slip up a little bit where that microphone can pick you up a little better.

THE WITNESS: Me, my brother, sister, my niece and nephew and my auntie.

BY MS. HALL:

Q. Okay. Are you currently working or do you stay home with the children?

A. I stay home with the kids.

Q. How do you know Minor 1 and Minor 2?

A. Those are my oldest sister's kids.

Q. Your older sister, Queenana?

A. Yes.

Q. Do you have a good relationship with them?

A. Yeah, they call me momma.

Q. They call you momma. How old is Minor 1 and Minor 2

- 1 A. Seven and five.
- 2 Q. Okay. Which one is seven?
- 3 A. **Minor 1** the five.
- 4 Q. Okay.
- 5 A. Seven and **Minor 2** is five.
- 6 Q. Okay. Does **Minor 2** go by a different name?
- 7 A. Yes. We call him **Minor 2**.
- 8 Q. **Minor 2** is five and **Minor 1** is seven.
- 9 A. Um hum.
- 10 Q. Okay. Do you know Sammy Scarborough?
- 11 A. I know him by him living next door to my sister.
- 12 Q. Okay. And I'm going to show you what has been
- 13 previously marked as State's Two. Would you please show
- 14 the jury where your sister lived?
- 15 A. This house right here.
- 16 Q. Okay. And where did Sammy live?
- 17 A. That house right there.
- 18 Q. All right. So you said you know him from living next
- 19 door to your sister; is that right?
- 20 A. Yes, ma'am.
- 21 Q. And when he was living next door to your sister what
- 22 did you know about him?
- 23 A. I didn't know too much about him. He would fix stuff
- 24 in his front yard, fixing tables and stuff. And that's
- 25 all I knew about him.

1 Q. So he was helpful to your sister?

2 A. Yes.

3 Q. Did your sister have a good relationship with him?

4 A. It was like sort of like cool. They was cool with
5 each other until this.

6 Q. Do you know when your sister lived in that home next
7 to Sammy Scarborough?

8 A. It was 2000. I believe it was 2000 at the time when
9 they moved there.

10 Q. Without telling me what anybody said do you know when
11 you became aware -- was there a time period when you found
12 out something may have happened to **Minor 1** and **Minor 2**

13 A. Yes.

14 Q. When did you find out that something may have
15 happened to them?

16 A. When my sister called me.

17 Q. Your sister, Queena, called you?

18 A. Yes.

19 Q. What did she -- what did -- what was the gist of your
20 conversation with your sister?

21 A. When she called me ---

22 MR. HOBBS: Your Honor, I would object to that
23 hearsay.

24 BY MS. HALL:

25 Q. Were you made aware that something had happened to

1 [Minor 1] and [Minor 2] based on that conversation?

2 A. Yes.

3 Q. As a result of that conversation what did you decide
4 to do?

5 A. Talk to my nephew.

6 Q. Okay. Did you talk to [Minor 1] and [Minor 2] or just one
7 or just the other?

8 A. I talked to [Minor 1] and then I called [Minor 1] -- [Minor 2]
9 and talked to them by himself.

10 Q. Okay. So tell me about your conversation with
11 [Minor 1] How old was [Minor 1] when you talked to him?

12 A. [Minor 1] was about five going on six.

13 Q. [Minor 1] or [Minor 2]

14 A. [Minor 1]

15 Q. [Minor 1] All right. Tell me about that conversation?

16 A. I called him, and I asked him what had -- what was
17 going on with somebody bothering him or somebody touching
18 him.

19 Q. All right. Without saying what he said did he give
20 you a disclosure of some type of abuse?

21 A. Yes.

22 Q. Did he tell you where it had occurred?

23 A. Yes.

24 Q. Where did he say it occurred?

25 A. He said it happened at the house in the barn.

1 Q. At the house in the barn?

2 A. Yes. In the backyard in the barn.

3 Q. All right. So at his house or at someone else's
4 house?

5 A. At someone else's house.

6 Q. Whose house?

7 A. At the defendant's house.

8 Q. Okay. Did he tell you when it had occurred?

9 A. No, he didn't tell me when. He just gave me details
10 of what happened to him.

11 Q. Okay. Were you talking to him on the phone or were
12 you talking to him in person?

13 A. In person.

14 Q. In person. What behavior did you observe from **Minor 1**
15 when you were talking to him?

16 A. He would hold his head down, and he had water in his
17 eyes every time I would ask him.

18 MR. HOBBS: Your Honor, objection. It's my
19 understanding that she spoke to him on the phone.

20 MS. HALL: She just said she spoke to him in person.

21 THE WITNESS: My sister called me, but I spoke to him
22 in person.

23 MR. HOBBS: Okay. Thank you.

24 BY MS. HALL:

25 Q. You said he was putting his eyes down?

1 A. Right. Put his eyes down.

2 Q. Could you show the jury what he was doing?

3 A. He was putting his head down, and he was like looking
4 at the ground kicking his feet like this on the ground.

5 And I held his head up, and I tried to get him right so he
6 could tell me what happened to him cause he didn't want to
7 tell me because he knows how I am. He didn't want to tell
8 me.

9 Q. Why -- how are you? Why did he not want to tell you?

10 A. He knew. I'm real protective over my nieces and
11 nephews.

12 Q. When you were talking with **Minor 1** were you aware of
13 any behaviors that he was exhibiting?

14 A. Yes, he would -- the way he would act like -- like a
15 girl would act.

16 Q. Okay.

17 A. Like a little girl would act.

18 Q. Now, about what about **Minor 2** the littler one. Did
19 you have a conversation with **Minor 2**

20 A. I asked him what did he see.

21 Q. Okay. So you asked **Minor 2** what did he see? Did **Minor 2**
22 disclose to you that he had been sexually abused?

23 A. He didn't tell me that, but ---

24 Q. Okay. That's fine. And during your conversation
25 with **Minor 2** was it just you and **Minor 2** or was anyone else

1 there?

2 A. **Minor 1**

3 Q. **Minor 1** was there?

4 A. Um hum.

5 Q. And what behavior did you see from **Minor 1** while you
6 were talking to **Minor 2**

7 A. The way he act. He didn't do like boy stuff like
8 with the boys no more. He do girl stuff. He like to be
9 with the girls. Jump rope and stuff like that.

10 Q. What about **Minor 2** What behavior have you seen from
11 **Minor 2**

12 A. He talks about sex.

13 Q. **Minor 2** talks about sex? In the home you're living at
14 currently with your mother and all of your nieces and
15 nephews and your child is there any access to the internet
16 at your home?

17 A. No.

18 Q. What about movies or shows of a pornographic nature?

19 A. No.

20 Q. What about any persons doing anything in the home?
21 Have they been exposed to anything like?

22 A. Not at my home.

23 Q. Not at your -- what about your mother's home?

24 A. No. No. No. No. My momma don't play that.

25 Q. Okay. What about Quinae's home? Are you aware of

1 anything they may have been exposed to at Quinae's home?

2 A. No.

3 Q. Okay. What general behaviors are you aware of the
4 boys currently exhibiting? Not the sexual acts stuff, but
5 just general behavior?

6 A. Just like if something happen to them they don't want
7 to -- they have nightmares.

8 Q. Who has nightmares?

9 A. **Minor 1** has nightmares. He wakes up out of his sleep
10 screaming.

11 Q. He wakes up in the night screaming?

12 A. Um hum.

13 Q. What does he say when he wakes up screaming?

14 A. He wakes up, he says that he thinks Mr. Sammy is
15 trying have kidnap him.

16 MR. HOBBS: Your Honor.

17 BY MS. HALL:

18 Q. He says that?

19 MR. HOBBS: Your Honor, I object. This is hearsay.

20 MS. HALL: Excited utterance.

21 MR. HOBBS: Your Honor, if I may be heard on the
22 argument as to excited utterance. Excited utterance would
23 require that it happened in some proximity to the alleged
24 event. This is a remote incident where a child is waking
25 up in the middle of the night. It does not constitute an

1 excited utterance in this case.

2 THE COURT: He's right. I'll have to sustain the
3 objection. Of course, this witness will be testifying
4 later on?

5 MS. HALL: He will.

6 THE COURT: But for right now the jury will disregard
7 that statement.

8 BY MS. HALL:

9 Q. You said **Minor 1** wakes up in the night screaming?

10 A. Yes.

11 Q. Okay. What about **Minor 2** Anything like that with
12 him?

13 A. No. **Minor 2** he more -- he act more manly than his
14 age.

15 Q. Okay.

16 MS. HALL: Beg the Court's indulgence.

17 BY MS. HALL:

18 Q. No other questions, but please answer anything Mr.
19 Hobbs may have.

20 CROSS-EXAMINATION

21 BY MR. HOBBS:

22 Q. Miss Murphy, have you ever been charged with a crime
23 of dishonesty?

24 A. No. Never.

25 Q. Excuse me?

1 A. Never.

2 Q. Never. You recall in 2003 ---

3 MR. DANIEL: Objection, Your Honor. Can we take this
4 up at least at the bench first?

5 (WHEREUPON, a bench conference was held off the
6 record in the presence of the jury, but out of the
7 hearing of the jury.)

8 THE COURT: Ladies and gentlemen of the jury, if you
9 will step back to your room for a few minutes.

10 (WHEREUPON, the jury panel was excused from the
11 courtroom at 11:53 a.m.)

12 MR. HOBBS: Your Honor.

13 THE COURT: Yeah.

14 MR. HOBBS: I would ask that the Court issue a
15 curative instruction as to my question. I do believe I
16 was misled in my understanding of the law in admitting
17 that evidence. I apologize to the Court for wasting their
18 time and that was my mistake.

19 MS. HALL: Thank you, Your Honor. Obviously, a
20 curative instruction will be fine in regards to the
21 question, the last question that was asked.

22 THE COURT: If they can come back in bring them in.
23 I suspect somebody probably needed a break.

24 (WHEREUPON, the jury panel enters the courtroom at
25 11:55 a.m.)

1 THE COURT: Thank you for your patience, ladies and
2 gentlemen. Ladies and gentlemen of the jury, disregard
3 that question that was posed by counsel to the witness.
4 That question has in effect been withdrawn and just
5 disabuse that from you mind. Disregard any question --
6 that last question. That do it?

7 MR. HOBBS: I believe so, Your Honor.

8 THE COURT: Okay.

9 BY MR. HOBBS:

10 Q. Sharon?

11 A. Yes.

12 Q. When did you stop living with Queenena?

13 A. I moved in with her -- I stayed with her for three
14 months and then I moved out.

15 Q. Okay. So you moved out because of an altercation
16 with Queenena, isn't that correct?

17 A. No, I moved out because my little cousin that was
18 staying there she didn't want to listen and ---

19 Q. Your little cousin -- I'm sorry. I should let her
20 answer. Go ahead.

21 A. She didn't want to listen. I moved out.

22 Q. Okay. In fact your little cousin, is it, accused
23 your boyfriend of some inappropriate action; is that
24 correct?

25 A. No. She didn't accuse him of no improper action.

1 She did something that -- did something to my little
2 niece, and I told them if they didn't stop I was going to
3 tell my sister. So she came up. She told me, she was
4 going to tell my sister that my boyfriend taught her.

5 Q. Okay. And what were they doing to your little niece?

6 A. They were making her run around the house with her
7 diaper -- they were letting her run around the house and
8 she was a baby. Her diaper needed to be changed and they
9 didn't want to do it. They wanted me to do it, so I did
10 it.

11 Q. And what did the niece ---

12 A. That's what it was about .

13 Q. What did the niece say to you about your boyfriend?

14 A. She said he said something to her.

15 Q. What did she say he said to her?

16 MS. HALL: Objection. Hearsay.

17 THE COURT: Rephrase your question or move on.

18 BY MR. HOBBS:

19 Q. Did she make any accusations of ---

20 MS. HALL: Objection. Calls for hearsay. He can
21 certainly call that witness.

22 THE WITNESS: He tried to make ---

23 THE COURT: Whoa, whoa, whoa. Just a minute.

24 MR. HOBBS: Your Honor, I believe ---

25 THE COURT: You can ask the question of any

1 accusations was made but you can't get into what was said,
2 okay?

3 MR. HOBBS: Yes, Your Honor

4 BY MR. HOBBS:

5 Q. Did she make allegations, sexual in nature, about
6 your boyfriend?

7 A. She tried. She did, but she took it right back cause
8 she was lying.

9 Q. And how did this result in you and Queena getting
10 into an argument?

11 A. We never got into an argument. We never got in an
12 argument. I told her that I was moving cause I couldn't
13 put up with this groan kid there at her house.

14 Q. You felt like your niece was making up a lie?

15 A. No. Not my niece. My cousin.

16 Q. Your cousin?

17 A. I knew she was.

18 Q. About your boyfriend?

19 A. I knew.

20 Q. And that's the reason why you moved out of the house?

21 A. Yeah, I moved out.

22 MR. HOBBS: No further questions, Your Honor.

23 THE COURT: Anything?

24 MS. HALL: No, Your Honor.

25 THE COURT: Thank you. You may step down.

1 MR. DANIEL: Beg the Court's indulgence for bringing
2 in our next witness.

3 Minor 1, after being duly sworn, testified
4 as follows:

5 MR. HOBBS: Your Honor, before we get started I want
6 to reiterate any previous objections, and again ask for
7 the aforementioned hearing that I requested earlier.

8 THE COURT: Ladies and gentlemen, if you will step
9 back to your room. Give us a few minutes, please.

10 (WHEREUPON, the jury panel was excused from the
11 courtroom at 12 o'clock.)

12 THE WITNESS: Minor 1.

13 THE COURT: Minor 1 I need you to lean forward. You
14 see that microphone right there? We're going to need for
15 you to talk into it and be just as plain and as clear as
16 you can, okay.

17 MS. HALL: Your Honor, we might be able to scoot the
18 chair up a little bit. Your Honor, may I have an
19 opportunity to do a brief questioning of the witness.

20 THE COURT: Yes.

21 COMPETENCY -- DIRECT EXAMINATION

22 BY MS. HALL:

23 Q. Would you tell me your name?

24 A. Minor 1

25 Q. What's your last name?

- 1 A. Minor I
- 2 Q. Do you have a middle name?
- 3 A. Yes.
- 4 Q. What is it?
- 5 A. Minor I
- 6 Q. Louder.
- 7 A. Minor I
- 8 Q. Minor I. How old are you, Minor I
- 9 A. Seven.
- 10 Q. And when is your birthday?
- 11 A. .
- 12 Q. And where do you go to school?
- 13 A. South Elementary.
- 14 Q. And who is your teacher at South?
- 15 A. Miss Bierly.
- 16 Q. And do you have any favorite subjects at school?
- 17 A. No.
- 18 Q. No. What do like the best about school?
- 19 A. Outside playing.
- 20 Q. Outside playing. What is your least favor thing
- 21 about school?
- 22 A. Math.
- 23 Q. Math. Me, too. Minor I you understand what I mean
- 24 when I talk about telling the truth or telling lies.
- 25 A. Yes.

1 Q. Let me ask you this way. Do you know what it means
2 if someone tells you to tell the truth?

3 A. Yes.

4 Q. All right. What happens if you tell a lie at school?

5 A. They will send you home.

6 Q. They send you home. What happens if you tell a lie
7 at home?

8 A. You're going to get a beating.

9 Q. You get a beating. What happens, do you think, if
10 you tell a lie in this room, in court?

11 A. You're going to go to jail.

12 Q. You go to jail. I'm going to ask you if you can tell
13 me the difference between the truth and a lie, okay.

14 **Minor I** if I tell you that this shirt is green is that the
15 truth or a lie?

16 A. A lie.

17 Q. What's the truth about my shirt?

18 A. It's red.

19 Q. It's red. And what if I said, "**Minor I** your shirt is
20 purple." Is that the truth or is that a lie?

21 A. A lie.

22 Q. A lie. What's the truth about your shirt?

23 A. It's white.

24 Q. It's white. Do you understand that when you're
25 sitting on the chair and all the time, but especially when

1 you're on this chair, that you need to tell the truth
2 about everything that you remember.

3 A. Yes.

4 Q. If you don't remember something what should you say?

5 A. I don't know.

6 Q. All right. What if you don't know the answer to
7 something? What should you say?

8 A. I don't know.

9 Q. I don't know. But if you remember it what should you
10 do?

11 A. Answer it.

12 Q. Answer it. All right. I'm going to -- Mr. Hobbs may
13 want to ask you some questions.

14 MR. HOBBS: Yes. Thank you.

15 COMPETENCY -- CROSS-EXAMINATION

16 BY MR. HOBBS:

17 Q. Minor I do you know why we're here today?

18 A. Yes.

19 Q. What are we here today for?

20 A. Cause Mr. Sammy.

21 Q. Okay. What about Mr. Sammy?

22 A. He made me suck his ding ding.

23 Q. Okay. And do you remember when this happened?

24 A. No.

25 Q. Okay. Has anyone ever told you that Mr. Sammy made

1 you suck his ding a ling?

2 A. No.

3 Q. Okay. Has anyone ever told you to tell a lie?

4 A. No.

5 Q. Has anyone ever made you promise to say something
6 that wasn't true?

7 A. No.

8 Q. Okay. Do you remember talk to ---

9 MS. HALL: Your Honor, I feel like it's a little bit
10 more of cross-examination than it is competency. He's
11 asked -- I did not ask any fact specific questions, and I
12 don't think that's particularly appropriate.

13 MR. HOBBS: Your Honor ---

14 MS. HALL: He is specifically trying to practice and
15 do a dry run of his cross-examination of the witness.

16 MR. HOBBS: I'll be happy to address that, Your
17 Honor. And I know I'm kind of beating the dead horse here
18 with dates, but it presents elements for us to consider
19 beyond just truth and lies, and that is his ability to
20 perceive events with a substantial degree of accuracy,
21 remember it, communicate about it intelligibly, and be
22 mindful of the duty to tell the truth under oath.

23 I do believe that these prior inconsistent statements
24 are relevant to show whether he is competent to actually
25 remember what happened. And I do believe I should be able

1 to ask him about his experiences in the forensic interview
2 for this competency hearing.

3 MS. HALL: Your Honor, I would disagree with that. I
4 don't believe any previous inconsistent statement ever
5 goes to competency. If that were the case we would find
6 most witnesses to be competent at some point in time
7 because most people give some type of inconsistent
8 statement.

9 Competency has to do with the witnesses ability to
10 perceive events. And in fact Rule 601(B) says, "That the
11 proposed witness must be able to express himself
12 concerning the matters to be understood by the judge and
13 jury. And they're presumed incompetent if they're
14 incapable of understanding the duty to tell the truth."

15 He demonstrated very well that he knows the
16 difference between the truth and a lie, identified the
17 difference, and he's already been asked questions about
18 the matter and he's able to communicate. He is not going
19 to be able to communicate like an adult, but Your Honor,
20 questions about prior inconsistent statements goes to the
21 weight of his testimony not his competency.

22 THE COURT: I'm going to give you all the leeway I
23 can, but we're concerned about right now his competency to
24 testify. Right now, not what happened in the past. So
25 ring it in the best you can.

1 MR. HOBBS: Yes, sir, Your Honor.

2 BY MR. HOBBS:

3 Q. Can you tell was what happened to you in regards to
4 Mr. Sammy?

5 MS. HALL: Again, Your Honor, this is a
6 cross-examination.

7 MR. HOBBS: Your Honor.

8 THE COURT: I'm going to give him a little leeway on
9 that.

10 MS. HALL: Okay.

11 BY MR. HOBBS:

12 Q. Can you tell us what happened with Mr. Sammy?

13 A. He took me in the (undecipherable) ding ding.

14 Q. Okay. Did he make you do it? Did he force you to do
15 it?

16 A. Yes.

17 Q. And where did this happen?

18 A. In his barn.

19 Q. In his barn. Okay. And do you remember what you
20 were wearing when it happened?

21 A. No.

22 Q. Okay. Did you have clothes on when it happened?

23 A. Yes.

24 Q. Did Mr. Sammy have clothes on when it happened?

25 A. Yes.

1 Q. Okay. Do you remember if it was hot outside or if it
2 was cold outside?

3 A. Hot.

4 Q. It was hot. Okay. Were you out of school at that
5 time?

6 A. Yes.

7 Q. Okay. And, you know --

8 MR. HOBBS: Your Honor, that's it as far as the
9 competency questions.

10 THE COURT: Anything else?

11 MS. HALL: No, Your Honor.

12 THE COURT: Obviously, his testimony, I find him
13 competent to testify today. Okay.

14 (WHEREUPON, the jury panel enters the courtroom at
15 12:08 p.m.)

16 THE COURT: You may proceed.

17 DIRECT EXAMINATION

18 BY MS. HALL:

19 Q. Would you tell me your whole name?

20 A. Minor 1.

21 Q. Minor 1. How old are you, Minor 1

22 A. Seven.

23 Q. Seven. What grade are you in?

24 A. Second.

25 Q. Second. Where do you go to school?

1 A. South Elementary.

2 Q. At South. And who is your teacher at South?

3 A. Miss Bierly.

4 Q. And what is your favorite thing to eat?

5 A. Chicken.

6 Q. Chicken. What kind of chicken? Any kind?

7 A. No.

8 Q. What do you not like to eat?

9 A. Beans.

10 Q. Beans. What kind of beans?

11 A. Every kind.

12 Q. Every kind. Minor 1 tell me about where you're
13 living. Who do you live with now?

14 A. My grandma.

15 Q. Your grandma. Who lives in your house with your
16 grandma?

17 A. My aunt and my uncle.

18 Q. Your aunt and your uncle. And what about cousins?

19 Do you have any cousins?

20 A. Yes.

21 Q. And you don't have to tell me who they are cause

22 there's a bunch of them, right? What about your brothers

23 and sisters who live with you about your grandma's house?

24 Are there some of those?

25 A. Yes.

1 Q. Tell me their names?

2 A. Desire, Minor 2 Demirea.

3 Q. Desire, Minor 2 and Demirea. And what does Minor 2 go
4 by?

5 A. Minor 2

6 Q. Do you have a nickname or do you go by Minor 1

7 A. Minor 1

8 Q. Okay. Where did you live before you lived with
9 grandma?

10 A. With my momma.

11 Q. With your momma? Where is your momma now?

12 A. In heaven.

13 Q. In heaven. How long have you been living with your
14 grandma?

15 A. I don't know.

16 Q. Has it been a long time or a little time? A couple
17 of months?

18 A. A little time.

19 Q. A little what?

20 A. A little time.

21 Q. A little time. I want to show you a picture. You
22 see it? Do you see your old house in that picture?

23 A. Yes.

24 Q. Can you show it to me? Okay. Do you see other
25 houses in that picture? You do? Do you know who houses

1 they are? Say yes or no.

2 A. Yes.

3 Q. All right. Tell me whose houses they are?

4 A. Mr. Sammy, Major and Minor 3

5 Q. Mr. Sammy, who is the middle one?

6 A. Major.

7 Q. Major and D.J, okay? Do you remember living in this
8 house? Yes?

9 A. Yes.

10 Q. What kinds of things did you do for fun when you
11 lived on that street?

12 A. Play.

13 Q. Play. What kind of play?

14 A. Hide and go seek.

15 Q. Hide and go seek. What else did you play?

16 A. (Undecipherable).

17 Q. So you play hide and go seek with a bicycle? Oh, no.
18 Separate?

19 A. Tag.

20 Q. Tag. Oh, I love tag. Minor 1 I want to ask you now
21 to look at some pictures, okay? I'm going to start with
22 this one. You see that?

23 A. Yes.

24 Q. All right. Minor 1 I'm going to ask if you know some
25 body parts, okay? And I'm going to write them up here on

1 the board, all right. So I'm going to come over here by
2 you so you can help me.

3 All right, Minor I what do you call this part up
4 here?

5 A. Hair.

6 Q. What did you say?

7 A. Hair.

8 Q. And what about that?

9 A. Eyes.

10 Q. Eyes. What do you call that?

11 A. Nose.

12 Q. And that?

13 A. Mouth.

14 Q. And what about that?

15 A. Ears.

16 Q. Ears. What do you call this whole place right here?

17 A. Stomach.

18 Q. Stomach. And what are these?

19 A. Arms.

20 Q. Okay. Minor I what do you call these?

21 A. Nipples.

22 Q. Okay. And what is this?

23 A. Ding a ding.

24 Q. You call it what?

25 A. Ding a ding.

1 Q. Ding a ding. What do you call these?

2 A. Legs.

3 Q. Okay. And these?

4 A. Feet.

5 Q. Okay. What about on the back side. What do you call
6 this?

7 A. Legs.

8 Q. Okay. And what is this?

9 A. Butt.

10 Q. Butt. What's this?

11 A. Back.

12 Q. Back. And what's this whole thing?

13 A. Head.

14 Q. The head. Okay. **Minor I** do you know which parts on
15 here are private parts? Can you tell me? Tell me.

16 A. Here the ding a ding and the butt.

17 Q. The ding a ding and butt are private parts? Okay.

18 Now, I'm going to show you kind of the same type picture,
19 but it's of a bigger person. Okay. All right. I'm not
20 going to do as many parts as we did on the little person,
21 but I'm going to do a few, okay. What's do you call this
22 whole thing on a big person?

23 A. The head.

24 Q. The head, okay. What do you call this on a big
25 person?

- 1 A. Nipples.
- 2 Q. Nipples. What do you call this on a big person?
- 3 A. Belly button.
- 4 Q. Belly button. All right. What about these?
- 5 A. Arms.
- 6 Q. Arms. What about these?
- 7 A. Hands.
- 8 Q. Hands. What about these?
- 9 A. Legs.
- 10 Q. Okay. These?
- 11 A. Feet.
- 12 Q. Okay. What do you call this on a big person?
- 13 A. A ding a ding.
- 14 Q. Ding a ding. You use the same word for big as a
- 15 little person? Okay. What about on the back side of the
- 16 big person. What do you call this part right here?
- 17 A. Legs.
- 18 Q. Legs. What do you call this part on a big person?
- 19 A. Butt.
- 20 Q. Butt. What do you call this part?
- 21 A. Back.
- 22 Q. The back. And what is this part on the back?
- 23 A. Head.
- 24 Q. The head. Do you know what the private parts are on
- 25 a big person? Tell me?

1 A. Ding a ding and butt.

2 Q. So the same private parts on a big person as on a
3 little person? Okay. And when I ask you questions will
4 you say yes or no for me?

5 A. Yes.

6 Q. Okay. All right, **Minor 1**, have you ever seen a
7 grown up's private parts?

8 A. No.

9 Q. No. Have you ever been asked to touch a grown up
10 person's private parts?

11 A. No.

12 Q. Okay. I want to ask you now about when you lived in
13 your old house, okay. In your old house you told me about
14 your neighbor. Can you tell me where your neighbor lived?
15 Who was it?

16 A. Mr. Sammy.

17 Q. Show me Mr. Sammy's house. Did you have fun things
18 to do at Mr. Sammy's house?

19 A. No.

20 Q. No. What happened at Mr. Sammy's house?

21 A. I can't remember.

22 Q. You can't remember. What about any kind of touches
23 that made you sad? Did any touches that made you sad ever
24 happen?

25 A. No.

1 Q. What about touches that you didn't want?

2 A. Yes.

3 Q. Yes. Tell me about those?

4 A. I don't want people hitting me.

5 Q. You don't want people hitting you. I don't want that
6 either. Tell me about with Mr. Sammy. What touches was
7 Mr. Sammy?

8 A. I don't know.

9 Q. You don't know. Is it hard to talk about?

10 A. Yes.

11 Q. All right. I just want you to answer the question
12 I'm asking you, okay, **Minor 1** Okay. Was Mr. Sammy, did
13 he ever make you do anything you didn't want to do?

14 A. No.

15 Q. No. What about with his body?

16 A. No.

17 Q. No. Okay.

18 MS. HALL: Beg the Court's indulgence for just a
19 moment.

20 BY MS. HALL:

21 Q. All right, **Minor 1** take a look at that for me.
22 Remember this?

23 A. Yes.

24 Q. Yes. All right. I want to ask you about a certain
25 part that you talked about some. This part right here.

1 What's that called?

2 A. The ding a ding.

3 Q. The ding a ding. Tell me about Mr. Sammy and the
4 ding a ding?

5 A. (Undecipherable).

6 Q. He what?

7 A. (Undecipherable).

8 Q. Okay. I can't understand you, baby. Can you speak a
9 little bit louder?

10 A. He put his ding a ding in my throat and made me
11 choke?

12 Q. He put his ding a ding in your throat and made you
13 choke?

14 A. Yes.

15 Q. Yes or no?

16 A. Yes.

17 Q. Yes. okay. When he put his ding a ding in your
18 throat were you wearing clothes?

19 A. Yes.

20 Q. Yes. What was Mr. Sammy wearing?

21 A. I don't know.

22 Q. You don't know. What's his ding a ding covered up by
23 his pants or was it out?

24 A. Out.

25 Q. Out. Where were his pants?

1 A. I don't know.

2 Q. Were they down? Up? Unbuttoned? Or something
3 different?

4 A. Unbuttoned.

5 Q. Unbuttoned. So when his pants were unbuttoned can
6 you circle for me what part you could see on Mr. Sammy?
7 Can you circle it for me?

8 MR. HOBBS: Your Honor, can I come around so I can
9 see?

10 THE COURT: Yes.

11 BY MS. HALL:

12 Q. So you could see his ding a ding?

13 A. Yes.

14 Q. And when he put it in your throat what did he say to
15 you?

16 A. Nothing.

17 Q. What?

18 A. Nothing.

19 Q. Nothing. What did he want you to do?

20 A. Nothing.

21 Q. Nothing. He just put it in your throat?

22 A. Yes. He told me not to tell my momma.

23 Q. Why did he tell you not to tell your momma?

24 A. Because he said I would get a beating.

25 Q. He said you would get a beating?

1 A. Yes.

2 Q. Yeah. When Mr. Sammy put his ding a ding in your
3 throat -- I'm going to show you this one, okay. Can you
4 tell me what part of yours his ding a ding went into? Can
5 you circle it for me? Let me give you the marker. How
6 did it get into your throat?

7 A. I don't know.

8 Q. Did it go through your eyes?

9 A. No.

10 Q. Did it go through your nose?

11 A. No.

12 Q. Did it go through your mouth?

13 A. Yes.

14 Q. Yes. Can you circle your mouth for me? Okay. And
15 when his ding a ding went into your mouth he told you not
16 to tell your momma, is that right?

17 A. Yeah.

18 Q. Yeah. Did you tell your momma anyway?

19 A. Yes.

20 Q. Yes. Did your momma beat you?

21 A. No.

22 Q. No. **Minor I** I want to ask you about some other
23 things in Mr. Sammy's house. Did he ever show you any
24 pictures of people?

25 A. Yes.

1 Q. Tell me about that?

2 A. He showed me a magazine with naked girls and naked
3 boys.

4 Q. A magazine with naked girls and naked boys?

5 A. Yes.

6 Q. Where is the magazine?

7 A. In his pocket.

8 Q. In his pocket. And when he showed it to you what did
9 you say?

10 A. Nothing.

11 Q. Nothing. How many times did he show you the
12 magazine?

13 A. Once.

14 Q. Once. How many times did he put his ding a ding in
15 your mouth and in your throat?

16 A. Once.

17 Q. Once or more than once?

18 A. Once.

19 Q. Once. Do you know whether it was hot or cold
20 outside?

21 A. Hot.

22 Q. Hot. Do you know whether it was summer vacation or
23 school year?

24 A. It was school year.

25 Q. It was school year, but it was hot. Okay. What

1 about your friends in the neighborhood. You told me about
2 another house that's in your neighborhood that belongs to
3 Minor 3. Can you tell me D.J? Did you and Minor 3 ever play
4 together?

5 A. Yes.

6 Q. Yes. Where did y'all play?

7 A. In the field outside.

8 Q. Here. Show me. Where was the field?

9 A. It's over there.

10 Q. Okay. And when you and Minor 3 would play together
11 would Minor 2 play with you, too?

12 A. No.

13 Q. No. Just you and Minor 3 most of the time?

14 A. Sometimes.

15 Q. Sometimes. And sometimes Minor 2 would be there?

16 Okay. Did you ever see Minor 2 or Minor 3 over at Mr. Sammy's
17 house?

18 A. No.

19 Q. No. What about at the back of Mr. Sammy's house?

20 A. Not Minor 2

21 Q. Not Minor 2 Did you see Minor 3 at that back of Mr.
22 Sammy's house?

23 A. Yes.

24 Q. Tell me about that?

25 A. I can't remember.

1 Q. You can't remember. All right. I want to show you a
2 big picture of Mr. Sammy's house, okay? All right.

3 Sorry, buddy. Take a look at that. Whose house is that?

4 A. Mr. Sammy.

5 Q. All right. Can you point to me where Mr. Sammy made
6 you suck his ding a ding?

7 A. Right there.

8 Q. Back there? Were you out in the yard or somewhere
9 different?

10 A. Somewhere different.

11 Q. Tell me where.

12 A. In the barn?

13 Q. A barn. Is the barn in that picture?

14 A. No.

15 Q. Where would the barn be if it was in that picture?
16 Do you know what happened to the barn?

17 A. No.

18 Q. No. Have you been over there to see?

19 A. No.

20 Q. No. Okay. Let's see, **Minor 1** Has any other
21 grownups or any bigger kids ever tried to make you suck
22 their ding a ding other than Mr. Sammy?

23 A. No.

24 Q. No? What about Stefan? Do you know Stefan?

25 A. Yes.

1 Q. Who is Stefan?

2 A. My cousin.

3 Q. Your cousin. Did Stefan ever try to touch any of
4 your private parts?

5 A. No.

6 Q. No. What about Stephen's private parts? Did he ever
7 try to make you touch any of his private parts?

8 A. No.

9 Q. No. Who tried to make you touch private parts?
10 Anybody in your house?

11 A. No.

12 Q. No Just Mr. Sammy?

13 A. Yes.

14 Q. Okay.

15 MS. HALL: Beg the Court's indulgence for just a
16 moment.

17 BY MS. HALL:

18 Q. Minor I did you ever get anything fun at Mr. Sammy's
19 house like balloons or candy?

20 A. Balloons.

21 Q. Balloons. What color balloons?

22 A. Pink.

23 Q. Pink. How many times did you get pink balloons?

24 A. I can't remember.

25 Q. More than one time.

1 A. I can't remember.

2 Q. Okay. That's a good answer. And I don't have any
3 other questions for you, but Mr. Hobbs may come up and ask
4 you some questions, okay.

5 CROSS-EXAMINATION

6 BY MR. HOBBS:

7 Q. You doing okay, Minor I

8 A. Yes.

9 Q. Well, I appreciate you talking to me today. Tell me
10 a little bit about what you like to do around the
11 neighborhood? What's your fun game to play?

12 A. Playing with my cousins.

13 Q. Playing with your cousins. Okay. You live with your
14 cousins now?

15 A. No.

16 Q. Okay. Who do you live with right now?

17 A. My grandma.

18 Q. With your grandma. Okay. When you used to live in
19 the white house they showed you in the picture who did you
20 use to play with?

21 A. My other cousins.

22 Q. Your other cousins. Who is your other cousin?

23 A. (Undecipherable), M.

24 Q. Okay. Would you play tag with them?

25 A. Yes.

1 Q. Hide and go seek? It's okay. Did you ever play hide
2 and go seek with them?

3 A. Yes.

4 Q. Okay. Very good. What about Minor 3 Was Minor 3 a friend
5 of yours?

6 A. Yes.

7 Q. Okay. Would you hang out and -- with Minor 3 a lot?

8 A. No.

9 Q. No. How often did you hang out with Minor 3 when you
10 lived in the white house?

11 A. I can't remember.

12 Q. You can't remember. That's okay. Do you ever talk
13 to Minor 3 on the phone?

14 A. No.

15 Q. Okay. Would you know how to call Minor 3 if you wanted
16 to?

17 A. No.

18 Q. Okay. That's fine. Now, we're here today talking
19 about Mr. Sammy; is that right?

20 A. Yes.

21 Q. Okay. And do you recall when you're saying Mr. Sammy
22 did this to you?

23 A. No.

24 Q. Okay. Do you know if it was last week?

25 A. No.

1 Q. Okay. Was it last month?

2 A. I don't know.

3 Q. Okay. Do you know if it was even a year ago?

4 A. I don't know.

5 Q. And that's okay. That's okay. Do you remember ever
6 going and talking to anybody about this in a room that had
7 carpeted walls and two chairs?

8 A. No.

9 Q. Okay. How about this. Do you ever remember going
10 and talking to a lady by the name of Sally Williamson?

11 A. No.

12 Q. Okay. Do you remember going to a room and she made
13 you look at pictures like this and identify the parts of
14 the boy and the parts of the girl?

15 A. No.

16 Q. Okay. That's fine. Do you remember telling her that
17 Mr. Sammy never touched you?

18 A. No.

19 Q. Okay. When you went and spoke to her were you afraid
20 of her at all?

21 A. No.

22 Q. Okay. Did you have any reason to lie to her when you
23 went and spoke with her?

24 A.

25 MS. HALL: Your Honor, he said he doesn't remember

1 talking to her. I don't know if he can answer the
2 question.

3 THE COURT: Go ahead.

4 BY MR. HOBBS:

5 Q. Now, do you remember telling anyone that you had
6 witnessed your cousin touching your sister?

7 A. No.

8 Q. Okay. What would you do if you saw your cousin
9 touching your sister?

10 A. Tell on him.

11 Q. Very good. And why would you do that?

12 A. I don't know.

13 Q. It's all right. That's all right. Okay. Your
14 cousin, Stefan, did he ever touch you in a bad way?

15 A. No.

16 Q. Did you ever see Stefan doing something that he
17 shouldn't have been doing?

18 A. No.

19 Q. Okay. Now, you have a little brother by the name of
20 **Minor 2** is that right?

21 A. Yes.

22 Q. Okay. Does **Minor 2** ever copy what you do?

23 A. No.

24 Q. He doesn't want to be like you?

25 A. I don't know.

1 Q. That's okay. Just you're his big brother, right?

2 A. Yes.

3 Q. Okay. That's fine. Now, did you ever see Minor 2
4 over at Mr. Sammy's yard?

5 A. No.

6 Q. Okay. Did you -- let me rephrase that. Did you ever
7 play hide and seek near Mr. Sammy's house?

8 A. No.

9 Q. No. Okay. Now, you say that something happened in
10 the barn. Can you tell us what the barn looked like?

11 A. Yes.

12 Q. Okay. Tell us what the barn looked like?

13 A. It was red and had a white -- it looks like it had a
14 white edge across it.

15 Q. Okay. Was it a big barn?

16 A. No.

17 Q. Small barn?

18 A. Yeah.

19 Q. Okay. Where was this barn?

20 A. Around his house.

21 Q. Okay. And what happened at the barn?

22 A. He made me suck his ding a ding.

23 Q. When he did that was the barn door opened?

24 A. No.

25 Q. Okay. You were closed? Were you closed in the barn

1 at any time?

2 A. No.

3 Q. What's that?

4 A. No.

5 Q. Hold on one second. Don't play with the microphone
6 too much. What? I'm sorry. What did you say?

7 A. I said one.

8 Q. I'm sorry. I'll move on from that question. I
9 didn't understand him. Do you remember ever seeing Minor 2
10 doing something he wasn't supposed to do?

11 A. No.

12 Q. You remember ever seeing Minor 3 doing something he
13 wasn't supposed to do?

14 A. No.

15 Q. Okay.

16 MR. HOBBS: No further questions, Your Honor.

17 MS. HALL: No further questions from the State, Your
18 Honor.

19 THE COURT: Thank you. You may step down.

20 MS. HALL: State calls Minor 2.

21 MR. HOBBS: Your Honor.

22 THE COURT: Ladies and gentlemen of the jury, if you
23 will step back. Let me have just a minute or two, please.

24 (WHEREUPON, the jury panel was excused from the
25 courtroom.)

1 THE COURT: We're going to need you to talk very
2 clearly into that, okay?

3 COMPETENCY DIRECT EXAMINATION

4 BY MS. HALL:

5 Q. You've got to speak into this. All right. I'm going
6 to scoot your chair up a little bit. Give it just one
7 more good scoot. Can you do one more scoot? Okay. Will
8 you tell me your name?

9 A. [REDACTED] Minor 2.

10 Q. [REDACTED] Minor 2. What do you do by? What is
11 your nickname?

12 A. [REDACTED] Minor 2.

13 Q. [REDACTED] Minor 2 How old are you?

14 A. Five.

15 Q. Five. When is your birthday?

16 A. [REDACTED].

17 Q. What year, do you know?

18 A. [REDACTED]

19 Q. [REDACTED] Where do you go to school, [REDACTED] Minor 2

20 A. South.

21 Q. Who is your teacher?

22 A. Miss Allen.

23 Q. Miss Allen. What is your favorite thing about
24 school?

25 A. Learning.

1 Q. Learning. Who's your least favorite thing about
2 school?

3 A. Math.

4 Q. Math. You're just like your brother. **Minor 2** if I
5 told you that my shirt was green would that be the truth
6 or a lie?

7 A. A lie.

8 Q. A lie. What's the truth? What color is my shirt?

9 A. Red.

10 Q. Red. And what would happen if I told a lie at
11 school? What would happen?

12 A. You get in trouble.

13 Q. Who would you get in trouble with at school?

14 A. Your teacher.

15 Q. Your teacher. Now, what about at home? If you told
16 a lie at home who would you get in trouble with?

17 A. Grandma.

18 Q. Grandma. What kind of trouble?

19 A. Bad trouble.

20 Q. Bad trouble. All right. Now, what about this room?
21 This is called a courtroom. What do you think would
22 happen if you told a lie in here?

23 A. You would go to jail.

24 Q. You think you would go to jail. Who would send you
25 to jail?

1 A. Police.

2 Q. The police. Do you understand that it's really
3 important all the time to tell the truth but especially
4 when you're here, when we're in this Court that it's
5 really important to tell the truth?

6 A. Yes, ma'am.

7 Q. Yes. Now, if I ask you a question that you don't
8 know the answer to what do you think you should say?

9 A. I don't know.

10 Q. I don't know. What if I ask you about something you
11 don't remember what should you say then? Should you make
12 something up or should you say, "I don't remember?"

13 A. I don't remember.

14 Q. I don't remember. Now, if I ask you something you
15 know the answer to should you tell the truth?

16 A. Yes.

17 Q. Do you think you can tell the truth today?

18 A. Yes, ma'am.

19 Q. All right. Mr. Hobbs is going to ask you some
20 questions about telling the truth and then we are going to
21 talk about some other stuff, okay?

22 COMPETENCY CROSS-EXAMINATION

23 BY MR. HOBBS:

24 Q. **Minor 2**, how you doing today?

25 A. Good.

1 Q. My name is Kyle. I just got a few questions for you,
2 okay? Minor 2 how old are you?

3 A. Five.

4 Q. Five years old. All right. So what grade does that
5 put you in?

6 A. Kindergarten.

7 Q. Kindergarten. All right. Very good. And you don't
8 like math very much? You like math? You like math?

9 Good. I'm very glad to hear that. Now, Minor 2 do you
10 know what we're doing here today?

11 A. Talking.

12 Q. Do you know why we are talking here today?

13 A. Because.

14 Q. Do you know why we're talk here today? Okay, let's
15 say this. Are we here today because of Mr. Sammy? Yeah?
16 What's going on with Mr. Sammy here today? Okay. It's
17 okay. Do you not know? Okay. That's okay. That's okay.
18 You're doing great. Now, what do you say that Mr. Sammy
19 did?

20 A. Made my brother book at magazines.

21 Q. Okay. Did he do anything to you?

22 A. No.

23 Q. Did he make you look at magazines?

24 A. No.

25 Q. Did he ever touch you inappropriately?

1 A. No.

2 Q. Did he ever make you feel bad?

3 A. No.

4 Q. So you're here today -- I'm sorry.

5 MR. HOBBS: Let me rephrase that, Your Honor.

6 BY MR. HOBBS:

7 Q. The only thing you say Mr. Sammy did was show your
8 brother magazines?

9 A. Magazines.

10 Q. Well, how did you see these magazines?

11 A. Because he had them at his house and he let my
12 brother see them.

13 Q. Did your brother tell you that? Did your brother
14 tell you that or did you see it?

15 A. He told me.

16 Q. He told you. Did you ever see it?

17 A. Yes, sir.

18 Q. You saw it. What did you see?

19 A. I saw boys and girls.

20 MS. HALL: And, Your Honor, I would like to ask that
21 this is probably not appropriate on cross on a competency
22 hearing. I feel like he's being allowed to basically
23 practice his entire cross-examination.

24 MR. HOBBS: Your Honor, may I be heard on that? Your
25 Honor, he is here today because the State is charging Mr.

1 Scarborough with committing a sexual battery on him as
2 well as showing him obscene material. I think it's very
3 important that we understand what he remembers and his
4 ability to communicate it with ---

5 MS. HALL: That's all for cross, Your Honor.
6 Competency is his ability to communicate what he remembers
7 and his ability to tell the truth. He's demonstrated
8 that.

9 THE COURT: All right. I'm going to let stand what's
10 already been asked, but try to keep it ---

11 MR. HOBBS: Yes, Your Honor. Okay.

12 BY MR. HOBBS:

13 Q. Did you see a magazine or did Minor 1 tell you about a
14 magazine?

15 A. I seen it.

16 Q. You seen it. Okay. Did Mr. Sammy show it to you or
17 did Minor 1 show it to you?

18 A. Mr. Sammy.

19 Q. Okay. When did this happen? Do you know? Okay.
20 When did it happen?

21 A. When I was living at the old house and when I turned
22 five.

23 Q. Okay. Did Mr. Sammy ever touch your or make you
24 touch him? Okay. Thank you.

25 THE COURT: Anything else?

1 MS. HALL: Nothing else, Your Honor. We're ready.

2 MR. HOBBS: Your Honor, how do you find?

3 THE COURT: Yes. He's competent.

4 MR. HOBBS: Thank you.

5 (WHEREUPON, the jury panel enters the courtroom at
6 12:37 p.m.)

7 THE COURT: All right.

8 DIRECT EXAMINATION

9 BY MS. HALL:

10 Q. All right. Would you tell me your whole name?

11 A. [REDACTED] Minor 2.

12 Q. And how old are you, [REDACTED] Minor 2?

13 A. Five.

14 Q. And when is your birthday?

15 A. [REDACTED]

16 Q. Do you know what year?

17 A. [REDACTED]

18 Q. Where do you go to school?

19 A. South.

20 Q. Who is your teacher at South?

21 A. Miss Allen.

22 Q. Miss Allen. What is your favorite food?

23 A. Chicken nuggets and fries.

24 Q. Chicken nuggets and fries. What is your least
25 favorite food?

1 A. Chicken and rice.

2 Q. Chicken and rice. Minor 2 is it okay if I call you

3 Minor 2 Is that what you go by? You going to have to say
4 yes or no so she can write it.

5 A. Yes.

6 Q. Yes, okay. Minor 2 you understand that we're --
7 you've got to tell the truth when you're in this courtroom
8 today, don't you?

9 A. Yes, ma'am.

10 Q. Okay. I'm going to do a practice of a lie and a
11 truth and I'm going to see if you can help me figure out
12 which one is which. If I told you that my shirt is orange
13 is that the truth or is that a lie?

14 A. Lie.

15 Q. A lie. What is the truth about my shirt?

16 A. Red.

17 Q. It's red. And do you understand that when we're in
18 here in this courtroom today we need to tell the truth?

19 A. Yes, ma'am.

20 Q. What happens if we tell a lie when we're in the
21 courtroom?

22 A. You will get in bad trouble.

23 Q. Who will you get in bad trouble with?

24 A. The judge.

25 Q. The judge. All right. Minor 2 do you have any

1 brothers or sisters?

2 A. Yes, ma'am.

3 Q. Okay. Who are your brothers and sisters.

4 A. It's Minor 1 Minor 3 and T and C

5 Q. Do they all live at your house with you with your
6 grandma?

7 A. No.

8 Q. Where do they live?

9 A. Some of them live at Bennettsville, and some of them
10 live in Dillon.

11 Q. Some of them live in Dillon. Okay. Who do you live
12 with right now?

13 A. Grandma.

14 Q. Who lives at the house with grandma?

15 A. My aunt and my uncle.

16 Q. All right. What about your cousins?

17 A. No.

18 Q. What about your brothers and sisters?

19 A. Um hum.

20 Q. Which brothers and sisters live with you?

21 A. Minor 1 and D

22 Q. And why are you living with your grandma?

23 A. Because my momma had to die.

24 Q. Your momma had to die. Where did you live before
25 your momma died?

1 A. At the new house.

2 Q. At the old house or the new?

3 A. New.

4 Q. You now -- you lived in the new house before? Can I
5 show you a picture see if you can help me. Let's see.

6 Not that one. Let's look at State's Number Two. Do you
7 see your old house you lived at with your momma? Right
8 there. Who were your neighbors? Did you have any
9 neighbors? Tell me who was in that house?

10 A. Sammy.

11 Q. Sammy. Who was in that house?

12 A. D.J..

13 Q. Okay. Who was in that house?

14 A. Right there?

15 Q. Yep?

16 A. Minor 3

17 Q. That was Minor 3 So what was the other house in
18 between? This one? Do you know?

19 A. Darryl.

20 Q. Okay. And when you lived at that house with your
21 momma who lived at that house with you?

22 A. My sister and my brother.

23 Q. Okay. And what kinds of things did you like to do
24 for fun?

25 A. Play.

- 1 Q. What kind of play?
- 2 A. Play basketball and kick ball.
- 3 Q. Okay. What else?
- 4 A. Play soccer.
- 5 Q. Okay. Play soccer. What else?
- 6 A. Football.
- 7 Q. Football. What else?
- 8 A. Basketball.
- 9 Q. Basketball. Okay. And when you lived in your house
- 10 you told me that somebody lived in this house. Who did
- 11 you say lives in that house?
- 12 A. Minor 3.
- 13 Q. Minor 3 Who is Minor 3?
- 14 A. My best friend.
- 15 Q. He's your best friend. What kind of things did you
- 16 and Minor 3 like to do for fun?
- 17 A. Play football.
- 18 Q. Play football. Where did you play football? Can
- 19 your show me?
- 20 A. Over there.
- 21 Q. Over there. Now, what about -- who lives in this
- 22 middle house that you were talking about? Who lives in
- 23 that house?
- 24 A. Any Uncle Darryl.
- 25 Q. And what kinds of things did you do with him?

1 A. Me and my daddy walked over there.

2 Q. You walked over there. Do you ever play games there?

3 Yes or no.

4 A. No.

5 Q. Okay. What about this house right here. Who lives
6 in that house?

7 A. Sammy.

8 Q. Sammy. What kinds of things did you do for fun over
9 at Mr. Sammy's?

10 A. We played kick ball, basketball. We played kick
11 ball.

12 Q. Kick ball, basketball and kick ball. Did you play
13 that with Mr. Sammy or just at his house?

14 A. Just at his house.

15 Q. At his house. Did he ever go out there and play with
16 you? Yes or no.

17 A. No.

18 Q. No. Okay. **Minor 2** I want to ask you about some body
19 parts. Let's see. Here we go. I'm going to try to make
20 everything fall down. I'm going to get your help, okay.

21 Here we go. Okay, **Minor 2** Is this a little boy or a
22 little girl?

23 A. Boy.

24 Q. Boy. Can you tell me what some of these parts are?
25 I'm going to point to them. I'm not going to do all of

1 them. What is that?

2 A. Ears.

3 Q. Ears. What's that?

4 A. Mouth.

5 Q. And what's that? What do you call it? You can call
6 it anything you want. It's okay?

7 A. I forget.

8 Q. Okay. You forgot. We'll come back to it. What do
9 you call this part?

10 A. Arms.

11 Q. Arms. What's this part?

12 A. Belly.

13 Q. Belly. What would you call this part?

14 A. Penis.

15 Q. Penis, okay. I'm write sideways so it's kind of hard
16 to read. What's this right here?

17 A. Hands.

18 Q. Hands. And what are these?

19 A. Feet.

20 Q. Feet, okay. Now, we're going to look at the back
21 side. What do you call these things?

22 A. Legs.

23 Q. Legs. And what is this right here?

24 A. Arms.

25 Q. Arms. What is this?

1 A. Hiney.

2 Q. Hiney, okay. And what this part?

3 A. Head.

4 Q. The head, okay. Now, I'm going to show you something

5 kind of the same but kind of different. Okay. Here we

6 go. Make sure I don't bang anybody on the head. Okay.

7 Here we go, Minor 2

8 All right. Let's see. Is this a grown up man or a
9 grown up woman?

10 A. Grown man.

11 Q. Grown man. Can you help me with some of these parts?

12 Okay. What's this part on a grown man?

13 A. Head.

14 Q. The head. And what's that?

15 A. Eyes.

16 Q. Eyes. And what's that?

17 A. Nose.

18 Q. And what's that?

19 A. Mouth.

20 Q. Okay. What are these?

21 A. Arms.

22 Q. Arms. And what's this whole part?

23 A. Body.

24 Q. Body. Okay. What's this?

25 A. Penis.

1 Q. Penis. And what's this?

2 A. Legs.

3 Q. And what are these?

4 A. Feet.

5 Q. Feet, okay. Now, let's look at the back side. What
6 is this part?

7 A. Bones.

8 Q. Bones, okay. And what's this. What do you call this
9 part?

10 A. Hiney.

11 Q. Hiney. And what are these?

12 A. Hands.

13 Q. Hands. Okay, are there parts on a grown up that are
14 private parts? Can you tell me what they are?

15 A. Penis, hiney and ...

16 Q. Trying to remember a name? Point to it. You want to
17 point to another private part?

18 A. Belly.

19 Q. Belly. Okay. So the belly is a private part. Are
20 there any grown ups that have ever tried to show you their
21 private parts?

22 A. No.

23 Q. No. What about any grown ups every tried to touch
24 any of your private parts? Let's look at you're -- a
25 boy's private parts?

1 A. No.

2 Q. No, okay. Have you ever seen a grown ups private
3 parts?

4 A. Yes.

5 Q. Whose private parts have you seen?

6 A. Sammy.

7 Q. Sammy's. When did you see Mr. Sammy's private parts?

8 A. Suck it -- made **Minor 1** suck his wee wee.

9 Q. Did you see him make **Minor 1** suck his wee wee?

10 A. Yes, ma'am.

11 Q. Can you tell me about that?.

12 A. It was when we were living in the other house.

13 **Minor 1** came in and said that.

14 Q. Did you see it with your eyes? Yes. Where were you?

15 A. Home.

16 Q. You were at home. Where was **Minor 1** when that
17 happened?

18 A. At his house.

19 Q. Whose house?

20 A. Sammy.

21 Q. So you didn't see it. Did you hear about it?

22 A. Um hum.

23 Q. Okay. What about things that adults aren't supposed
24 to show you. Has an adult shown you something that they
25 shouldn't have shown you?

1 A. No.

2 Q. All right. What about pictures of people without
3 clothes on? Have you ever seen that?

4 A. Yes.

5 Q. Tell me about that?

6 A. He showed Minor 1 that.

7 Q. What about you? I want to know what he showed you.

8 A. No.

9 Q. No. What about when you were outside his house?

10 A. Yes.

11 Q. Yes. Tell me about that?

12 A. That's when me and my brother went outside. He
13 showed us that.

14 Q. Tell us what he showed you?

15 A. Pictures.

16 Q. What kinds of pictures?

17 A. Gay boys.

18 Q. Gay boys. Where did he show you those pictures?

19 A. His house.

20 Q. His house. And where did he have the pictures?

21 A. In his room.

22 Q. In his room. Can your show me where you were when he
23 showed them to you? Point. All right. So were you
24 inside the house or outside?

25 A. Outside.

1 Q. Outside. So were you in the yard or in the barn or
2 somewhere else?

3 A. In the yard.

4 Q. In the yard. Okay. And when he showed you the
5 picture he said they were gay pictures?

6 A. Yes, ma'am.

7 Q. Can you tell me what that means?

8 A. Gay stuff.

9 Q. Gay stuff. Like what? Was it showing private parts?

10 A. Yes, ma'am.

11 Q. Whose private parts was it?

12 A. Boys.

13 Q. Boys. Can you point to which private parts you saw
14 in those pictures or those magazines? That part. And
15 what other part? You can do it. So you're pointing to
16 what? The hiney and the penis?

17 All right. And were there girls in any of the
18 magazines you saw or just boys?

19 A. Boys.

20 Q. And what were the boys doing with their private
21 parts?

22 A. Humping.

23 Q. Humping. What is humping?

24 A. They take their clothes off and hump.

25 Q. They take their clothes off and hump. Has any other

1 grown ups ever shown you pictures of humping before?

2 A. No.

3 Q. What about at your old house with your momma? Did
4 you ever see any pictures inside your momma's house?

5 A. Um hum.

6 Q. What?

7 A. We look at my pictures at my house.

8 Q. At your pictures at your house. Of you?

9 A. No. Me and my brother took pictures at Walgreens.

10 Q. Oh, you took pictures at Walgreens. You and your
11 brother did? What about pictures of boys humping? Where
12 did you see those pictures?

13 A. At his house.

14 Q. Who is he?

15 A. Sammy.

16 Q. Sammy. What about your cousin, Stefan. Tell me
17 about Stefan?

18 A. He's my cousin.

19 Q. He's your cousin. Has he ever tried to touch you?

20 A. No.

21 Q. Have you ever seen him touch anybody else?

22 A. Yes.

23 Q. Who did you see him touch?

24 A. Minor 1

25 Q. Minor 1 You saw Stefan touch Minor 1 When was that?

1 A. At my grandma's house.

2 Q. And your grandma's house. And when did that happen?

3 A. When we were there.

4 Q. When you were there. Tell me what happened?

5 A. Me and Minor 1 was in the house, and Stefan touched
6 him.

7 Q. Where did he touch him?

8 A. Penis.

9 Q. Penis. Now, what about Mr. Sammy? You told us you
10 saw Mr. Sammy touch Minor 1 too. Did you see it or did
11 you just hear about it?

12 A. See it.

13 Q. You see it. Okay. Now, I want to ask you about your
14 private parts. Tell me about your penis. Has any grown
15 up or any cousin or anybody ever try to touch your penis?

16 A. No.

17 Q. No. What about try to make you do something to their
18 penis?

19 A. No.

20 Q. No? All right. Just a minute, okay, Minor 2 Did Mr.
21 Sammy ever give you anything like a balloon or candy?

22 A. Candy and balloons.

23 Q. Candy and balloons. How many times did he give you
24 candy and balloons?

25 A. One.

1 Q. One. And how many times did he show you the gay
2 magazines?

3 A. Two.

4 Q. Two. When were they?

5 A. Huh?

6 Q. When was it? Do you know?

7 A. 2008.

8 Q. How do you know that?

9 A. Cause that's when I was five.

10 Q. That's when you were five. I thought you were five
11 right now? Are you tired of answering questions?

12 A. My eye itches.

13 Q. Your eye is itching. Do you need to take a break and
14 go wipe it with a Cleanex? No. I don't have any other
15 questions. Minor 2 do this for me, okay. Mr. Hobbs is
16 going to come ask you some questions, okay? Okay.

17 CROSS-EXAMINATION

18 BY MR. HOBBS:

19 Q. All right. Minor 2 did Mr. Sammy ever touch you?

20 A. No.

21 Q. Did you ever touch Mr. Sammy?

22 A. No.

23 Q. Okay. Where were you when you saw Minor 1 touch Mr.
24 Sammy?

25 A. At his house.

1 Q. At his house or were you at your house?

2 A. His house.

3 Q. Were you inside or were you outside?

4 A. Outside.

5 Q. Okay. Now, did **Minor 1** tell you about that or did you
6 see it?

7 A. I seen it.

8 Q. You saw it.. Okay. Now, what did you see Stefan do
9 to **Minor 1**

10 A. Touch him.

11 Q. He touched him. When did that happen?

12 A. At my grandma's house.

13 Q. At your grandma's house. Do you remember when it
14 happened?

15 A. Um hum.

16 Q. When did it happen? Do -- you okay, **Minor 1**

17 A. Um hum.

18 Q. Okay, buddy. When did that happen?

19 A. When the time we were there.

20 Q. Okay. Did you ever see **Minor 1** touch someone where
21 they shouldn't touch him?

22 A. No.

23 Q. And, **Minor 2** do you remember going and talking to a
24 lady in a room that had carpet walls and two seats?

25 A. No.

1 Q. Okay. Do you remember talking to a lady who showed
2 you pictures like that of naked boys and girls?

3 A. No.

4 Q. Okay.

5 MR. HOBBS: Your Honor, that's all the questions I
6 have.

7 MS. HALL: No further questions. Come on, **Minor 2**

8 COLLOQUY

9 THE COURT: Unless you've got something we need to
10 get in before lunch. It's close to 1:00.

11 MR. DANIEL: It's okay. I'm hoping that after lunch
12 that we should -- we may well finish our case today, by
13 the end of the day. If not we may have one witness first
14 thing in the morning, but we don't anticipate going much
15 longer.

16 THE COURT: All right. Is 2:15 plenty of time for
17 everybody?

18 MR. HOBBS: It is for us.

19 THE COURT: An hour and 15 minutes for lunch. You
20 all know more about Dillon than I do cause you live in
21 Dillon County, and there are a lot of good places to eat.
22 Remember don't let anybody approach you or talk with you
23 or contact you about this case. We'll see you back here
24 in the jury room at 2:15.

25 (WHEREUPON, the jury panel was excused from the

1 courtroom at 12:55 p.m.)

2 THE COURT: I wish y'all would talk with the Police
3 Department and the Sheriff's Department across the street.
4 I don't want anybody milling around out here on these
5 courthouse grounds. I understand there was some mouthing
6 going on out there yesterday. And I have no report that
7 any jurors heard it, but I am not going to tolerate that
8 kind of behavior.

9 Y'all catch anybody out there running their mouth
10 about this case I want them brought up here immediately
11 and I'll deal with it, and I don't care who it is. We've
12 got to let the jury have a little time because of that
13 situation. Okay, 2:15.

14 (WHEREUPON, Court was in recess at 12:57 p.m. and
15 reconvenes at 2:21 p.m.)

16 (WHEREUPON, the jury panel enters the courtroom at
17 2:21 p.m.)

18 THE COURT: All right.

19 MR. DANIEL: Thank you, Your Honor. Pleases the
20 Court. State calls Hope Owens.

21 HOPE OWENS, after being duly sworn, testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. DANIEL:

25 Q. Miss Owens, good afternoon.

- 1 A. Good afternoon.
- 2 Q. What's your whole name?
- 3 A. Hope Danielle Owens.
- 4 Q. And you have any children?
- 5 A. One.
- 6 Q. Who is your child?
- 7 A. Minor 3 [REDACTED]
- 8 Q. What is his whole name?
- 9 A. [REDACTED] Minor 3 [REDACTED]
- 10 Q. Everybody call's him Minor 3
- 11 A. Um hum.
- 12 Q. Hope, do you know Sammy Scarborough?
- 13 A. Yes, I do.
- 14 Q. Have you ever lived near him?
- 15 A. Yes, I have.
- 16 Q. Is your house currently where his house is? In the
- 17 same neighborhood?
- 18 A. Yes.
- 19 Q. How long have you lived in that house?
- 20 A. In the house I stay in now about two months.
- 21 Q. All right.
- 22 A. But before that it was three years.
- 23 Q. All right. The house you stayed in for three years
- 24 was that also in the same neighborhood?
- 25 A. Yes.

1 Q. Was that actually right across the street?

2 A. Yes.

3 Q. Okay. Has **Minor 3** always lived with you?

4 A. Yes, except for the past two months.

5 Q. Okay. And the past two months where has he lived?

6 A. With his aunt and uncle.

7 Q. Okay. So other than the last two months **Minor 3** has
8 always lived with you in this neighborhood?

9 A. Yes.

10 Q. Did **Minor 3** ever spend any time with Sammy Scarborough?

11 A. Yes.

12 Q. How do you know that?

13 A. They -- the neighborhood children would be -- it
14 wasn't just my child. The neighborhood children would be
15 over there at his house.

16 Q. Okay. Did **Minor 3** ever hang out with **Minor 1** and **Minor 2**
17 **Minor 2**?

18 A. Yes. Daily.

19 Q. Are you aware of any times when **Minor 3** and **Minor 1** and
20 **Minor 2** all hung out with Mr. Scarborough?

21 A. Yes.

22 Q. Did that happen often?

23 A. Often enough. I would probably say not every day,
24 but often enough.

25 Q. Okay. Were you ever aware if Mr. Scarborough ever

1 gave the kids anything?

2 A. Yes, I was.

3 Q. And what are those things?

4 A. Candy, balloons. One time he gave my son a Nerf
5 football.

6 Q. (And how do you know this? How do you know about
7 these things?

8 A. My son come home and showed me, and I asked him where
9 he get it from and he would say Mr. Sammy.

10 Q. At any point, Miss Owens, did **Minor 3** ever disclose to
11 you that he had been sexually abused?

12 A. Yes, he did.

13 Q. Did he tell you where it happened?

14 A. In the backyard at Mr. Sammy's.

15 Q. And did he tell you when it happened?

16 A. When he came to me it was the end of I'm going to say
17 about November of 2011.

18 Q. Okay. When he had that conversation with you, when
19 **Minor 3** told you he had been abused did you go to the police?

20 A. No, I didn't.

21 Q. Now, why not?

22 A. Shock. I just didn't go. I should have, but I
23 didn't.

24 Q. And after you came -- when did you eventually go to
25 the police?

1 A. It was, I think, May or June of last year, 2012.

2 Q. And what happened to make you go to the police?

3 A. I found out what happened to Quinae's two kids, Minor 2
4 and Minor 1

5 MR. DANIEL: Beg the Court's indulgence.

6 BY MR. DANIEL:

7 Q. Miss Owens, I don't have any more questions. If you
8 would please answer any questions Mr. Hobbs may have.

9 A. Okay.

10 MR. HOBBS: Your Honor, I have no questions for this
11 witness.

12 THE COURT: Thank you. You may step down. Be
13 careful with that step.

14 MR. DANIEL: Your Honor, just a second to get our
15 next witness, please. He would be right outside the door.
16 Your Honor, the State calls Minor 3

17 MR. HOBBS: Your Honor.

18 THE COURT: Ladies and gentlemen of the jury, if you
19 will step back to your room. I need to take a few minutes
20 of law.

21 (WHEREUPON, the jury panel was excused from the
22 courtroom at 2:28 p.m.)

23 MR. DANIEL: Want to put him under oath?

24 THE COURT: It's Minor 3 right?

25 Minor 3, after being duly sworn, testified

1 as follows:

2 THE COURT: Yes, or no. You've got to answer.

3 THE WITNESS: Yes, sir.

4 THE COURT: Thank you, sir. You may be seated.

5 COMPETENCY DIRECT EXAMINATION

6 BY MR. DANIEL:

7 Q. D.J, what's your whole name?

8 A. Drunta Lamore Sampson, Jr.

9 Q. And where do you live?

10 A. In Dillon.

11 Q. Who do you live with?

12 A. My momma.

13 Q. How old are you?

14 A. Eight.

15 Q. What grade are you in?

16 A. Second.

17 Q. What school do you go to?

18 A. South Elementary.

19 Q. What's your teacher's name?

20 A. Miss Leach.

21 Q. Okay. What is your favorite thing to study at
22 school?

23 A. Math.

24 Q. What do you not like to study?

25 A. Science.

1 Q. Okay. Minor 3 do you know what it means to tell the
2 truth? Do you know -- you've got to say yes or no.

3 A. Yes, sir.

4 Q. This lady right here is taking down everything you
5 say, remember, so you've got to use your words. Do you
6 know what it means to tell a lie?

7 A. Yes, sir.

8 Q. Is it good or bad to tell a lie?

9 A. Bad.

10 Q. What might happen if you told a lie to Miss Leach at
11 school?

12 A. Get in trouble.

13 Q. What might happen if you told a lie to your momma,
14 Hope?

15 A. Get in trouble.

16 Q. What do you think might happen if you told a lie in
17 this courtroom and the Judge heard you?

18 A. Get in trouble.

19 Q. If I told you that my jacket is white is that a truth
20 or would that be a lie?

21 A. If your jacket white?

22 Q. If I said my jacket is white did I just tell you the
23 truth or a lie about my jacket?

24 A. A lie.

25 Q. Why?

1 A. Because it ain't white. It's black.

2 Q. Okay. Do you understand, D.J, that in this courtroom
3 you've got to tell the truth about whatever it is somebody
4 asks you. Do you understand that? What's that little
5 badge you have on there? Who gave that to you?

6 A. Miss Valerie.

7 Q. And what's that badge mean?

8 A. To tell the truth.

9 Q. Okay. You can't wear that badge if you don't tell
10 the truth, can you? Okay.

11 MR. DANIEL: Judge, I don't have any more voir dire.

12 THE COURT: What was his age? I missed that.

13 BY MR. DANIEL:

14 Q. How old are you?

15 A. Eight.

16 THE COURT: Eight, okay. Mr. Hobbs.

17 MR. HOBBS: Thank you, Your Honor.

18 COMPETENCY CROSS-EXAMINATION

19 BY MR. HOBBS:

20 Q. Hi, [REDACTED] My name a Kyle, okay. I've got to ask you
21 some questions, and can you tell me the truth to those
22 questions?

23 A. Yes, sir.

24 Q. Okay. Do you know what we're doing here today?

25 Okay. Tell us. What are we doing?

1 A. Trying to -- trying to '...

2 Q. It's okay. Take your time.

3 A. Trying to prove ...

4 Q. Okay. What are we here to talk about?

5 A. Mr. Sammy.

6 Q. Mr. Sammy. Okay. Has anyone told you what to say
7 here today? Who told you what to say here today?

8 A. Miss Kelly and ...

9 Q. Miss Kelly and who else?

10 MR. HOBBS: Your Honor, we've had -- I'm sorry. I
11 need to take something up with the Court very briefly.
12 There is -- we can excuse D.J? I'm sorry. Just very
13 briefly?

14 THE COURT: Would a family member just step out the
15 door with him for a minute.

16 MR. HOBBS: Your Honor, I would ask that no one speak
17 to him about his testimony.

18 THE COURT: Don't talk to anybody.

19 MR. HOBBS: Your Honor, it came to my attention
20 during lunch that someone says that there was the
21 allegation of some coaching going on between the children
22 witnesses and the victim's family on the right. I only
23 ask that the Court acknowledge it. I cannot watch behind
24 me a lot of these instances. It came to my attention. I
25 do want to bring it up to the Court.

1 I would asked the Court to admonish or at least let
2 the audience know not to give any visual queues to the
3 children and also to just bring it to the Court's
4 attention.

5 THE COURT: Okay. All right. I hadn't noticed any
6 lately, but this applies to everybody. From the witness
7 on the stand, they're testifying, I don't want to see any
8 facial gestures. I don't want to see any attempted
9 coaching by shaking the head or affirmative or negative.
10 I don't want to see any rolling of the eyes. I don't want
11 to see any hand movement of any type that might indicate
12 that a witness is being coached.

13 I don't want any gestures that might be of
14 intimidation type. Okay?

15 MR. HOBBS: Thank you, Your Honor. I'm sorry for the
16 break there. We can continue.

17 (WHEREUPON, the witness returns to the witness
18 stand.)

19 BY MR. HOBBS:

20 Q. All right, Minor 3 Okay, Minor 3 we were just talking and
21 you said that Miss Kelly and someone else had told you
22 what to say. Who else told you what to say?

23 A. Mr.

24 Q. Shipp? Okay, Mr. Shipp. Did your momma tell you
25 what to say? Okay, so just Miss Kelly and Mr. Shipp.

1 What did they tell you to say?

2 A. The truth. To tell the truth.

3 Q. Okay. And there is nothing wrong with that. Did
4 they tell you anything else to say? Okay. That's fine.
5 Thank you for clearing that up. We -- you said earlier
6 that we're here to talk about Mr. Scarborough; is that
7 right? Okay. What is it that Mr. Scarborough did?
8 Mr. Sammy?

9 A. Tried to hump me.

10 Q. Okay. Did Mr. Scarborough ever touch you? Okay.
11 Where did he touch you?

12 A. On my thing.

13 Q. On your thing. Okay. Did you ever touch Mr.
14 Scarborough or Mr. Sammy? No. Never touched Mr. Sammy.
15 Did Mr. Sammy ever touch you anywhere else? No. Did Mr.
16 Sammy ever show you any pictures ---

17 MR. DANIEL: Judge, I'm going to object. I think
18 that's enough. We've established competency. We're
19 renewing our objection again. This is way beyond the
20 scope of competency.

21 THE COURT: I think this is probably the wrapping it
22 up. Go ahead and ask him the questions.

23 MR. HOBBS: This is most certainly the last question.

24 BY MR. HOBBS:

25 Q. Did Mr. Sammy show you any pictures?

1 A. He showed me a magazine.

2 Q. Okay. What was in the magazine?

3 A. Girls and boys humping.

4 Q. Okay. Thank you?

5 MR. HOBBS: That's all my questions, Your Honor.

6 THE COURT: Anything else?

7 MR. DANIEL: No, sir. As long as the Court finds him
8 competent.

9 THE COURT: He's competent. You can bring them in.

10 (WHEREUPON, the jury panel enters the courtroom at
11 2:38 p.m.)

12 MR. DANIEL: May it please the Court. Thank you.

13 DIRECT EXAMINATION

14 BY MR. DANIEL:

15 Q. Minor 3 what's your whole name?

16 A. Drunta -- I mean Drunta Morris Sampson, Jr.

17 Q. What's your middle name? Drunta what?

18 A. Drunta Sampson.

19 Q. Okay. How old are you, Minor 3?

20 A. Eight.

21 Q. Where do you go to school?

22 A. South elementary.

23 Q. Who is your teacher there?

24 A. Miss Leach.

25 Q. What's your favorite thing to study in school?

1 A. Math.

2 Q. What is your least favorite thing to study in school?

3 A. Science.

4 Q. You make good grades at school?

5 A. Yes, sir.

6 Q. Who do you live with, Minor 3

7 A. My mom.

8 Q. What is your mom's name?

9 A. Hope.

10 Q. Have you always lived with Hope all of your life?

11 A. No, sir.

12 Q. Where else have you lived?

13 A. My auntie.

14 Q. And where was that?

15 A. In Winnsboro.

16 Q. How -- do you remember how long you lived with your
17 auntie in Winnsboro?

18 A. About two months.

19 Q. Okay. But right now you live back in Dillon?

20 A. Yes, sir.

21 Q. Okay. D.J, do you know is it good or bad to tell the
22 truth?

23 A. Good.

24 Q. Is it good or bad to tell a lie?

25 A. Bad.

1 Q. If you told a lies to Miss Leach at school what do
2 you think might happen to you?

3 A. Get in trouble.

4 Q. If you told a lie to your momma, Hope, at home what
5 do you think might happen to you?

6 A. Get in trouble.

7 Q. If you told a lie in here in this room to the judge
8 what do you think might happen?

9 A. Get in trouble.

10 Q. If I told you that my coat is green would that be the
11 truth or a lie?

12 A. A lie.

13 Q. Why?

14 A. Because you're not wearing no green jacket because
15 you're wearing black.

16 Q. Okay. All right. I think that's good enough. Now,
17 D.J, before you came in here today did anybody tell you
18 what to say when you got in here? Who told you something?

19 A. Miss Kelly and you.

20 Q. What did we tell you?

21 A. To tell the truth.

22 Q. We tell you anything else to say? Yes or no?

23 A. No, sir.

24 Q. Okay. That little badge that you're wearing who gave
25 that to you?

1 A. Miss.

2 Q. Did Miss Valerie give that to you?

3 A. Yes, sir.

4 Q. And what is that badge mean?

5 A. To tell the truth.

6 Q. Okay. So you think you can tell the truth about what
7 happened here today?

8 A. Yes, sir.

9 Q. All right. D.J, do you know Mr. Sammy?

10 A. Yes, sir.

11 Q. Have you ever been to his house?

12 A. Yes, sir.

13 Q. I'm going to show you three little pictures, okay.

14 I'm going to show you what's been marked as State's One.

15 Let me move this microphone over here. Okay. You

16 recognize these houses? Who lived in that house?

17 A. Mr. Sammy.

18 Q. Okay. Do you see a house that you lived in in this

19 picture? This one back here? All right. And, now, is

20 that the house you live in now? Where is the house you

21 live in now? This one right here? Okay. And you lived

22 there with who?

23 A. My mom.

24 Q. All right. Showing you State's Three. That's

25 another picture. Whose house is that?

1 A. Mr. Sammy's.

2 Q. Have you been there before? Did you go inside the
3 house or either in the yard? Are you pointing to the
4 backyard there? Okay. Do you see a barn or anything else
5 back there?

6 A. There was a barn right there.

7 Q. But it's not there any more? Okay.

8 THE COURT: Got to answer yes or no.

9 BY MR. DANIEL:

10 Q. Okay. Yeah. Well, just for the record do you see a
11 barn back there right now, yes or no?

12 A. No, sir.

13 Q. But what happened to that barn? Is it still there
14 now?

15 A. No, sir.

16 Q. Okay. Okay. Now, tell this jury about Mr. Sammy?

17 A. Mr. Sammy was trying to hump me.

18 Q. Say that again with the microphone?

19 A. Mr. Sammy was trying to hump me.

20 Q. Where did that happen?

21 A. In his backyard.

22 Q. Was anybody else there that time?

23 A. No, sir.

24 Q. Okay. We're going to talk about that a little bit
25 more in a minute. Did he ever give you anything when went

1 to his house?

2 A. Yes, sir.

3 Q. What kinds of things did Mr. Sammy give you?

4 A. A football and a balloon.

5 Q. Okay. And did you take those back home to your
6 momma?

7 A. No, sir.

8 Q. Did your momma know that Mr. Sammy gave you that
9 stuff?

10 A. Yes, sir.

11 Q. Okay. Let's look at a couple of pictures here.

12 First we're going to look at this diagram. You've seen

13 this before, right? Okay. Let's move this back over

14 here. Now, I'm going to ask you what some of these things

15 are, okay? Is this a little boy or is this an old man?

16 A. A little boy.

17 Q. All right. What is this whole area right here?

18 A. The head.

19 Q. Head. What is this?

20 A. Mouth.

21 Q. What is that right there?

22 A. Nose.

23 Q. What are those two things?

24 A. Eyes.

25 Q. All right. What are those?

- 1 A. Fried eggs.
- 2 Q. Fried eggs. You can call it whatever you want to
- 3 call it. What's that?
- 4 A. Belly button.
- 5 Q. What are these?
- 6 A. Arms.
- 7 Q. What's that right there?
- 8 A. Turtle.
- 9 Q. Turtle. What are those?
- 10 A. Legs.
- 11 Q. And what are those?
- 12 A. Feet.
- 13 Q. Okay. What is that?
- 14 A. Butt.
- 15 Q. What is that?
- 16 A. Head.
- 17 Q. And what are those?
- 18 A. Arms.
- 19 Q. And what are those?
- 20 A. Feet.
- 21 Q. What are those?
- 22 A. Legs.
- 23 Q. Are there any parts on the little boys body no nobody
- 24 is supposed to touch? Are there any body parts that
- 25 nobody is supposed to touch? And what are you pointing at

1 right there?

2 A. Butt.

3 Q. Let's go on to one other one. Is this a picture of a
4 young person or an old person?

5 A. An old person?

6 Q. All right. Real quick. What is this?

7 A. Head.

8 Q. What is that?

9 A. Mouth.

10 Q. What is this part right here?

11 A. Stomach.

12 Q. What's that?

13 A. Turtle.

14 Q. What's that?

15 A. Butt.

16 Q. What are those?

17 A. Legs.

18 Q. Okay. That's enough. Now, have you ever seen

19 Mr. Sammy's private parts? Tell us which parts of Mr.

20 Sammy you've seen. And what are you pointing at there?

21 A. Turtle.

22 Q. Okay. Where were you when you saw Mr. Sammy's
23 turtle?

24 A. At the back of his yard.

25 Q. At the back of his yard. Were you outside or inside?

- 1 A. Outside.
- 2 Q. Okay. Was anybody else with you there at that time?
- 3 A. No, sir.
- 4 Q. All right. What was he was doing with his turtle
- 5 when you saw it.
- 6 A. He was trying to put it in my butt.
- 7 Q. Show us where he was trying to put it. What did it
- 8 feel like when Mr. Sammy tried to put his turtle in your
- 9 butt?
- 10 A. Not good.
- 11 Q. Not good. Did it hurt? Yes or no?
- 12 A. Yes, sir.
- 13 Q. Now, how were you standing? Were you facing him when
- 14 he did that? Could you see what he was doing? Now, if he
- 15 was trying to put his turtle in your butt how were you
- 16 facing him?
- 17 A. Turning around.
- 18 Q. Show me what you mean by turning around?
- 19 A. Turning my head around.
- 20 Q. So was he standing behind you? And the way you saw
- 21 him was you were turning around looking at him? Was
- 22 anybody else there when this happened?
- 23 A. No, sir.
- 24 Q. Do you remember how many times this happened? Would
- 25 it happen one time or more than one time?

1 A. One time or I think more than one.

2 Q. One time or you think more than one? Okay. Did you
3 ever see Mr. Sammy with Minor 2 or Minor 1 You know them,
4 right? Are they your friends?

5 THE COURT: You've got to answer.

6 BY MR. DANIEL:

7 Q. You've got to say yes or no.

8 A. Yes, sir.

9 Q. Okay. Did you play with them in the neighborhood?

10 A. Yes, sir.

11 Q. Did Mr. Sammy at any time when you were at his house
12 did he ever show you any pictures?

13 A. A magazine.

14 Q. A magazine. What kind or magazine?

15 A. A nasty one.

16 Q. A nasty one. What do you mean by nasty? Why was it
17 nasty?

18 A. Cause it had boys and girls humping.

19 Q. Those boys and girls in that magazine did they have
20 their clothes on or off?

21 A. Off.

22 Q. How many times do you think he showed you that
23 magazine? One time or more than one time?

24 A. One.

25 Q. And did you ever see Mr. Sammy touch Minor 1 turtle?

1 Say yes or no?

2 A. No, sir.

3 Q. Did you ever see Sammy touch Minor 2 turtle?

4 A. No, sir.

5 Q. When you were with Mr. Sammy when he was humping you
6 did he touch your turtle?

7 A. Yes, sir.

8 Q. He did. What did he do to your turtle?

9 A. Squeeze it.

10 Q. He squeezed it. Did it hurt? Yes or no?

11 A. Yes, sir.

12 Q. Did Mr. Sammy ever tell you anything when y'all
13 were -- when he was doing this to you that time? Yes or
14 no?

15 A. Yes, sir.

16 Q. What did he say?

17 A. He said, "You don't tell your momma." I said, "No,"
18 and when he did it when he got done I said, "Sike," and I
19 ran to my momma and told her.

20 Q. Okay. Let me make sure I understood you, okay.
21 What's the first thing he said to you?

22 A. Don't tell your momma.

23 Q. Don't tell your momma. And you said what?

24 A. No.

25 Q. You said, no, and then what did you do?

1 A. I ran over there and told my momma.

2 Q. Okay.

3 MR. DANIEL: Give me just a second. Beg the Court's
4 indulgence.

5 BY MR. DANIEL:

6 Q. D.J, just a few more really quick questions. How old
7 are you again?

8 A. Eight.

9 Q. Eight. Okay. Did Mr. Sammy ever put his turtle in
10 your mouth? Yes or no?

11 A. No, sir.

12 Q. Did Mr. Sammy ever make you put your turtle in his
13 mouth? Yes or no?

14 A. No.

15 Q. Okay. But show me again on this diagram where Mr.
16 Sammy put his turtle. And what are you pointing out
17 there?

18 A. The butt.

19 Q. Okay. And, again, just to be clear, at any time, any
20 time when you guys were over at Sammy's place did you ever
21 see Sammy do anything to Jyreak? Yes or no?

22 A. No, sir.

23 Q. Did you ever see Sammy do anything to [REDACTED] Minor 1

24 A. No, sir.

25 Q. Did you ever see [REDACTED] Minor 2 and [REDACTED] Minor 1 do anything to

1 each other?

2 A. No, sir.

3 Q. Okay. But did Mr. Sammy do something to you? Yes or
4 no? Say yes or no.

5 A. Yes, sir.

6 Q. Okay.

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

8 BY MR. DANIEL:

9 Q. Did Mr. Sammy ever try to make you do something with
10 his turtle? Yes or no?

11 A. Yes, sir.

12 Q. What did he try to make you do with his turtle?

13 A. Suck it.

14 Q. Okay. Let's talk about that for a minute. He tried
15 to make you suck his turtle. How did he do that?

16 A. He put -- he unbuckled his pants and pulled them
17 down, pulled his underwear down and told me to suck it.

18 Q. And did you suck it?

19 A. No, sir.

20 Q. How close did it get to your mouth.. Okay.

21 MR. DANIEL: Your Honor, I have no further questions.

22 Thank you.

23 BY MR. DANIEL:

24 Q. D.J, thank you for answering my questions. If you
25 would answer any questions Mr. Hobbs has, please. Thank

1 you.

2 CROSS-EXAMINATION

3 BY MR. HOBBS:

4 Q. Minor 3 were you good friends with Minor 2 and Minor 1

5 A. Yes, sir.

6 Q. Have you talked to them since they moved away? Okay.

7 A. Yes, sir.

8 Q. What did y'all talk about?

9 A. We talked about playing.

10 Q. Yeah, what kinds of games do y'all like to play?

11 A. Football and tag and hide and go seek.

12 Q. I remember seeing a video of you wearing cleats. Do
13 you still play football? You don't play football? You
14 ever play football around your neighborhood? Okay. Very
15 good.

16 D.J, earlier you said that Mr. Sammy tried to hump
17 you. Did he actually hump you? Can you say -- can you
18 speak an answer for us?

19 A. Yes, sir.

20 Q. Okay. So he did hump you?

21 A. Yes, sir.

22 Q. Were your clothes on or off?

23 A. Off.

24 Q. Okay. All of your clothes or just some of them?

25 A. All of them.

1 Q. All of them. Okay. D.J, okay. Now, what did he do
2 with his turtle?

3 A. Put it in my butt.

4 Q. Okay. And how far did -- do you remember talking to
5 a lady in a room with carpeted walls and two seats? No.
6 Do you remember having to identify the parts of the body
7 on that picture with somebody else? Okay. When was that?

8 A. When I was living in Winnsboro.

9 Q. Okay. Do you remember doing it here in Dillon? No.
10 Okay. Do you remember telling that lady that Mr. Sammy
11 didn't touch you? You do. Do you remember telling her
12 that he didn't touch your butt? What were -- will you say
13 yes or no?

14 A. Yes, sir.

15 Q. Okay. Do you remember telling her that -- apologize.
16 After this happened did you go to the doctor so he could
17 look at your butt?

18 A. Yes, sir.

19 Q. Okay. What did the doctor say?

20 A. He said stay around him.

21 Q. Stay around who?

22 A. Mr. Sammy.

23 Q. Okay. And when did you go to the doctor?

24 A. The day when he did it.

25 Q. The day when he did it. But when you spoke to that

1 lady in that carpet room you said that Mr. Sammy had never
2 touched your butt; is that right? Okay. And you said
3 that Mr. Sammy had never -- I'm sorry. Let me rephrase
4 that. You said that you had never taken your clothes off
5 around Mr. Sammy; is that right? What is that?

6 A. Yes, sir.

7 Q. Okay. But today you're saying that he did; is that
8 right?

9 A. Yes, sir.

10 Q. Okay. And you said that Mr. Sammy tried to make you
11 suck his turtle? Did he touch you? Did he try to force
12 you? How did he try to force you?

13 A. Put my head to his thing.

14 Q. How close was your head to his thing?

15 A. Right here. I was right here, and he put -- he bent
16 it down right there.

17 Q. Did it ever touch your head? Never touched your
18 head. Okay. And you said that Mr. Sammy never put his
19 turtle in your mouth; is that right? And that he never
20 put your turtle in his mouth; is that right?

21 A. Yes, sir.

22 Q. Yes, sir. And you do recall speaking to Miss Sally
23 Williamson; is that who it was?

24 A. Yes, sir.

25 Q. Okay. And you remember telling her that Mr. Sammy

1 never touched you?

2 A. Yes, sir.

3 Q. Okay.

4 MR. HOBBS: No further questions, Your Honor.

5 MR. DANIEL: Very briefly.

6 REDIRECT EXAMINATION

7 BY MR. DANIEL:

8 Q. D.J, remember in this room what's the number one
9 rule?

10 A. To tell the truth.

11 Q. Okay. Are you telling the truth here today?

12 A. Yes, sir.

13 Q. All right. How did it feel -- you tell this jury how
14 did it feel when Mr. Sammy put his turtle in your butt?

15 A. Not good.

16 Q. Thank you, Minor 3

17 RECROSS-EXAMINATION

18 BY MR. HOBBS:

19 Q. D.J, you remember that carpeted room with the two
20 seats that we were talking about? No. Do you remember
21 what the one rule in that room was? Do you remember that
22 the one rule for that room was to just tell the truth?
23 What's that?

24 A. Yes, sir.

25 Q. Okay.

1 MR. HOBBS: Thank you, Your Honor.

2 THE COURT: Is that it?

3 MR. HOBBS: We're done with this witness.

4 MR. DANIEL: Thank you, **Minor 3** Come on. Your Honor,
5 the State calls Natasha Funderburk.

6 THE COURT: Come up and be sworn, Miss Funderburk.

7 NATASHA FUNDERBURK, after being duly sworn,
8 testified as follows:

9 CLERK OF COURT: Be seated and state your full name
10 for the Court.

11 MR. HOBBS: Your Honor, I do have a motion very
12 briefly that I prior stated to the Court. And I do have a
13 new consideration for the Court in reference to that
14 motion.

15 THE COURT: Ladies and gentlemen, if you will step
16 back to your room a few minutes.

17 (WHEREUPON, the jury panel was excused from the
18 courtroom at three o'clock.)

19 COLLOQUY

20 THE COURT: Jury is clear.

21 MR. HOBBS: Thank you, Your Honor. At this point,
22 Your Honor, before we get into this Lyle evidence I would
23 like to renew my prior objections as to its admittance.
24 Your Honor, one of the first motions that we dealt with in
25 Court was the motion for consolidation of the multiple

1 charges against three victims. What was presented to the
2 Court was that they were going to present testimony that
3 all three of these children were sexually battered by Mr.
4 Sammy Scarborough.

5 And at this point, Your Honor, one of those children,
6 **Minor 2** [REDACTED], has denied any sexual battery, has no
7 know one say they witnessed any sexual battery, and no
8 evidence has been brought to this Court prior to the
9 admission of this Lyle witness.

10 Now, Your Honor, as I told the Court when we are
11 dealing with consolidation we have to look at each case
12 individually. When we brought this Lyle evidence in
13 through the Solicitor's opening statements and now this
14 Lyle testimony we did it on the basis that there was an
15 alleged sexual battery of all three of the children and
16 that these accusations were highly similar to the
17 accusation they want to put up for **Minor 5**.

18 Your Honor, there has been no evidence as to **Minor 2**
19 and it's been my understanding that the State intends now
20 to dismiss that charge against him, Your Honor, but this
21 would be a basis not only for the exclusion of this Lyle
22 evidence as the situation is even greatly -- even more
23 dissimilar than they originally were.

24 And also, Your Honor, I would like to motion for
25 mistrial as this evidence has not come in. We have

1 consolidated the cases, and they were allowed to opine on
2 bringing in **Minor 5** [REDACTED] and the accusations that he may
3 make in the opening statement.

4 MR. DANIEL: Judge, a directed verdict motion can be
5 made at the appropriate time by Mr. Hobbs. That's
6 essentially the motion he's making. The State was well
7 aware from the beginning that we're dealing with little
8 children who say different things almost every time you
9 talk to thing.

10 The consistency with this case is every single time
11 they've pointed out this defendant as the perpetrator.
12 Now, we knew well -- we were well aware coming into this
13 case that **Minor 2** situation, **Minor 2** situation,
14 may be an indictment we had to pull off based on what he
15 said.

16 We also knew that the engaging child in sexual
17 performance was an indictment that we might have to pull
18 off based on the testimony. We weren't sure. Okay. As
19 late as last night we had the kid you just heard from,
20 D.J, saying that he saw **Minor 2** and **Minor 1** do things to
21 each other because Sammy Scarborough told them to.

22 He didn't testify to that right there. Therefore,
23 that's another one we will be pulling. Those two, and we
24 knew that. There is ample evidence in the record to
25 support going forward on all the other indictments, and

1 that is precisely what we anticipated. With the exception
2 of, well, maybe **Minor 2** is going to tell us what he told us
3 a few times and saying that he was abused also.

4 The fact that we consolidated based on what we
5 believed the evidence would show we can't go back now and
6 unconsolidate or mistrial. We, in good faith, put our
7 evidence forward. We argued the Court -- we argued to the
8 Court that we thought X, Y, and Z were going to be
9 presented. And X and Y were presented just part of Z
10 wasn't.

11 So the consolidation should stand, and the idea of a
12 mistrial, I get it. Mr. Hobbs has got to ask for this,
13 but obviously, that would -- that's ludicrous at this
14 point.

15 MR. HOBBS: Your Honor, I certainly -- may I be
16 heard? I certainly can appreciate the difference between
17 the motion that I'm making now and a directed verdict.
18 The double edge sword as you presented to the State with
19 this consolidation was that we are now basing this Lyle
20 evidence on all three cases. And we simply do not have
21 the correct allegations and sexual battery contained as to
22 **Minor 2**

23 And now we have prejudiced my client because we have
24 lumped all of these accusations together, and now we're
25 going to admit Lyle evidence based on this case but not

1 that case. Your Honor, it simply does not pass. Now,
2 before these witnesses testify, it does not pass the
3 Wallace elements of being highly similar in this case
4 because the nature of the sexual battery has now changed.

5 Now, we have a case mixed in with all of these. We
6 have an accusation mixed in with these, and an indictment
7 they does not substantiate any similarity to what **Minor 5**
8 is going to accuse him of.

9 I would renew my motion to exclude this evidence
10 especially in light of their inability to produce sexual
11 battery as to one of these consolidated cases.

12 THE COURT: I'm going to deny your motion.

13 MR. DANIEL: Thank you, Judge. Judge, since we have
14 the jury out Ms. Funderburk's testimony is going to be
15 very short. Can we go ahead and do competency with
16 **Minor 5** He is right outside the door so we can be done
17 with that?

18 THE COURT: No problem.

19 MR. DANIEL: Okay. Step down just a minute, please.
20 Your Honor, **Minor 5**.

21 **Minor 5**, after being duly sworn,
22 testified as follows:

23 CLERK OF COURT: Thank you. You can be seated.
24 State your full name for the Court for me. What's your
25 name?

1 THE WITNESS: Minor 5 .

2 CLERK OF COURT: Thank you. You can be seated.

3 COMPETENCY DIRECT EXAMINATION

4 BY MR. DANIEL:

5 Q. Minor 5 what's your whole name?

6 A. Minor 5

7 Q. Whoa, that's a little bit loud. Let's back up just a
8 little bit. That's okay. You did exactly what I told you
9 to do. All right. Okay, tell me your full name again?

10 A. Minor 5

11 Q. Minor 5, how old are you?

12 A. Eight.

13 Q. Where do you go to school?

14 A. Cheraw Intermediate.

15 Q. Cheraw Intermediate. So do you live in Dillon?

16 A. No, sir.

17 Q. Did you used to live in Dillon?

18 A. Yes, sir.

19 Q. Okay. What is your teacher's name?

20 A. Miss Midgley and Miss Owens.

21 Q. Do you like school?

22 A. Yes, sir.

23 Q. What's your favorite thing to study in school?

24 A. Math.

25 Q. What do you not like to study in school?

1 A. Science.

2 Q. Who do you live with, **Minor 5**

3 A. My mom and my step daddy and my sister and my other
4 brother.

5 Q. What's your sister's name?

6 A. **B**

7 Q. What's your brother's name.

8 A. **P**

9 Q. Is your brother older or younger than you?

10 A. Younger.

11 Q. Is your sister older or younger than you?

12 A. Older.

13 Q. Okay. **Minor 5** do you know the difference in a truth
14 and a lie?

15 A. Yes, sir.

16 MR. DANIEL: Judge, didn't you make a finding of the
17 competency yesterday?

18 THE COURT: As I was sitting here I was. I said that
19 was yesterday. Counsel, you got any ---

20 MR. DANIEL: I just remembered that.

21 THE COURT: I mean I ruled on this yesterday, but
22 today is another day. You want us to go back. I'm going
23 to defer to you on this. Do you want us to go back
24 through this since it's another day? You know, basing it
25 on that.

1 MR. HOBBS: Your Honor, I did believe that we would
2 be bringing him up for competency hearing. I don't want
3 to present or get in testimony. I think we got ample
4 testimony from him yesterday. However, I do need to talk
5 about any sort of motivation or lies that may have been or
6 if he was told to tell a lie or anything. If anyone told
7 him what to say.

8 MR. DANIEL: And that is appropriate for cross. But
9 as to competency, as res gestae the Court has already
10 ruled on competency on this, and I just forget. We did
11 this whole dog gone thing yesterday.

12 MR. HOBBS: Your Honor, the State has opened up
13 competency hearing for this sake of preserving the record.
14 I do have a scholarly article that I would ask to make as
15 Court's Exhibit One for the Court's consideration
16 regarding the competency of a child who witnesses
17 something at his age and then tries to recount it years
18 later.

19 And if for nothing else, Your Honor, just for the
20 record of the Court that we're here on competency hearing
21 and they I would ask to admit it?

22 MR. DANIEL: Objection.

23 THE COURT: I'll tell you I'm -- I'll will be fine.
24 I'll look at anything you want me to look at, but I'm
25 thinking, you know, just over the years dealing with

1 especially adults one day they could be competent and the
2 next day they could be mentally incompetent. So just for
3 the safe side of it let's go ahead and develop it. That
4 way we know we have covered the bases.

5 MR. HOBBS: Thank you, Your Honor.

6 MR. DANIEL: Okay. Well, then I would again renew
7 our ongoing objection that Mr. Hobbs and his questions be
8 limited to competency and not facts of the case.

9 THE COURT: Right.

10 MR. DANIEL: And I already know the Court's ruling on
11 that. May I proceed?

12 THE COURT: Yes.

13 BY MR. DANIEL:

14 Q. Okay. You know the difference in a truth and a lie?

15 A. Yes, sir.

16 Q. Is it good or bad to tell the truth?

17 A. Good.

18 Q. Is it good or bad to tell a lie?

19 A. Bad.

20 Q. If I told you that my jacket was green is that the
21 truth or a lie?

22 A. Lie.

23 Q. Why?

24 A. Because your jacket is black.

25 Q. Okay. Minor 5, thank you very much.

1 MR. DANIEL: Judge, I think I have asked enough
2 questions.

3 MR. HOBBS: Your Honor, very briefly.

4 COMPETENCY CROSS-EXAMINATION

5 BY MR. HOBBS:

6 Q. Minor 5 do you know why we are here today?

7 A. No, sir.

8 Q. Okay. Who are we here to talk about today?

9 A. Mr. Sammy.

10 Q. Okay. What is it that you say Mr. Sammy did to you?

11 Now, let me ask that again, Minor 5 Do you remember Mr.
12 Sammy doing something to you?

13 A. Yes, sir.

14 Q. Okay. Okay. You look a little confused. Do you
15 remember -- what do you remember Mr. Sammy doing? I know
16 this is touch, Minor 5 but it's very important that we
17 understand what you remember versus what somebody maybe
18 told you. What do you remember about Mr. Sammy? It's
19 okay. What do you remember or do you remember anything
20 about Mr. Sammy?

21 A. Just a little bit.

22 Q. Okay. Now, you understand the difference between
23 what somebody telling you something and you actually
24 remembering it, don't you?

25 A. Yes, sir.

1 Q. Okay. Because if somebody told you something that
2 you don't remember then you wouldn't actually remember it,
3 right?

4 MR. DANIEL: Judge, I'm sorry. I'm 32 and I don't
5 even understand his question.

6 MR. HOBBS: I can rephrase the question.

7 BY MR. HOBBS:

8 Q. Do you know the difference between remembering
9 something and somebody telling you you remember something?

10 A. No, sir.

11 Q. Okay. That's fine. What do you remember clearly
12 about Mr. Sammy? And remember you're not in any trouble.
13 I just have to understand what you remember and not what
14 somebody told you what you remember.

15 MR. DANIEL: May we approach.

16 (WHEREUPON, a bench conference was held off the
17 record, but out of the presence of the jury.)

18 THE COURT: All right. Take two of those signs and I
19 want you to bear that off whereby no intimidation by
20 anybody in this room can be accomplished. Minor 5 are
21 you okay? You want some water?

22 THE WITNESS: No, sir.

23 THE COURT: You want to rest a little bit?

24 THE WITNESS: No, sir.

25 THE COURT: Okay. You think you could ask -- you

1 think you could answer the questions that are asked?

2 THE WITNESS: No, sir.

3 THE COURT: Would you rather step down and just rest
4 a little bit?

5 THE WITNESS: Um hum. Yes, sir.

6 THE COURT: Okay.

7 MR. DANIEL: Judge, the posters actually don't solve
8 the problem. Can we slide his chair over a little bit,
9 please?

10 THE COURT: I couldn't hear that.

11 MR. DANIEL: The posters don't solve the problem.
12 Can we just slide his chair this way just a little bit?

13 THE COURT: He wants to step down a few minutes.

14 MR. DANIEL: He wants to take a break. Come on.

15 THE COURT: We've been going at it for over an hour.
16 Let's just take a brief recess, and nobody can talk to
17 him. Just let him just relax a few minutes. Madam Clerk,
18 take him back into my chambers. There is some Coca-Cola
19 and cookies back there. Go out this door. We're going to
20 take us a break for right now.

21 MR. DANIEL: We can do the mom.

22 THE COURT: All right. Bring the mom. We're going
23 to suspend that for right now. Let him calm down. We'll
24 come back to it in a little bit. I'm not cutting you off.
25 We've just got to give him a brief recess.

1 MR. HOBBS: I would -- I understand the Court's
2 position. I would ask that the Court reserve her
3 testimony until we found her son's accusations competent,
4 but that's my request to the Court and I appreciate it.

5 THE COURT: All right. Denied.

6 (WHEREUPON, the jury panel enters the courtroom at
7 3:21 p.m.)

8 NATASHA FUNDERBURK, after being duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. DANIEL:

12 Q. What's your full name?

13 A. Natasha Funderburk.

14 Q. Natasha, where do you live?

15 A. In Cheraw, South Carolina.

16 Q. Have you ever lived in Dillon?

17 A. Yes.

18 Q. Are you from Dillon?

19 A. Yes.

20 Q. Okay. Now, you have children?

21 A. Yes.

22 Q. How many?

23 A. Three.

24 Q. What are their names?

25 A. Minor 5 P and B

1 Q. Minor 5 P and B How old is Minor 5

2 A. Minor 5 is eight.

3 Q. How old is P

4 A. He's a year.

5 Q. And hold old is B

6 A. She's ten.

7 Q. Do you know the defendant, Sammy Scarborough?

8 A. Yes, I do.

9 Q. Are you related to him?

10 A. Yes.

11 Q. How are you -- I'm sorry. How are you related to
12 him?

13 A. He's an uncle by marriage.

14 Q. Okay. How long have you said you lived in Cheraw?

15 A. For the past two years.

16 Q. Okay. Before that did you live in Dillon all your
17 life?

18 A. Yes.

19 Q. Okay. And Minor 5 lived with you the whole time?

20 A. Yes.

21 Q. Now, you said Minor 5 is eight now. So when you
22 lived in Dillon did you and your children spend time with
23 Mr. Scarborough?

24 A. Yes. A lot of time.

25 Q. A lot of time?

1 A. Yes.

2 Q. So you were close?

3 A. Yes.

4 Q. By a lot of time how frequently did you spend time
5 together?

6 A. Almost every day.

7 Q. Okay. Was **Minor 5** your eight year old, was he ever
8 allowed to be alone with the defendant?

9 A. All the time. He actually babysit him for about a
10 year.

11 Q. Okay. How old was **Minor 5** when that was going on?

12 A. He was about -- between the age of two and four.

13 Q. Okay. At any point did **Minor 5** come to you and tell
14 you he had been sexually abused?

15 A. Yes.

16 Q. And how old was he when that happened?

17 A. He was four.

18 Q. Okay. Did he tell you where that abuse occurred?

19 A. Yes.

20 Q. Where did he say?

21 A. In his truck. In Uncle Sammy's truck.

22 Q. In Uncle Sammy's truck. Did he say when it happened?

23 A. No.

24 Q. When **Minor 5** told you this what did you do?

25 A. We -- I was in shock. So we got up and I called my

1 aunt. And I found out that she was at the Laundromat by
2 her daughter.

3 Q. All right. Hold on. Your aunt is that's?

4 A. Sammy's wife.

5 Q. Okay?

6 A. So we went to the Laundromat and I told **Minor 5** I
7 said, "**Minor 5** tell Aunt Barbara Ann what you just told
8 me." so he repeated it to Aunt Barbara Ann. And then
9 Sammy came out, and repeated it to Sammy. And Sammy
10 started laughing. So I took **Minor 5** and we left.

11 Q. Okay. So Sammy Scarborough's response to being
12 accused of sexually abusing his family member was what
13 again?

14 A. He started laughing.

15 Q. He say anything?

16 A. No.

17 Q. What did you do next?

18 A. I went home and as soon as I got in the yard I called
19 the cops.

20 Q. And did they respond?

21 A. The cops came out and took our report. They sent us
22 to the Care House.

23 Q. What happened at the Care House?

24 A. He did a forensic interview, and they wanted him to
25 get some counseling. So I took him to counseling, and we

1 were waiting for -- we were waiting to go to trial from
2 what I thought. But in the meantime we went to Family
3 Court.

4 Q. Okay. Now, were charges ever brought?

5 A. No.

6 Q. Do you know why they weren't ever brought?

7 A. I didn't. I wrote letters asking why, you know,
8 trying to stay in contact with the investigator asking
9 him, you know, why charges wasn't being brought. He
10 always told me he was talking to the Solicitor about
11 charges, and he thought **Minor 5** was too young, so.

12 Q. Who was that investigator?

13 A. June Bug Hayes.

14 Q. Did you ever deal with Jason Turner in that
15 investigation?

16 A. No.

17 Q. Okay. And you said you were told he was too young,
18 and how old was he at the time?

19 A. Four.

20 Q. Okay. So you -- when did you find out that Sammy
21 Scarborough was actually coming to Court on some of these
22 accusations?

23 A. I found out in I think it was May.

24 Q. Okay. And did you have a conversation with me about
25 this situation?

1 A. I called your office, and I asked, you know, why
2 wasn't the charges brought about [Minor 5] -- for [Minor 5]
3 And you said that you didn't know anything about [Minor 5]

4 Q. Right. And did you get a call from me and Kelly Hall
5 of the Attorney General's Office a few months ago about
6 this case?

7 A. Yes.

8 Q. And what -- were you under the impression then that
9 we were coming to Court on this?

10 A. Yes.

11 Q. The store that [Minor 5] -- where [Minor 5] said this
12 abuse happened do you know what store he was talking
13 about?

14 A. I don't know.

15 Q. All right. Did you ever know [Minor 5] to ride in
16 Sammy Scarborough's truck?

17 A. A lot. He was very -- he loved trucks and cars and
18 he would go work only his trucks with Sammy.

19 Q. And has [Minor 5] ever accused anybody else of touching
20 him inappropriately at all?

21 A. No.

22 MR. DANIEL: Beg the Court's indulgence. No further
23 questions.

24 BY MR. DANIEL:

25 Q. Miss Funderburk, would you please answer any

1 questions Mr. Hobbs may have?

2 CROSS-EXAMINATION

3 BY MR. HOBBS:

4 Q. Natasha, your last name is Funderburk now? What was
5 your last name before it was Funderburk?

6 A. Conners.

7 Q. Okay. And who is Junior Blackly, is it?

8 A. I know a Junior Blakely. That's all I know.

9 Q. Junior Blakely. I apologize for pronouncing it
10 wrong?

11 A. That's all right.

12 Q. Who is Junior Blakely?

13 A. That's my dad.

14 Q. Your father?

15 A. Um hum.

16 Q. Is he your biological father or your step dad?

17 A. My biological father.

18 Q. Biological father. How old were you when you made an
19 accusation about Mr. Blakely sexually assaulting you?

20 A. I was in high school, so around 15.

21 Q. Fifteen years old?

22 A. Yes.

23 Q. Okay. What became of those charges?

24 A. My mom was so shocked, so I guess they took me out of
25 her home and placed me into a temporary foster home.

1 Q. Okay. Did you ever go to Court and testify against
2 him?

3 MR. DANIEL: Your Honor, I would object and ask what
4 the relevance is. This testimony is something that
5 Miss Funderburk dealt with when she was 15. What does
6 that have to do with the fact that Sammy Scarborough
7 molested little boys?

8 MR. HOBBS: I'm getting to that point, Your Honor.

9 THE COURT: Go ahead.

10 BY MR. HOBBS:

11 Q. Did you ever go to trial?

12 A. No.

13 Q. Never went to trial?

14 A. No, sir.

15 Q. Did he -- was he ever formally charged with those
16 crimes?

17 A. Not that I'm aware of.

18 Q. That's fine. What does **Minor 5** call your dad?

19 A. Pop Pop.

20 Q. Pop Pop. Now, it's my understanding that there has
21 been instance where Pop Pop has shown **Minor 5**
22 inappropriate material. Has that ever been in front of
23 you?

24 A. No. Never.

25 Q. Do you have any knowledge about that?

1 A. I don't.

2 Q. Okay. Have you ever made any other accusations
3 regarding someone sexually assaulting you?

4 A. I was physically sexually abused whenever I was in
5 the sixth grade.

6 Q. Okay?

7 A. Fourth, fifth and sixth grade.

8 Q. And who was that?

9 A. That was Jerry Boatwright.

10 Q. Jerry Boatwright.

11 A. He was charged with that.

12 Q. Okay. Was he convicted of that?

13 A. Yes, he was.

14 Q. Okay. Do you still maintain that that happened here
15 today?

16 A. Yes, it did.

17 Q. What about the accusations against your father? Do
18 you still maintain that that happened?

19 MR. DANIEL: Judge, I'm going to renew my objection.
20 He still hasn't gotten to where this is relevant.

21 THE COURT: I know. Let's move on to something else.

22 MR. HOBBS: Yes, Your Honor.

23 BY MR. HOBBS:

24 Q. Has **Minor 5** been exposed to anything that would
25 heighten his sexual knowledge?

1 A. Whenever his Uncle Sammy made him suck his penis.

2 That's when his sexual knowledge was heightened.

3 Q. Okay. And what age are you alleging that that
4 happened?

5 A. Between the ages of three and four.

6 Q. Three and four. When did he tell you about it? How
7 old was he at that point?

8 A. He was four.

9 Q. He was four years-old. Does **Minor 5** know about any
10 of your past experiences?

11 A. No, he doesn't.

12 Q. Okay?

13 MR. HOBBS: Thank you, Your Honor.

14 MR. DANIEL: No questions.

15 THE COURT: You may step down. Thank you. Ladies
16 and gentlemen of the jury, if you will step back to your
17 room just a few minutes, please.

18 (WHEREUPON, the jury panel was excused from the
19 courtroom at 3:30 p.m.)

20 COLLOQUY

21 THE COURT: All right. Sheriff, if you will put that
22 barrier back up. Shift that chair over as far as you can.
23 **Minor 5** you okay? I want you to look at me. Has anybody
24 said anything to you that scared you?

25 THE WITNESS: No, sir.

1 THE COURT: Okay. Yesterday the attorneys asked you
2 some questions and you were very straight forward in
3 answering them. Do you feel like that you can go forward
4 now? Go ahead with this and answer their questions?

5 THE WITNESS: Yes, sir.

6 THE COURT: Okay. Just do the best you can, okay?

7 THE WITNESS: Yes, sir.

8 THE COURT: If there is any problem, if anybody looks
9 at you or does anything to try to scare you in any way you
10 just look at me and let me know, okay?

11 THE WITNESS: Yes, sir.

12 THE COURT: All right.

13 MR. DANIEL: Are we starting over?

14 THE COURT: Mr. Hobbs, still his witness.

15 COMPETENCY CROSS-EXAMINATION (CONTINUED)

16 BY MR. HOBBS:

17 Q. Minor 5 we were talking before we took a break, and
18 I asked you if you knew the difference between remembering
19 something or having someone tell you something happened.
20 Can you tell the difference between those two?

21 A. No, sir.

22 Q. Minor 5 you understand what we're -- who we're
23 talking about here today, right?

24 A. Yes, sir.

25 Q. And who is that?

1 A. Mr. Sammy.

2 Q. Okay. Very good. Now, I need you to tell the Court
3 if anything you remember about Mr. Sammy?

4 A. I remember he was my uncle.

5 Q. Okay. Do you remember anything else about Mr. Sammy?

6 A. No, sir.

7 MR. HOBBS: Your Honor, I have no further questions.

8 MR. DANIEL: Redirect.

9 COMPETENCY REDIRECT EXAMINATION

10 BY MR. DANIEL:

11 Q. Minor 5 I'm going to show you -- hold on. I've got
12 to get something. Well, that's okay. We can -- you
13 recognize -- have you seen this before? Have you seen a
14 picture like this before? Okay. I'm not going to write
15 on it, but I'm going to ask you some questions. What is
16 this. What is that? Speak up. Speak up a little bit,
17 okay. You will be fine. What are these?

18 A. Eyes.

19 Q. What's this? What do you call that?

20 A. Private.

21 Q. Private. What do you call this?

22 A. Legs.

23 Q. What do you call that? Okay. You call this a
24 private? Is that what you said?

25 A. Yes.

1 Q. Okay. Let me show you this other one. Does this
2 look like a little boy or an old man?

3 A. Boy.

4 Q. What is this?

5 A. Legs.

6 Q. What are these?

7 A. Eyes.

8 Q. What are those?

9 A. Arms.

10 Q. What is that?

11 A. Butt.

12 Q. What are those?

13 A. Legs.

14 Q. Okay.

15 THE COURT: What was the last answer?

16 MR. DANIEL: Legs.

17 THE COURT: Legs.

18 MR. DANIEL: I'm sorry. Legs.

19 BY MR. DANIEL:

20 Q. Okay.

21 THE COURT: You're going to have to move just a
22 little bit.

23 BY MR. DANIEL:

24 Q. Come a little bit closer to this microphone. Okay.
25 We're almost done with this part. Okay. Is there any

1 part on a little boy that nobody is supposed to touch?

2 A. Yes, sir.

3 Q. What part would that be?

4 A. My butt and my private.

5 Q. Your butt and your private. Okay. Is there any part
6 on a grown man like this that nobody else is supposed to
7 touch?

8 A. Yes. Private.

9 Q. Have you ever seen Mr. Sammy's private?

10 A. Yes.

11 Q. You did. Where did you see his private? Where were
12 you when you saw his private?

13 A. In his truck.

14 Q. In his truck. You know where his truck was?

15 A. Yes, sir.

16 Q. Where was it?

17 A. At a store.

18 Q. At a store. Okay. And you were sitting inside this
19 truck when you saw it? Is that what you said?

20 A. Yes, sir.

21 Q. Point to the part on the picture that you saw of Mr.
22 Sammy. Okay. When you saw that did he have his clothes
23 on or off?

24 A. On.

25 Q. And last question. Did he make you do anything to

1 his private?

2 A. Yes.

3 Q. What did he make you do? Okay.

4 MR. DANIEL: Judge, that completes it for his
5 competent. Minor 5 thank you. Anything?

6 MR. HOBBS: One question.

7 COMPETENCY RECROSS-EXAMINATION

8 BY MR. HOBBS:

9 Q. Minor 5 do you remember that happening or did
10 someone tell you that happened?

11 A. I remember it.

12 Q. You remember it.

13 MR. HOBBS: That's my only question.

14 MR. DANIEL: Judge, if you can have a second. I need
15 to switch these out. Hang on. Look at me.

16 BY MR. DANIEL:

17 Q. Okay. Going to do it one more time and then we'll be
18 done.

19 THE COURT: Oh, he's obviously competent.

20 MR. DANIEL: Sir?

21 THE COURT: He's obviously competent.

22 MR. DANIEL: Sir, we're ready to go forward.

23 THE COURT: Basically the same thing as we went
24 through yesterday. Bring them in.

25 (WHEREUPON, the jury panel enters the courtroom at

1 3:40 p.m.)

2 MR. DANIEL: May it please the Court.

3 THE COURT: Yes, sir.

4 MR. DANIEL: Your Honor, the State calls Minor 5

5 Minor 5

6 THE COURT: He's still under oath.

7 MR. DANIEL: Okay. Can we actually do that again,
8 please?

9 THE COURT: We can.

10 MR. DANIEL: Thanks.

11 Minor 5, after previously being duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DANIEL:

15 Q. Minor 5 what's your whole name?

16 A. Minor 5.

17 Q. Minor 5 Minor 5 how old are you?

18 A. Eight.

19 Q. Where do you go to school?

20 A. Cheraw Intermediate.

21 Q. Cheraw Intermediate?

22 A. Yes, sir.

23 Q. So do you live in Cheraw?

24 A. Yes, sir.

25 Q. Did you used to live in Dillon?

1 A. Yes, sir.

2 Q. Do you know how long you've lived in Cheraw?

3 A. Yes, sir.

4 Q. How long?

5 A. Three and a half years.

6 Q. Okay. Minor 5 do you know the difference in a truth
7 and a lie?

8 A. Yes, sir.

9 Q. Okay. Is it good or bad to tell the truth?

10 A. Good.

11 Q. Is it good or bad to tell a lie?

12 A. Bad.

13 Q. If you were at school, and what's your teacher's name
14 at school?

15 A. Miss Midgley.

16 Q. Okay. If you were there, and let's say you were in
17 Miss Midgley's class and you told a lie to Miss Midgley,
18 do you think that would be good or bad?

19 A. Bad.

20 Q. What might happen if you told a lie to Miss Midgley?

21 A. I might get in trouble.

22 Q. Okay. If you -- who do you live with?

23 A. My momma, my step daddy and my sister and my little
24 brother.

25 Q. Okay. If you told a lie to your momma you think you

1 might get in trouble?

2 A. Yes, sir.

3 Q. Would that be a good or bad thing if you told a lie
4 to your mom?

5 A. Bad.

6 Q. Okay. If you told a lie in this room to the judge
7 what do you think might happen?

8 A. Might get in trouble.

9 Q. Okay. If I told you that my pants were white would
10 that be the truth or that be a lie?

11 A. A lie.

12 Q. Okay. Why?

13 A. Cause your pants are black.

14 Q. Okay. In this room do you understand that it's
15 important to tell the truth?

16 A. Yes, sir.

17 Q. Are you wearing a badge? What is that on your
18 jacket? Oh, you got two. Stand up and show the jury what
19 you got. Show them the one on your shirt, and show them
20 the one on your jacket. Who gave those to you?

21 A. Miss Valerie.

22 Q. You can sit back down. And what do you have to do
23 when those badges are on?

24 A. Tell the truth.

25 Q. Right. Has anybody told you what to say in here?

1 A. No, sir.

2 Q. Did you meet with me before; like on another day
3 before we came in here today?

4 A. Yes, sir.

5 Q. Did you meet with Miss Kelly before we came in here
6 today?

7 A. No, sir.

8 Q. Okay. Did I ever tell you what you're supposed to
9 say in here?

10 A. No, sir.

11 Q. What's the number one rule I told you was in this
12 room?

13 A. Not to lie?

14 Q. Right. So can you tell the truth in here today?

15 A. Yes, sir.

16 Q. Okay. Let me ask you now about that. Do you know
17 why we're here? You know who we're here to talk about
18 today?

19 A. Yes, sir.

20 Q. Who is that?

21 A. Mr. Sammy.

22 Q. Now, is he your uncle?

23 A. Yes, sir.

24 Q. So when you -- did you ever hang out with him when
25 you were little?

1 A. Yes, sir.

2 Q. Do you ever see him any more?

3 A. No, sir.

4 Q. When you hung out with him before what did you call
5 him?

6 A. Uncle Sammy.

7 Q. Okay. When you were with uncle Sammy were you ever
8 alone with him, just the two of you?

9 A. Yes, sir.

10 Q. Did you ever go to his house?

11 A. Yes, sir.

12 Q. Did have ever ride in his car?

13 A. Yes, sir.

14 Q. What kind of car did he have?

15 A. A truck.

16 Q. A truck. Do you remember what color that truck was?

17 A. No, sir.

18 Q. Okay. So let me show you some pictures. I'm going
19 to ask you will you take that microphone and move it over
20 to this side, please. There you go. Good. All right.

21 This diagram, is this a diagram of an adult, a grown
22 person or a little person?

23 A. Little person.

24 Q. Okay. I'm going to ask you what some of these things
25 are, okay? What is this?

1 A. Face.

2 Q. Face. We'll just write down what you're telling me,
3 okay. What are these?

4 A. Eyes.

5 Q. What is that right there?

6 A. Nose.

7 Q. What's that?

8 A. Lips.

9 Q. What are those?

10 A. Eyes.

11 Q. What are those?

12 A. Legs.

13 Q. What is that?

14 A. Private.

15 Q. Private. What is that?

16 A. Belly button.

17 THE COURT: Move that microphone just a little bit
18 closer. That will help.

19 BY MR. DANIEL:

20 Q. All right. What are these?

21 A. Legs.

22 Q. Good. What's that?

23 A. Butt.

24 Q. What is that?

25 A. Hair.

1 Q. Hair? All right. Let me show you another one. Is
2 this a diagram of a little boy or an older man?

3 A. An older man.

4 Q. Let me ask you the same kind of questions. What is
5 this? This whole thing?

6 A. Legs.

7 Q. Okay. What is that?

8 A. Lips.

9 Q. What is that?

10 A. Private.

11 Q. Private. What are those?

12 A. Legs.

13 Q. Okay. What are those?

14 A. Lips.

15 Q. What is that?

16 A. Butt.

17 Q. What is that?

18 A. Hair.

19 Q. What are those?

20 A. Arms.

21 Q. All right. Is there anywhere -- you can go by this.
22 Is there anywhere on a little boy's body that nobody is
23 supposed to touch?

24 A. Yes, sir.

25 Q. What parts are those?

1 A. Your private and your butt.

2 Q. Okay. Did you say your private?

3 A. Yes, sir.

4 Q. And what else you say?

5 A. And butt.

6 Q. And your butt. Okay. Is there anywhere on a grown
7 up's body that nobody should be touching?

8 A. Yes, his private and his butt. Yes, sir.

9 Q. Say that again.

10 A. His private and his butt.

11 Q. Okay. Now, **Minor 5** when you were alone with
12 Mr. Sammy or Uncle Sammy as you call him. When you were
13 alone with Uncle Sammy did you ever see his private part?

14 A. Yes, sir.

15 Q. Did you see his butt?

16 A. No, sir.

17 Q. Where were you when you saw his private part?

18 A. In his truck.

19 Q. Okay. Were his clothes on or off when you saw his
20 private part?

21 A. On.

22 Q. If his clothes -- were his shorts or his pants on or
23 off?

24 A. On.

25 Q. On. Well, if his pants are on how did you see his

1 private parts?

2 A. I don't know how to describe it.

3 Q. Okay. Did he have his pants unbuttoned?

4 A. Yes, sir.

5 Q. Was his private part sticking out of his pants
6 because they were unbuttoned?

7 A. Yes, sir.

8 Q. Okay. Did he make you touch his private part?

9 A. Yes, sir.

10 Q. Did he make you touch it with your hand?

11 A. No, sir.

12 Q. Point out what part of on your body Uncle Sammy made
13 you touch his private part with?

14 A. Lips.

15 Q. Your lips. Can you show me. Can you point that out,
16 please? Okay, use that. Are you pointing to the lips
17 right here? Okay. Now, did Mr. Sammy or did Uncle
18 Sammy's private part ever go into your mouth?

19 A. Yes, sir.

20 Q. How did that make you feel?

21 A. Bad.

22 Q. When Uncle Sammy made you, his great nephew, put in
23 your mouth his private part how long did that last?

24 A. A second.

25 Q. A second. Did he tell you anything when he did that?

1 A. No, sir.

2 Q. Did he ever touch you on -- in your private part?

3 A. No, sir.

4 Q. Has anybody else ever made you do that to them?

5 A. No, sir.

6 Q. So the only person in your life who ever made you do
7 that is who?

8 A. Mr. Sammy.

9 Q. Hang on just a second. Minor 5 thank you for
10 answering my questions. If you will sit there for just a
11 few more minutes and answer any questions that Mr. Hobbs
12 may have, okay. Thank you.

13 CROSS-EXAMINATION

14 BY MR. HOBBS:

15 Q. Minor 5 how old are you now?

16 A. Eight.

17 Q. Eight. Do you remember how old you were when this
18 happened?

19 A. No, sir.

20 Q. Okay. Do you remember if it was a long time ago or a
21 short time ago?

22 A. No, sir.

23 Q. Okay. Minor 5 were you three years old when this
24 happened?

25 MR. DANIEL: Judge, he just answered he doesn't

1 remember. I don't know how he's going to ask him the same
2 question.

3 MR. HOBBS: Directly ask him his burglar age.

4 THE COURT: That's all right.

5 BY MR. HOBBS:

6 Q. Were you three years-old when this happened?

7 A. I don't know.

8 Q. Okay. That's okay. Did you ever go and talk to
9 anybody after this happened?

10 A. Yes, sir.

11 Q. Who did you go and talk to?

12 A. My sister.

13 Q. Your sister. Did you ever talk to a lady that showed
14 you pictures like the pictures Mr. Shipp showed you?

15 A. No that I remember..

16 Q. That's okay. Do you remember telling a lady when she
17 talked to you that Uncle Sammy didn't touch you?

18 A. No, sir.

19 Q. Okay. And, **Minor 5** I know this is difficult for
20 you, but we're almost done. When you saw Mr. Sammy's
21 thing was it hard or was it soft?

22 A. Soft.

23 Q. Have you ever seen any sort of material that shows
24 people with their clothes off? Any sort of pictures?

25 A. No, sir.

1 Q. Has anyone ever showed pictures to you of people with
2 their clothes off?

3 A. No, sir.

4 Q. Okay. Has anyone ever touched you in a way that made
5 you feel bad?

6 A. Yes, sir.

7 Q. Okay. Anyone -- I know that you said Uncle Sammy did
8 this years ago. Anyone else other than Uncle Sammy?

9 A. No, sir.

10 Q. Okay.

11 MR. HOBBS: That's all, your Honor.

12 MR. DANIEL: No redirect.

13 THE COURT: Thank you, **Minor 5** You may step down
14 know.

15 MS. HALL: The State calls Sally Williamson.

16 SALLY WILLIAMSON, after being duly sworn,
17 testified as follows:

18

19 CLERK OF COURT: Be seated. State your full name for
20 the Court spelling your last.

21 THE WITNESS: My name is Sally Williamson.

22 W-I-L-L-I-A-M-S-O-N.

23 DIRECT EXAMINATION

24 BY MS. HALL:

25 Q. Good afternoon, Ms. Williamson?

1 A. Hi.

2 Q. Where do you currently work?

3 A. I work with the Care House of the Pee Dee which is
4 located in Florence.

5 Q. And what services does the Care House of the Pee Dee
6 provide?

7 A. We provide therapy and advocacy and forensic
8 interviewing for children and families who may have
9 witnessed or been victims of a crime.

10 Q. And what do you do at the Care House?

11 A. I provide therapy as well as forensic interviewing
12 which are two very separate roles.

13 Q. Okay. Tell me what's the difference between therapy
14 and forensic interviews, briefly?

15 A. Therapy is typically done with a child or a family to
16 assist them in processing any abuse that they may have
17 experienced. So it's an on going process with no real
18 time limit.

19 Forensic interviewing is much different. It's not
20 clinical or therapeutic in nature, but instead for the
21 purposes of assessment. So often used as an investigative
22 tool by law enforcement and D.S.S. And it does
23 semi-structured interviews.

24 Q. Okay. How long have you been at the Care House?

25 A. I have been there just over two years. It was two

1 years July of this year.

2 Q. And what did you do prior to coming to the Care
3 House? Where did you work?

4 A. Prior to that I was a child protective services
5 worker for Georgetown County Department of Social Services
6 for a little over six years doing foster care and
7 investigations. And prior to that I was a domestic
8 violence sexual assault advocate for a non-profit in North
9 Carolina for just over six years as well.

10 Q. And could you tell the ladies and gentlemen of the
11 jury a little bit about your educational background?

12 A. I have a bachelors in psychology from Western
13 Carolina University from 1998. As well as master's in
14 counseling from Western University which I obtained in
15 2011.

16 Q. And now what about you training in forensic
17 interviewing. Is there any specific training for that?

18 A. Yes, there is. I completed a 40 hour training course
19 in forensic interviewing on the basics of forensic
20 interviewing. And at the end of which there is actually a
21 mock interview which is evaluated by the peers and the
22 facilitators of the training.

23 Additionally, I attended the 25 advance interview
24 training regarding special circumstances. So interviewing
25 children with special needs and subjects of that nature.

1 It was 25 hours, as well as some on site training. The
2 actual on staff forensic interviewer that was there when I
3 started it actually observed her conduct several forensic
4 interviews as well for training.

5 Q. What would you estimate is the total number of
6 forensic interviews you yourself have conducted?

7 A. Approximately 850.

8 Q. Okay. And how many of those 850 would you say you
9 conducted in the past year? So I guess since last
10 November? How many?

11 A. I would estimate approximately 300.

12 Q. Okay. And you mentioned earlier that forensic
13 interview is for fact finding purposes. Could you explain
14 a little bit more about that?

15 A. Forensic interview is like I said an assessment tool
16 used to gather information about suspected child
17 maltreatment. It follows a specific format in what we
18 call a protocol. Would you like me to explain?

19 Q. We'll get to that in just a minute. You mentioned
20 also that there were basically two different entities that
21 normally you all got cases from. What were those two
22 entities?

23 A. Those are what we call investigative entities. So
24 law enforcement and Department of Social Services when
25 they're conducting suspected cases of child maltreatment

1 and they will often use forensic interviews to obtain
2 information.

3 Q. Why might D.S.S. or law enforcement use someone like
4 the Care House as opposed to doing interviews themselves?

5 A. It allows for a neutral party. Someone that is not
6 involved in the actual investigation directly. To obtain
7 the information and often times especially in a situation
8 in my role we have an extensive experience for conducting
9 several interviews. And so -- but mostly because it
10 provides a neutral perspective to gathering the
11 information.

12 Q. Okay. You mentioned the protocols a moment ago.
13 What protocol do you use at the Care House?

14 A. We use what we call the R.A.T.A.C. protocol which an
15 acronym, and so each letter stands for something
16 different. It's a nationally recognized protocol.

17 Q. All right. So let's very briefly stay on that. So
18 'R' is the first one. What does that stand for?

19 A. 'R' is for formatting. So the child first enters the
20 room. That's my opportunity to help them feel comfortable
21 in the room, explain the rules of the room, and my role as
22 an interviewer and I'll talk to them a little bit about
23 their interests to help them.

24 Q. So of getting to know you?

25 A. Yes.

1 Q. Okay. What about the 'A' in R.A.T.A.C.? What does
2 that stand for?

3 A. The 'A' stands for anatomy identification, and so
4 present to each child a drawing of a male and female
5 figure to determine what words or what terminology they
6 use for different body parts.

7 Q. And why do you want to know what words they use?

8 A. Because most people use different words for different
9 parts of the body. In particular, the private parts.
10 Many kids have various, multiple words that they use or
11 terminology that they use for those parts. So I want to
12 be sure that they make a statement I understand what
13 they're referring to.

14 Q. All right. And what about the 'T' in R.A.T.A.C.?
15 What does that stand for?

16 A. The 'T' stands for touch inquiry. So at this point I
17 inquire, I ask the child about receiving touches that are
18 appropriate touches versus inappropriate touches. And if
19 the received those different types of touches.

20 Q. And what about 'A'? What does the 'A' stand for?

21 A. 'A' stands for abuse scenario, and so immediately
22 following the touch inquiry they make a statement or a
23 disclosure about receiving inappropriate touches or any
24 abuse that is the point in which I inquire more
25 information about the scenario. Exactly what happened in

1 the situation.

2 Q. And what is the 'C' in R.A.T.A.C. stand for?

3 A. The 'C' stands for closure. And so the closure phase
4 is an opportunity for me to provide a respectful end to
5 the interview. To thank the child for talking to me, and
6 as well as reviewing any type personal safety and
7 boundaries for the future.

8 Q. How common is the R.A.T.A.C. protocol?

9 A. It's very common. It's nationally recognized. It's
10 used in about 19 states within the U.S. as well as two
11 countries internationally.

12 Q. And what type of questions -- I know we've gone
13 through the different phases of R.A.T.A.C., but what type
14 of questioning generally does R.A.T.A.C. encourage you to
15 use?

16 A. Encourage the use of what we call open ended
17 questions.

18 Q. Could you give an example?

19 A. So an open ended question, tell me more about that or
20 tell me more versus directed question. For example, what
21 did your mom use to spank you. And so we use more open
22 ended questions as we obtain more information throughout
23 the forensic interview that may be necessary to provide
24 more directed questions.

25 Q. Why might it be necessary to get more direct with

1 your questioning?

2 A. Say for example a child in the open ended questions
3 makes a statement that the interviewer wishes to explore.
4 Or revisit a particular element of a statement that they
5 made prior to gather a little bit more information to
6 understand what it is that they're trying to communicate.

7 Q. Okay. What about if the child just doesn't answer
8 the question at all? Does that ever happen?

9 A. It does. Sometimes that does happen.

10 Q. And what is the R.A.T.A.C. protocol tell you to do if
11 a child doesn't answer a question?

12 A. Typically, the first thing that I do is allow them an
13 opportunity to take a few minutes to think about it.
14 Maybe that the child is processing the question or can I
15 understand the question. If they still don't answer then
16 sometimes I'll rephrase the question or I'll state it a
17 different way to be sure that they do understand. And
18 sometime I even move on to another question and then
19 revisit the prior question a little bit later in the
20 interview.

21 Q. Sally, are the child's parents or guardians present
22 during the interview?

23 A. They're not present during the interview. Sometimes
24 they will transport the child or accompany the child to
25 our facility, but it's very important that in the actual

1 interview itself that it's only myself, the interviewer,
2 and the child.

3 Q. And why is it that you don't want the parents or
4 guardian in the room?

5 A. We don't want the child to be concerned about
6 parents' response to what they may be saying or care
7 takers response to what they may be saying in the
8 interview itself.

9 Q. Where do you conduct these interviews? What type of
10 room?

11 A. They're conducted in a small, child friendly setting.
12 There is no toys in the room because we don't encourage
13 play. It's simply for talking, and I explain that to the
14 kids when they come into the room. And so it's just
15 myself and the child. Very few things in the room itself,
16 and there is a camera mounted in the corner of the room as
17 well.

18 Q. Who might be allowed to observe the interview?

19 A. A investigative entities that I have discussed
20 earlier, so law enforcement investigators, or Social
21 Services investigators.

22 Q. And does the child see those people who are observing
23 the interview?

24 A. No. They are in a room nearby, and the room
25 adjacent. And we have a closed circuit monitoring system

1 so the camera that's in the room actually is wired to a
2 television system so that the person observing can
3 actually hear and see myself and the child and -- live.

4 Q. Do the parents or guardians get to observe the
5 interviews

6 A. No, they do not.

7 Q. Okay. Now, what about when the parents or guardians
8 come to bring the children. Do you take a social or
9 family history from those parents?

10 A. We do often obtain that information. Typically, our
11 advocate conducts that piece of information gathering with
12 the parent or caretaker that's present.

13 Q. And how extensive is that information gathering?

14 A. It is fairly brief. It's information like who lives
15 in the home, information about mother and father, a brief
16 allegation history so what are the concerns or the
17 allegations. And in particular information about the
18 child like any special needs, do they have any speech or
19 hearing difficulties, are they on grade level, do they
20 have any other emotional or behavioral issues.

21 Q. Now, what about law enforcement. What information do
22 you obtain from them?

23 A. Typically, from law enforcement we get a very brief
24 statement or information. So for example, the brief
25 allegation. So it's an investigation of possible child

1 sexual abuse, the alleged perpetrator if that person's
2 identify is known as well as the information from the
3 parent or caretaker that's responsible for the child.

4 Q. Now, when you're obtaining all this information from
5 the parent or caretaker as well as the investigative
6 entity, D.S.S. or law enforcement, what's the purpose of
7 obtaining all of that information?

8 A. The main purpose so I'm aware when I go into the
9 actual forensic interview if I need to make any special
10 accommodations for the child. If the child is not -- if
11 the child has any developmental delays. Those are
12 certainly pieces of information that are relevant so I can
13 modify and accommodate the child to meet their
14 developmental needs. So that's the main reason for that
15 family history or information is gathered and emotional
16 behavior history.

17 Q. And do you share the information you get from law
18 enforcement or prents with the children?

19 A. No.

20 Q. Why is that?

21 A. We certainly want when we go into a forensic
22 interview for it to be very neutral, and so I really don't
23 provide any information to the child in the interview
24 other than my name and my role as an interviewer.

25 Q. Do you know [REDACTED] Minor 1?

1 A. I do.

2 Q. How do you know him?

3 A. He was referred to the Care House for a forensic
4 interview.

5 Q. And who made that referral?

6 A. Sergeant Jason Turner of the Dillon Police
7 Department.

8 Q. When you received the referral what information was
9 given to; you?

10 A. It was an investigation of possible child sexual
11 abuse, and that that were possibly other victims.

12 Q. And when you received that referral who brought
13 **Minor 1** in for his interview?

14 A. His mother, Mrs. Murphy.

15 Q. And was law enforcement with Mrs. Murphy as well?

16 A. Yes.

17 Q. Who was there?

18 A. Jason Turner.

19 Q. And did you have an opportunity to speak with Mrs.
20 Murphy and/or Jason Turner and obtain all of that history?

21 A. Yes, I did.

22 Q. And was any of that information shared with **Minor 1**

23 A. No, it was not.

24 Q. Okay. And you said you did conduct an interview with
25 **Minor 1**

1 A. Yes, I did.

2 Q. Do you know what that date was?

3 A. It was May 29th of 2012.

4 Q. Okay. And how old was **Minor I** when he came in for
5 that interview?

6 A. He was six years-old at the time.

7 Q. How might his age, the age of a six year old, be a
8 factor in **Minor I** ability to communicate with you?

9 MR. HOBBS: Your Honor, I'm going to object to that.
10 It seems to me to be edging on veracity as to his ability
11 to try to tell the truth about these accusations.

12 MS. HALL: Actually, trying to ask about his ability
13 to communicate like an adult. Nothing about veracity in
14 this case.

15 THE COURT: Okay. Go ahead. Overruled.

16 THE WITNESS: A sex year old would certainly be able
17 to answer very basic questions, typically. But, of
18 course, not be able to articulate or give as much detail
19 as an adult or an older child would present.

20 BY MS. HALL:

21 Q. Who was in the room during the interview on May 29th?

22 A. Just myself and **Minor I**

23 Q. Okay. Were there any interruptions or outside
24 interferences during your interview?

25 A. No, there were not.

1 Q. Was **Minor I** cooperative with you?

2 A. He was.

3 Q. Was he able to provide details to your questions?

4 A. Sometimes, yes.

5 Q. Okay. How was his demeanor during the interview?

6 A. He was rather engaged and willing to answer
7 questions. As we began to get into the very detailed
8 specifics in the interview he did become a little bit more
9 withdrawn.

10 Q. Was **Minor I** able to disclose any type of sexual abuse
11 to you?

12 A. He did not disclose sexual abuse. No.

13 Q. Okay. How common is it for a child to come in and
14 disclose everything that happened to them in a forensic
15 interview with you?

16 A. It's not uncommon for them to not provide all of the
17 details of a particular scenario incident especially if
18 their -- if there is any occasion that its been more than
19 one occurrence.

20 Q. Why is that?

21 MR. HOBBS: Your Honor, again, this seems to me to be
22 a veracity question. She's asking about why the children
23 sometimes don't give information versus what this
24 particular individual did. I do think we're talking about
25 veracity at this particular time.

1 MS. HALL: I was asking generally, but I can rephrase
2 it.

3 BY MS. HALL:

4 Q. Generally speaking, not speaking of this interview,
5 why would a child not disclose everything or disclose
6 pieces of something?

7 A. It could be for a variety of reasons. They could be
8 afraid. They could fear that they're in trouble. They --
9 it could have to do with the dynamics of the relationship
10 to the alleged perpetrator. It could be that they don't
11 completely understand some of the questions. It could be
12 that the interviewer does not -- isn't thorough in their
13 questioning.

14 Q. So even it could be what you're doing with the child
15 that they may not?

16 A. Absolutely.

17 Q. Okay. What if any recommendations did you make
18 following your interview with **Minor 1**

19 MR. HOBBS: Your Honor, I'm going to object to any
20 conclusions or recommendations following the forensic
21 interview. I do believe they're inadmissible and then
22 speak to the veracity of the child's statement.

23 THE COURT: She's not qualified as an expert so.

24 MS. HALL: Correct.

25 THE COURT: Draw it in.

1 MS. HALL: I was just asking what recommendation she
2 made as an interviewer. I can withdraw the question.

3 THE COURT: Might best.

4 BY MS. HALL:

5 Q. All right. Do you know **Minor 2**?

6 A. Yes, I do.

7 Q. All right. And I, for purposes of clarification,
8 what does he like to go by?

9 A. He goes by **Minor 2**

10 Q. All right. We're going to call him **Minor 2** if that's
11 okay? How you know **Minor 2**

12 A. **Minor 2** was referred to the Care House for a forensic
13 interview.

14 Q. Okay. And who made that referral?

15 A. Sergeant Jason Turner from the Dillon Police
16 Department.

17 Q. And when you received a referral was the same
18 information that you gave us on **Minor 1** was that the same
19 information you got on **Minor 2**

20 A. Yes.

21 Q. Did you interview **Minor 2**

22 A. I did. Yes.

23 Q. When did you interview **Minor 2**

24 A. That was on June 11th of 2012.

25 Q. All right. Why was **Minor 2** interviewed -- not

1 interviewed the same day as **Minor 1**

2 A. **Minor 1** made the first allegation so we scheduled his
3 interview first.

4 Q. Okay. How old was **Minor 2** when he cam in for his
5 forensic interview?

6 A. He was four years-old at the time.

7 Q. And not speaking to veracity but how might his age,
8 the age of a four year old, be a factor in his ability
9 just to communicate with you?

10 MR. HOBBS: Your Honor, I believe this goes beyond
11 her ability to testify as a forensic interviewer.. We're
12 getting into child development and psychology. She's not
13 been qualified as an expert, and I don't believe she can
14 testify to these characteristics.

15 PROSPECTIVE JUROR: She can testify as how his age
16 was a factor in his ability to communicate with her.

17 THE COURT: Strictly on that, but I don't want to get
18 too deep in this. You know how tight they are on us about
19 this.

20 MS. HALL: I agree.

21 BY MS. HALL:

22 Q. Speaking of **Minor 2** how might his age have been a
23 factor in his ability to communicate with you?

24 A. He certainly could answer very basic questions, but
25 not articulate himself in the same way that an older child

1 or an adult would be able to.

2 Q. Okay. Who was in the room during your interview with

3 **Minor 2**

4 A. Just myself and **Minor 2** the child.

5 Q. Okay. Were there any interruptions or outside
6 interferences during that process?

7 A. No.

8 Q. Was **Minor 2** able to answer your questions?

9 A. Sometimes, yes.

10 Q. Okay. How was **Minor 2** demeanor during his interview?

11 A. He was fairly open and forthcoming throughout the
12 interview.

13 Q. All right. And I want to ask you about **Minor 3** **[REDACTED]**.

14 Do you know **Minor 3**

15 A. Yes, I do.

16 Q. How do you know him?

17 A. He was also referred to the Care House by Sergeant
18 Turner of the Dillon Police Department.

19 Q. Okay. And when you received that referral did you
20 get any different information or just the same thing with

21 **Minor 1** and **Minor 2**

22 A. Very basic information, and suspected child sexual
23 abuse and there were possible other victims.

24 Q. Okay. And when you got that information from
25 Sergeant Turner was **Minor 3** made aware of any of the

1 information that you received?

2 A. No.

3 Q. Okay. Did you conduct an interview with **Minor 3**

4 A. I did, yes.

5 Q. When was that?

6 A. That was on May 31st of 2012.

7 Q. And how old was he?

8 A. He was six years-old at the time.

9 Q. Not speaking to veracity and not speaking generally;
10 just **Minor 3** How was his age an factor in his ability to
11 communicate with you?

12 A. Once again, able to provide very basic information
13 but not give description and articulation the same way as
14 an older child or an adult.

15 Q. Were there any interruptions or outside interference
16 during your interview with **Minor 3**

17 A. No, there were not.

18 Q. Was he cooperative?

19 A. He was, yeah.

20 Q. Was **Minor 3** able to provide details to your questions?

21 A. Yes, he was.

22 Q. Was he able to answer who, what, when, where type
23 questions?

24 A. Yes, he was.

25 Q. How was his demeanor during the interview?

1 A. He was open and forthcoming throughout most of the
2 interview.

3 Q. Was D.J, without saying what he said, did he make a
4 disclosure to you of sexual abuse?

5 A. He did.

6 Q. What if anything did he tell you regarding where the
7 abuse occurred?

8 A. He indicated that it was at a neighbor's house. A
9 white house, and he indicated it was Mr. Sammy's.

10 Q. Okay. And was he able to relate anything to you
11 regarding when the abuse occurred?

12 A. He indicated that it was -- I believe that he said it
13 was a warm outside. And I do recall that much.

14 Q. All right?

15 MS. HALL: Beg the Court's indulgence.

16 BY MS. HALL:

17 Q. No further questions for you. Please answer anything
18 Mr. Hobbs may have for you.

19 CROSS-EXAMINATION

20 BY MR. HOBBS:

21 Q. How you doing, Miss Williamson?

22 A. Good.

23 Q. All right. Miss Williamson, tell me what was the
24 date of your initial meeting with **Minor I**.

25 A. That was on May 29th of 2012.

1 Q. 2012. So not this past May 29th? The year before
2 that?

3 A. Yes.

4 Q. Okay. Now, you said that you get particular
5 information from the family and from the investigator. Do
6 you have your notes here today?

7 A. No, I do not.

8 Q. You do not. You did not bring your notes to Court
9 here today?

10 A. I brought the children's files. What are you
11 referring to when you ask that?

12 Q. Your forensic report. Your summation of the child's
13 interview?

14 A. I do have a forensic report.

15 Q. Okay. Can we get that?

16 THE COURT: You may step down.

17 MS. HALL: Your Honor, briefly before she goes may we
18 approach?

19 (WHEREUPON, a bench conference was held off the
20 record in the presence of the jury, but out of the
21 hearing of the jury.)

22 BY MR. HOBBS:

23 Q. Okay. When you intake information as far as the
24 alleged perpetrator in this case who was the alleged
25 offender?

1 A. I believe his name is Sammy Lee Scarborough.

2 Q. All right. Very good. And when you obtained a
3 criminal history from Mr. Scarborough what information did
4 you get?

5 A. I, honestly, without reviewing the report or
6 referring to the report I do not recall.

7 Q. Fantastic. I would ask that you get a copy of the
8 report so you can review it to refresh your memory at this
9 time.

10 MS. HALL: I have copies of it, so she can just use
11 mine.

12 BY MR. HOBBS:

13 Q. Okay. So, again, when we're talking about **Minor 1**
14 what was his criminal history that you wrote down or that
15 you received as far as the offender?

16 A. Two prior charges of C.S.C. with minor. Never
17 prosecuted.

18 Q. Okay. Did you ever see any record from Mr.
19 Scarborough?

20 A. I did not.

21 Q. Okay. Where did you get that information?

22 A. Typically the information in a family history is
23 obtained either by the parent or caretaker present or law
24 enforcement present.

25 Q. Okay. And what law enforcement was present on this

1 day?

2 A. Sergeant Jason Turner of the Dillon Police
3 Department.

4 Q. Okay. Do you recall how many times you asked- **Minor 1**
5 if Sammy touched him?

6 A. Verbatim? That particular question?

7 Q. Yes?

8 A. Or how many times I asked about inappropriate
9 touching?

10 Q. How about this.

11 A. There's a difference.

12 Q. Very good distinction. Let's say how many times did
13 you ask him if anyone had ever touched his private parts
14 before?

15 A. Without reading through the entire transcribed report
16 I can tell you how many times I asked that.

17 Q. Okay. Well, let's look at the report. If you go down
18 to touch inquiry did you ever ask him if anyone had ever
19 touched his private part before? Second paragraph touch
20 inquiry?

21 A. Yes.

22 Q. Okay. What was his response?

23 MS. HALL: Objection. Hearsay. She can't testify to
24 what he said during his forensic interview just like we
25 can't ask what he testified to.

1 MR. HOBBS: Prior inconsistent statement, Your Honor.

2 MS. HALL: That's false ---

3 MR. HOBBS: Your Honor.

4 MS. HALL: --- impeachment ---

5 MR. HOBBS: Your Honor, if I may.

6 THE COURT: She's right.

7 MR. HOBBS: Your Honor, I can present the rule.

8 Extrinsic evidence of prior inconsistent statements can be
9 brought into the Court for ---

10 MS. HALL: To the witness. That would be **Minor 1** not
11 Miss Williamson.

12 MR. HOBBS: Very good.

13 BY MR. HOBBS:

14 Q. What was the question you asked following that
15 question?

16 A. I asked if anyone had ever touched his middle in
17 parentheses penis or his butt, and again he said, 'no'.

18 Q. Okay. What was the question that you asked following
19 that?

20 A. I asked him if anyone had ever tried to make him
21 touch their private parts, and he said, 'no'.

22 MS. HALL: Objection. She can't read the answer. He
23 can ask her her questions. She also can't read from the
24 report. That's as good as putting it in evidence.

25 MR. HOBBS: Your Honor, I can ---

1 MS. HALL: She can refresh her memory.

2 MR. HOBBS: I can rephrase my questions.

3 THE COURT: Overruled.

4 BY-MR. HOBBS:

5 Q. Do you know if you asked **Minor I** these questions one
6 time or multiple times?

7 A. I rephrase questions and asked about the different
8 types of victimization.

9 Q. Okay. So you wouldn't ask them the same question
10 more than once?

11 A. I can't say that. I'm not sure.

12 Q. Okay. I would ask you to go to Page Eight of your
13 report. Looking at the second paragraph did you ask him
14 if anyone had ever touched his butt?

15 A. Yes.

16 Q. Okay. Did you ask him if anyone had ever made him
17 touch their middle or penis?

18 A. Yes, sir.

19 Q. Did you ask if anyone had ever put anything into his
20 mouth that he didn't want there?

21 A. Yes.

22 Q. So to your recollection that's the second time you
23 had asked that question, correct?

24 A. Which question?

25 Q. All of them actually. Let's look with anyone had

1 ever made him touch their middle. Was that the second
2 time you asked that question?

3 A. I'm not sure what number that is?

4 Q. I don't have numbers. On Page Eight?

5 A. Okay.

6 Q. In the center of the paragraph?

7 A. My concern is that you skipped several pages, and so
8 I'm not sure in between.

9 Q. Okay. Very good. But at least two times you asked
10 that question?

11 A. Yes.

12 Q. Okay. And in summation did you ever ask if Mr. Sammy
13 put his penis anywhere on anybody's body?

14 A. Yes.

15 Q. Yes?

16 A. Yes.

17 Q. Okay. And in summation did **Minor 1** ever report any
18 sexual abuse?

19 MS. HALL: Objection, Your Honor. He can't ask what
20 **Minor 1** reported.

21 MR. HOBBS: Your Honor, that's the same question that
22 she phrased as to ---

23 MS. HALL: Time and place.

24 MR. HOBBS: Your Honor, if any sexual allegations
25 were ever presented. That's what's I'm asking. That's

1 the same question that she asked on direct. I'm
2 reiterating it.

3 MS. HALL: Your Honor, I believe that the question,
4 if he's allowed to ask hearsay, is whether a disclosure
5 was made and if it was time and place.

6 BY MR. HOBBS:

7 Q. Were any disclosures made by [Minor 1] of any sexual
8 assaults on him?

9 A. No.

10 Q. Thank you. Let's go to [Minor 2]. Now, [Minor 2] when
11 did you take his statement?

12 A. I interviewed [Minor 2] on June 11th of 2012.

13 Q. Okay. And so you didn't do [Minor 2] and [Minor 1]
14 statement on the same day?

15 A. That is correct.

16 Q. Very good. Now, was Sergeant Turner present at that
17 interview?

18 A. Yes, he was.

19 Q. Okay. And looking at what -- we won't even look at
20 it yet. Do you recall if you asked him if he had ever
21 been touched before?

22 A. Yes.

23 Q. Okay. Do you recall how many times you asked him if
24 he had ever been touched before?

25 A. I do not.

1 Q. Do you recall if it was one time or more than one
2 time?

3 A. I don't understand that question.

4 Q. Do you recall if you asked him if he was touched one
5 time or more than one time?

6 A. I don't recall.

7 Q. Okay. I would have you look to the abuse scenarios
8 did you ask if anyone ever touched his ding dong before?

9 A. Yes.

10 Q. Okay. Did you ask if anyone every touched his butt?

11 A. Yes.

12 Q. Did you ask if any anyone ever put anything into his
13 mouth that he didn't want there?

14 A. Yes.

15 Q. Did you ask if he had seen somebody touch someone
16 else's private parts?

17 A. Yes.

18 Q. Okay. Now, were there any disclosure of sexual
19 allegations other than Mr. Scarborough for **Minor 2**

20 A. Not to my recollection. No.

21 Q. Okay.

22 A. No.

23 Q. Okay. Looking again on Page 11 do you recall if you
24 asked him a second time if anyone had ever touched his
25 ding dong before?

1 A. Yes.

2 Q. Okay. Did you then again ask him again if anyone put
3 anything into his mouth?

4 A. Yes.

5 Q. Did you ask again if anyone ever touched his butt?

6 A. Yes.

7 Q. Did you ask again if anyone had ever made him touch
8 their ding dong?

9 A. Yes.

10 Q. Okay. Now, again, did he present any allegations of
11 sexual abuse to you? **Minor 2** did he produce any evidence
12 or -- I'm sorry. Any statements regarding sexual abuse?

13 A. No.

14 Q. Any descriptions of sexual abuse to you?

15 A. No.

16 Q. No. Now, you told us earlier that there were no
17 interruptions to the interview; is that correct?

18 A. That is correct.

19 Q. Okay. What about when you go leave the room and you
20 go talk to Investigator Turner, would that be an
21 interruption?

22 A. I don't consider it an interruption. It's typically
23 the process that we use especially if an investigator is
24 observing the interview.

25 Q. Certainly, there was an interruption in the interview

1 when you left the room?

2 A. Okay.

3 Q. Now, let's look at **Minor 3** Did you ask **Minor 3** if
4 Mr. Sammy ever tried to make him touch his turtle? And
5 we'll go to the abuse scenario. And, actually, we'll go
6 in order. I'll withdraw that question did you ask him if
7 anyone had ever touched his private parts?

8 A. Yes.

9 Q. Okay. Did you ask him if Mr. Sammy tried to touch
10 it?

11 A. If you're referring to the top of Page Five, no.

12 Q. I'm referring to ---

13 A. I asked if anyone had ever touched his private parts.

14 Q. Okay. And then if you go down a little bit further
15 you asked the question again. If he, Mr. Sammy. You see
16 that question?

17 A. Yes.

18 Q. Okay. Did you then ask him if Mr. Sammy tried to
19 touch him?

20 A. Yes.

21 Q. Okay. Did you then ask if Mr. Sammy did anything to
22 his turtle?

23 A. I asked him to tell me -- tell me ---

24 Q. Okay?

25 A. --- about that.

1 Q. We continue down. Did you ask if Mr. Sammy did
2 anything to his turtle when he showed it to him?

3 A. Yes.

4 Q. Okay. Continuing down. You then asked if Mr. Sammy
5 put anything into his mouth that he didn't want there?

6 A. Yes.

7 Q. Okay. And let's go ahead and go to the back of the
8 interview. I don't want to have to make you read the
9 whole report there. Let's go to the last page, Page 8.
10 Did you ask him again if Sammy put anything into his
11 mouth?

12 A. Yes.

13 Q. Did you ask him again if Sammy ever touched his
14 turtle?

15 A. Yes.

16 Q. Did you ask him again if Sammy ever tried to touch
17 his turtle?

18 A. Yes.

19 Q. Okay. So these questions were asked several times to
20 these children, correct?

21 A. As a follow up to prior statements that the child
22 made?

23 Q. The identical yes or no question was asked several
24 times, correct?

25 A. Yes.

1 Q. Okay. And these questions, you said that you were
2 concerned that these children might not be able to
3 articulate since they're not very old, right?

4 A. Based on their age.

5 Q. Based on their age, so you would ask them yes or no
6 questions, correct?

7 A. I asked different types of questions including yes or
8 no. Yes.

9 Q. And tell me when you come across potential other
10 sexual allegations do you ask them about that or do you
11 continue to ask what your basis is for this offender?

12 A. Explain your question over.

13 Q. If the child is to articulate that there has been
14 some other sexual abuse do you follow up on that or do you
15 steer him back to the abuse that you're there to talk
16 about?

17 A. Well, I certainly first I continue to ask about what
18 we're already -- the topic we're already discussing.

19 However, I do follow up with any the disclosures or other
20 people that the child has identified as abusive in some
21 way?

22 Q. Okay. Do you understand the difference between a
23 sexual assault and a sexual battery?

24 A. No, not necessarily.

25 Q. Okay. If we were to say that a sexual assault

1 generally involves some sort of penetration or a sexual
2 battery generally involves some sort of penetration would
3 that sound about right?

4 MS. HALL: Objection, Judge, she says she doesn't
5 know the difference.

6 MR. HOBBS: I'm asking her if she believes that to be
7 a sexual battery.

8 THE COURT: If she knows.

9 THE WITNESS: I don't know. I know there are several
10 different types of charges all with specific elements to
11 them. I can't tell you what each and every statute is.

12 BY MR. HOBBS:

13 Q. Understood. Understood. Well, we're using the
14 words, 'sexual abuse' here. If I'm to ask did Minor 3
15 disclose any information about a sexual battery as I just
16 described it ---

17 MS. HALL: Objection. Can't ask that.

18 BY MR. HOBBS:

19 Q. As I just defined it.

20 MS. HALL: Hearsay. Exception ---

21 THE COURT: Sustained.

22 MS. HALL: Thank you.

23 MR. HOBBS: No further questions, Your Honor.

24 MS. HALL: No redirect.

25 THE COURT: You may step down. Thank you.

1 MS. HALL: State calls Investigator Valerie Williams.

2 VALERIE WILLIAMS, after being duly sworn,
3 testified as follows:

4 CLERK OF COURT: Be seated. State your full name for
5 the Court spelling your last.

6 THE WITNESS: My name is Valerie Williams.
7 W-I-L-L-I-A-M-S.

8 DIRECT EXAMINATION

9 BY MS. HALL:

10 Q. Where do you work, Ms. Williams?

11 A. I work for the South Carolina Attorney General's
12 Office.

13 Q. And what do you do there?

14 A. I'm a criminal investigator.

15 Q. How long have you been an investigator with the
16 Attorney General's Office?

17 A. Since January of this year.

18 Q. What did you do prior to coming to the A.G's Office?

19 A. Prior to that I worked for 16 years for the State Law
20 Enforcement Division as a criminal investigator as well.

21 Q. And that's S.L.E.D?

22 A. That's S.L.E.D.

23 Q. Okay. And what did you do prior to S.L.E.D.?

24 A. I, for nine years, I was an officer with the Sumter
25 Police Department. I worked two years on patrol and the

1 rest of the time I spent in investigations.

2 Q. So you've been in law enforcement for about how long?

3 A. Over 25 years.

4 Q. Okay. What about working with children? Have you
5 had any special training to work with children?

6 A. I have a bachelor's in criminology and a master's in
7 counseling. And in that -- in completing that degree I
8 had to do over 750 interning hours, and I did counseling
9 with both adults and children. And the children were
10 in -- the children I counselled were in a child advocacy
11 center.

12 I'm also trained to do forensic interviews and as a
13 victim's advocate.

14 Q. How did you come to be involved in this case?

15 A. I work under the supervision of Lieutenant Pete
16 Logan, and attorneys in our office, when they want
17 assistance with cases, they go to him to have an
18 investigator assigned. I was assigned by Pete Logan.

19 Q. So you were assigned to be the investigator on this
20 case for the Attorney General?

21 A. That's correct.

22 Q. Have you met [Minor 1]?

23 A. I have.

24 Q. What about [Minor 2]?

25 A. I get their names kind of confused as [Minor 1] and

1 **Minor 2** so **Minor 2** is good. Yes, I have meet **Minor 2** as well.

2 Q. And what about **Minor 3** ?

3 A. D.J, yes, I've met D.J..

4 Q. What about **Minor 5**

5 A. Yes, I met **Minor 5** as well.

6 Q. I'm going to go one at the time. When did you first
7 meet **Minor 1**

8 A. I first met **Minor 1** when we met at the Solicitor's
9 Office. I believe it was August 23rd of this year is my
10 first meeting with him.

11 Q. Okay. When was the next time you met **Minor 1**

12 A. The next time I met **Minor 1** I want to say that was
13 October the 23rd the next time we met.

14 Q. What about **Minor 2** You recall the first time you met
15 **Minor 2**

16 A. Well, it would have been the same day. I met both
17 brother together?

18 Q. Okay. Do you recall who brought **Minor 1** and **Minor 2** to
19 the August 23rd meeting?

20 A. The August 23rd meeting was their mother. I believe
21 her first name is Queena.

22 Q. And then what about the October meeting? Do you
23 recall who brought them?

24 A. I honestly don't recall who brought them that day. I
25 know it was not Queena because she had passed away.

1 Q. Okay. What about Minor 3 [REDACTED]? Do you know the
2 first time you met Minor 3

3 A. I met Minor 3 I believe it was October the 18th. You
4 and I went out to his elementary school.

5 Q. And what about after October 18th? Did you meet with
6 Minor 3 again?

7 A. I don't believe I met with Minor 3 again that I can
8 recall until we are here.

9 Q. Okay. And what about Minor 5 [REDACTED]? When was the
10 first time you met him?

11 A. I actually met Minor 5 [REDACTED] for the first time on
12 October 31st.

13 Q. So last week?

14 A. It was last week.

15 Q. Okay. And were all of these meetings in preparation
16 for trial?

17 A. Yes, they were all for trial prep.

18 Q. Okay. So who was with you? I know we mentioned a
19 bunch of different meetings, but do you know who was with
20 you at those meetings?

21 A. Normally, when I'm assigned to an attorney I go with
22 them and we do any trial prep. I go with them. So the
23 vast majority of the meetings I was with Ms. Hall. And
24 sometimes as well with Mr. Daniel. I believe the one on
25 October 31st, however, I was only with Mr. Daniel.

1 Q. And why is it you usually accompany the prosecutors
2 in trial preparation?

3 A. One of the things that I've learned on my journey
4 through law enforcement and working on these types of
5 cases is that children tend to disclose in pieces, and
6 often times if I'm with an attorney and they're asking a
7 kid questions they may say something that they hadn't said
8 before. And we certainly don't want to put the attorney
9 in the role of having to testify?

10 Q. So you're basically there to testify if something
11 different comes up or be present?

12 A. Exactly.

13 Q. Okay. Did you have the opportunity to talk with any
14 of these boys?

15 A. I have.

16 Q. Without telling me what any of the boys said -- I'm
17 going to take them one at the time.

18 A. Okay.

19 Q. Can you tell me whether **Minor I** made a disclosure of
20 any type of sexual abuse?

21 A. I believe so. Yes, he did.

22 Q. And where did **Minor I** indicate it occurred, the abuse
23 occurred?

24 A. **Minor I** like a lot of kids his age is probably not
25 good with addresses and locations. All I recall is

1 Mr. Sammy's house.

2 Q. Okay. And when did **Minor 1** indicate that it occurred
3 or did he indicate when it occurred?

4 A. He didn't indicate it occurred this year. All I knew
5 for sure that it was prior to this year.

6 Q. Okay. And did that disclosure occur on August 23rd,
7 October 23rd, both or neither?

8 A. I honestly don't remember the August 23rd. I do
9 remember October, and I remember again he was also here
10 with Mr. Daniel and said that again.

11 Q. All right. He did make disclosures on both of the
12 October dates, and you're not sure about the August date?

13 A. I'm just not a 100 percent sure.

14 Q. Okay. What about **Minor 2** Has **Minor 2** ever made a
15 disclosure to you of any type of sexual abuse?

16 A. **Minor 2** has not.

17 Q. All right. What about **Minor 3** Has **Minor 3** ever made a
18 disclosure to you of any type of sexual abuse?

19 A. **Minor 2** did.

20 Q. Did D.J -- oh, excuse me. Did I said D.J?

21 A. You said **Minor 3**

22 Q. Okay. Just make sure.

23 A. I think you said **Minor 3**

24 Q. Did **Minor 3** tell you where the abuse occurred?

25 A. Just to make sure that I'm clear, **Minor 1** did. **Minor 2**

1 did not. **Minor 3** did.

2 Q. Okay. And where did **Minor 3** say it occurred?

3 A. Okay. **Minor 3** said also Mr. Sammy's backyard or barn.

4 Q. And when did **Minor 3** say it occurred?

5 A. He did not give a date. He only just -- didn't say
6 this year.

7 Q. Okay. And what about **Minor 5**? Without saying
8 what he said did **Minor 5** indicate that he had been
9 sexually abused?

10 A. **Minor 5** did indicate that, yes.

11 Q. Did **Minor 5** tell you where the abuse occurred?

12 A. **Minor 5** like to over boys, just said Mr. Sammy's.
13 My recollection is the backyard, the barn.

14 Q. Okay. And did **Minor 5** indicate to you when that
15 occurred?

16 A. Again, they did not give dates. Dates are very
17 difficult for children. They are very difficult for some
18 adults. They just know it didn't happen this year. It
19 was before this year.

20 MS. HALL: Beg the Court's indulgence.

21 BY MS. HALL:

22 Q. Agent Williams or Investigator Williams, excuse me.
23 When you spoke with **Minor 1** was **Minor 2** present?

24 A. No. When I initially met the two brothers they were
25 both there, but when we speak to the children we speak to

1 them separately.

2 Q. What about D.J? Were any of the other children
3 present when you spoke with **Minor 3**.

4 A. No. As a matter of fact **Minor 3** -- they weren't even in
5 the same city because **Minor 3** was in Winnsboro.

6 Q. All right. And what about when you spoke with
7 **Minor 5**

8 A. **Minor 5** as I said, for the first time it was here in
9 the court.

10 Q. Were the other children there when you met with
11 **Minor 5**

12 A. No. Actually, we had put them in a separate room.

13 Q. Okay. What about their parents? Were there parents
14 in the room with you when you talked to the children?

15 A. No. Not when we had all of the separate meetings and
16 when we came to Court to actually show them the courtroom
17 we had the parents sit with the other children outside. I
18 do remember **Minor 5** just didn't want his mom in the room.

19 Q. Okay. So the children didn't have other children
20 around or their parents around when they were?

21 A. No. No. We tried to keep them very separated
22 because we don't want any suggestions.

23 Q. No further questions. Please answer anything
24 Mr. Hobbs has.

25 MR. HOBBS: Your Honor, may we approach briefly?

1 (WHEREUPON, a bench conference was held off the
2 record in the presence of the jury, but out of the
3 hearing of the jury.)

4 CROSS-EXAMINATION

5 BY MR. HOBBS:

6 Q. Ms. Williams, in preparation for this trial did you
7 prepare any notes or reports?

8 A. No. I did look at my calendar and I did talk with
9 Ms. Hall.

10 Q. So you looked at your calendar. When you spoke to
11 the children did you take any notes or prepare any
12 reports?

13 A. I did not prepare any reports. I took some notes to
14 help my memory.

15 Q. Okay. Within those notes would you disclose what you
16 talked about, where you talked about? Things like that?

17 A. I would have put down something. When I prepare for
18 talking to kids I look at, for instance, the notes that
19 Ms. Hall would have for her forensic interviews, etc. And
20 then if I hear anything that said differently I would note
21 that.

22 Q. Okay, so you never prepare any sort of investigative
23 report?

24 A. It would have to be a very extensive change in what
25 they were saying from one time to another for me to

1 generate a separate report.

2 Q. So we have no -- nothing for you to reference as to
3 what you did in this investigation?

4 A. I have my calendar notes. I wrote the dates down
5 from my calendar.

6 Q. That's your report? That's your notes?

7 A. No, sir. This is just -- I went in my calendar today
8 and made sure that I knew what date.

9 Q. But that's it?

10 A. Yes, sir.

11 MR. HOBBS: No further questions.

12 MS. HALL: No further questions, Your Honor?

13 THE COURT: Thank you. You may step down.

14 THE WITNESS: Thank you.

15 COLLOQUY

16 MR. DANIEL: Judge, that's it for the day. We have
17 one more witness that we are going to call whenever the
18 Court is ready in the morning. It's the one we talked
19 about earlier, we then will rest after that.

20 THE COURT: All right. We'll stop for the evening.
21 Once again don't discuss the case with anyone. Don't
22 allow any contact. Y'all have a good evening, and we'll
23 see you at 9:30 in the morning. Everybody else remain in
24 the courtroom while the jury departs.

25 (WHEREUPON, the jury panel was excused from the

1 courtroom at 4:48 p.m.)

2 MR. DANIEL: Judge, prior to closing arguments I
3 would just like to put out there the idea that anything
4 that these kids said during their forensic interview is
5 not admissible. It's not to be argued. It is not to be
6 mentioned.

7 Now, obviously, any response that they gave to any
8 questions about that can be, but anything else is not
9 going to be admissible and I don't want have to be
10 objecting during the closing argument.

11 MR. HOBBS: Your Honor, I can address that
12 hypothetical objection, if you like me to.

13 THE COURT: Go ahead.

14 MR. DANIEL: I said Mr. Hobbs would object. I don't
15 want to hear a whole bunch of stuff. He can't say more.
16 I would ---

17 THE COURT: Let the Solicitor hear it.

18 MR. HOBBS: I will tell them how I feel about the
19 that. I would limit to what the children said on the
20 stand as to what they told the forensic interviewer and I
21 would also limit the forensic interviewer's statements
22 regarding them declaring any sort of sexual assault as
23 brought out by the Solicitor.

24 That would be the limit of my statements about what
25 they said to the forensic interviewer.

1 MR. DANIEL: We'll see.

2 THE COURT: All right. 9:30 in the morning.

3 END OF TRANSCRIPT OF RECORD

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CERTIFICATE OF REPORTER

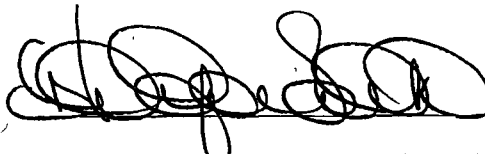
STATE OF SOUTH CAROLINA)

COUNTY OF DILLON)

I, HATTIE O. GORDON, Official Court Reporter for the 4th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Dillon County, South Carolina, on the 5th day of November, 2013.

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

February 17, 2014



HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
<u>COUNTY OF DILLON</u>	)	2013-GS-17-0290
		2013-GS-17-0291
		2013-GS-17-0292
		2013-GS-17-0293
		2013-GS-17-0294
		2013-GS-17-0328
		2013-GS-17-0710

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
SAMMY LEE SCARBOROUGH	)	
<u>DEFENDANT</u>	)	

November 4-6, 2013
Dillon, South Carolina
Volume 03 of 03

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

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

SHIPP DANIEL, ASSISTANT SOLICITOR
Attorney for the State

KELLY W. HALL, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KYLE M. HOBBS, ESQUIRE
Attorney for the Defendant

1 (WHEREUPON, other Court-related business was
2 conducted on the record but not related to the trial
3 of this case and not included in this transcript of
4 record.)

5 COLLOQUY

6 THE COURT: All right. Back to the Scarborough
7 trial.

8 MR. DANIEL: Judge, I do need to put on the record
9 the offers that was made to the defendant just for
10 appellate purposes.

11 MR. HOBBS: I need to get the defendant, Your Honor.

12 MR. DANIEL: Oh, I'm sorry. Judge, I just want to
13 put on the record the offers that have been made to the
14 defendant when Mr. Nick Lewis of the Public Defender's
15 Office represented Mr. Scarborough. There was an offer of
16 a cap of 20 years. Obviously, he would have pled to a
17 lesser charge since the charge that he's on trial for, the
18 main charge carries a minimum of 25 years. That offer was
19 rejected.

20 And then when we came in here Monday morning to start
21 the trial, now, the defendant was represented by
22 Mr. Hobbs. We had discussed back in chambers with the
23 Court, we have discussed several times in between the
24 parties here a recommendation, even a negotiation, of 25
25 years to all three counts of C.S.C. with a minor in the

1 first degree. All the other charges would have been
2 dismissed.

3 The defendant had ample time to discuss that with his
4 lawyer. There were several breaks taken so that they
5 could discuss the -- that offer. And from our
6 understanding the defendant was fairly close to taking
7 that offer, but at the last minute decided to proceed with
8 jury selection and proceed with the trial which, of
9 course, is his right.

10 And at that point, of course, once we began selection
11 of the jury the State had no offer on the table as is our
12 practice in situations such as that. And I just wanted to
13 note all of that for the record. And the State is ready
14 to proceed this morning. We have one witness and then
15 we'll rest.

16 MR. HOBBS: May I be heard briefly, Your Honor.

17 THE COURT: Mr. Hobbs.

18 MR. HOBBS: Thank you, Your Honor. I don't have any
19 objections to what he presented as far as the factual
20 circumstances surrounding offers made to Mr. Scarborough.
21 I can represent that I was not representing him at the
22 time of the original offer, but I would take the State's
23 word that was the offer that was presented.

24 Your Honor, we have one witness today I believe left
25 for the State. It's my understanding this is an expert

1 witness. I found out about this witness on Monday when I
2 arrived in Court. I have not seen any of the material
3 involving this expert. And I have concerns about what
4 this expert is going to testify to. I would ask the
5 State, before we put her on the stand, to tell us the
6 nature of this expert testimony so I can make a proper
7 objection if it's necessary.

8 THE COURT: Okay.

9 MR. DANIEL: Certainly the State is not entitled to
10 give the Defense any witness list prior to trial. We gave
11 Mr. Hobbs the witness list before jury selection as we
12 always do. There is no rule that says that we have to
13 tell them anything beforehand.

14 The witness in this -- the expert in this case is
15 Gaye Allen Cook who we will seek to have qualified as an
16 expert in child abuse assessment. She has nothing to do
17 with this case. She has never met these children. She
18 hasn't evaluated anything in this case. All she knows
19 from this case is what I told her, and that is that we've
20 got four little boys. These are the accusations.

21 She's going to testify generally as to child abuse
22 assessment, and that's actually how the most recent case
23 law prefers it. The most recent case law says it's better
24 to have an independent expert to talk about these things.
25 And she has -- she's done no reports. She has -- which I

1 would have to turn over, but she's done no reports.
2 Again, like I said has nothing to do with this case. She
3 is speaking strictly in general terms. And the case law
4 wholeheartedly supports our ability and our right to call
5 her in the context in which we plan.

6 THE COURT: No report.

7 MR. HOBBS: Thank you, Your Honor. I would present
8 to the Court an objection if I may at this point.

9 THE COURT: Why don't you hold that until she is
10 qualified.

11 MR. HOBBS: Yes, Your Honor.

12 THE COURT: No. On second thought if there is
13 something you want to put on the record now about that
14 feel free to go ahead, but you need to make sure that we
15 renew it after the qualification process.

16 MR. HOBBS: Certainly, Your Honor. Very briefly. I
17 would ask the Court now to enact a motion in limine or I
18 would present a motion in limine as to this expert
19 witness. Again, I would assert to the Court that I have
20 no notice of this witness until the day of trial started,
21 and therefore, had no opportunity to evaluate what her
22 testimony would be and get an expert witness to rebut her
23 testimony.

24 Your Honor, secondly, I do believe that within my
25 general Brady I did ask for the names of any experts that

1 they would be presenting at trial. I believe that would
2 be an entitlement so I could get an expert to rebut what
3 she was saying and what she asserts and testifies to.

4 On the second point, Your Honor, as far as an expert
5 testimony I have concerns now that her testimony will be
6 more prejudicial than it will be probative. the basis of
7 that, Your Honor, is that we only heard of attributes and
8 conditions of one victim after an assault occurred. We've
9 got three victims in this case that we are on trial for,
10 and that would be **Minor 1**

11 **Minor 3** [REDACTED], we have no evidence of how an alleged
12 assault changed his demeanor. We heard from family
13 members of **Minor 2** the youngest child, who said that there
14 was no change in his demeanor. So we're look to **Minor 1**
15 and his change in demeanor that they assert happened as a
16 result of Mr. Scarborough's alleged assault or battery.

17 Your Honor, I would present to the Court that once it
18 came out that he had been previously sexually assaulted by
19 a family member then this evidence does not go to show
20 that his actions and change in demeanor are related to Mr.
21 Scarborough. Instead this evidence is going to be highly
22 prejudicial and not probative to any facts since another
23 sexual assault has come into the record and it has been
24 shown to happen to **Minor 1**

25 MR. DANIEL: Judge, there is no rule that requires

1 the State, ever, to give to the Defense the witness list
2 prior to trial unless we have an expert who evaluated
3 these children and wrote a report. In that case the rules
4 are clear. I've got to give that information, but this is
5 an independent expert who has never met -- still has not
6 met these kids unless they -- she saw them in here this
7 morning.

8 She's never talked to them. She's never evaluated
9 them, and Mr. Hobbs is confused. She's not testifying as
10 to their demeanor as a result of abuse. She's testifying
11 as to things like delayed disclosure, partial disclosure
12 which are all common. And we have in every sex abuse
13 trial we have an expert to talk about those kinds of
14 things, and we've never disclose to the Defense prior.
15 Not that we're trying to hide it, but the rules don't
16 require us to do it.

17 She's going to testify as to their age and how that
18 may affect disclosure and things of that nature. So Mr.
19 Hobbs has made a real big point in this trial of the
20 discrepancies in the children's testimony and what they
21 said then and what they said now and what they said.
22 Well, we're allowed to explain that, and we think that the
23 research and the expert testimony that Ms. Gaye Allen Cook
24 will provide will explain it to the jury. And they are
25 certainly entitled to hear it.

1 And at no time was I required to tell Mr. Hobbs that
2 she was on our witness list.

3 THE COURT: All right. These preliminary objections
4 are overruled, however, I will revisit my ruling on it
5 after the qualification effort, and if she is qualified
6 and she gets beyond the parameters that you have put forth
7 then I may have to step in. But we first process -- the
8 first thing we've got to work through is to see if she's
9 qualified in the field that you claim that she it. So we
10 will do that.

11 MR. DANIEL: Thank you, Judge. Going back to the
12 issue of a offer, I think the most recent case law prefers
13 the Court to inquire of the defendant on the record that
14 he was aware of the offer. Was made aware by his lawyers.
15 We talked to our appellate P.C.R. people about that, too.

16 If the Court sees fit we would ask the Court just to
17 inquire that he was communicated the offers by both his
18 Public Defender counsel and now his private counsel and
19 that he made a knowingly and intelligent decision?

20 THE COURT: I have no problem with that. Mr.
21 Scarborough, you heard the statement of the Solicitor
22 about those offers when you were represented by Mr. Lewis
23 and now by Mr. Hobbs. Is that -- was that a correct
24 assessment.

25 MR. SCARBOROUGH: Yes, sir.

1 THE COURT: And you made the decision?

2 MR. SCARBOROUGH: Yes, sir.

3 THE COURT: With counsel from Mr. Hobbs?

4 MR. SCARBOROUGH: Yes, sir.

5 THE COURT: Okay.

6 MR. DANIEL: Thank you, Judge. State is ready to go
7 forward.

8 THE COURT: All right. What you got?

9 MR. DANIEL: Yeah, Judge, that's a good point.
10 Should we qualify the witness before they come in?

11 THE COURT: No. I can -- I was thinking about that,
12 but we won't have to because of the mere qualification.
13 If she's not qualified there's no danger in doing that
14 because it would cease right then and there is no
15 prejudice.

16 MR. DANIEL: Right.

17 THE COURT: All right. Madam Clerk, if you will take
18 this down. We are going to poll the jury this morning.
19 The question that I want posed to them -- I hadn't written
20 it down myself. I have it in my mind. Have you had any
21 contact, either directly or indirectly, with anyone
22 concerning the case before the Court?

23 Madam Clerk, you go down your list. We will
24 individually poll them as -- the Sheriff and the bailiff
25 will retrieve them as you call them, and then we will seat

1 them in the box. But I want it individually done at this
2 time. If you will just start at the top of the list we'll
3 fetch them.

4 THE BAILIFF: Bring them up to the front?

5 THE COURT: No. You can just bring them in a let
6 them come to the first seat that they come to except the
7 foreperson. Eventually, we will get to him and he will
8 take that seat.

9 MR. DANIEL: May we approach, Judge?

10 (WHEREUPON, a bench conference was held off the
11 record, but out of the presence of the jury.)

12 POLLING OF THE JURY

13 CLERK OF COURT: Ashley Legette. Ms. Legette, would
14 you stand. I have a question for you, please, ma'am.
15 Have you had any contact directly or indirectly with
16 anyone concerning this case before the Court?

17 JUROR: No, ma'am.

18 CLERK OF COURT: Thank you, ma'am. Robin Bracey.
19 He's our foreperson. Mr. Bracey, would you stand, please,
20 sir. Have you had any contact directly or indirectly with
21 anyone concerning this case before the Court?

22 JUROR: No, ma'am.

23 CLERK OF COURT: Thank you, sir. Julie Taylor. Go
24 ahead and have a seat. If you would stand for me, please,
25 ma'am. Have you had any contact directly or indirectly

1 with anyone concerning this case before the Court?

2 JUROR: No, ma'am.

3 CLERK OF COURT: Thank you ma'am. You may be seated.
4 Thomas Carter. Mr. Carter, will you stand for me, please,
5 sir. Have you had any contact directly or indirectly with
6 anyone concerning this case before the Court?

7 JUROR: No, ma'am.

8 CLERK OF COURT: Thank you, sir. You may be seated.
9 James Davis, Jr. Stand right there for me, Mr. Davis.
10 Have you had any contact directly or indirectly with
11 anyone concerning this case before the Court?

12 JUROR: No, ma'am.

13 CLERK OF COURT: You can be seated. Thank you.
14 Betty Williams. Stand right there for me, Miss Williams.
15 Have you had any contact directly or indirectly with
16 anyone concerning this case before the Court?

17 JUROR: No, ma'am.

18 CLERK OF COURT: Thank you. You may be seated.
19 Larry Manning. What you stand right there for me, Mr.
20 Manning. Have you had any contact directly or indirectly
21 with anyone concerning this case before the Court?

22 JUROR: No, ma'am.

23 CLERK OF COURT: Thank you. You can be seated.
24 Beulah Grice. Would you stand there for me, Miss Grice.
25 Have you had any contact directly or indirectly with

1 anyone concerning this case before the Court?

2 JUROR: No, ma'am.

3 CLERK OF COURT: Thank you, ma'am. You can be
4 seated. Barbara Page. Would you stand right there for
5 me, Miss Page. Have you had any contact directly or
6 indirectly with anyone concerning this case before the
7 Court?

8 JUROR: No.

9 CLERK OF COURT: Thank you, ma'am. You can be
10 seated. Aaron Young. Stand right there for me,
11 Mr. Young. Have you had any contact directly or
12 indirectly with anyone concerning this case before the
13 Court?

14 JUROR: No, ma'am.

15 CLERK OF COURT: Thank you. You may be seated.
16 Martina McDonald. Would you stand right there for me,
17 Miss McDonald. Have you had any contact directly or
18 indirectly with anyone concerning this case before the
19 Court?

20 JUROR: No.

21 CLERK OF COURT: Thank you. You can be seated.
22 Kenneth Allen. Mr. Allen, have you had any contact
23 directly or indirectly with anyone concerning this case
24 before the Court?

25 JUROR: No, ma'am.

1 CLERK OF COURT: Thank you, sir. You can be seated.
2 Alternate Number One is Amanda Bethea. Miss Bethea, have
3 you had any contact directly or indirectly with anyone
4 concerning this case before the Court?

5 JUROR: No, ma'am.

6 CLERK OF COURT: Thank you, ma'am. You can be
7 seated. Alternate Number Two the Tarsha Dixon.
8 Miss Dixon, have you had any contact directly or
9 indirectly with anyone concerning this case before the
10 Court?

11 JUROR: No.

12 CLERK OF COURT: You can be seated. Thank you.
13 That's it, Your Honor.

14 THE COURT: Thank you, ladies and gentlemen. First
15 of all I want to apologize about the delay this morning.
16 I didn't want you to think that we were out here drinking
17 coffee and eating donuts. We had a matter that was
18 scheduled several weeks ago for this morning, and I
19 apologize. I should have asked y'all to report at 9:45 or
20 either 10:00. And it was called to my attention that that
21 had been scheduled so I had to work that in, but we're
22 ready to go now. Solicitor.

23 MR. DANIEL: Thank you, Your Honor. May it please
24 the Court. The State calls its final witness, Miss Gaye
25 Allen Cook.

1 GAYE ALLEN COOK, after being duly sworn,
2 testified as follows:

3 CLERK OF COURT: State your full name for the Court
4 spelling your last, please, ma'am.

5 THE WITNESS: Gaye Allen-Cook. A-L-L-E-N hyphen
6 C-O-O-K.

7 DIRECT EXAMINATION

8 BY MR. DANIEL:

9 Q. Miss Allen-Cook, good morning?

10 A. Good morning.

11 Q. Thank you for being here. Would you tell the jury
12 what you do?

13 A. I am a clinical child and family therapist
14 specializing in trauma and abuse in a private practice in
15 Florence.

16 Q. What sort of certification do you have to do what it
17 is that you do?

18 A. Well, I can start with my educational background if
19 you like.

20 Q. Please.

21 A. I have a bachelor's degree in early childhood
22 education. I have a master's degree in clinical
23 counseling. I have post-graduate studies in trauma and
24 abuse from Gardner Webb University. I am currently acting
25 as a supervisor for the State of South Carolina in the

1 model that we have approved as the best model for children
2 who have witnessed trauma or been through trauma. And
3 that is called Trauma Focused Cognitive Behavioral
4 Therapy. We also call that T.F.C.B.T.

5 I currently sit on the list of expert witnesses for
6 the University of South Carolina. I've recently been
7 nationally recognized by my work in trauma and abuse. And
8 I've also been recently recognized by the Duke Endowment
9 for my work with children who witnessed or been through
10 trauma and abuse.

11 Q. How many years have you done this type of work?

12 A. I'm 13 years. I was previously licensed in the State
13 of North Carolina as an L.P.C. which is a license
14 practiced counselor. And currently I'm licensed in the
15 State of South Carolina as an L.P.C.

16 Q. And, Ms. Allen-Cook, what sort of testimony have you
17 given in courts in South Carolina before?

18 A. In South Carolina I've testified in family court.
19 I've testified in criminal court. I've testified in civil
20 court. And even testified once in federal court. I've
21 been qualified as an expert in all of those courts. Have
22 testified for the State prosecution and have also
23 testified for the Defense.

24 Q. And this particular case that we're here on have you
25 done any work on this case?

1 A. I have not.

2 Q. Do you know the children that we're here about?

3 A. I saw them walking about this morning, but didn't
4 even speak to them.

5 Q. And do you know the Defendant, Sammy Scarborough?

6 A. I do not.

7 MR. DANIEL: Judge, at this time I would ask that
8 Miss Gaye Allen-Cook be qualified as an expert in child
9 abuse assessment?

10 THE COURT: Any questions?

11 MR. HOBBS: Briefly, Your Honor.

12 THE COURT: Okay.

13 VOIR DIRE OF THE WITNESS

14 BY MR. HOBBS:

15 Q. Good morning, Miss Allen-Cook.

16 A. Good morning.

17 Q. How many times have you testified in the criminal
18 courts of South Carolina?

19 A. I'm going to give you a rough estimate. I would say
20 around 150.

21 Q. A hundred and fifty. Were you qualified as an expert
22 each of those 150 times?

23 A. Yes.

24 Q. Have you published any research or publications that
25 you've produced?

1 A. I've not published anything on my own. I'm actually
2 working on something right now with a colleague. I have
3 done like magazine articles and things like that for the
4 Duke Endowment regarding children in trauma.

5 MR. HOBBS: Your Honor, I would at this point object
6 to her being admitted as an expert witness in this case.
7 And I would renew my prior motions as to Rule 403, and I
8 also have concerns as to this leading to veracity
9 testimony. I would present that objection to the Court
10 now.

11 THE COURT: Okay. I'm going to overrule the
12 objection. Solicitor, understand now the parameters of --
13 you relayed to the Court as to her testimony.

14 MR. DANIEL: Certainly, Judge. We won't be
15 speaking -- I will not ask this witness anything about if
16 she believed these children or anything like that. This
17 will strictly be generic about children in trauma and
18 child abuse assessment.

19 THE COURT: Proceed.

20 MR. DANIEL: Thank you, Judge.

21 CONTINUED DIRECT EXAMINATION

22 BY MR. DANIEL:

23 Q. Okay, Ms. Allen-Cook, let's get right to this. When
24 a child is abused, when a child is sexually abused do they
25 always immediately run to momma or daddy or grandmomma or

1 granddaddy?

2 MR. HOBBS: Your Honor, I would ask that he not lead
3 the witness.

4 MR. DANIEL: That's not a leading question. I'm
5 not -- that question doesn't suggest an answer.

6 THE COURT: Right. Go ahead.

7 MR. DANIEL: Thank you.

8 BY MR. DANIEL:

9 Q. When a child is abused sexually does that child
10 always run to momma or daddy or some adult and tell them
11 what happened?

12 A. No.

13 Q. Why not?

14 A. There are various reasons for that. Some children do
15 go and tell. I would tell you that it's a very small
16 number of that as far as my practice has been concerned.
17 Typically, what happens is when children are sexually
18 abused they're sexually abused by someone that they know.
19 It's not necessarily the stranger danger mentality that we
20 used to have. It's somebody that may be as their friend,
21 may be as a family member, may be someone in their church,
22 may be someone that they have a really strong relationship
23 with.

24 And so they don't always go and tell especially when
25 the abuse has been what we call chronic. It means that

1 its happened more than one time. Small children don't
2 come out and tell us that, necessarily, cause often times
3 they learn to think it's okay.

4 Q. When they do tell, whoever they may run to to tell,
5 do they always give all the details of the abuse?

6 A. No. Disclosure is a process. When children disclose
7 which means to tell about something that happened to them,
8 it's not an event. It's not typically where they run and
9 grab someone and say, "Hey. I need to tell you this is
10 what happened to me."

11 It's more of a process, and what I mean by that is
12 children will tell someone that they trust a little bit of
13 information and then depending on how that person responds
14 they may or may not come back and tell more information.
15 often times through that process, especially when children
16 are small, the details can get a little hairy. The
17 details can get a little cloudy, and often times the story
18 doesn't always make sense to those of us who are grown ups
19 who are trying to process what they're telling us.

20 Q. Let's talk about some key terms that are common in
21 your field. What is delayed disclosure?

22 A. Delayed disclosure is the term that's been coined to
23 show that we don't always come out and tell something that
24 happens to us immediately. It's delayed which means post,
25 after what happened. Delayed can cover lots of time

1 spans. Some children may wait a couple of days. Some
2 children may wait a couple of weeks. Some a couple of
3 months. I've seen children in my practice that waited
4 several years to tell what happened to them.

5 Q. And what is partial disclosure or tentative
6 disclosure?

7 A. Partial disclosure is when a child comes and says
8 this happened and then they are watching to see that
9 person's response. And then they may come back and tell a
10 little bit more. Partial meaning part of the story.
11 Tentative meaning a little bit and maybe the details may
12 come back and tentatively change.

13 Q. Okay. About how many cases involving child sexual
14 abuse would you say you work? And I know that's going to
15 be tough, but could you give us a ball park?

16 A. I've been practicing for 13 years, and I've devoted
17 the majority of my practice to abuse and trauma. So I
18 would say a gross estimate, probably about 12 to 13
19 hundred children.

20 Q. Okay. Of those 12 or 13 hundred children how many of
21 those cases involved a situation where we had delayed or
22 partial disclosure?

23 A. I would say the vast majority of those. In my
24 practice I've seen almost every case have delayed
25 disclosure. If your asking me for a specific number,

1 obviously, I'm giving a ball bark, but I would say 95 to
2 96 percent of the children that I've treated have been in
3 the delayed disclosure.

4 Q. Now, how does the fact that the perpetrator, if he's
5 a family member or close friend of the children, how might
6 that affect how a child discloses?

7 A. Well, children naturally come into this world wanting
8 to bond with people. If they're lucky they have a very
9 healthy bond with their biological parents. Many children
10 are lucky enough to have bonds with aunts and uncles and
11 grandparents and some children are even so lucky to have
12 family members or extended people in their lives that feel
13 like family members.

14 So what happens is when a person that's been in that
15 type of a role in a child's life when that person does
16 something that's not okay to a child it leaves that child
17 with lots of questions. First of all, you know, why would
18 somebody do this to me who cares about me. Why would
19 somebody do this to me who spends a lot of time with me.

20 And often times when you have children who have been
21 abused by somebody that is very close with them the most
22 difficult part of that is getting that child to realize
23 that what happened was not okay. Because that child sees
24 this person that's been such a vital, positive part of
25 their life as why would they do something to me that

1 wasn't okay.

2 Q. Let's talk a little bit, Ms. Allen-Cook, if we could
3 about the age of a victim and how that might affect
4 things. If the abuse is chronic or ongoing as you
5 mentioned earlier how might the age of the victim affect
6 what sorts of things that victim actually discloses?

7 A. Well, all people, you know, have developmental
8 processes that we go through from birth until the time
9 that we pass away. And, you know, when children are
10 small, you know, infant to three or four they're trying to
11 make sense of the world around them. They're trying to
12 see who they can trust, who they can't trust.

13 Obviously, their recall and memory is not as good as
14 a child that's maybe 10 or 12. And when children are that
15 small it's often difficult for them to process that things
16 that are happening to them may not be okay.

17 Q. If a child is really young, a child who is abused is
18 really young, how might that affect the ability of that
19 child to recall certain details?

20 A. Well, memory is something that as we grow and develop
21 it gets better, obviously. And so when you're small your
22 memories are not always vivid. A really good example that
23 I like to use for families when I'm working with them is
24 let's suppose that we take a child to McDonalds today, and
25 that child is maybe four or five. And we let that child

1 order whatever they want to eat. Let's say they order
2 chicken nuggets and french fries.

3 And we go outside and we play in the Play Place, and
4 that child falls down, busts their head open and had to go
5 to the hospital for some type of treatment, stitches,
6 whatever. And let's fast forward say six months, nine
7 months. And we sit that child down and we say, "Do you
8 remember when we took you to McDonalds?" And they say,
9 "Yeah." And we say, "Do you remember what you ordered for
10 lunch? No. Do you remember what happened to you? Yeah,
11 I fell down and I had to get stitches in my head."

12 And so that child young may not remember the small
13 detail of what they ate, but what they will remember is
14 the big detail because it was traumatic. They had to go
15 and they had to have medical attention, stitches,
16 whatever. And so children -- all people are that way. We
17 remember the part of the story that has the biggest impact
18 on us usually.

19 Q. And following that train of thought is it unusual for
20 a child, a very young child who has been a victim of a sex
21 crime, to not be able to remember chronological things?

22 A. No. Children that are young have a really difficult
23 time understanding the concept of time. I mean if you ask
24 a four or five year old child, you know, when did we go to
25 Disney World they might say yesterday when really you went

1 a year ago. Or if you ask a small child, maybe four or
2 five years-old, you know, when did you get that doll that
3 you have? They may say, "Oh, I got it, you know, when I
4 was two" when really they got it just a couple of weeks
5 ago.

6 The concept of time is something that we as people
7 start to understand and develop the older we get.

8 Q. Now, why might the same child when asked one time
9 what happened to you gives you one answer, and then when
10 you ask them the same question a few minutes later give
11 you a different answer as to the details?

12 MR. HOBBS: Your Honor, I would object. This is the
13 veracity evidence that I was concerned about.

14 THE COURT: Overruled.

15 THE WITNESS: I'm sorry. Could you ask that again?

16 BY MR. DANIEL:

17 Q. Certainly. Why might a child if asked about an event
18 why might a child give you one answer with certain details
19 one time, and if you ask that same child the same
20 questions a few minutes later give you different details,
21 a different answer?

22 A. Well, I think once again we have to go back to the
23 development of that child and how old that child may be.
24 Children that are young when they are explaining things to
25 us, even things that may not be difficult for them, they

1 may not recall all of the details at that one time. It
2 may be that they give us parts of that and then they give
3 us a few more parts later. Or they may come back and
4 change some of those parts. Some of that is just because
5 that's the way our brain remembers things.

6 When children go through traumatic experiences they
7 may tell us just a little bit, and then they may come back
8 and tell us just a little bit more and that little bit
9 more may not exactly fit into the mold of the beginning
10 part that they explained.

11 Q. You mentioned traumatic events. How might a
12 traumatic event such as the sudden death of a parent
13 affect a child's ability to accurately disclose sex abuse?

14 A. I think those of us in my field would say that there
15 is nothing more difficult for a child to experience than
16 to lose a mommy. Traumatic grief is what we call that
17 because it happens to you rapidly and traumatically.
18 Children are not able to process the concept of grief.

19 When you already have things going on in your life
20 when you're little and now your mommy is not there usually
21 the symptoms are exasperated. This child may be left not
22 really understanding where they fit. Most children have
23 the benefit of being raised, you know, by their mommy when
24 they're young, and when you have that benefit and that
25 person is just all of a sudden gone it's hard to make

1 sense of anything. It's hard to make sense of your world.
2 It's hard to make sense of current things, past things
3 because you just don't expect to lose your mommy'.

4 Q. Let's talk a little bit about situations involving
5 multiple children. If two or three children are in a room
6 with the perpetrator at the same time and some abuse
7 happens in the room why might those children when they
8 leave and they're asked about it later why might their
9 stories be different about what happened?

10 MR. HOBBS: Your Honor, objection. I believe this
11 goes to veracity of the statement.

12 THE COURT: Overruled.

13 THE WITNESS: We all experience things differently.
14 Even sometimes the same thing. And so when children, even
15 if their in a group, are experiencing something that
16 happens what that child brings to the table is their past
17 life experiences. They're bringing their own development,
18 any possible developmental delays, anything of that
19 nature. And they're looking at things through their own
20 set of eyes.

21 Even siblings that are raised in the same family unit
22 still look at things through a different set of eyes
23 because we're all individuals. And we all have different
24 life experiences that bring us where we are at three,
25 five, ten, 50.

1 Q. Are you familiar with a forensic interview?

2 A. I am.

3 Q. Are you actually certified to do forensic interviews?

4 A. I am.

5 Q. Let me ask you this question. Why might a child
6 during his or her forensic interview not disclose any
7 abuse, but later when asked the same questions say, "Well,
8 yeah, this is what happened" and be able to give details
9 at that time?

10 A. Forensic interview are often a very difficult thing
11 for children. People who do those attempt to make them as
12 sterile as they can meaning that the room typically
13 doesn't have anything in it except a dry erase board, some
14 markers and a couple of chairs. And I think you have to
15 stop and think about, once again, the development of a
16 child.

17 A child that is small is brought to a place where
18 they're going to go in and tell their story. They meet
19 the forensic interviewer usually for about two minutes
20 prior to going into the room with this person. And now
21 this person is asking them all kinds of questions, showing
22 them pictures of body parts which children are often very
23 embarrassed by. And, you know, sometimes children go and
24 they're having a bad day and they don't want to be there
25 and they don't want to have to go through this process.

1 And often times when children are interviewed there
2 are other people there. The child, you know, knows that
3 law enforcement may see that video because the interviewer
4 is supposed to explain all that. The child is told that
5 the interview is being videotaped. And so what happens in
6 a small child's minds is let's just suppose that they've
7 been abused by someone who they love and possibly they've
8 been told they better not tell what happened.

9 Well, now, you have this little child who is sitting
10 in a chair looking at a forensic interviewer. That
11 interviewer is saying, "This is being videotaped. I may
12 have to show this to the police" or you know, "I'm
13 videotaping this so people can know what we say today."

14 Well, you know if you're a small child and you're
15 sitting there hearing that and you've been told that
16 you're never to tell. If you tell you're going to get in
17 trouble. If you tell somebody is going to go to jail.
18 All the awful things that people tell children. Often
19 times children click that in their head, and they say,
20 "There is no way I'm telling anything today," and they
21 usually do anything that can just to get out of that room.

22 And so often times what we have to say to parents is
23 "Your child didn't tell us anything today, but that
24 doesn't rule out that something happened and this is what
25 we want you to look for and this is the way you would come

1 back and, you know, contact law enforcement or contact,
2 you know, the person that's done the forensic. But it's
3 not atypical for children not to disclose everything or
4 sometimes anything when they go to forensics.

5 Q. Thank you, Miss Allen-Cook. Please answer any
6 question Mr. Hobbs may have?

7 MR. HOBBS: May it please the Court?

8 CROSS-EXAMINATION

9 BY MR. HOBBS:

10 Q. Miss Allen-Cook, you spoke about delayed disclosure
11 and stated that you believe delayed disclosure was present
12 in 95 to 96 percent of your cases?

13 A. Yes, sir. As a rough estimate.

14 Q. As a rough estimate?

15 A. Yes, sir.

16 Q. Would you call it delayed disclosure if the children
17 immediately went and told their parents after the alleged
18 abuse?

19 A. Well, I would call -- depending on what they said.
20 Sometimes, as I said, disclosure is a process. Sometimes
21 children may go and say just a little bit and then they
22 may come back as I said a couple weeks, a couple of
23 months, sometimes a couple of years. That's not atypical.
24 The other part of delayed disclosure is some children
25 don't tell anything and they wait for quite a while.

1 Q. Right. But if the child immediately went to their
2 parents and disclosed the alleged abuse that would not be
3 delayed disclosure, correct?

4 A. I guess I would have to know what that child
5 disclosed. If that child disclosed a little bit or if
6 that child didn't disclose anything at all regarding
7 detail.

8 Q. If the child disclosed the alleged abuse in detail
9 ---

10 A. Okay.

11 Q. --- immediately after it happened would that be
12 delayed disclosure?

13 A. No.

14 Q. Okay. And how often does that happen in your
15 opinion?

16 A. In my practice I've not seen that happen very often
17 at all?

18 Q. Maybe 4 percent of the cases?

19 A. As a rough estimate I'd say 4 or 5 percent.

20 Q. And I believe you, when we qualified you as an
21 expert, you cited multiple sources of education and
22 continuing education as well as acclains in your field.
23 Are you familiar with the theory of infantile amnesia?

24 A. I'm not. I'm sorry. No, sir.

25 Q. You never heard of infantile amnesia?

1 A. No, sir.

2 Q. Would you say that a child's memory between the ages
3 of two and four are very different than a memory at the
4 age of eight?

5 A. Yes.

6 Q. And why is that?

7 A. Well, as I said, you know, as all people grow and
8 develop our memory also grows and develops. And we start
9 to have different parts of our brain that work a little
10 better than they did when we were two, three or four.

11 Q. All right. So an eight year-old or a seven
12 year-old's perception of time is much better than a
13 younger child's?

14 A. Typically, as long as we're not dealing with any type
15 of delays, meaning developmental delays. The other thing
16 I think I have to qualify here is when children go through
17 trauma, trauma also affects our memory. And so if you go
18 through something when you're really small your memory may
19 be affected when your five, six, seven, eight.

20 Q. If a child is presented a story enough times could
21 that affect their perception of an event?

22 A. Are you meaning if someone has explained the story to
23 them?

24 Q. Or if someone has presented a story to them? If
25 they're told it enough and it's not true might it affect

1 their perception of the alleged event?

2 A. Yes.

3 Q. Yes. And why is that?

4 A. Well, I mean when children are small they often
5 believe what they're told. And so if they're explained
6 and told something over and over, especially by someone
7 that they love or who is in authority over them,
8 definitely could affect what they say.

9 Q. So if someone -- a child is told that something
10 happened enough they may very well believe that it
11 actually happened?

12 A. They could.

13 Q. Okay. You said that a child will bring their past
14 life experiences to the table when they're interpreting
15 perceived events; is that correct?

16 A. Yes, sir.

17 Q. Okay. And if a child had been sexually abused in
18 their past might it affect their ability to perceive and
19 recount an event?

20 A. It could.

21 Q. And you also seemed to write off inconsistencies and
22 non-sensible statements of the children saying that
23 they're young and sometimes they don't perceive the world
24 as adults do; is that correct?

25 A. Correct.

1 Q. However, if a child denies allegations of sexual
2 abuse couldn't it very likely be that the child was not
3 sexually abused?

4 A. It could. There could also be other explanations,
5 but it could.

6 Q. And if the story doesn't make sense might it be
7 because the story is made up?

8 A. Possibly, but there could also be other explanations.

9 Q. And as far as this case goes have you had an
10 opportunity to review the facts of this case?

11 A. I've not seen any documentation in this case.

12 Q. Thank you. Have you had an opportunity to speak to
13 any of the victims in this case?

14 A. No, sir.

15 Q. Okay. Have you identified any other sources of
16 sexual abuse in this case?

17 A. I'm sorry. I don't understand the question.

18 Q. Other than the ones alleged here in the trial today
19 have you had an opportunity to identified any other
20 sources of sexual abuse for these victims?

21 A. No, sir.

22 Q. Thank you.

23 MR. HOBBS: No further questions, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. DANIEL:

1 Q. Ms. Allen-Cook, you were just asked a couple
2 different times by Mr. Hobbs is it possible that the child
3 could make something up if they were told a story or
4 something like that, and you said, "There could be other
5 explanations," remember that?

6 A. Yes.

7 Q. What are those other explanations? What are
8 possibilities?

9 A. Well, I mean, the classic is when children will say
10 it didn't happen to me. It happened to my best friend.
11 And you say, "Well, what happened to your best friend,"
12 and the child begins to describe what happened to their
13 best friend when really they're telling you what happened
14 to them.

15 Often it's easier for people of all ages to explain
16 something that happened to somebody else rather than to
17 explain something that happened to themselves.

18 Q. Mr. Hobbs also asked you about delayed disclosure and
19 if the child goes and tells a parent but then doesn't say
20 anything at the forensic interview. Talk about why that
21 might happen. Why might a child eventually go to a parent
22 and say, "I've been abused by whoever," then have a
23 forensic and not disclose?

24 MR. HOBBS: Asked and answered, Your Honor. He's
25 already asked this question in his previous direct

1 examination.

2 MR. DANIEL: But I'm allowed to come back if Mr.
3 Hobbs talks about it in cross.

4 THE COURT: Proceed.

5 THE WITNESS: You're going to have to ask that again.
6 I'm sorry.

7 BY MR. DANIEL:

8 Q. Since Mr. Hobbs brought it up why might a child
9 eventually go to a parent and say, "I was abused" and then
10 they go through the police and go to a forensic interview
11 and they don't disclose then. But then later they come
12 back and they tell people what happened to them? Why
13 might that happen?

14 A. Well, I think I've kind of explained that. Children
15 have a much easier time talking about things with their
16 mommy or their daddy or their grandmother or somebody that
17 has a relationship with them. Hopefully, we have
18 people -- children who have people in their lives like
19 that.

20 It's much easier to explain that to somebody that's
21 already accepted you and already loves you and takes care
22 of you. When you go to a forensic interview this is a
23 stranger. This is somebody that you don't know, and I
24 think we have to keep in mind that when children are
25 sexually abused it's pretty typical that the person that

1 has been abusing them has told them you best not tell.

2 If you tell I'm going to kill your dog. If you tell
3 I'm going it kill you mom. If you tell you're going to
4 get beat. If you tell you're not going to have anywhere
5 to live. I mean there are all these horrible things that
6 people tell children to keep their mouths closed. And so
7 when you go into a situation with a forensic interviewer,
8 and that person tells you who they are, what their job is,
9 that the interview is being recorded no matter how little
10 you are you start to think I'm not suppose to be doing
11 this because this is what's going to happen to me if I
12 tell.

13 Q. One more question. Mr. Hobbs mentioned that because
14 of the statistics you gave, I know they were ball park,
15 but only 4 percent of your cases involve a child making an
16 immediate disclosure to their parents? In other words,
17 only 4 percent of your cases was there not delayed
18 disclosure.

19 But if it's happened more than once, if the abuse has
20 happened more than once, and then the child tells the
21 parent immediately following the last time they were
22 abused -- so let me be clear. If a child is abused ten
23 times by this same person, and they don't tell the parent
24 until the tenth time then is that considered delayed
25 disclosure?

1 A. Well, it can be considered delayed disclosure, but I
2 think what you have to keep in mind is when you're looking
3 at a child whose been chronically sexually abused -- and
4 what that means is didn't happen just one time. It
5 happened over and over and over again.

6 We also have to look at time and develop. You know
7 when the first occurrence happened the child could have
8 been a certain age, and the next occurrence the child
9 could have been a different age. And when children are
10 chronically abused what they learn is, number one, this
11 must be okay. Number two, this must be the way that it's
12 always going to be.

13 And the most important thing is if their chronically
14 abused by somebody that they have a relationship with,
15 somebody that they care about, somebody that they trust.
16 What they learn is this can't be bad. This can't be not
17 okay because why would this person do something to me that
18 wasn't okay.

19 And so when we're talking disclosure, when we're
20 talking about delay or they're tentative or all the big
21 words we like to use we have to bring it back to when
22 children go through something over and over and over again
23 their sense of that begins to change because they begin to
24 think that's the way it's supposed to be.

25 So it wouldn't be atypical for them not to go and

1 tell. It wouldn't be atypical for them to just think that
2 this is what is supposed to keep happening.

3 Q. Thank you, Miss Allen-Cook.

4 MR. HOBBS: Briefly, Your Honor.

5 THE COURT: Yes, sir.

6 RECROSS-EXAMINATION

7 BY MR. HOBBS:

8 Q. It would be chronic abuse if it only happened one
9 time, correct?

10 A. It would not be chronic abuse.

11 Q. It would not be?

12 A. Correct.

13 Q. Okay. And if it didn't happen ten times as the
14 Solicitor presented to you, and it only happened on time
15 and they immediately went and told their parents. That
16 would not be delayed disclosure, would it?

17 A. No.

18 MR. HOBBS: Thank you, Your Honor.

19 BY MR. HOBBS:

20 Q. Thank you, Miss Cook.

21 THE COURT: You may step down. Thank you.

22 THE WITNESS: Yes, sir.

23 COLLOQUY

24 MR. DANIEL: Beg the Court's indulgence. Your Honor,
25 at this time the State respectfully rests its case.

1 MR. HOBBS: Your Honor, I believe we have some
2 matters of law to take out up outside the presence of the
3 jury.

4 THE COURT: Ladies and gentlemen, if you will step
5 back. Now time for me to take up matters of law.

6 (WHEREUPON, the jury panel was excused from the
7 courtroom at 10:50 a.m.)

8 MR. DANIEL: Your Honor, at this time the State is
9 going to withdraw indictments 2013-GS-17-710, engaging in
10 child under 18 for sexual performance, and Indictment
11 2013-GS-17-328; that is a criminal sexual conduct with a
12 minor in the first degree. The victim there is **Minor 2**
13 Murphy. As to those two we do not believe there is enough
14 evidence there to support these indictments so we are
15 withdrawing these for consideration and we will go forward
16 on the remaining five.

17 THE COURT: All right.

18 MR. HOBBS: Thank you, Your Honor. I would first ask
19 the Court for a directed verdict as to Indictment
20 2013-GS-17-0290, the indictment for criminal sexual
21 conduct with a minor in the first degree as it applies to
22 Mr. **Minor 3**.

23 Your Honor, we had Mr. Sampson on the stand and he
24 admitted and acknowledged having told a forensic
25 interviewer that Mr. Sammy had not touched him. He

1 acknowledged that he told a forensic interviewer that
2 Mr. Sammy had not touched his butt. And now, Your Honor,
3 the State wishes to bring charges of sexual battery that I
4 believe aren't substantiated by evidence in this case.
5 Your Honor, secondly ---

6 MR. DANIEL: Can I be heard on that one?

7 THE COURT: Sure.

8 MR. DANIEL: Judge, there is direct evidence in this
9 case that Minor 3 testified that Mr. Sammy -- I think his
10 quote was, "Mr. Sammy put his turtle in my butt and it
11 hurt." That's totally sufficient for a C.S.C. with minor
12 in the first degree. And nothing else needs to be said on
13 that charge.

14 THE COURT: All right. That one is denied. We'll
15 clean it up as we go.

16 MR. HOBBS: Thank you, Your Honor. As to Indictment
17 Number 2013-GS-17-291; that is obscene dissemination
18 appearing and promoting obscenity as being unlawful. Your
19 Honor, that one deals with Minor 3 [REDACTED]. Again, Your
20 Honor, to adjudge material as obscene under this section
21 the Court has to make several considerations. I would
22 reference Section 16-15-305.

23 Your Honor, it would be unlawful for him to have
24 provided or delivered any obscene writing, record or
25 digital, electronic file or other representation or

1 description of the obscene.

2 Your Honor, under Subsection B of this statute it
3 describes how we look for the material to be obscene. To
4 the average person applying contemporary community
5 standards the material depicts or describes patently
6 offensive ways sexual conduct specifically described and
7 defined by Subsection C of this section.

8 The average person applying contemporary community
9 standards related to the depiction or description of the
10 sexual conduct and find that the material taken as a whole
11 appeals to the prurient interest in sex to the reasonable
12 person. The material taken as a whole lacks serious
13 literary, artistic, political or scientific value. And
14 the material is not otherwise protected or privileged
15 under the Constitution of the United States.

16 Your Honor, in this case we have not been presented
17 any obscene material to adjudge and compare to criminal --
18 I'm sorry, to community standards. Your Honor, instead
19 what we have is **Minor 3** said he was simply shown a magazine
20 that depicted nude people in it.

21 Your Honor, without some subject matter to adjudge as
22 obscene I would present to the Court that the State has
23 failed to meet burden of obscene material as defined in
24 16-15-305(B).

25 MR. DANIEL: Judge, there is nothing in the statute

1 that says the State has to bring in and show the Court or
2 the jury the pornography used to back up this charge.

3 **Minor 3** testified that he saw from Mr. Sammy, he says, "Boys
4 and girls with clothes off." A magazines with pictures of
5 boys and girls with their clothes off. That's enough.

6 MR. HOBBS: Your Honor, I completely disagree with
7 that position. We specifically have to look to the
8 material as being obscene as defined in this subsection.
9 Nudity in and of itself does not constitute obscene
10 material. Further, Your Honor, Subsection C of the
11 statute defines what sexual conduct means: Vaginal, anal
12 or oral intercourse, whether actual or simulated. Normal
13 or perverted, whether being between humans, animals or a
14 combination thereof.

15 Next section: Masturbation, excretory functions, or
16 lewd exhibition, actual or simulated of the genitals,
17 pubic hair, anus, vulva, female breast nipples and
18 including male and female genitalia in a state of sexual
19 stimulation or arousal or covered male genitals in an
20 discernibly prurient state.

21 Your Honor, we simply do not have sexual conduct in
22 this case. We have nudity. Nudity is protected, Your
23 Honor, but obscenity is not protected. In this case we
24 have no material to adjudge and decide if it's obscene.
25 We simply have a description of nude people depicted in a

1 magazine which may be material that is protected under the
2 United States Constitution.

3 Your Honor, it might also not rise to obscenity.
4 Nudity does not equal obscenity.

5 MR. DANIEL: Judge, Section 16-15-305, Subsection D,
6 reads as follows: "Obscenity must be judged with reference
7 to ordinary adults except that it must be judged with
8 reference to children or other especially susceptible
9 audiences or clearly defined deviate sexual groups. If it
10 appears from the character of the material or the
11 circumstances of its dissemination to be especially for or
12 directed to children or such audiences or groups."

13 MR. HOBBS: Your Honor, in a direct response to that,
14 to directly quote that, "Obscenity must be judged in the
15 character and the material and the circumstances must be
16 judged." We don't have the material. We don't have the
17 children identifying the material to be similar to what
18 they saw. Instead we have a blanket accusation as to
19 being shown nudity.

20 Your Honor, we cannot adjudge obscenity without some
21 sort of obscene act or sexual conduct or the presentation
22 of this material for the Court to review.

23 MR. DANIEL: The last thing I'm going say. If the
24 State had to present the pieces of obscene material in
25 every case in order to get past a directed verdict motion

1 on disseminating obscene material the State would never
2 win because how many times is a perpetrator going to give
3 a five year old a magazine and say, "Hey, here keep it,"
4 and then that kid's going to take it to his mommy? That
5 just doesn't happen. That's not the standard. The
6 standard is was it obscene to children. There is naked
7 people. There is sufficient testimony, and this motion
8 should be denied.

9 MR. HOBBS: Your Honor, I would agree. If I may be
10 heard briefly on one point to rebut what he said. I would
11 agree that the obscene material does not need to be
12 present here in the courtroom. However, the obscenity has
13 to be in the record. The sexual conduct has to be in the
14 record. And, Your Honor, we don't have any testimony as
15 to the obscene nature of it nor the sexual conduct which
16 is a required element of the statute. It is specifically
17 stated in 16-15-305(B)(1).

18 THE COURT: I'm going to deny the motion at this
19 time, but I may revisit that later.

20 MR. HOBBS: Thank you, Your Honor. Your Honor, in
21 the, I guess, the effort of judicial economy and saving
22 the Court's time, I would present the same argument as to
23 **Minor 2** and **Minor 1** in this case. Again, we don't have
24 these obscene sexual conducts on the record. We only have
25 statements regarding the nudity of the people in this

1 magazine. I do believe they should be adjudged one case
2 by one case by one case.

3 But, Your Honor, I have seen no evidence of obscenity
4 or sexual conduct contained in the testimony regarding the
5 nudity that they allegedly saw in this magazine. So I
6 would present the same arguments that I presented as to
7 **Minor 3** with the fact that **Minor 1** and **Minor 2** both did not
8 state the obscene conduct that was displayed.

9 Your Honor, and those indictments are 2013-GS-17-293,
10 and that is as to **Minor 1**. And then we have 2013-GS-17-294
11 as to **Minor 2**. Your Honor, again I would present that
12 neither of these children, and even looking at them one at
13 a time, that neither of these children described the
14 sexual conduct or the obscenity. They simply said they
15 were nude.

16 MR. DANIEL: That's just not accurate. That's just
17 not what the testimony was. One of them said gay sex.
18 **Minor 1** and **Minor 2** which are the indictments I am talking
19 about now, actually gave more detail about the
20 pornographic material than **Minor 3** did. And the Court just
21 denied a motion for **Minor 3**. Well, there is more evidence in
22 the record coming from the other two on those two charges
23 than even there was from **Minor 3**.

24 They talk about gay sex. They talked about boys and
25 boys. They talked about boys and girls with their clothes

1 off. That's totally sufficient.,

2 MR. HOBBS: Your Honor, and I do believe we should
3 take these individually. [Minor 1] was specific with,
4 looking back at my notes, [Minor 1] only says that there were
5 nude boys and girls in this magazine. Looking back, I do
6 think that [Minor 1] makes a statement as to pics of gay
7 boys. So that would be a greater description than [Minor 1]
8 gave. [Minor 1] said nudity, male and female. [Minor 2] did
9 describe, to concede at least a description to the State's
10 point, pics of gay boys. But that's it.

11 THE COURT: Wasn't there some testimony about boys
12 and girls humping?

13 MR. DANIEL: There was. Saw magazines of boys and
14 girls humping. We were just talking about that.

15 THE COURT: All right. Those motions are denied.

16 MR. DANIEL: Thank you, Judge.

17 MR. HOBBS: Your Honor, I would ask the Court to
18 consider those individually, and that would be my request
19 to the Court. Your Honor, as to a Indictment Number ---

20 MR. DANIEL: Judge, I'm sorry, I don't mean to
21 interrupt, but can we just go back to clarify for the
22 record that [Minor 2] described gay sex. [Minor 1] described
23 boys and girls humping. And D.J described naked boys and
24 girls. Just to clear that up for the record of those
25 being the three indictments, Mr. Hobbs.

1 MR. HOBBS: Your Honor, I adamantly disagree with
2 their interpretation of [Minor 1] statements. [Minor 1] they
3 never elicited any testimony regarding what these people
4 were doing or if they were involved in any sort or sexual
5 conduct. I assure the Court that if the record was pulled
6 the Court would see that the only description was nudity
7 of males and females.

8 THE COURT: Well, the record will speak for that.
9 Right now I'm going to overrule the objection. However,
10 on that 291 I may come back and revisit that later on.

11 MR. DANIEL: Which one is 291?

12 THE COURT: 291 is [Minor 3]

13 MR. DANIEL: All right. Judge, we would just
14 reiterate our argument as to all three of those. And it's
15 my understanding, to speak of the record, you have at this
16 time denied that motion on all three indictments because
17 of the facts ---

18 THE COURT: Everything is denied right now, but it's
19 according to what the jury does later on I can always step
20 in.

21 MR. DANIEL: Certainly.

22 THE COURT: And I've got all kinds of prerogatives.

23 MR. DANIEL: Certainly. Thank you.

24 MR. HOBBS: Thank you, Your Honor. My last motion
25 for directed verdict would be in regards to

1 2013-GS-17-293. My apologies. I was incorrect.

2 2013-GS-17-292, criminal sexual conduct in the first
3 degree as regards to **Minor I**. And again, Your Honor, we
4 have **Minor I** after stating multiple times on the stand and
5 under oath that nothing occurred and that he was not
6 touched and eventually alleging some sort of sexual
7 battery.

8 However, Your Honor, again this goes in direct
9 contradiction to statements made to the forensic
10 interviewer. The forensic interviewer got on the stand
11 and said that he had never disclosed any sexual abuse
12 allegations to her.

13 THE COURT: Well, that is for the jury to decide from
14 the evidence. I'm not going to grant that and it's
15 denied.

16 MR. HOBBS: Thank you. Your Honor, I would at this
17 point as my final motion ask the Court -- and renew my
18 motion for a mistrial in regards to the Lyle evidence
19 presented in this case. I know that we have gone over
20 this and over this, however, I feel that given the
21 evolution of the evidence in this case and the fact that
22 we ended up with one of these consolidated cases having
23 absolutely no similarity to the Lyle evidence that came
24 in. The Lyle evidence in the 404(B) evidence was far more
25 prejudicial than it was probative and it also failed the

1 Wallace factors in consideration of being highly similar
2 to the accusations in the case.

3 Your Honor, I would also ask the Court at this time
4 for a mistrial in regards to the admission of this expert
5 witness. I do believe that her testimony spoke to the
6 veracity of these child witnesses and only spoke to
7 bolster what they were saying and their inconsistencies.

8 MR. DANIEL: The witness never testified as to the
9 veracity of these children. She never -- she -- in fact,
10 her testimony was she never met the children. She never
11 talked to them. Saw them maybe this morning running
12 around, but never spoke to them. In order for her to
13 testify as to the veracity of these children, which the
14 case law strictly prohibits, she would have at least had
15 to have known them and she did not testify to that.

16 MR. HOBBS: Your Honor, I would also renew that
17 motion for mistrial on the basis of lack of notice as to
18 the expert and the prejudice to my client and not being
19 able to bring in any experts to rebut her testimony. That
20 lack of notice was highly prejudicial to my client and
21 made us unable to prepare a defense in relationship to her
22 testimony.

23 MR. DANIEL: Judge, there is no rule that says that
24 I've got to tell the Defense who any of my witnesses are
25 before trial must less an expert who doesn't write a

1 report. She didn't write the report. She didn't meet
2 with the kids. Mr. Hobbs has yet to site any rule that
3 the State has violated in not disclosing who our witnesses
4 are.

5 And I didn't address the issue of Lyle because the
6 Court's already ruled on it, but I would just say for the
7 record that the Court analyzed the factors that Wallace
8 gives. The Court made a ruling on the fact that the
9 similarities outweigh the dissimilarities, and the Court's
10 ruling should speak for itself and the Lyle evidence is
11 proper.

12 THE COURT: Those motions are denied. I stick by
13 what I previously did on the Lyle.

14 MR. DANIEL: Thank you, Judge.

15 MR. HOBBS: Your Honor, that is all the motions I
16 have at this time. If you would like to bring the jury in
17 I can rest my case. I don't intend to put on case in
18 chief, and I will reserve my right to the final closing in
19 this case.

20 THE COURT: All right. You have any objection if I
21 speak with your client about his Fifth Amendment rights?

22 MR. HOBBS: Not at all, Your Honor.

23 THE COURT: His right to testify. You have gone over
24 that with him, though, haven't you, Mr. Hobbs?

25 MR. HOBBS: Yes, Your Honor, I have.

1 THE COURT: Mr. Scarborough, I need to speak with you
2 about your Fifth Amendment rights under the United States
3 Constitution and a similar part of a provision of State
4 Constitution of South Carolina. That's concerning your
5 right to testify and you have to make that decision on
6 your own. It has to be freely, voluntarily and
7 intelligently entered into by you.

8 I understand from counsel that y'all have conferred
9 over your right to testify as well as your right to remain
10 silent, and in effect, you have elected not to testify; is
11 that correct?

12 MR. SCARBOROUGH: Yes sir.

13 THE COURT: You understand that if you do testify you
14 can be treated as any other witness and can be impeached
15 as any other witness in a criminal case?

16 MR. SCARBOROUGH: Yes, sir.

17 THE COURT: And you understand that if you don't
18 testify it cannot be used against you in anyway and I will
19 even instruct the jury of your constitutional right to
20 elect to not testify or to remain silent?

21 MR. SCARBOROUGH: Yes, sir.

22 THE COURT: And you have reached that decision to
23 not to testify, elect not to testify; is that correct?

24 MR. SCARBOROUGH: Yes, sir.

25 THE COURT: Is that decision been made freely and

1 voluntarily and intelligently by you and you alone?

2 MR. SCARBOROUGH: By me.

3 THE COURT: By you. All right. Do you have any
4 questions
5 concerning those rights?

6 MR. SCARBOROUGH: No, sir.

7 THE COURT: Before you make a final decision on that
8 would you like to speak with your attorney one last time?

9 MR. SCARBOROUGH: I can.

10 MR. HOBBS: Your Honor, if we may have a few minutes
11 to discuss this. I would like to reiterate the reasons
12 why and also his rights.

13 THE COURT: All right.

14 (WHEREUPON, a short break was taken.)

15 MR. HOBBS: Nothing further, Your Honor. I have had
16 a chance to confer with my client, and he will stand by
17 his position and not testify.

18 THE COURT: Is that correct, Mr. Scarborough?

19 MR. SCARBOROUGH: Yes sir.

20 THE COURT: All right. Thank you.

21 (WHEREUPON, the jury panel enters the courtroom at
22 11:38 a.m.)

23 THE COURT: Mr. Hobbs.

24 MR. HOBBS: Thank you, Your Honor, at this point in
25 the case the State would rest their case. I'm sorry. The

1 Defendant would rest their case, and also, Your Honor,
2 assert their right to final closing in this case. Your
3 Honor, if you would like to handle it I would now restate
4 all of my prior objections presented in regards to my
5 directed verdict argument as well as arguments in regards
6 to a mistrial.

7 THE COURT: So noted, and I take the same position
8 and also the same reservation I've already stated on the
9 record.

10 MR. HOBBS: Thank you, Your Honor.

11 THE COURT: We are ready to move on to the closing
12 arguments.

13 CLOSING STATEMENT BY MR. DANIELS

14 MR. DANIEL: Thank you, Your Honor. May it please
15 the Court, Mr. Hobbs, ladies and gentlemen, good morning.
16 At the beginning of this trial Ms. Hall defined the word
17 'neighbor'. She talked about the good memories that a lot
18 of us enjoyed having spent time with our neighbors. Well,
19 I am going to define another word for you, and that word
20 is 'predator'.

21 The word predator is defined as one who preys,
22 destroys or devourers. For **Minor 1** **Minor 2** and **Minor 3** Sammy
23 Scarborough wasn't just a neighbor. He was a predator.
24 He preyed on these little children. He destroyed their
25 chance at a normal life, and he devoured their innocence.

1 The evidence, the true, tough, raw evidence that you
2 heard from that witness stand screamed that Sammy
3 Scarborough is a predator. But I can sit here all day
4 long and tell you that, but it doesn't matter what I
5 think. It matters what you think. When you strip away
6 all the rest, when you strip away all the police, when you
7 strip away the investigation, when you strip away the
8 parents and the guardians, when you strip away the
9 forensic interviewer and the expert you are left with one
10 thing. Ultimately, this case comes down to do you believe
11 the children. Do you believe what they are telling you or
12 do you not?

13 Now, the Defense in its opening statement to you said
14 several things that I want to address before we get into
15 the facts of this case. The Defense said and I quote,
16 "The State would have you, the jury, check your common
17 sense at the door and focus instead on emotion." those are
18 the words Mr. Hobbs used. Ladies and Gentlemen, nothing
19 could be further from the truth. We want you to focus on
20 common sense. Common sense is all you need. Common sense
21 is what tells you that a five year old, a seven year old,
22 a seven year old and an eight year old don't make this
23 kind of stuff up. Common sense tells you that.

24 Mr. Hobbs also said and I quote, "We're not here to
25 tell you these kids are liars." Ladies and gentlemen,

1 that's exactly what he's saying because if they are not
2 liars Sammy Scarborough is guilty. So don't let him fool
3 you with that. Absolutely, he wants you to think these
4 kids are liars. He also said children are victims. These
5 children in this case are victims quote, "Not at the hands
6 of this defendant but at the hands of a poor investigation
7 and a malicious prosecution." That's what he said.

8 . Ladies and gentlemen, the number one rule of defense
9 lawyers in criminal cases is to blame the police. When
10 they don't have a good argument they are going to blame
11 the police and then they might also blame the victims.
12 But it's kind of hard to blame little boys when they are
13 the victims, so let's blame their parents. Typical
14 defense lawyer. We expected it, and we knew it was
15 coming.

16 Mr. Hobbs called this an incomplete investigation.
17 Let's talk about the investigation. This is not at a
18 perfect case for us. It's not a perfect case by the
19 investigation. We never have a perfect case. Law
20 enforcement makes mistakes. I make mistakes. It happens
21 all the time. Every day in every case. There was no
22 search warrant done of the Defendant's home. Should there
23 have been? Probably. It would have been nice.

24 But let's talk about what may have resulted from that
25 search warrant. Does a married man leave gay pornography

1 out in his house for his wife to find? Would we have had
2 found that anyway? The barn. There was testimony that
3 some of this abuse happened in the barn. The barn's not
4 there anymore. We don't know what happened to it. We
5 don't -- obviously, it was taken down. We don't know who
6 did it. We don't know why it happened, but it was not
7 there for us to search even if we wanted to. Should we
8 have probably issued a search warrant, yeah. We didn't,
9 but would that change what those kids said? Absolutely
10 not.

11 Mr. Hobbs said, "Notice the lack of forensic and
12 medical evidence in this case." Ladies and gentlemen,
13 these types of cases don't lend themselves to that kind of
14 evidence. This isn't a case where somebody bust in a door
15 or touches the door knob or touches something on the door
16 and goes in and robs the house and you find fingerprints.
17 It's not that kind of case. It's not like what you see on
18 television.

19 Mr. Hobbs says, "Valerie Williams, who works for the
20 Attorney General's office, didn't write a report when she
21 talked to the kids." As a practice, she doesn't write
22 reports. Why? Because she works for the prosecutor. She
23 doesn't work for law enforcement. But the fact that she
24 didn't write a report doesn't mean that Sammy
25 Scarborough's not guilty.

1 Mr. Hobbs said the forensic interviewer knew, Sally
2 Williamson, she knew that this defendant had been accused
3 in the past of doing similar things. Sally Williamson,
4 who testified that she has done 850 total forensic
5 interviews in her career. 300 in the last year. She
6 testified that it's normal for us to gather that kind of
7 information before we do forensic interviews. And she
8 said, "But we don't ever tell the children that kind of
9 stuff." And in this case she said and we didn't. "We
10 didn't tell the children that."

11 Let's talk about what the police did right. They
12 followed protocol when it comes to child abuse cases.
13 They did what they are supposed to do. They did what they
14 are trained to do in a sense that as soon as Investigator
15 Turner found out about these allegations he verified it
16 enough to say, "Okay, I'm going to stop you and we're
17 going to go let some experts ask you some questions
18 because we're not trained to do that." That's how it
19 works across the country. Not just in Dillon because we
20 can't handle it. That's how it works everywhere. The
21 police did that.

22 The forensic interviewer said, "They went to his
23 house. They went to Sammy Scarborough's house to serve
24 these warrants, try to find him." For months they tried
25 to find him. And they eventually tracked him down all the

1 way up in Virginia with the help of the U.S. Marshalls.

2 And then they attempted to get his side of the story.

3 The next thing the defense always tries to do is
4 blame the victims. But in this case the victims are
5 small. They won't look real good coming up here badgering
6 some little kids so let's blame the parents.

7 Mr. Hobbs amazingly got Natasha Funderburk on the
8 stand and talked. Asked her about when she had been
9 abused as a child when she was a teenager. I want to take
10 this moment on behalf of the criminal justice system to
11 apologize to Ms. Funderburk for having to come up here and
12 talk about that which has nothing do with what we're here
13 about. That is shameful that she had to get up here and
14 talk about that.

15 Continuing to blame the parents, Queena Murphy, the
16 mother of **Minor 2** and **Minor 1** heard from Investigator
17 Turner that Mr. Scarborough had been abused -- I mean --
18 I'm sorry. Mr. Scarborough had been accused before of
19 messing with little kids back in the past, and somehow
20 that's a problem.

21 Investigator Turner, his testimony was that he told
22 Queena Murphy that after Queena and her sons came forward
23 to the police. After. It had nothing to do with their
24 accusations. They didn't know that. Stefan or some other
25 boyfriend or cousin or somebody was mentioned.

1 When **Minor 2** got up on the stand in his
2 cross-examination **Minor 2** was asked, "Did Stefan ever touch
3 any of you?" His first answer was no. Then Mr. Hobbs
4 asked him again and he said, "Yeah, I saw Stefan touch
5 **Minor 1** Now, that may have happened. I have no idea.
6 What I do know is that Stefan was never charged with
7 anything or arrested.

8 I do know that **Minor 2** made it very clear that he was
9 asked after that did Mr. Sammy, as you call him, did Mr.
10 Sammy do this to **Minor 1** and he said, "Yeah," which is
11 what he said all along. **Minor 1** was asked, "Did Stefan
12 ever do anything to you?" Nope. Never did anything to
13 me, but Mr. Sammy did. What is that? But Mr. Sammy did.

14 Additionally, about this Stefan person, Stefan was at
15 grandma's house. That's where he hung out. He was at
16 Maggie's house. Well, these kids didn't start living at
17 Maggie's house until a month ago when their mom died.
18 They went over there. I think the testimony was that
19 maybe they spent one night a week or something over there,
20 but that's not where they spent the vast majority of their
21 time.

22 Let's talk about what the parents did right. Now,
23 all except Hope, who didn't go to the police, that's a
24 mistake. She admitted that to you. She said, "I should
25 have gone to the police." Then she said that. Hope's got

1 issues of her own. Other than that all had multiple times
2 when they said to these boys, "Alright. What you are
3 saying about Mr. Sammy is very serious, and we are not
4 going to ruin a man's life. So you better be telling us
5 the truth before we go further with this." Maggie
6 testified to that and Sharon testified to that.

7 They took it very seriously and then they all went to
8 the police, eventually with Hope. But the other ones went
9 to the police. They got the kids away from the defendant.
10 They didn't let him have any more communication. Natasha
11 went to the police right away. The police told her, "He
12 is so young. He's three or four, and it would be hard for
13 us to sign a warrant." She did all she could. She wrote
14 letters to law enforcement wondering why a warrant wasn't
15 signed. She did all she could as a parent. That's what
16 the parents did right.

17 One other thing that the Defense has hinted at here
18 is that these kids may have been coached to do all this.
19 There is no evidence in this case that these children were
20 coached by anybody. Nobody said that. And if they were
21 coached somebody did a poor job coaching them because they
22 all gave difference accounts in the sense that they
23 called -- they had different words for our private parts.
24 They have different accounts of the details. It's similar
25 enough, their stories, to believe the children but it's

1 not similar enough to think they were coached. If they
2 were coached they didn't do a very good job. What did
3 they tell you we told them when we were meeting with them
4 to prepare for trial? What's the number one rule we told
5 you in this room? Tell the truth. All we ever asked you
6 is to tell the truth. That's what we're here for.

7 You know, this idea about them being coached, there
8 was no reason for that anyway. All the testimony is that
9 these people loved Sammy Scarborough. He was a member of
10 **Minor 5** family. They were with him every day. Queen's
11 testimony was that Sammy Scarborough had come to her house
12 and helped do things around her house. They let these
13 kids play with him in the neighborhood all the time. So
14 it wasn't like some sort of neighborhood, "We don't like
15 Sammy Scarborough so let's have our kids trump this stuff
16 up on him." That's not what happened. Testimony is very
17 clear. They all got along very well.

18 Folks, the number one rule of being a defense lawyer
19 in a criminal case is blame the police or the victims.
20 That's what they have done. Let's talk about why the only
21 person to blame in this case is that predator sitting
22 right there, Sammy Scarborough. Let's talk about that.
23 It is our burden to prove to you, as the Judge is going to
24 tell you, all the elements of these charges beyond a
25 reasonable doubt. Now, that's a high standard. But that

1 standard doesn't scare us, and I don't say that because
2 we're some super lawyers at all. I say that because
3 that's the standard that is used criminal courts across
4 this country every day.

5 What that means, beyond a reasonable doubt, is doubt
6 that makes a reasonable person hesitate to act. Not all
7 doubt but beyond a reasonable doubt. That's our theme.
8 Now, these are young children. Our burden is high enough
9 when we are talking about adults. But when we are talking
10 about little kids and our whole case comes down to these
11 little kids, it makes it that much tougher. We can't
12 expect five, seven and eight year olds to come in this
13 courtroom and talk and communicate like we do. We know
14 that because we use our common sense. We also know that
15 because an expert told us. We didn't need her to tell us
16 that. We know that.

17 You could tell these boys were scared. You could
18 tell they didn't want to be here. It's tough enough for
19 us as adults to talk about sex much less having to sit
20 here and listen to a little kid talk about it. They're
21 scared because for the first time in a long time they had
22 to lay eyes on this man. It's traumatic for them,
23 especially **Minor 2** and **Minor 1** who just went through
24 arguably the most traumatic thing they could ever go
25 through a month ago when they lost their mom. These kids

1 don't have any frame of reference for talking about that
2 stuff. What are the words we heard? Ding a ding, turtle,
3 fried eggs, private. These kids don't have any frame of
4 reference to think about or to know about what those
5 things can do to you when you're being abused.

6 Gaye Allen-Cook, you heard from her this morning,
7 "Very common, she says, for children not to disclose
8 everything." Very common. In fact it's more common than
9 not. She said especially if the perpetrator says, "You
10 better not tell because if you do your mama's going to
11 hurt you and you'll be in trouble." There is testimony
12 that Sammy Scarborough said that to these boys.

13 And that makes it even more likely that they are not
14 going to disclose everything. They might not disclose at
15 all. In this case they did, but some of the details were
16 twisted and some of the accounts different. These kids,
17 she testified, very common they get confused easily and
18 that they mix up some details. They can't remember exact
19 dates or exact times. She said that's more common than
20 not especially with little children.

21 She said it is common for children not to disclose to
22 a forensic interviewer. She said it's common or it's more
23 likely they would disclose to a mother, somebody who loves
24 them, as opposed to a woman they've known for three
25 minutes. Common sense, ladies and gentlemen. This many

1 children from different families who live in different
2 houses, one of whom lives in another county all saying
3 essentially the same thing. Children don't make this kind
4 of stuff up. They just don't.

5 Let's use this common sense that we talked about as
6 we go through these indictments. The defendant has been
7 charged in this first indictment with criminal sexual
8 conduct with a minor in the first degree as it relates to
9 **Minor 1** That's the first little boy you heard testify.
10 That's **Minor 1**

11 Now, before I talk about at that let me say when we
12 started this case there were seven indictments. There was
13 a criminal sexual conduct and a pornography charge for
14 each of the three kids, and then there was engaging in
15 sexual performance charge. That's seven indictments. You
16 are going to be considering only five. Let me tell you
17 why. It is our burden, it is our job not just to get a
18 conviction. It is our job as prosecutors to see that
19 justice is done.

20 In this case, **Minor 2** could not testify when he got in
21 here to the elements of a criminal sexual conduct. He
22 could not talk or he didn't say that something happened to
23 himself. He didn't say that when he got in here. So it's
24 not fair to that Defendant. It's not fair to you for us
25 to put that indictment in for your consideration so we

1 took it out. It is also not fair for us to put before you
2 the indictment of engaging in child sexual performance
3 because he could not testify to that either. So we pulled
4 that indictment as well. So, now, you are going forward
5 with five indictments.

6 The first one as I said, criminal sexual conduct with
7 a minor in the first degree as it relates to **Minor 1** Now,
8 what I have to show you is that he was under the age of
9 11. And I have to show you, again, beyond a reasonable
10 doubt, that a sexual battery occurred. And a sexual
11 battery we can be talking about oral sex. We could be
12 talking about anal sex, and in this case that's what we're
13 dealing with.

14 **Minor 1** what did he say? Very plainly -- **Minor 1**
15 obviously, we know he is under the age of 11, but what did
16 he say? Quote, "Mr. Sammy put his ding a ding in my
17 throat and I choked." Is he making that up? Was he
18 coached to say that? "Mr. Sammy put his ding a ding in my
19 throat and I choked."

20 **Minor 2** testified that he saw Sammy Scarborough
21 messing with **Minor 1** at the Defendant's house. **Minor 1**
22 consistently disclosed to other people what had happened.
23 Now, was he clear every time? No. He was six. "Mr.
24 Sammy put his ding a ding in my mouth and choked."

25 **Minor 3** **Minor 3** says, "Mr. Sammy put his turtle in my butt

1 and it hurt." How in the world does a six year old make
2 that up? He even gave me the details, and I said it's
3 kind of confusing because if you said he put his turtle in
4 your butt and you were facing him, he said, "No. I saw
5 him." I said, "How did you see him," and he said, "I was
6 turned around looking like this." That's what he said.
7 Can you imagine that?

8 He said, "The Defendant grabbed and squeezed my
9 turtle." He said, "He tried to stick his turtle in my
10 mouth and got this close." He also consistently said to
11 other people time and place. He was abused. Here is
12 where it happened. As much as he could identify time he
13 said it. That's the indictment for C.S.C. on **Minor 3**.

14 I don't have a C.S.C. on **Minor 2** I told you we
15 pulled that. So now we go to disseminating. What I have
16 to show you is that the Defendant knowingly makes obscene
17 material available to any individual. Let me read you
18 this very important part of the law. "Obscenity must be
19 judged with reference to ordinary adults except that it
20 must be judged with reference to children or other
21 especially susceptible audiences if it appears from the
22 character of the material or the circumstances of its
23 dissemination to be especially or directed to children."

24 In other words, what is obscene to us -- I'm sorry.
25 What's obscene to a child might not be so obscene to us.

1 But you are to consider who the audience is here. The
2 audience here are the children. Now, what did **Minor 1** say?
3 He said he saw pictures of naked people. Mr. Sammy
4 gave -- showed those to us. **Minor 2** says, "I saw Mr. Sammy
5 show **Minor 1** those pictures, naked boys and girls." **Minor 2**
6 said he saw gay boy pictures. Is he making that up?
7 That's a five year old. He five now. That was a four
8 year old. He doesn't know what gay boy pictures are. And
9 even if he does why is he going to say Sammy Scarborough
10 is the one that showed them to him? He's going to make
11 this stuff up?

12 **Minor 3** said, "The Defendant, Sammy Scarborough,
13 Mr. Sammy, showed me a magazine with boys and girls with
14 their clothes off humping." But they want you to think
15 we're making it all up. Other evidence in support of
16 these boys, access. All the parents or grandparents
17 testified that the Defendant most definitely had access to
18 them. There is not a question. This isn't a case of
19 well, must have been someone else walking down the street
20 who did this. No. They were all very close. And they
21 spent a lot of time together. That's not in question
22 here.

23 Maggie said she saw the Defendant playing kickball
24 with all three of them. They were all together. That's
25 not at question. Maggie and Sharon both testified as to

1 the boy's demeanor. How when she asked about these events
2 they held their head down. Let's talk about nightmares.
3 Hope said she was aware because **Minor 3** came home with
4 balloons and football. Were they exposed to any sort of
5 sex? Could they have come up with these things cause they
6 have seen something at their own houses?

7 What did Natasha Funderburk say? Mr. Hobbs said was
8 there any way that **Minor 3** I mean -- I'm sorry, **Minor 5** was
9 exposed to sex things at your house? She said, "No, he
10 was never exposed to any kind of sex until Sammy
11 Scarborough put his private part in **Minor 5** mouth."
12 Several people testified as to time and place.

13 Now, the rules prevent them from coming in here and
14 telling you what the little boys told them as far as
15 details but they can say, yes, he disclosed abuse and he
16 said it happened at this place and he said it happened at
17 this time. Those were fairly consistent. And there is a
18 lot of testimony that it happened at the house and in the
19 backyard or in that barn.

20 **Minor 5** you might be asking why there is no
21 indictment for **Minor 5** And that's a legal thing, and I
22 will explain it to you real briefly. Law enforcement
23 never signed a warrant on that case because of **Minor 5**
24 age, but the law allows us to show you evidence of a
25 common scheme or plan that the Defendant uses to victimize

1 victims. That's why we can show you **Minor 5** but yet you
2 don't have a decision to make on **Minor 5** when you get back
3 there. The common scheme or plan is that this Defendant
4 used his position of authority of an adult in the
5 neighborhood who hung out with these children to lure them
6 in and to make them his prey.

7 What did **Minor 5** say? That he was alone with Uncle
8 Sammy. There was one day in his truck at the store when
9 Uncle Sammy made **Minor 5** suck his private part. Natasha
10 said he told you about that disclosure. She said **Minor 5**
11 came to me and told me. What did Natasha do? She did
12 exactly what any mother should do. Because they were so
13 close she went to Sammy Scarborough down at the laundry
14 mat. Said, "Oh, let me tell you what **Minor 5** said." What
15 was his response? Did he say, 'No, that didn't happen.
16 That's crazy. What are you talking about?" That's not
17 what he said. Remember what he did? He laughed. He
18 laughed. So what did she do? She immediately grabs
19 **Minor 5** and she goes home. She calls the police. That's
20 exactly what she should have done.

21 Ladies and gentlemen, this is a tough case and I'm
22 wrapping up. This is a case about topics that nobody
23 wants to talk about much less hear little children have to
24 talk about. But when these children tell you their story
25 South Carolina law says, "That's enough." Judge Burch is

1 going to tell you when he reads you the law in a few
2 minutes that the voice of a child is enough. You don't
3 have to have corroborating testimony.

4 Don't have to show you other witnesses who saw it.
5 Who's going to see something like this? What perpetrator
6 is going to do this in front of other people? I don't
7 have to show you that. The law says the voice of the
8 child is enough. This isn't t.v. Not going to have much
9 D.N.A. Not going to have much fingerprints. That is not
10 real life. All you have to do in this case, and your
11 question when you get back there in a few minutes is, 'do
12 we believe the children'? Do you?

13 Do you believe **Minor 1** when he says, "Sammy's ding a
14 ding went in my mouth and I choked." Do you believe
15 **Minor 1** when he says, "Mr. Sammy showed me a magazine with
16 naked boys and girls in it." In this case do you believe
17 **Minor 2** when he said he saw Sammy Scarborough make **Minor 1**
18 suck his wee wee? Do you believe **Minor 2** when he says,
19 "Mr. Sammy showed me gay boy pictures." Do you believe
20 **Minor 3** when he says, "Mr. Sammy put his turtle in my butt
21 and it hurt." Do you? Do you believe **Minor 3** when he says,
22 "Mr. Sammy showed me nasty pictures of boys and girls
23 humping." Do you believe that?

24 In order for you to find this Defendant not guilty
25 you've got to ignore every last bit of that. Ladies and

1 gentlemen, use your common sense. Strip away all the
2 outside stuff. Don't fall for Defense Lawyer 101. Let's
3 be real. Five, six, seven and eight year olds don't make
4 this stuff up. They just don't. When a neighbor turns
5 into a predator and preys on little children, destroys
6 their chance at a normal life and devours their innocence
7 that predator needs to be held accountable. Sammy
8 Scarborough is a predator. Sammy Scarborough is guilty.
9 Thank you for your attention.

10 MR. HOBBS: Thank you, Your Honor. May it please the
11 Court. Court's indulgence just one minute?

12 THE COURT: Sure.

13 CLOSING STATEMENT BY MR. HOBBS

14 MR. HOBBS: Ladies and gentlemen of the jury, last
15 night I was up thinking about this case and thinking about
16 the evidence that the State has presented in an effort to
17 prove my client guilty beyond a reasonable doubt. And I
18 was reminded of a trip I took back home to see my dad
19 recently. And much like when I go to see my dad when I
20 arrived he had a list of chores for me to do to help him
21 out around the house. A list of yard work, raking the
22 yard, raking up the pine straw, raking up the leaves,
23 pulling up the weeds from the garden. And just like I was
24 a teenager again he expected me to help, and of course, I
25 did. I love my father and want to help him out as much as

1 I can.

2 I'm out there working in the yard for a couple of
3 hours and believe it or not I started to work up an
4 appetite. I know that looking at me it's hard to believe
5 that I worked up an appetite, but I went into the kitchen
6 and much like I normally do when I look for food I didn't
7 look for the most healthy food that he had. I didn't look
8 for the rice cakes or anything like that, and I ended up
9 finding a Snickers bar in his cabinet kind of way back in
10 the back.

11 And I opened the Snickers bar very excited, of
12 course, about the Snickers bar I had just found, and I
13 took a bite of it. It didn't taste too bad. It tasted a
14 little stale, but then I looked down at what I had just
15 taken a bite out of. And I don't know how it had
16 happened, how moisture had gotten into that Snickers bar
17 but there was actually mildew inside the Snickers bar.
18 And instead of presuming that the rest of the Snickers bar
19 was going to be okay to eat I went ahead and threw it in
20 trash because once I had taken a bite out of it, once I
21 saw what was inside, I knew that the whole candy bar was
22 bad.

23 In this case, ladies and gentlemen of the jury, the
24 State would present to you to ignore that mildew on the
25 candy bar. To ignore that we have taken a bite out of

1 this case, and we've seen what was on the inside, to
2 ignore the inconsistency of witnesses. To ignore a lack
3 of investigation. This is the first time I have ever
4 heard a Solicitor say, "Oh, yeah, we should have done
5 that. We should have searched the house." Ignore that.
6 Ignore what these children have said in the past. Ignore
7 what doesn't make sense. Why? Because they are children.

8 But at the same point believe everything that they
9 say and believe what the State wants you to believe. And
10 we had three different children that were accusing my
11 client, Mr. Sammy Scarborough, of sexual battery and
12 dissemination of obscene material. The first of which was
13 **Minor 1** We heard from him first, the oldest of the Murphy
14 Boys.

15 Now, **Minor 1** got on the stand and when asked by the
16 State, "did Mr. Sammy touch you," **Minor 1** answer, "No."
17 Asked again, "Did Mr. Sammy put anything into your mouth?
18 No." Asked again, "Did Mr. Sammy touch you? No." Asked
19 again, "Did Mr. Sammy make you do anything? No." Around
20 about the time, sixth time, seventh time this question was
21 asked, he says, looking back into the audience for
22 reassurance, "Oh, yes. Yes. Mr. Sammy sucked -- made --
23 stuck his ding a ling in my mouth."

24 So we heard from the forensic interviewer, and the
25 forensic interviewer got on the stand and I asked her a

1 bunch of questions about the questions that she had asked
2 these boys. And I'm sure y'all were all getting
3 frustrated saying, "Why does he keep going over and over
4 these same questions again and again?" I wanted to
5 present to you that over a year and a half ago these
6 questions were posed to the children. Yes or no questions
7 about what had happened. Not one time, not two times,
8 many times, three times. And by the time that interview
9 was over no sexual assault was disclosed.

10 Ladies and gentlemen of the jury, I would also
11 present to you that the State has the ability to present
12 that video to you. That video of the forensic interview
13 under South Carolina law ---

14 MR. DANIEL: Can we approach, please, Your Honor. I
15 would love to object to this closing and this needs to be
16 discussed.

17 (Bench conference held off the record but in the
18 presence of the jury.)

19 MR. HOBBS: As I was saying under South Carolina law
20 the State is allowed to bring in the videotape of the
21 forensic interview.

22 THE COURT: Hold up. Ladies and gentlemen of the
23 jury, if you would step back to your jury room.

24 (WHEREUPON, the jury panel was excused from the
25 courtroom at 12:20 p.m.)

1 THE COURT: Let me tell both of y'all something right
2 now. If you're going to practice law in the State of
3 South Carolina, even though I don't remember what was on
4 the record about this, I'll have to go back and pull it.
5 But if y'all agreed to do something and now you have gone
6 back on your word there is not a whole lot I can do about
7 it. But the Disciplinary Committee in Columbia can do
8 something about it. Now, both of you understand that?

9 MR. DANIEL: Yes, sir.

10 MR. HOBBS: Yes, Your Honor.

11 THE COURT: Now, can y'all sit back there and agree
12 to resolve this problem or do I need to go back and pull
13 this record up and see exactly what was said in open court
14 about what y'all did agree to cause I don't think there
15 was any real clarification about that.

16 MR. DANIEL: I don't think we're going to agree to
17 anything because I mean, now, and I tell you. Here is the
18 issue. We had a whole hearing on these videos, and we
19 were prepared to introduce them. And we could have
20 introduced them at any point if we had desired. But I
21 went to Mr. Hobbs and I said, "Look. There are some
22 issues with these videos. We will be glad not to show
23 them if and only if you agree to not to try and introduce
24 them yourself and not argue that we didn't introduce
25 them." But this is exactly why I said we've got to agree

1 to this beforehand and we want show them. But you then
2 can't come back then and argue that, well, the State
3 didn't show these videos because we could have.

4 So, I never anticipated Mr. Hobbs coming in his
5 closing and blaming us for not showing the videos.

6 MR. HOBBS: Your Honor ---

7 MR. DANIEL: It was an agreement that we had that he
8 absolutely -- I never would have agreed to that had I
9 known he was going to argue that.

10 MR. HOBBS: Your Honor, I made objections as to the
11 admissibility of the video, and you were set to review
12 those videos and understand the competency and whether or
13 not they met the statutorily compliant to the
14 requirements. Prior to your ruling on that I was
15 presented or I was approached by the State, and the State
16 said to me "We have some appellate issues that we don't
17 want to mess with. We won't introduce the video if you
18 don't introduce the video." That's exactly what happened.

19 It wasn't that I motioned the Court and the Court
20 said the video can't come in and now I'm telling the jury
21 that it's their fault. They made the choice not to
22 introduce the video because they quote, "Had concerns
23 about it." I consented to not introduce the video if they
24 didn't introduce the video. I never said that I couldn't
25 bring that up to the jury or make an argument about it.

1 Our consent was that if he wouldn't bring in the
2 video then I wouldn't bring in the video and that's it.
3 And that was their choice and it was done because they
4 said as he quoted, "We had concerns about the video."

5 MR. DANIEL: I'm not the smartest guy in the world
6 but I'm not an idiot. And I would have been an idiot to
7 say, "All right. If you agree not to introduce it
8 yourself I'll pull them back, but you can go ahead and
9 argue with them." I would never have done that. What I
10 said is "You can't introduce them. If we are going to
11 agree to this we won't introduce them, you can't introduce
12 them and then you can't blame us for not introducing them.
13 That's exactly -- we were standing right there, and that's
14 exactly the conversation we had. And I agreed with you
15 that there is not a whole lot you can do about it at this
16 point.

17 THE COURT: Oh, there is something I can do. I'm
18 going to call a meeting with the Chief Public Defender,
19 and I am going to sit down and we're going to get this
20 thing before him. And as long as I am going to be Chief
21 Judge coming up next time, this next year, I promise you
22 there is going to be some modifications about who gets
23 appointed cases, conflict cases. Now, both of you
24 understand that? I'm just about sick of this whole mess.

25 MR. HOBBS: Your Honor, I can make a good faith

1 assertion to the Court that my understanding of that
2 consent was that I would not bring the video in, and I did
3 not bring the video in.

4 THE COURT: That implies, Mr. Hobbs, that you
5 wouldn't come through the back door on it.

6 MR. HOBBS: I don't understand.

7 THE COURT: You don't understand that? If y'all sit
8 there and agreed you wouldn't put it into evidence why
9 would you think you would have the right to back door the
10 State on that?

11 MR. HOBBS: Because they chose not to put it into
12 evidence because they had ---

13 THE COURT: Upon agreement.

14 MR. DANIEL: That was our agreement.

15 MR. HOBBS: Your Honor, I don't have the burden in
16 this case. I don't have to produce evidence. If they
17 don't want me to produce evidence ---

18 THE COURT: All right. Bring the jury back in. You
19 go ahead. That meeting is going to happen, and it's going
20 to happen within the next few days. Do you understand me?

21 MR. HOBBS: Yes, Your Honor.

22 MR. DANIEL: So he's allowed to argue it still?
23 There is nothing we can do about that right now?

24 THE COURT: There is nothing I can do about it, but I
25 will tell you one thing. If these attorneys in this -- my

1 circuit can't live by what they know is the right thing to
2 do there is going to be some changes made.

3 MR. HOBBS: Thank you, Your Honor.

4 (WHEREUPON, the jury panel enters the courtroom at
5 12:35 p.m.)

6 THE COURT: You may proceed.

7 MR. HOBBS: Thank you, Your Honor. Ladies and
8 gentlemen of the jury, as I was saying in South Carolina
9 the State has the present ability to present the videotape
10 of the forensic interviews to you for your consideration.
11 The State made a decision to not present that evidence to
12 you, and I would propose to you that's because they did
13 not want you to see what was contained in those videos.

14 Again, as I was saying when asked about these
15 accusations and asked about the forensic interview the
16 forensic interviewer said as to **Minor 1** no sexual -- no
17 disclosure of sexual assault was made by him. Again, no
18 video was presented.

19 THE COURT: Let me -- I apologize for interrupting
20 you, but I cannot allow that statement to go unchallenged.
21 There was an agreement that it would not come in, and
22 that's all I'm going to say.

23 MR. HOBBS: Your Honor, I would object to that as
24 burden shifting.

25 THE COURT: Your objection is overruled. I'm just

1 stating what the agreement was stated before the Court. I
2 am not implying anything into it. I am just stating that
3 there was an agreement in Court that those videos would
4 not come in, and I stand by that.

5 MR. HOBBS: Thank you, Your Honor. The investigator
6 in this case presented to us that he wrote a four page
7 incident report in regards to his investigation. Within
8 that four page incident report, which contained maybe
9 twelve lines of words, he says that he didn't execute a
10 search warrant, he didn't look for this obscene material
11 he didn't talk to local people in the community about the
12 presentation of obscene material and he would present to
13 you that he had done his due diligence.

14 At the end of the day what was an inthorough [sic]
15 investigation. As we heard from the State there are so
16 many things that maybe, probably should have been done,
17 like searching the home to look at this obscene material.

18 Again, an extensive investigation. Where is the
19 extensive investigation? There was no search of the
20 Defendant's home. By the State's own admission they say
21 they should have searched the home. Wouldn't it have been
22 nice if we had the material to look at so that we could
23 adjudge what is obscene because in South Carolina
24 obscenity is not nudity? Obscenity is statutorily
25 defined. Obscenity requires sexual conduct. And when we

1 say we saw nudity we don't know the character of that
2 nudity. We don't know if it rises to obscenity. And we
3 have no magazines, no material to look to decide as you
4 the finders of the facts if this was obscene material that
5 was presented to these children.

6 The State brought up in its closing, and I believe it
7 was a misquote that I asked **Minor 2** about Stefan Murphy.
8 Now, it's hard to think back. Yesterday was a long day
9 for everybody I know that. But if you recall, I sat down
10 here in this chair every time I talked to these children.
11 In fact it was Madam Solicitor who asked the question
12 about Stefan, and to whom the information about his
13 brother being sexually assaulted by Stefan Murphy came in.
14 She asked the question. He answered it.

15 Now, you may say, Stefan Murphy, what does he have to
16 do with anything? See, the basis of the State's case is
17 that where else could these children have come up with
18 this information? How else would a child know what to say
19 or what accusations to make? How else would a child know
20 what it was like to be sexually assaulted? What I present
21 to you as in the case of **Minor 1** he had been sexually
22 assaulted by the family member, Stefan Murphy. And that's
23 why the villainizations of going into these details, the
24 reason being because the victim's sexual knowledge and
25 their exposure to these things is highly relevant in these

1 case so we can understand how a young child comes up with
2 these kinds of accusations.

3 Why would a child manifest these accusations out of
4 thin air? And as their expert said it comes from their
5 life's experiences. It comes from the things that they
6 have seen and they have experienced. That's where these
7 accusations came from. We've already seen many aspects of
8 the State's case fall apart. Specifically, we were told
9 that you would see evidence of engaging a child under 18
10 for sexual performance in the State's opening. We saw
11 nothing.

12 And, again, when we look at **Minor 1** statements, when
13 we consider that a year and a half ago when it was closer
14 in time to this alleged incident, that he denied being
15 asked time and time again that he denied any allegation of
16 sexual abuse.

17 Now, as for **Minor 2** his younger brother, as the State
18 told you that case has already been dismissed. We were
19 told from the onset that **Minor 2** would get on the stand and
20 tell us about the sexual battery committed by my client.
21 Instead he got on the stand and said, "I was never
22 touched. I was never sexually battered. This never
23 happened to me." We do look at what else he said, though.
24 He says, you know, I did see some material. I saw some
25 nude people. And, again, we don't have material to

1 adjudge. We don't have material look at.

2 We talked to the forensic interviewer about talking
3 to **Minor 2** a year and a half ago when this incident was
4 closer, and she asked the same question over and over
5 again, "What happened? What did you see?" Or I'm sorry.
6 You know, Did this happen? Did he tough you? Did you
7 touch him," over and over again. And by the end of it no
8 sexual assault disclosures.

9 And, again, we have an extensive investigation that
10 resulted in no search warrant, no presentation of
11 magazines and, again, through his testimony, Stefan
12 Murphy. Why does Stefan Murphy matter to **Minor 2** **Minor 2**
13 didn't say Stefan Murphy did anything to him. Stefan
14 Murphy matters because, again, this exposure to abuse.
15 This exposure to these items. Where in the world could a
16 child come up with such fantastical accusations? From
17 their own home. From their own family. That's where
18 these accusations come from.

19 Then we get to **Minor 3** **Minor 3** his testimony was the most
20 staggering and shocking of all. You know, we heard
21 that -- we heard his mother come on the stand and say,
22 well, he told me back in, I believe she said in November
23 of 2011, that something happened but we didn't do
24 anything. We didn't call the police. We didn't do
25 anything about it until the middle of the next year after

1 his two friends come forward and make accusations.

2 Again where could **Minor 3** have gotten this information
3 from? From his neighborhood friends, from talking to his
4 friends, them telling what they had been doing, the
5 accusations they had been making. Where does this
6 information come from, and why was it not brought to the
7 attention of authorities until some seven months after the
8 investigation?

9 But it broke all of our hearts listening to what he
10 said on the stand; that he had been anally raped by
11 Defendant. That the Defendant had taken his clothes down
12 and stuck his penis inside of his anus. Inside of his
13 butt as they called it and said he said hurt. And I said
14 what did you do? Did you go to the doctor? Yeah, yeah, I
15 went to the doctor. Oh, and what did the doctor tell you?
16 Oh, well, he said, you know, stay away.

17 If a mother is told by her son that he has been raped
18 and penetrated in his anus she would take him to the
19 doctor, and I assure you that it would have come out when
20 she was on the stand that she had taken her son to the
21 doctor. Also, if there was a doctor who examined this
22 child and who had looked at this and had seen that a man
23 had raped him that doctor would have come in and testified
24 that this had happened. The reality is this story grew
25 out of control. And before we could reel it in, before we

1 could figure out how to adjust to it by the state, he says
2 that he is violently raped and that he went to the doctor.

3 Ladies and gentlemen, he was not anally raped and he
4 did not go to the doctor. I assure you if he was you
5 would have seen medical records that showed what happened
6 to this boy; the injury he sustained and the doctor's
7 diagnosis of that injury. We certainly would have heard
8 from the mother that she had taken him to the doctor.
9 That she had heard about this terrible crime and had gone
10 to have had her son checked out. Again, we are never
11 presented with this information because, quite simply, it
12 does not exist.

13 In light of that accusation, in light of having her
14 son anally raped and she takes him to the doctor, she
15 brings him home and then waits seven months to tell the
16 authorities about it. I talked to [Minor 3] about his
17 interview with the forensic interviewer, and he was the
18 only one that actually remembered saying that he hadn't
19 been touched. I asked him, "[Minor 3] do you remember telling
20 the forensic interviewer that you were never touched?
21 Yes. [Minor 3], do you remember telling the forensic
22 interviewer that there was no butt contact? Yes." A year
23 and a half ago you went and spoke to a woman about this
24 very incident and he recalls that he told her that this
25 had never happened. But, now, he wants to come in here

1 and make these accusations to you and expects -- and the
2 State expects you to believe it without ever questioning
3 where the rest of evidence is.

4 Again, don't consider what doesn't make sense. Don't
5 consider the lack of the investigation. Instead, why
6 don't we affect and judge my Client, Sammy Scarborough's,
7 life and liberty on an incomplete investigation, on
8 accusations that are unsubstantiated.

9 Again, **Minor 3** talks about a magazine, but we have no
10 search of the home so we can identify it. Even if he
11 could have identified it and said, "You know, that's the
12 magazine that I saw." Well, yeah, we probably should
13 have. We probably should have searched the home. That
14 might be important, right? No magazine has been presented
15 to you. We cannot adjudge obscenity without some frame of
16 reference. Nudity is not obscenity. It needs to be
17 something more.

18 Ladies and gentlemen of the jury, we get last to the
19 statements and the testimony of **Minor 5**. The State
20 apologizes to **Minor 5** mother for me asking about prior
21 sexual abuse. Well, I apologize to **Minor 5** mother for
22 the fact that they even had to come in here and testify
23 here today, or I'm sorry, yesterday. Because what did
24 **Minor 5** say about what had happened to **Minor 3**. He doesn't
25 know **Minor 3**. There is nothing he could say about **Minor 3**. What

1 did [Minor 5] say about [Minor 1] He doesn't know anything
2 about [Minor 1] What did he say about [Minor 2] No frame of
3 reference.

4 Instead what he did was came and testify about
5 something that had happened some five years ago. An
6 accusation that was presented to authorities by his
7 mother. An accusation that was followed up with two
8 forensic interviews, and an accusation that the
9 authorities chose not to pursue.

10 Now, listening to the mother she made a very
11 compelling case for why this should have been charged and
12 why this was something that shouldn't have fallen through
13 the cracks. Well, when given the opportunity the
14 investigator considered the evidence and considered the
15 two forensic interviews from this child some five years
16 ago and chose not to pursue these charges.

17 Again, where is that investigator? Wouldn't it have
18 been nice to hear from that investigator so he could tell
19 us, "Hey, why weren't these charges brought?" Instead of
20 listening to a mother and her belief about the case why
21 not present the investigator who actually weighed the
22 evidence, who reviewed it to hear from him as to why they
23 shouldn't have brought these charges.

24 But yet we're here wondering, asking questions.
25 Asking why was this not brought in? Why is there no

1 medical evidence? Why is there no medical examination
2 when a boy contends that he was anally raped and taken to
3 the hospital? Why did these children, when a year and a
4 half ago when asked these questions, denied that this
5 happened? And where did the source of this information
6 come from?

7 In the case of **Minor 5** again, we get into this
8 apology that I asked these questions about their prior
9 sexual history. The person who sexually assaulted her was
10 her father, Pee Paw. A man who is still active in
11 **Minor 5** life. That's why it was important. The
12 exposure of children to these sort of circumstances, this
13 sort of knowledge, that's where this information comes
14 from.

15 And this is a woman who has made several accusations
16 over her life to authorities about family members. And
17 now she is pursuing accusations against another family
18 member. And that should go to the weight when you are
19 considering her testimony.

20 At the end of the day the State asks you to use your
21 common sense. They ask you to disregard inconsistencies,
22 disregard a lack of medical evidence, disregard any
23 inconsistent statements, disregard prior accusations of
24 sexual abuse upon family members, disregard waiting seven
25 months after your child was anally raped to go to the

1 authorities, disregard the fact that these accusations
2 which never came to fruition in the charge. The same
3 excuse that Shipp gave to Stefan Murphy. Well, he was
4 never charged. Right? It was never charged. Don't worry
5 about Stefan. He was never even charged.

6 Well, ladies and gentlemen, don't worry about
7 **Minor 5** That was never even charged. And then you ask
8 yourself does **Minor 5** have anything to say about the now
9 two accusations of sexual battery that are before you? He
10 does not. He is here to evoke emotion in you. He is here
11 to make you think that his accusations are true, and so
12 you should convict him of -- my client of the accusations
13 presented by **Minor 3** and **Minor 1** in spite of the State's
14 weaknesses. In spite of their inability to produce all
15 this viable evidence.

16 The State would ask you again, we have bitten into
17 the candy bar. We've discovered the mold. Just eat
18 around it. Don't worry about that. Just eat around it.
19 When in reality it should be thrown away just like these
20 baseless allegations, just like these unsteady
21 accusations.

22 The preponderance -- excuse me. The burden of proof
23 in this case is on the State. It's not on my client to
24 prove himself innocent. It's on the State to prove him
25 guilty. And not prove him just more likely than not

1 guilty. Prove him guilty beyond a reasonable doubt.

2 When we look at reasonable doubt, the Judge is going
3 charge us on what that means. And, essentially, if I was
4 going to sum that up it's a doubt for which you can assign
5 a reason. Ladies and gentlemen, this case is roth with
6 reasonable doubt, and if you need to see the reasonable
7 doubt, if you're wondering where it is, there. There is
8 your reasonable doubt. Thank you for your time.

9 CHARGE OF THE COURT

10 THE COURT: Thank you, counsel. Closing arguments
11 are done, and it's now time to move on to the Judges's
12 charge of the law. Is everybody okay? Does anybody need
13 a brief recess? Okay. All right. If I could have your
14 attention. It now becomes my time to give you the law of
15 the case. I point out to you that the word, 'juror' comes
16 from Latin and it means an oath person: A juror is a
17 person taking a solemn oath to bring their best talents,
18 and capabilities to the task to rendering a fair and
19 impartial verdict.

20 Your oath designates you as an official of this
21 Court. This oath is commensurate with the oath taken by
22 me when I take office as a Judge. The Judge and the jury
23 blend their duties and responsibilities so as to achieve a
24 fair and impartial verdict. The word, 'verdict' derives
25 from a Latin word. It comes from two Latin root words.

1 Verus which means absolute pure truth, and dicta which
2 means to speak the truth. And the two Latin root words
3 are combined and the word verdict means to speak the
4 truth. Under your oath as a juror the verdict in this
5 case must speak the truth.

6 The State of South Carolina charges the Defendant in
7 these indictments, as you have already heard, with the
8 offenses of criminal sexual conduct with a minor under 11
9 years of age and dissemination of obscene material under
10 Section 16-15-0305. There are three indictments for that,
11 and two for the criminal sexual conduct.

12 I will point out to you that the indictments that I
13 have up here on the bench are not evidence, and they don't
14 prove anything. An indictment is simply the charging
15 paper used to bring the matter for Court action. To the
16 indictments the Defendant has entered pleas of not guilty.
17 That plea of not guilty places the burden of proof upon
18 the State of South Carolina to prove the guilt of the
19 Defendant beyond a reasonable doubt.

20 The Defendant is presumed to be innocent unless and
21 until the State has established guilt beyond a reasonable
22 doubt. A person charged with committing a criminal
23 offense in South Carolina is never required to prove
24 himself innocent. Let me speak with you about reasonable
25 doubt. As I told you the State has the burden of proving

1 the Defendant's guilt beyond a reasonable doubt. The
2 State is required to prove every element of the offenses
3 charged by evidence which satisfies you the jury of the
4 guilt of the Defendant beyond a reasonable doubt.

5 The Defendant is not required to prove his innocence,
6 and the burden of proof is always upon the State to prove
7 guilt beyond a reasonable doubt. And what is reasonable
8 doubt in the law? A reasonable doubt is the kind of doubt
9 that would cause a reasonable person to hesitate to act.
10 The term, 'reasonable doubt' should be given its plain and
11 ordinary meaning. The State has the burden of proving the
12 Defendant guilty beyond a reasonable doubt.

13 Some of you may have served in civil cases where you
14 were told that it is only necessary to prove the fact is
15 more likely true than not such as by the greater weight or
16 the preponderance of the evidence. In criminal cases the
17 State's evidence must be more powerful than that. It must
18 be beyond a reasonable doubt.

19 Proof beyond a reasonable doubt is proof that leaves
20 you firmly convinced of the Defendant's guilt. There are
21 very few things in this world that we know with absolute
22 certainty. In criminal cases the law does require proof
23 that overcomes every possible doubt. The law does not
24 require that. If based on your consideration of the
25 evidence you are firmly convinced that the Defendant is

1 guilty of the crimes charged you will find him guilty. If
2 on the other hand you conclude that there is a real
3 possibility that he is not guilty you must give the
4 Defendant the benefit of the doubt and find the Defendant
5 not guilty.

6 It is a vital and important rule of law that the
7 Defendant in a criminal trial, no matter how grave or
8 serious may be the offense for which he has been charged,
9 he must also be presumed innocent unless and until his
10 guilt has been proven beyond a reasonable doubt the
11 presumption of innocence is the legal proof of innocence.
12 This presumption of innocence remains with the Defendant
13 at all times from the moment of his arrest throughout the
14 trial proceedings and goes into your jury room and remains
15 with the Defendant even then unless and until you the jury
16 reach a verdict of guilty based upon evidence which the
17 State has presented satisfying you of the Defendant's
18 guilty beyond a reasonable doubt.

19 The burden of proof is upon the State of South
20 Carolina to establish by evidence presented to you to your
21 satisfaction beyond a reasonable doubt. The State must
22 prove the Defendant, once again, guilty beyond a
23 reasonable doubt. And by the Constitution and the laws of
24 this State you the jury are the sole judges of the facts
25 and the evidence in this case. I am not permitted to

1 intimate any opinion that I have about any facts in the
2 case. That is your sole province. I am not permitted to
3 indicate to you how I even may feel about the testimony
4 and evidence presented. I tell you now that I don't any
5 opinion in this case nor am I under the law entitled to an
6 opinion.

7 I have made numerous trial rulings on matters of
8 evidence and law in your presence, and please do not
9 derive any inference from any rulings that I have made as
10 to any opinion that I may have on the facts. As I said, I
11 do not have any opinion or feelings on the facts because
12 the State of South Carolina under our Constitution does
13 not allow me to express an opinion or feelings about the
14 facts. As I told you earlier in the case I am the judge
15 of the law.

16 Now, considering the facts, in determining what the
17 facts are in this case you of necessity must pass upon the
18 credibility of the witnesses who have testified. You are
19 the sole judges of the credibility of the witnesses who
20 took that witness stand. Credibility in the law means
21 believability. Can I believe this witness? Is this
22 witness credible? The value and weight to be given to
23 their testimony is in your sound discretion. You alone
24 must decide the force and effect and the truth of the
25 testimony.

1 I'm making a determination as to the credibility of a
2 witness there are more factors that you may and should
3 take into consideration such as the appearance or manner
4 of a witness as he or she gave testimony on the witness
5 stand. This sometimes is known in the law as the demeanor
6 of the witness. Did the witness have any interest in the
7 outcome of the trial?

8 Was the witness forthright or hesitant? Was the
9 witness' testimony consistent or did it contain
10 discrepancies? What was the ability of the witness to
11 know about the facts concerning which he or she gave
12 testimony? Did the witness have cause or reason to be
13 biased or prejudiced in favor of the testimony he or she
14 gave? Was the testimony of the witness corroborated and
15 made stronger by other testimony and evidence or was it
16 made weaker and impeached by other testimony and evidence
17 presented?

18 As jurors you have a right to believe a small portion
19 of a witness' testimony and disregard the larger portion.
20 Or you may believe a larger portion of a witness'
21 testimony and disregard the smaller portion. You may
22 believe a witness's testimony in its entirety or you may
23 completely reject a witness' testimony in its totality.
24 Not doing that arbitrarily, but if you have a sound reason
25 in the record for doing so. You may believe the testimony

1 of a single witness against many witnesses or the many
2 witnesses as against the one. Most certainly you do not
3 determine the matter of credibility or believability
4 merely by counting the number of witnesses that may have
5 been presented.

6 Throughout this entire process you have but one
7 single objective, and that is to seek the truth regardless
8 from what source that truth may have come. By the very
9 same constitution and laws which makes you the finders of
10 the facts in the case I am the judge of the law. I am the
11 sole and the only instructor of the law. You must accept
12 it as correct the law as I charge it to you to be the
13 correct law.

14 In that regard neither you nor I should be concerned
15 with what the law ought to be in this State, but rather
16 what I charge you the law actually is in this State. You
17 must accept under your oath the law as I charge it to you.
18 The Defendant is entitled to every inference in his favor
19 which can reasonably be drawn from the evidence.

20 When two inferences may be drawn from the same set of
21 facts, one consistent with a verdict of guilty and one
22 inference consistent with a verdict of not guilty, the
23 Defendant is entitled to the inference which is consistent
24 with a verdict of not guilty. You cannot find the
25 Defendant guilty based upon suspicion, conjecture or

1 speculation no matter how strong. A conviction, once
2 again, can only be based upon proof of guilt beyond a
3 reasonable doubt.

4 The Defendant in this case has not testified. He has
5 elected not to testify and that is his constitutional
6 right, and it is not circumstance you can take into
7 consideration or even allow to enter into your discussion
8 in the jury room. Under the Constitution of South
9 Carolina and the United States Constitution it is the
10 Defendant's constitutional right to elect not to testify.

11 The burden of proof is upon the State of South
12 Carolina to establish his guilt by competent evidence
13 beyond a reasonable doubt. The fact that the Defendant
14 elected not to testify does not create any inference
15 against him. You the jury must not permit that fact to be
16 weighed in the deliberations. Nor should this fact enter
17 into the discussions or deliberations of the jury in any
18 manner.

19 Let me speak to you about direct and circumstantial
20 evidence. Some trials you may have all direct evidence.
21 Some trials you may have all circumstantial evidence.
22 Some trials you may have a combination of both. There are
23 two types of evidence which are generally presented during
24 trials, direct evidence and circumstantial evidence.
25 Direct evidence is the testimony of a person who asserts

1 or claims to have actual knowledge of the facts such as an
2 eyewitness. Circumstantial evidence is the proof of a
3 chain of facts and circumstances indicating the existence
4 of a fact. The law makes absolutely no distinction
5 between the weight or value to be given to either direct
6 or circumstantial evidence. Nor is it a greater degree of
7 certainty required of circumstantial evidence than that of
8 direct evidence.

9 You should weigh all the evidence in the case. After
10 weighing all the evidence if you are not convinced of the
11 guilt of the Defendant beyond a reasonable doubt you would
12 find the Defendant not guilty. Now, I in no way suggest
13 to you any -- as I said I don't have an opinion about the
14 evidence. You may have to determine what may be direct
15 and what may be circumstantial evidence or if there is a
16 combination of both from what has been presented to you.

17 Now, I need to talk with you about expert witnesses.
18 Although lay witnesses are limited to testifying about
19 facts within their knowledge and not allowed to give
20 opinions certain witnesses, who by their training,
21 education or experience are considered experts in their
22 particular field, may give their opinions in that field
23 based upon the facts of a matter and their conclusions.

24 These opinions constitute evidence to be considered
25 by you in connection to all of the other testimony and

1 evidence in the case. You may consider the expert's
2 opinion just as you do all the other evidence in the case.
3 It is for you the jury to give it such weight as you in
4 your experience and discretion may determine. You must
5 weigh such evidence and accept or reject it in the same
6 manner as you would treat all the other evidence in the
7 case.

8 The testimony of experts on a subject that is little
9 known to the general public is entitled to consideration.
10 Such testimony, however, must be submitted to your
11 judgment and consideration to be weighed by you as a part
12 of the evidence in connection with all the other facts in
13 the case.

14 The testimony of experts is to aid and assist you as
15 jurors, not to dominate or control you in your decision in
16 the questions of fact. Their opinions and deductions from
17 the evidence before you and their judgments and opinions
18 do not preclude yours. You are required to decide
19 disputed questions after comparison and consideration of
20 all the evidence in the case.

21 Normally, a person cannot give opinion testimony. As
22 a general rule when a person testifies they must testify
23 to what they saw, heard or sensed by smell or something of
24 that nature. However, there is an exception when someone
25 is qualified because of education or experience. They are

1 permitted to give their opinion in certain areas if was
2 Court qualifies them that way. Though a witness has been
3 qualified as an expert this does not mean that you must
4 accept the opinion, but it is evidence for you to utilize
5 in any way that you see fit.

6 You should consider expert opinion received in
7 evidence in this case and give it such weight as you feel
8 it deserves. An expert witness' testimony is to be given
9 no greater weight than that of other witnesses simply
10 because the witness isn't an expert. You not are required
11 to accept an expert's opinion even though it is not
12 contradicted.

13 If you decide an opinion of an expert is not base
14 upon sufficient education and experience or if you
15 conclude that the reasons given in support of the opinion
16 are not sound or if you feel it is outweighed by other
17 evidence you may disregard the opinion entirely. Give the
18 testimony of experts the weight, if any, that you feel it
19 should receive.

20 In regard to evidence of other crimes, the evidence
21 is limited to consideration by you as it relates to:

22 One, motive for the offense charged in the case or
23 cases.

24 Two, intent in regard to the commission of the
25 offenses charged in the case or cases.

1 Three, absence of mistake or accident in reference to
2 the offenses charged in the case or cases.

3 Four, a common scheme or plan embracing the
4 commission of two or more crimes so related to each other
5 that proof of one tends to establish the others.

6 Or, Five, the identity of the person that is charged
7 with the commission of the crime or crimes on trial.

8 Even if you are to believe that the alleged prior bad
9 acts presented in this case actually occurred the current
10 charges against the Defendant must still be proven as I
11 said beyond reasonable doubt. I charge you under 16-3-657
12 of the South Carolina Code of Laws that section provides
13 that the testimony of the victim in criminal sexual
14 conduct prosecutions need not be corroborated by other
15 testimony or evidence.

16 All right. Now, I'm going to get charge specific
17 with you about the laws of the offenses that have been
18 charged. As I told you we've got three indictments for
19 dissemination of obscene materials, and we've got two
20 indictments for criminal sexual conduct with a minor.
21 Specifically, those victims under Indictment 292, the
22 victim in that indictment was **Minor 1** And on 290 the
23 victim in that was **Minor 3**

24 I'm going to charge you under 16-3-365(A) of the
25 South Carolina Code of Laws. That's titled, 'First Degree

1 Criminal Sexual Conduct With a Minor". A person is guilty
2 of criminal sexual conduct with a minor in the first
3 degree if the actor engages in sexual battery with a
4 victim who is less than 11 years of age.

5 Section 16-3-365(1) (A) defines actor as a person
6 accused of criminal sexual conduct. Section 16-3-651(I)
7 provides victim means the person alleging to having been
8 subjected to criminal sexual conduct. The first element
9 the State must prove beyond a reasonable doubt is that the
10 Defendant engaged in sexual battery with the victim.

11 What is sexual battery? Section 16-3-651(H) of the
12 South Carolina Code of Laws defines sexual battery as
13 sexual intercourse, cunnilingus, fellatio, anal
14 intercourse or any intrusion however slight of any part of
15 a person's body or of any object into the genital or anal
16 openings of another person's body except when such
17 intrusion is accomplished for medically recognized
18 treatment or diagnostic purposes."

19 If you find the State has not proven beyond a
20 reasonable doubt that sexual battery occurred you must
21 stop deliberating and find the Defendant not guilty on
22 that particular charge.

23 If you find that the sexual battery did occur you
24 must then decide whether the State has proven beyond a
25 reasonable doubt that the victim was less than 11 years of

1 age at the time of the sexual battery.

2 As to the dissemination I charge you from 16-15-305
3 of the Code of Laws of South Carolina, 1976 as amended.

4 "It is unlawful for any person knowingly to disseminate
5 obscenity. A person disseminates obscenity within the
6 meaning of this article if he or she sells, delivers or
7 provides or offers or agrees to sale, delivery or provide
8 any obscene writing, picture, record digital electronic
9 file or any other representation or description of the
10 obscene.

11 Presents or directs any obscene play or dance or
12 other performances or participates directly in that
13 portion thereof which makes it obscene. Publishes,
14 exhibits or otherwise makes available anything obscene to
15 any group or individual or exhibits, presents, rents,
16 sells, delivers or provides or offers or agrees to
17 exhibit, present, rent or to provide any motion picture
18 film, film, film strip or projection slides or sound
19 recording or sound tape or sound track or videotapes and
20 recordings of any matter or material of whatever form
21 which is a representation, description, performance or
22 publication of the obscene."

23 For purposes of this article any material is obscene
24 if:

25 To the average person applying contemporary community

1 standards the material depicts or describes in a patently
2 offensive way sexual conduct specifically defined by
3 Subsection C of this section to the average person
4 applying contemporary community standards relating to the
5 depiction or description of sexual conduct would find that
6 the material taken as a whole appeals to the prurient
7 interest in sex.

8 Three, to a reasonable person the material taken as a
9 whole lacks serious literary, artistic, political or
10 scientific value.

11 And, Four, the material as used is not otherwise
12 protected or privileged under the Constitution of the
13 United States or of this State.

14 As used in this article -- this is Section C you
15 heard me mention:

16 One, sexual conduct means vaginal, anal or oral
17 intercourse whether actual or simulated, normal or
18 perverted, whether between human beings, animals or a
19 combination thereof.

20 (B) is masturbation, excretory functions or lewd
21 exhibition, actual or simulated, of the genitals, pubic
22 hair, anus, vulva or female breast nipples including male
23 or female genitals in a state of sexual stimulation or
24 arousal. Or covered male genitals in a discernibly turgid
25 state.

1 (C), An act or condition that depicts actual or
2 simulated bestiality, sado-masochistic abuse, meaning
3 flagellation or torture by or upon a person who is nude or
4 clad in undergarments or in a costume that reveals public
5 hair -- excuse me. Pubic hair, anus, vulva genitals or
6 female breast nipples or the condition of being fettered,
7 bound or otherwise found physically restrained on the part
8 of the one so clothed..

9 (D), An act or condition that depicts actual or
10 simulated touching, caressing or fondling of or other
11 similar physical contact with the covered or exposed
12 genitals, pubic or anal regions or female breast nipple
13 whether alone or between humans, animals or a human and an
14 animal of the same or opposite sex in an act of actual or
15 apparent sexual stimulation or gratification.

16 Or (E), An act or condition that depicts the
17 insertion into any part of a person's body other than the
18 male sexual organ or of any object into another person's
19 anus or vagina except when done as part of a recognized
20 medical procedure.

21 Patently offensive means obviously and clearly
22 disagreeable, objectionable, repugnant, displeasing,
23 distasteful or obnoxious to contemporary standards of
24 decency and propriety within the community.

25 Prurient interest means a shameful or morbid interest

1 in nudity, sex or excretion and is reflected of an arousal
2 as a lewd and lascivious desires and thoughts.

3 Person means any individual, corporation,
4 partnership, association, firm, club or other legal or
5 commercial entity.

6 Knowingly means having general knowledge of the
7 content of the subject material or performance or failing
8 after reasonable opportunity to exercise reasonable
9 inspection which would have disclosed the character of the
10 material or performance.

11 Obscenity must be judged with reference to ordinary
12 adults except that it must be judged with reference to
13 children or other especially susceptible audiences or
14 clearly defined deviate sexual groups if it appears from
15 the character of the material or the circumstances of its
16 dissemination to be especially for or directed to children
17 or such audiences or groups.

18 As used in this article community standards used to
19 determine prurient appeal and patent offensiveness are the
20 standards of the area from which you the jury are drawn.

21 Mr. Foreman, ladies and gentlemen of the jury, you
22 already heard me say several times that we have five
23 indictments there, and you've got to pick up each one and
24 reach a verdict on each and every one of them. I tell you
25 and charge you at this time on each and every indictment

1 you will have to reach a unanimous verdict. Under the
2 Constitution of this State a jury verdict must be
3 unanimous. Every single juror has to agree on the
4 verdict, whatever it may be, that you reach. It can't be
5 any split or division. Like I said it has to be
6 unanimous.

7 Mr. Foreman, you under your oath and your duty, will
8 be a required to fill out the verdict form which is
9 located on the back of the indictment in the lower -- make
10 sure I get it right. Lower left hand corner. You will
11 find where it says 'verdict' it will be your duty, once
12 that verdict is reached on each and every indictment, to
13 sign your name after you have written in the particular
14 verdict. Okay.

15 Possible forms of verdict. Don't give any weight as
16 to how I tell you the possible forms, and it is pretty
17 simple here on these indictments. It's a choice of either
18 guilty or not guilty. Whatever that verdict is, Mr.
19 Foreman, it will be your duty as I said to write in
20 whatever the verdict may be.

21 COLLOQUY

22 I want to thank all of you at this time for your
23 attention. I have watched you throughout this trial. You
24 have been very attentive, and nobody fell asleep on me. I
25 thank you for that. I apologize for some of the delays we

1 had, but that's just the way it works. As I explained to
2 you y'all are the finders of the facts, and I'm the judge
3 of the law. Sometimes I have to take up matters of law
4 outside of your presence and get all that straightened out
5 so that we could proceed.

6 And, also, as I said this morning we had a matter
7 that had been scheduled some time back, and we were able
8 to take care of that through your patience with us and I
9 thank you for that. What we're going to do, before we
10 send you back to the jury room to begin your actual
11 deliberations, it's well after one o'clock now. I'm going
12 to defer to Madam Clerk just a minute, but I think we're
13 going to be able to take you out to lunch and then bring
14 you back.

15 Because if we bring it in it could take quite a while
16 and it could be over into the afternoon. Sure enough, it
17 would probably take at least an hour so I think we're
18 going to be better off to do that. But let me defer to
19 Madam Clerk. Do not begin your deliberations at this
20 time. I repeat, do not begin your deliberations at this
21 time. I've got one other thing to cover with you before
22 we actually do that, okay.

23 In other words, I have a little final matter I have
24 to take up with you before I turn you loose. And I've got
25 to check in with the attorneys to make sure I covered

1 everything they asked me to cover. Okay. So, we will
2 break for lunch now. Don't discuss this case. Don't even
3 discuss it among yourselves. We will send you out. We've
4 got transportation arranged.

5 CLERK OF COURT: We've got everything ready, Judge.

6 THE COURT: Okay. If y'all will step back to the
7 jury room. Once again don't deliberate. I've got to talk
8 with counsel and with the staff that's going to be
9 attending.

10 (WHEREUPON, the jury panel was excused from the
11 courtroom at 1:19 p.m.)

12 THE COURT: Actually, I hadn't completed the charge,
13 but if I left out anything y'all let me know where I can
14 complete that when I get back. The only thing I left out
15 was about the deliberations and getting the alternates
16 out. Okay. Anything else?

17 MR. DANIEL: I don't have anything else.

18 MR. HOBBS: No objections, Your Honor.

19 THE COURT: Okay.

20 MR. DANIEL: Judge, we would ask that the alternates
21 stay we us at least for lunch. Maybe for a little while
22 after just in case someone gets sick from the food or
23 something.

24 THE COURT: Sure. We'll take them, too. All right,
25 now, just since we've got 403 in here, normally I will let

1 the attorneys, and most of the time they do. They waive
2 the oath of the bailiffs and the security staff that go.
3 But just to show you how it's done, in case somebody
4 doesn't want to waive it, we'll go through that just so
5 you know that's the way it's done. Okay.

6 So I need everyone that's going to be attending the
7 jury to come around to Madam Clerk's desk. We've got
8 everybody.

9 COURT REPORTER: I need them all to state their name
10 individually on the record.

11 CLERK OF COURT: She wants your name.

12 COURT REPORTER: I need everybody's name.

13 MR. LANE: John Lane.

14 MR. POWERS: Bobby Powers.

15 MS. ANTHONY: Norma Anthony.

16 MS. JOHNSON: Pamela Johnson.

17 MR. HUGGINS: Johnny Huggins.

18 MR. GRIGGS: Wayne Griggs.

19 MS. FORE: Charlene Fore.

20 MS. JOHNSON: And we've got two downstairs, James
21 Samuel and Terry McArthur.

22 THE COURT: Counsel, before we get into this, we are
23 just doing this formally to show how it's done. Do y'all
24 waive this oath because we've got two waiting downstairs
25 at the cars?

1 MR. HOBBS: Yes, Your Honor.

2 MR. DANIEL: I waive. I'm a little concerned about
3 Charlene, but other than that I'm okay.

4 CLERK OF COURT: Okay.

5 MR. DANIEL: I totally waive.

6 CLERK OF COURT: We do have two downstairs.

7 THE COURT: Okay. They waive. That's fine. Y'all
8 raise your hand.

9 CLERK OF COURT: Raise your right hand.

10 (WHEREUPON, John Lane, Bobby Powers, Norma Anthony,
11 Pamela Johnson, Johnny Huggins, Wayne Griggs and
12 Charlene Fore were sworn in to accompany the jury
13 panel to lunch.)

14 THE COURT: All right. We'll be in recess for about
15 50 minutes to an hour. So everybody get them a bite to
16 eat and come back and we'll give it to the jury.

17 (WHEREUPON, Court was in recess at 1:24 p.m. and
18 reconvened at 2:42 p.m.)

19 THE COURT: Ladies and gentlemen of the jury, before
20 I send you back to deliberate there are more details I
21 need to go over with you. Once you begin your
22 deliberations if somebody needs to take a smoke break,
23 restroom break or whatever, cease your deliberations until
24 you have all 12 deliberating jurors back.

25 I want to beg your indulgence with me at this time

1 and ask you not to be shy or bashful in responding to me
2 on this if you need to. But if you're not feeling good,
3 you feel that you cannot go back there and diligently
4 deliberate this case for any reason whatsoever not is the
5 time to tell me. If you feel that you cannot continue to
6 be a fair and impartial juror and go back and follow your
7 oath and deliberate this case let me know now.

8 All right. We've got three exhibits. As soon as we
9 send those back along with the indictments, Mr. Foreman,
10 you may begin your deliberations. I need the 12 jurors,
11 original jurors, to step back and let us get those items
12 to you. And I need the alternates to stay with me here in
13 the courtroom just for a minute or two. We will find a
14 place for y'all to sit for a few minutes.

15 Mr. Foreman, if you get back to the jury room and you
16 discover that any juror or jurors is going to refuse to
17 deliberate this case immediately notify me. Okay. All
18 right. Y'all step back.

19 (WHEREUPON, the jury panel was excused from the
20 courtroom at 2:46 p.m.)

21 THE COURT: All right. Madam Alternate, you remain
22 with us a few minutes to make sure that we get started
23 back there, and we will be in touch with you in a little
24 while. Y'all just relax. Y'all just step back there a
25 minute. She will take y'all down. Anything for the

1 record?

2 MR. DANIEL: Nothing from the State.

3 MR. HOBBS: Nothing from the Defense, Your Honor.

4 THE COURT: Thank you, gentleman.

5 (WHEREUPON, the jury panel was excused from the
6 courtroom to begin deliberations at 2:47 p.m.)

7 THE COURT: Okay let's stand at ease.

8 (WHEREUPON, Court was in recess at 2:47 p.m. and
9 reconvened at 4:51 p.m.)

10 VERDICT OF THE JURY

11 THE COURT: I've been notified that the jury has
12 reached its verdicts. Okay, even though it has been a
13 fairly short week it has been a long week for everyone
14 that's been involved in the trial of the case. And I know
15 that whatever the jury has done on this you're going to
16 have to live with it, and let's don't have any improper
17 outburst or conduct in the courtroom, okay. Sheriff,
18 notify Mr. Lane to bring them in.

19 (WHEREUPON, the jury panel enters the courtroom at
20 4:52 p.m.)

21 THE COURT: All right. All jurors are reported.
22 Madam Clerk.

23 CLERK OF COURT: Mr. Foreman, have you reached a
24 verdict?

25 JURY FOREPERSON: Yes, ma'am, we have.

1 THE COURT: Hand it to Mr. Bower, please.

2 (WHEREUPON, Court's Exhibits Nos. 1 AND 2 were marked
3 for identification and received into evidence.)

4 THE COURT: All are signed and dated. Madam Clerk,
5 you may publish the verdict.

6 CLERK OF COURT: Thank you, Judge. On Your Honor's
7 docket is 2013-GS-17-290, the State of South Carolina v.
8 Sammy Lee Scarborough. Indictment for criminal sexual
9 conduct with a minor. We the jury find guilty. Signed by
10 Robin Bracey, 11/6/2013.

11 On Your Honor's docket is 2013-GS-17-291, the State
12 of South Carolina, County of Dillon v. Sammy Lee
13 Scarborough. We the jury find the Defendant guilty.
14 Signed by Foreman, Robin M. Bracey, 11/6/2013.

15 On Your Honor's docket is 2013-GS-17-292, the State
16 of South Carolina, County of Dillon v. Sammy Lee
17 Scarborough for criminal sexual conduct. We the jury find
18 guilty. Signed by Foreperson, Robin M. Bracey, 11/6/2013.

19 On Your Honor's docket is 2013-GS-17-293, the State
20 of South Carolina, County of Dillon v. Sammy Lee
21 Scarborough. The jury finds guilty. Signed by Foreman,
22 Robin M. Bracey, 11/6/2013.

23 On Your Honor's docket is 2013-GS-17-294, the State
24 of South Carolina, County of Dillon v. Sammy Lee
25 Scarborough. We the jury find guilty. Signed by

1 Foreperson, Robin M. Bracey, 11/6/2013.

2 If this is your verdict would you signify by raising
3 your right hand.

4 THE COURT: All right. Anything further of the jury?

5 MR. DANIEL: Nothing from the State, Your Honor, our
6 than thank the jury for its service.

7 MR. HOBBS: Your Honor, I would request that you poll
8 the jury as to their verdict.

9 POLLING OF THE JURY

10 CLERK OF COURT: All right. When I call your name I
11 need for you to stand. I will ask you a question and you
12 need to answer it and then I'll excuse you or you can be
13 seated.

14 Number 92, Ashley Legette. Is this your verdict?

15 JUROR: Yes, ma'am.

16 CLERK OF COURT: Still your verdict?

17 JUROR: Ma'am?

18 CLERK OF COURT: Is it still your verdict?

19 JUROR: Yes, ma'am.

20 CLERK OF COURT: Thank you. Robin M. Bracey. Was
21 this your verdict?

22 JUROR: Yes, ma'am.

23 CLERK OF COURT: Still your verdict?

24 JUROR: Yes, ma'am.

25 CLERK OF COURT: Thank you, sir. Number 158, Julie

1 Taylor. Was this your verdict?

2 JUROR: Yes, ma'am.

3 CLERK OF COURT: Is it still your verdict?

4 JUROR: Yes, ma'am.

5 CLERK OF COURT: Thank you. Thomas L. Carter. Was
6 this your verdict?

7 JUROR: Yes, ma'am.

8 CLERK OF COURT: Is it still your verdict?

9 JUROR: Yes, ma'am.

10 CLERK OF COURT: Thank you, sir. James Davis, Jr.
11 Was this your verdict?

12 JUROR: Yes, ma'am.

13 CLERK OF COURT: Still your verdict?

14 JUROR: Yes, ma'am.

15 CLERK OF COURT: Thank you. Betty G. Williams. Was
16 this your verdict?

17 JUROR: Yes, ma'am.

18 CLERK OF COURT: Still your verdict?

19 JUROR: Yes, ma'am.

20 CLERK OF COURT: Thank you. Larry Manning. Was this
21 your verdict?

22 JUROR: Yes, ma'am.

23 CLERK OF COURT: Still your verdict?

24 JUROR: Yes, ma'am.

25 CLERK OF COURT: Thank you, sir. Beulah Grice. Was

1 this your verdict?

2 JUROR: Yes, ma'am.

3 CLERK OF COURT: Still your verdict?

4 JUROR: Yes, ma'am.

5 CLERK OF COURT: Thank you. Barbara Page. Was this
6 your verdict?

7 JUROR: Yes, ma'am.

8 CLERK OF COURT: Still your verdict?

9 JUROR: Yes, ma'am.

10 CLERK OF COURT: Thank you. Aaron Young. Was this
11 your verdict?

12 JUROR: Yes, ma'am.

13 CLERK OF COURT: Still your verdict?

14 JUROR: Yes, ma'am.

15 CLERK OF COURT: Thank you. Martina McDonald. Was
16 this your verdict?

17 JUROR: Yes, ma'am.

18 CLERK OF COURT: Still your verdict?

19 JUROR: Yes, ma'am.

20 CLERK OF COURT: Thank you. Kenneth Allen. Was this
21 your verdict?

22 JUROR: Yes, ma'am.

23 CLERK OF COURT: Still your verdict?

24 JUROR: Yes, ma'am.

25 CLERK OF COURT: Thank you, sir. That's it, Your

1 Honor. Thank y'all.

2 COLLOQUY

3 THE COURT: Ladies and gentlemen of the jury, thank
4 you so much for your service on this case. Thank you so
5 much for your patience with the Court. At this time your
6 duties for the week are completed, and we will move on in
7 this case with what we call mitigation and sentencing.
8 It's where we will hear from both sides anything to
9 mitigate sentencing and then go forward with sentencing.

10 If you so desire you may leave at this time. Sheriff
11 will escort you wherever you need to go, to your car, if
12 you would like to leave at this time. And I'm a little
13 different from other judges concerning this. If you would
14 like to stay and watch the rest of the proceeding you're
15 more than welcomed to do so. You can stay in the seat
16 that you're in or you can move anywhere else in the
17 courtroom you may so desire to observe those aspects of
18 the trial. I'll leave that to you.

19 So if you would like to go ahead and depart that's
20 fine. If you'd like to stay that will be fine, too. I'll
21 leave that up to you. But once again thank y'all so much
22 for your service. And we're almost at the end of the year
23 so this calendar year will be over in about a month and a
24 half.

25 But should you be drawn in December to come and serve

1 you would not have to serve. And you would have an
2 exemption for two more years, but if you're drawn in the
3 future I would encourage and hope you would come back and
4 help the Court, whichever judge may be presiding at that
5 time. All right. Thanks

6 (WHEREUPON, the jury panel was excused from the
7 courtroom at 5:00 p.m.)

8 SENTENCE OF THE COURT

9 MR. HOBBS: Your Honor, may I be heard briefly on
10 post-trial motions. Your Honor, at this point I would ask
11 the Court in motion for a new trial. I do feel, Your
12 Honor, that the jury's verdict stands in the face of the
13 weight of the evidence that was presented throughout the
14 course of this trial. And I would ask the Court to grant
15 my client a new trial on that basis.

16 Your Honor, there was a disagreement as to how my
17 closing should be handled. I would renew my objection to
18 the issue with the closing, and that would be all the
19 evidence.

20 THE COURT: All right. That's noted. At this time I
21 will deny that motion.

22 MR. DANIEL: May it please the Court, Judge, after
23 the jury's verdict we are here now, obviously for
24 sentencing. I'm passing up sentencing sheets. There are
25 five of them. One is to criminal sexual conduct with a

1 minor in the first degree which on both of C.S.C.
2 sentencing sheets we have checked violent, most serious,
3 mandatory G.P.S. And then the three sentencing sheets for
4 obscene material, those are non-violent offenses.

5 Mr. Hobbs has signed both of those as have I.
6 Obviously the defendant, pursuant to a conviction, is not
7 required to sign. Judge, I think probably the first thing
8 we would like to do is let the Court hear from the victims
9 and their families. And we will wrap it up after that.
10 First, if the Court would hear from Sharon Murphy who was
11 a witness in this case.

12 Judge, do you want to go our stuff first or would you
13 like to hear from the defendant first?

14 THE COURT: No. The State goes first.

15 MR. DANIEL: Well, what I'd like to do then is hear
16 from the victims, and then if you would go to the defense
17 and then let us just kind of wrap up if that's okay. This
18 is Sharon Murphy.

19 THE COURT: Miss Murphy.

20 MS. S.. MURPHY: Your Honor, I want to thank you and
21 the Court for helping and my nephews and my mother with
22 this victory. I know my sister is smiling down and her
23 soul is at rest because she cried all the time about this.
24 Every time I would talk to her she would cry about his.
25 And I'm so happy that we finally got justice. Thank you.

1 Thank you. Thank you all. Thank you.

2 THE COURT: Thank you very much.

3 MR. DANIEL: Judge, next is Natasha Funderburk.

4 MS. FUNDERBURK: I'd like to say thank you on behalf
5 of myself and my son, Minor 5 This has been a long five
6 years for us even though charges wasn't formally brought
7 for Minor 5 we are asking for, you know, the maximum
8 amount because he have taken away more than just, you
9 know, Minor 5 childhood. He's broken our family apart.
10 We don't really talk. My aunt don't talk to us. We don't
11 talk to her.

12 My mom was drawn in the middle of it. We had to move
13 from our -- this was our home. We moved to a town where
14 nobody knows us. We know nobody there, and it was all
15 because of this. So I do ask for the maximum.

16 THE COURT: Thank you for coming.

17 MR. DANIEL: Next, Judge, and she can just stand
18 where she is. This is Hope Owens.

19 THE COURT: Miss Owens.

20 MS. OWENS: Your Honor, I just want to ask that -- I
21 just want to say thank you. I couldn't protect my child.
22 I couldn't protect him from him, but please, try to
23 protect other children. Please.

24 THE COURT: Thank you.

25 MS. HALL: Your Honor, this is Minor 3 [REDACTED], and he

1 wants to tell you how he feels or what he wants to have
2 happen to Mr. Sammy.

3 THE COURT: Yes, sir.

4 MR. SAMPSON: I want Mr. Sammy to stay in jail the
5 rest of his life.

6 MS. HALL: You want to tell him anything else? Okay.

7 THE COURT: Thank you.

8 MR. SCARBOROUGH: Your Honor, this is another one of
9 the victims, [REDACTED] Minor 1 [REDACTED] Tell the Judge what you want
10 to have happen to Mr. Sammy.

11 [REDACTED] Minor 1 [REDACTED] Stay in jail.

12 MS. HALL: Do you want to tell him anything else?
13 Okay. You can sit down.

14 THE COURT: Thank you, sir.

15 MR. DANIEL: That would be all from the victims,
16 Judge. If we could just reserve some time after
17 mitigation.

18 MR. HOBBS: Thank you, Your Honor. From the onset of
19 these accusations and my representation of Mr. Scarborough
20 he has maintained his innocence. I've had the opportunity
21 to get to know his family who are present in the courtroom
22 right now, and he has a tremendous support system, Your
23 Honor. From my conversations with them this does not
24 connect with what they know of Sammy Scarborough.

25 Your Honor, I don't believe Mr. Scarborough wants to

1 address the Court at this time, however I would present to
2 the Court, that as the State put on the record earlier
3 today for your consideration that previously offered 20
4 years is an impossibility. There was the offer at the
5 beginning of the week for 25 years.

6 I would ask the Court to consider that as a point of
7 understanding where we were entering into this trial.
8 Your Honor, again, Sammy maintains his innocence, and his
9 family is here to support him and they have been here the
10 whole time. And, again, they say nothing but the best
11 things about him; that this is not in line with what they
12 know of him.

13 THE COURT: Thank you, sir. I will come back to Mr.
14 Scarborough in case he decides he would like to make any
15 statement. I always let the defendant have the last say
16 after we here everything.

17 MR. DANIEL: Your Honor, on behalf of Miss Hall I'd
18 like to say just a few things. First, as it relates to
19 Mr. Hobbs' comment about the offer. We make offers in
20 cases like this to prevent these little children from
21 having to get up here and suffer through testimony,
22 particularly suffer through a cross-examination.

23 They still had to do that. The offer of a cap of 20
24 was a long time ago. The offer of 25 earlier this week
25 was to prevent these kids from having to testify. They

1 had to testify. Some of them more than once.

2 Mr. Scarborough has had the opportunity, had the
3 choice before to take responsibility for this. Has the
4 choice right now but is still not taking responsibility
5 for his actions. Judge, these were touch issues. These
6 little boys and these families dealt with this with the
7 utmost amount of dignity and class. You saw them sitting
8 through this entire trial. They were classy. They didn't
9 act out. They didn't make noises. They were as dignified
10 as we can ever expect in the face of a situation where it
11 would be understandable if they weren't had they not been
12 dignified.

13 If parents and grandparents and aunts and were --
14 bent over backwards to meet with us when we needed to meet
15 with them. Law enforcement, despite arguments made in
16 Court, did an admiral job in this case. Valerie Williams
17 with the Attorney General's Office did an excellent job
18 helping us prepare these children for testimony. The
19 Clerk of Court even on her own without -- I didn't even
20 know about it until this morning, had her staff bring in
21 some candies and some coloring books and things for the
22 kids downstairs as they were sequestered.

23 I would completely remiss if I didn't mention Kelly
24 Hall. Kelly is a dear friend of mind. Kelly works on
25 these types of cases all day every day out of Columbia

1 going all over the state trying cases like this. Without
2 her incredible work in this case we would not be standing
3 here today.

4 Judge, I tried murders. I tried robbers. I tried
5 burglars. Had some real serious cases in this room, and
6 my intent is not to lesson those cases and those victims
7 and those charges, but what this man did, what the jury
8 just found unanimously, beyond a reasonable doubt that
9 this man did is repulsive. Our legislature has said we
10 find this crime so repulsive that if you're found guilty
11 of it you must spend a minimum of 25 years in prison.

12 And our legislature has said it's so repulsive that
13 we're going to allow the judge to impose a life sentence.
14 This man preyed on these four little boys. This man
15 completely stole their innocence. He took any chance they
16 may have ever had at having a normal life. He took it
17 away for his own selfish gratification.

18 If ever there were a child sex abuse case where life
19 was the appropriate punishment it would be this case. We
20 respectfully ask this Court, pursuant to this jury's
21 unanimous verdict on all five indictments, to sentence
22 this predator to life in prison. Thank you.

23 THE COURT: Thank you, Solicitor. Madam Attorney
24 General.

25 MS. HALL: Your Honor, I just would like to say this

1 case is over for all of us when we leave this room today
2 with the exception of the defendant who is going to face
3 whatever punishment you sentence and these families. This
4 is not over for them today, and I do ask that you consider
5 that.

6 THE COURT: Anything else? Oh, criminal record.

7 MR. DANIEL: Mr. Scarborough in addition to currently
8 being on the Central Registry pursuant to a Family Court
9 hearing involving **Minor 5** case has the following
10 convictions:

11 In 2002 a D.U.S. third or more. In 2003 a breaking
12 into motor vehicles and burglary third. 2004, D.U.S.
13 2005, burglary. That may have been -- that was actually a
14 probation revocation. 2010, D.U.S, open container, seat
15 belt violation. 1987, grand larceny, burglary second.
16 1993, financial transaction card theft, petit larceny.
17 1995, receiving stolen goods. 1999, simple possession of
18 marijuana, traffic offenses. 2001, D.U.S. second. 2002,
19 D.U.S. and traffic. That's all I show.

20 THE COURT: That's enough. All right. Mr.
21 Scarborough, I advise you at this time that whatever the
22 sentence may be that you have a right to appeal this
23 matter. Any notice of appeal to preserve your rights of
24 appeal have to be filed within ten days of sentencing. At
25 this time is there anything that you would like to say to

1 the Court?

2 MR. SCARBOROUGH: No, sir, Your Honor.

3 THE COURT: All right. On 2013-292, whereby a jury
4 has convicted you of criminal sexual conduct with a minor
5 in the first degree the sentence is life imprisonment.

6 On 290, 2013-290, whereby a jury has convicted you on
7 another indictment for criminal sexual conduct with a
8 minor. These both are under the age of 11 years, first
9 degree, the sentence is life imprisonment.

10 2013-291, whereby a jury has convicted you of
11 dissemination of obscene material, the sentence is five
12 years.

13 2013-293, another indictment for dissemination of
14 obscene material, the sentence is five years.

15 On 294, whereby the jury has convicted you of
16 dissemination of obscene material, the sentence is five
17 years.

18 All of these sentences are concurrent. I cannot
19 allow you to be back on the streets of Dillon County or
20 anywhere else in this great nation of ours taking into
21 consideration that the damage you have done to all of
22 those children cannot take that chance of you ever doing
23 it to any other child again.

24 I want to tell the children I know you have gone
25 through a lot of information that was -- you relayed to

1 the Court. I appreciate the way you presented yourselves.
2 I am glad that I heard that you're doing well in school.
3 The risk that comes from the psychological damage of
4 crimes that are committed like this are very great.

5 And I pray and hope that all of you will keep the
6 same attitude you've got now and go right on through life
7 and be successful and help your family and your neighbors
8 in the days to come because, you know, even though the
9 criminal justice system does the best it can with the
10 burden we have with our case loads and all does take time
11 to process these things.

12 And I want to thank all of you. The family members
13 especially with the patience that you had in allowing the
14 court system and criminal justice system, law enforcement,
15 everybody involved, the Attorney General's Office,
16 Solicitor's Office, everybody involved to do their work
17 and do it well. I'm not going to sit up here and preach
18 all night about that, but thanks once again for all of
19 yours cooperation and your demeanor. Okay. All right.
20 That's it.

21 MR. DANIEL: Thank you, Judge.

22 END OF TRANSCRIPT OF RECORD

23

24

25

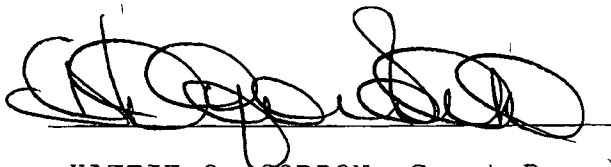
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Dillon County, South Carolina, on the 6th day of November,
2013.

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

February 21, 2014

A handwritten signature in black ink, appearing to read 'Hattie O. Gordon', written over a horizontal line.

HATTIE O. GORDON, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of)

DILLON)

IN THE COURT OF COMMON PLEAS)

Sammy Lee Scarborough,)

Full name and prison number (if any) of Applicant)

#111397)

2017-CP-17 561)

v.)

APPLICATION FOR)

State of South Carolina)

POST-CONVICTION RELIEF)

FILED
GWENTHYATT
2017 NOV -2 AM 10:36
CLERK OF COURT
DILLON COUNTY

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 Lee Correctional Institution, 190 Wiscarty Highway, Bishopville, South Carolina 27010
2. Name and location of Court which imposed sentence Dillon County Court of General Sessions, Dillon, South Carolina
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) 2013-95-17-00290, CSC w/ Minor 1st Degree
 - (b) 2013-95-17-00291, Dissemination of Pornographic

- (c) 2013-95-17-00002, CSC w/ M.I.W., 1st Degree
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 6, 2013, Life
- (b) November 6, 2013, five (5) years
- (c) November 6, 2013, Life
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, I did.
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. South Carolina Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. affirmed
- ii. reversed
- iii. _____
- (c) the date of each such result:
- i. February 24, 2016
- ii. May 30, 2017
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. Unknown
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Denial of Effective Assistance of Counsel
- (b) Actual Involence
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment
- (b) See Attachment
- (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? Yes.
- (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? No.
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. Petition for Rehearing
- 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. _____

ATTACHMENT

11.)

- a) Counsel was ineffective when failing to object to the Prosecution's attempt to introduce prior charges that were never prosecuted by introducing the testimony of Officer Jason Turner and Interviewer Sally Williamson, of which was clearly prejudice to the Applicant and should not have been allowed.

Counsel was ineffective when failing to object to the repetitive use of questioning by the Prosecution during Direct Examinations of Valerie Williams and Gaye Allen Cook, even though the questions were asked and answered.

Counsel was ineffective when failing to present the video containing the interviews of the victims were the victims admitted that the Applicant had never assaulted them. When counsel agreed to the exclusion of the audio/video, precluding him from mentioning the interviews, violating the Applicant's right to the Effective Assistance of Competent Counsel, even after the Prosecution admitted that the video/audio tapes would be 'damning' to its case.

Counsel was ineffective for allowing the presentation of pornographic material, even after the investigation revealed no evidence of pornographic material. The allowance of this material is prejudicial to the Applicant and that allowance during Examinations that would determine guilt or innocence, was highly detrimental to the Applicant. Proper Examinations could have resulted in counsel rendering Effective Assistance in accordance with the Rules of Professional Conduct.

- b) Applicant has maintained his innocence as there does not exist any Direct Evidence and the Circumstantial Evidence that were presented before a Jury, could be clearly refuted and contradicted, such as the audio/video interview of the alleged victims, were the victims admitted to Law Enforcement that no one had assaulted them, proving the innocence of the Applicant.

For the above mentioned issues, the Applicant's Constitutional Rights were violated and did not allow him to have a fair trial and could have proved that he is indeed Innocent.

(c) the disposition thereof:

i. Denied

ii. _____

iii. _____

(d) the date of each such disposition:

i. Apr. 14, 2014

ii. _____

iii. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Unknown

ii. _____

iii. _____

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, they have not

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

(b) the proceedings in which each ground was raised:

i. N/A

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) (10)(a); First Collateral Attack;
 (b) (10)(b); First Collateral Attack;
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A
 (b) your trial, if any? Yes, I was.
 (c) your sentencing? Yes, I was.
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes, I was.
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes, I was.

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. Byrle M. Hobbs,
 ii. Katharine H. Hudgins, Post Office Box 11589,
Columbia, South Carolina 29211
 (b) the proceedings at which each such attorney represented you:
 i. Trial and Sentencing
 ii. South Carolina Court of Appeals; South
Carolina (Supreme) Court

19. State clearly the relief you seek in filing this application:

Based on the above, Sentences Vacated,
Convictions Reversed and Remanded for a
New Trial.

20. Are you now under sentence from any other court that you have not challenged?

No, I am not.

STATE OF SOUTH CAROLINA)

County of PILLOW)

VERIFICATION

I, SAMMY LEE SCARBOROUGH, #141397, 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.

Sammy Scarborough

SWORN to and subscribed before me this 30
 day of Oct, 2017.
Debra Eastwood (L.S.)
 Notary Public

My Commission Expires: 3/3/2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, SAMMY LEE SCARBOROUGH, #141317, 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.

Sammy Scarborough
Applicant

SWORN or affirmed to and subscribed before me this
30 day of Oct, 2017.

Delma Eastman
Notary Public

My Commission Expires: 3/3/2021

FILED
GWEN T. HYATT
2017 NOV -2 AM 10:36
CLERK OF COURT
DILLON COUNTY

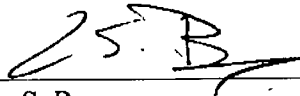
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON	)	C/A NO: 2017-CP-17-561
	)	
Sammy Scarborough,	)	
	)	
Applicant,	)	
	)	FIRST AMENDMENT TO PRIOR
v.	)	APPLICATION FOR PCR
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully
- (i) Counsel improperly introduced Applicant's prior charge for CSC.
 - (ii) Counsel failed to properly object to hearsay.
 - (iii) Counsel failed to object to testimony that victim was abused at Applicant's home.
 - (iv) Counsel failed to object to improper vouching for witnesses by the State during closing arguments and inflammatory language calling Applicant a "predator"

FILED
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 2018 MAY 24 AM 11:19
 CLERK OF COURT
 DILLON COUNTY

THE BOOZER LAW FIRM, LLC



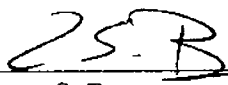
Lance S. Boozer
Attorney for Applicant
1419 Pendleton Street
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
May 22, 2018

CERTIFICATE OF SERVICE

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing First Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, on May 22, 2018, addressed as follows:

Johnny E. James, Jr.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211



Lance S. Boozer

FILED
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2018 MAY 24 AM 11:20
CLERK OF COURT
DILLON COUNTY

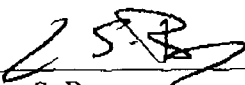
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON	)	C/A NO: 2017-CP-17-561
	)	
Sammy Scarborough,	)	
	)	
Applicant,	)	
	)	SECOND AMENDMENT TO PRIOR
v.	)	APPLICATION FOR PCR
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, at his request, makes the following additional claim and amendment to his prior application for post-conviction relief:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (i) Applicant believes counsel failed to discharge his duty of due diligence and investigate the facts, witnesses, and evidence in the case.
 - (ii) Applicant believes counsel failed to have a proper defense for physical evidence in the case.
 - (iii) Applicant believes counsel failed to have a valid strategy for trial.
 - (iv) Applicant believes counsel failed to challenge or move to quash the indictments before the jury was sworn; that the indictments were insufficient and the trial court lacked subject matter jurisdiction.
 - (v) Applicant believes counsel failed to obtain and show the jury recordings of the victims that provided voluntary statements indicating Petitioner's innocence.

FILED
 GWENTHYATT
 2018 JUL 11 AM 9:56
 CLERK OF COURT
 DILLON COUNTY

THE BOOZER LAW FIRM, LLC


Lance S. Boozer
Attorney for Applicant
1419 Pendleton Street
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
July 9, 2018

CERTIFICATE OF SERVICE

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing First Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, on July 9, 2018, addressed as follows:

Johnny E. James, Jr.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211


Lance S. Boozer

FILED
GWENT. HYATT
2018 FEB -2 AM 8:54

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON) FOR THE FOURTH JUDICIAL CIRCUIT

Sammy Lee Scarborough,)
S.C.D.C. No. 141397,)
CLERK OF COURT)
DILLON COUNTY)

Case No.: 2017-CP-17-00561

Applicant,

v.

State of South Carolina,

Respondent.

RETURN AND
PARTIAL MOTION TO DISMISS

In response to the application for post-conviction relief filed by Sammy Lee Scarborough (Applicant) on November 2, 2017, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dillon County Clerk of Court. Applicant was indicted at the June 2013 term of the Dillon County Grand Jury for two counts of criminal sexual conduct with a minor, first degree (2013-GS-17-00290, -00292), and three counts of disseminating harmful material to minors (2013-GS-17-00291, -00293, -00294).¹ Kyle Michael Hobbs, Esquire represented Applicant. W. Shipp Daniel, III, of the Fourth Circuit Solicitor's Office, and Kelly W. Hall, of the South Carolina Attorney General's Office, prosecuted the case. On November 4, 2013, Applicant proceeded to trial before the Honorable Paul M. Burch and a jury.

¹ Applicant does not challenge indictments -00293 or -00294 on the face of his application. Additionally, two other charges were withdrawn during trial—engaging a child under 18 for sexual performance (2013-GS-17-00710), and an additional count of criminal sexual conduct with a minor in the first degree (2013-GS-17-00328). Respondent's efforts to attain the Clerk of Court's records of these indictments have thus far been unusually unsuccessful. Because they are not the subject of Applicant's collateral attack, and in order to avoid any delay, Respondent submits this return without the records of the unchallenged indictments, rather than seek any additional time. Respondent will continue to seek out these records and provide them to opposing counsel if/when they are obtained.

Four very minor boy victims testified to abuse at the hands of Applicant.² Victim 1 testified that Applicant "put his ding a ding in my throat and made me choke" in Applicant's barn. (Tr. 202, ll. 10-16; Tr. 207, ll. 5-12.) He also testified Applicant showed him pictures of naked girls and boys in a magazine. (Tr. 204-05.) He denied that his cousin Stefan ever touched him or tried to make Victim 1 ever touch him. (Tr. 208, ll. 1-11.) He testified Applicant gave him balloons. (Tr. 208, ll. 18-22.) On cross-examination, Victim 1 described the barn as red with a white edge across it and again testified Applicant "made me suck his ding a ding." (Tr. 213, ll. 10-22.)

Victim 2 testified Applicant showed him pictures of undressed "gay boys" humping. (Tr. 231-33.) He testified he saw his cousin Stefan touch Victim 1's penis and saw Applicant touch Victim 1's penis. (Tr. 233-34.) He testified Applicant gave him candy and balloons and that he played kickball and basketball at Applicant's house. (Tr. 226, ll. 8-14; Tr. 234, ll. 20-25.)

Victim 3 testified Applicant tried to hump him in Applicant's backyard. (Tr. 253, ll. 17-21.) He reported Applicant gave him a football and a balloon. (Tr. 254, ll. 3-4.) He testified he saw Applicant's "turtle" when he was at the back of Applicant's yard. (Tr. 256, ll. 18-24.) He further elaborated that Applicant tried to put his "turtle" in Victim 3's butt and that it hurt. (Tr. 257, ll. 4-12.) He also testified Applicant showed him a nasty magazine with boys and girls humping with their clothes off. (Tr. 258, ll. 11-24.) He stated that when Applicant was humping him, Applicant touched Victim 3's "turtle" and squeezed it, which he testified hurt. (Tr. 259, ll. 5-11.) He further testified Applicant tried to make him suck Applicant's "turtle," but Victim 3 did not do so. (Tr. 261, ll. 9-19.) On cross-examination, Victim 3 admitted he told the forensic interviewer that Applicant had not touched his butt and that he had never taken his clothes off

² The following four paragraphs are largely restatements of the State's summaries of victim testimonies provided in the State's "Statement of the Facts" on appeal

around Applicant. (Tr. 264, ll. 1-6.) However, he agreed that he was now saying Applicant did touch his butt. (Tr. 264, ll. 7-9.) He also testified Applicant put his head to Applicant's "thing." (Tr. 264, ll. 10-16.)

Victim 4 testified that he saw Applicant's "private part" while they were in his truck. (Tr. 300, ll. 11-18.) He stated that Applicant had his pants unbuttoned with his "private part" sticking out of the pants and that he made Victim 4 touch it with his lips. (Tr. 301, ll. 3-14.) Victim 4 testified Applicant's "private part" was in his mouth for a second and that it made him feel bad. (Tr. 301, ll. 17-24.)

The jury found Applicant guilty as indicted on November 6, 2013. Judge Burch sentenced Applicant to imprisonment for concurrent terms of life for each CSC, and five years for each count of disseminating harmful material.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Kathrine H. Hudgins, Esquire, who raised the following issues:

1. Did the trial judge abuse his discretion in refusing to sever seven different indictments naming three different child victims when the State failed to demonstrate that the three groups of alleged offenses were of the same general nature, failed to prove that the offenses arose out of a single chain of circumstances and were provable by the same evidence and the Applicant was prejudiced by the improper joint trial?
2. Did the trial judge err in admitting Rule 404(b) evidence when the State failed to prove that the prior act was relevant and the prior act did not meet the common scheme or plan exception to Rule 404(b)?
3. Did the trial [judge] abuse his discretion in refusing to declare a mistrial after [Victim 2] denied the allegations in one of the indictments and later in the trial the forensic interviewer and the investigator from the Attorney General's Office confirmed that [Victim 2] had denied the allegation contained in the indictment?
4. Did the trial judge err in refusing to direct a verdict of acquittal on the three [counts of] dissemination of obscene material charges when the State did not

introduce in evidence any purported obscene material and relied only on the testimony of the child witnesses?

The parties proceeded to oral arguments before the South Carolina Court of Appeals on October 14, 2015. Applicant was represented by Ms. Hudgins. Jennifer Ellis Roberts, of the South Carolina Attorney General's Office, represented the State. By opinion decided February 24, 2016, the South Carolina Court of Appeals affirmed Applicant's convictions by unpublished opinion. State v. Scarborough, Op. No. 2016-UP-074 (S.C. Ct. App. filed Feb. 24, 2016). Applicant petitioned the Supreme Court of South Carolina for a writ of certiorari, which was denied by order dated May 30, 2017. The Remittitur was issued on June 2, 2017.

II.

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Denial of Effective Assistance of Counsel"

- a. "Counsel was ineffective when failing to object to the Prosecution's attempt to introduce prior charges that were never prosecuted by introducing the testimony of Officer Jason Turner and Interviewer Sally Williamson, of which was clearly prejudice to the Applicant and should not have been allowed."
- b. "Counsel was ineffective when failing to object to the repetitive use of questioning by the Prosecution during Direct Examinations of Valerie Williams and Gaye Allen Cook, even though the questions were asked and answered."
- c. "Counsel was ineffective when failing to present the video containing the interviews of the victims [where] the victims admitted that the Applicant had never assaulted them. When counsel agreed to the exclusion of the audio/video, precluding him from mentioning the interviews, violating the Applicant's right to the Effective Assistance of Competent Counsel, even after the Prosecution admitted that the video/audio tapes would be 'damning' to its case."
- d. "Counsel was ineffective for allowing the presentation of pornographic material, even after the investigation revealed no evidence of pornographic material. The allowance of this material is prejudicial to the Applicant

and that allowance during Examinations that would determine guilt or innocence, was highly detrimental to the Applicant. Proper Examinations could have resulted in counsel rendering Effective Assistance in accordance with the Rules of Professional Conduct.”

2. “Actual Innocence”

- a. “Applicant has maintained his innocence as there does not exist any Direct Evidence and the Circumstantial Evidence that were presented before a Jury, could be clearly refuted and contradicted, such as the audio/video interview of the alleged victims, were the victims admitted to Law Enforcement that no one had assaulted them, proving the innocence of the Applicant.”

Attached to and incorporated herein are the records of the Dillon 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 current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

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.

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 respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant's allegation that he is actually innocent should be dismissed as not cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. Claims by an Applicant that he or she is actually innocent, is not guilty, or that the evidence against him or her was insufficient to prove guilt are not cognizable grounds for post-conviction relief absent a claim of ineffective assistance of counsel or newly discovered evidence. S.C. Code Ann. § 17-27-20(a)(6) ("[T]his section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction."); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (interpreting the statute as barring such claims as inappropriate for consideration under the act); Dickson v. State, 247 S.C. 153, 156, 146 S.E.2d 257, 258 (1966)

("The allegation that petitioner is not guilty does not raise a matter for consideration by habeas corpus."). Therefore, Applicant's independent allegation of actual innocence should be dismissed as not cognizable under the Uniform Post-Conviction Procedure Act.

V.

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; Mangal v. State, Op. No. 27726 (S.C.Sup.Ct. refiled October 4, 2017) (Shearouse Adv.Sh. No. 38 at 12). 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 individual 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.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

Respondent denies each allegation not expressly admitted, qualified, or explained.

VII.

WHEREFORE, Respondent respectfully requests that this Court grant its partial motion to dismiss, set forth in Section IV, above, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

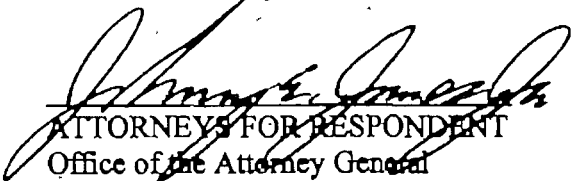
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By:


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31 Jan. 2018

FILED
GWEN T. HYATT

STATE OF SOUTH CAROLINA

2018 FEB -2 AM 8:54

IN THE COURT OF COMMON PLEAS

COUNTY OF DILLON

CLERK OF COURT
DILLON COUNTY

2017-CP-17-0561

SAMMY L. SCARBOROUGH, #141397,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
Boozer Law Firm
1400 Laurel Street, Ste 4A
Columbia, SC 29201-2500

DATED this 31st day of January, 2018.


Mallory Morris, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF DILLON) 2016-CP-17-00561

SAMMY LEE SCARBOROUGH)
APPLICANT)
vs.) TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA)
RESPONDENT)

July 23, 2018
Darlington, South Carolina

B E F O R E:

THE HONORABLE LARRY B. HYMAN, JR., JUDGE.

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

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JOHNNY E. JAMES, JR., ASSISTANT ATTORNEY GENERAL
Attorney for the State

KYLE HOBBS, Esquire

HATTIE O. GORDON
Circuit Court Reporter