

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Beaufort County

Honorable Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN ADAMS,

APPELLANT

APPELLATE CASE NO 2017-001018

RECORD ON APPEAL

RECEIVED

JUL 22 2019

SC Court of Appeals

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

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

MARK FARTHING
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR APPELLANT

ISAAC McDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit
Post Office Box 1880
Bluffton, SC 29910
(843) 255-5880

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED SEPTEMBER 19-21, 2016	1
VOIR DIRE	10
COURT'S RULING ON MOTION TO PROHIBIT REFERENCE TO MINOR CHILD AS "VICTIM"	22
<u>JACKSON V. DENNO</u> HEARING.....	26
TESTIMONY (IN CAMERA)	
JOSEPH BABKIEWICZ	
Direct Examination by Ms. Joseph	26
Cross Examination by Mr. Brown	30
Redirect Examination by Ms. Joseph.....	43
Recross Examination by Mr. Brown.....	44
MARYBETH HEFNER	
Direct Examination by Ms. Joseph	51
Cross Examination by Mr. Brown	58
Redirect Examination by Ms. Joseph.....	78
COURT'S RULING ON MOTION TO PRECLUDE TAINTED WITNESS TESTIMONY	111
COURT'S RULING ON MOTION REGARDING PRIVILEGE OF RECORDS.....	137
OPENING STATEMENT BY MR. WHETSEL.....	145
OPENING STATEMENT BY MR. BROWN.....	148
TESTIMONY	
JOHN DESTACIO	
Direct Examination by Ms. Joseph	157
Cross Examination by Mr. Brown	158
Redirect Examination by Ms. Joseph.....	161
Recross Examination by Mr. Brown.....	161

PATRICIA BRYANT	
Direct Examination by Ms. Joseph	164
Cross Examination by Mr. Brown	166
Redirect Examination by Ms. Joseph.....	167
Recross Examination by Mr. Brown.....	169
TABITHA JONES	
Direct Examination by Ms. Joseph	170
Cross Examination by Mr. Brown	175
COURT'S RULING SUSTAINING STATE'S OBJECTION.....	
TESTIMONY	
TABITHA JONES	
Recross Examination by Mr. Brown.....	189
JOSEPH BABKIEWICZ	
Direct Examination by Ms. Joseph	201
Cross Examination by Mr. Brown	207
Redirect Examination by Ms. Joseph.....	232
Recross Examination by Mr. Brown.....	233
MINOR	
Direct Examination by Mr. Whetsel	236
Cross Examination by Mr. Brown	245
MARY BETH HEFNER	
Direct Examination by Ms. Joseph	252
Cross Examination by Mr. Brown	260
Redirect Examination by Ms. Joseph.....	278
Recross Examination by Mr. Brown.....	280
CHARLES BRYANT	
Direct Examination by Ms. Joseph	281
Cross Examination by Mr. Brown	285
CHARGE CONFERENCE.....	
TESTIMONY	
KRISTEN DALTON	
Direct Examination by Ms. Joseph	357
MOTION TO OFFER WITNESS AS AN EXPERT	

COURT'S RULING	360
TESTIMONY	
KRISTEN DALTON	
Cross Examination by Mr. Brown	366
Redirect Examination by Ms. Joseph.....	375
Recross Examination by Mr. Brown.....	377
STATE RESTS	390
MOTION FOR DIRECTED VERDICT.....	392
COURT'S RULING	393
RENEWAL OF MOTION TO PRECLUDE TAINTED WITNESS TESTIMONY	394
COURT'S RULING	394
RENEWAL OF MOTION TO IMPEACH TABITHA JONES' TESTIMONY.....	394
COURT'S RULING	396
RENEWAL OF MOTION TO INCLUDE TESTIMONY AND RECORDS.....	397
COURT'S RULING	398
DEFENSE RESTS	403
RENEWAL OF ALL PREVIOUS MOTIONS BY THE DEFENSE	414
COURT'S RULING	414
CLOSING STATEMENT BY MS. JOSEPH.....	416
CLOSING STATEMENT BY MR. BROWN.....	427
CHARGE OF THE COURT.....	451
QUESTION FROM THE JURY	460
VERDICT	464
POLLING OF THE JURY.....	464

MOTION FOR NEW TRIAL	469
RENEWAL OF ALL PREVIOUS MOTIONS BY THE DEFENSE	469
COURT'S RULING	471
SENTENCING	476
DEFENDANT'S EXHIBIT 4 (STATEMENT).....	482
DEFENDANT'S EXHIBIT 5 (STATEMENT).....	484
COURT'S EXHIBIT 5 (PROPOSED JURY CHARGE).....	486
COURT'S EXHIBIT 6 (PROPOSED JURY CHARGE).....	487
NOTICE OF MOTION AND MOTION TO PRECLUDE TAINTED WITNESS TESTIMONY	488
MOTION FOR NEW TRIAL BASED UPON NEWLY DISCOVERED EVIDENCE OF MISCONDUCT BY A PROSECUTION WITNESS.....	489
STATE'S RESPONSE TO MOTION FOR NEW TRIAL.....	497
MOTION HEARING TRANSCRIPT DATED MARCH 30, 2017	502
COURT'S RULING ON MOTION TO COMPEL	530
COURT'S RULING ON MOTION FOR NEW TRIAL	537
ORDER DENYING MOTION FOR NEW TRIAL	539
INDICTMENTS AND SENTENCE SHEET	540
CERTIFICATE OF COUNSEL	543

**THE FOLLOWING EXHIBITS FROM THE TRIAL HEARING DATED SEPTEMBER
19-21, 2017, ARE ON FILE WITH THIS COURT:**

**STATE'S EXHIBITS #1-2 (VIDEO INTERVIEWS); DEFENDANT'S EXHIBITS #10-13
(PHOTOGRAPHS)**

**THE FOLLOWING EXHIBITS FROM THE POST-TRIAL HEARING DATED MARCH
30, 2017, ARE ON FILE WITH THIS COURT:**

COURT'S EXHIBIT #5 (THUMB DRIVE)

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF BEAUFORT) 2014-GS-07-00021

STATE OF SOUTH CAROLINA)
 PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD
) VOLUME I OF III
JUSTIN ADAMS)
 DEFENDANT)

September 19-21, 2016
 Beaufort, South Carolina

B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH, JUDGE; and a jury.

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

ALEXANDRA M. JOSEPH, ASSISTANT SOLICITOR
 Attorney for the State

DUSTIN WHETSEL, ASSISTANT SOLICITOR
 Attorney for the State

JAMES A. BROWN, JR., PUBLIC DEFENDER
 Attorney for the Defendant

JOSEPH BABKIEWICZ,
 MARY BETH HEFNER,
 JOHN DESTACIO,
 PATRICIA BRYANT,
 TABITHA JONES,
 [REDACTED] Minor

A P P E A R A N C E S (continued):

CHARLES BRYANT,
KRISTIN DALTON,

HATTIE O. GORDON
Circuit Court Reporter

MASTER INDEX

VOLUME 01: September 19, 2016

Voir Dire of the Jury	10
Selection of the Jury	34
Colloquy	44
Jackson v. Denno Hearing	59

JOSEPH BABKIEWICZ

Direct Ms. Joseph	59
Cross By Mr. Brown	63
Colloquy	75
Redirect By Ms. Joseph	76
ReCross By Mr. Brown	77
Colloquy	82

MARYBETH HEFNER

Direct By Ms. Joseph	84
Cross By Mr. Brown	91
Redirect By Ms. Joseph	111
Colloquy	112
Certificate of Reporter	160

VOLUME 02: September 20, 2016

Colloquy	163
Opening Statement by Mr. Whetsel	178
Opening Statement by Mr. Brown	181

1	JOHN DESTASIO	
2	Direct By Ms. Joseph	190
3	Cross By Mr. Brown	191
4	Redirect By Ms. Joseph	194
5	Recross By Mr. Brown	194
6	PATRICIA BRYANT	
7	Direct By Ms. Joseph	197
8	Cross By Mr. Brown	199
9	Redirect By Ms. Joseph	200
10	Recross By Mr. Brown	202
11	TABITHA JONES	
12	Direct By Ms. Joseph	203
13	Cross By Mr. Brown	208
14	Colloquy	215
15	Colloquy	215
16	TABITHA JONES	
17	Further Cross By Mr. Brown	222
18	JOSEPH BABKIEWICZ	
19	Direct By Ms. Joseph	234
20	Cross By Mr. Brown	240
21	Redirect By Ms. Joseph	265
22	Recross By Mr. Brown	266
23	Colloquy	267
24	Minor	
25	Direct By Mr. Whetsel	269

1	Cross By Mr. Brown	278
2	MARY BETH HEFNER	
3	Direct By Ms. Joseph	285
4	Cross By Mr. Brown	293
5	Redirect By Ms. Joseph	311
6	Recross By Mr. Brown	313
7	CHARLES BRYANT	
8	Direct By Ms. Joseph	314
9	Cross By Mr. Brown	318
10	Colloquy	321
11	Certificate of Reporter	358
12		
13	<u>VOLUME 03: September 21, 2016</u>	
14	Colloquy	360
15	KRISTIN DALTON	
16	Direct By Ms. Joseph	390
17	Cross By Mr. Brown	399
18	Redirect By Ms. Joseph	408
19	Recross By Mr. Brown	410
20	Colloquy	424
21	Closing Statement by Ms. Joseph	449
22	Closing Statement by Mr. Brown	460
23	Charge of the Court	482
24	Colloquy	490
25	Question from the Jury	493

1	Verdict of the Jury	496
2	Polling of the Jury	497
3	Colloquy	500
4	Sentence of the Court	504
5	Certificate of Reporter	514
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2	DVD - Hope Haven	163	111
1	DVD - Interviews	163	238
3	Vol. Stmt - Patricia Bryant	201	

1	DEFENDANT'S EXHIBITS			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	1	Child Victim Interview	64	
4	2	Supreme Court Order	74	
5	3	Model Admin Protocol	74	
6	4	Vol Stmt - P. Bryant	74	
7	5	Vol Stmt - T. Jones	74	
8	6	Email Dated 07/22/16	74	
9	7	Email Dated 08/01/16	74	
10	8	Interview 09/15/16	74	
11	9	Incident Report	192	
12	10	Photo	220	
13	11	Photo	220	
14	12	Photo	220	
15	13	Photo	220	
16	14	Vol. Stmt: Charles Bryant	318	
17	15	Discharge Report	404	
18	16	Maltreatment Protocol	405	
19				
20				
21				
22				
23				
24				
25				

1	COURT'S EXHIBITS			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	1	Dft Voir Dire	34	34
4	2	DVD Interviews	76	76
5	3	DVD - Hope Haven	112	112
6	4	Dft Jury Instr. #1	360	360
7	5	Dft Jury Instr. #2	360	360
8	6	Dft Jury Instr. #3	381	381
9	7	Jury Question	493	493
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

VOIR DIRE OF THE JURY

THE COURT: I find the jury panel to be qualified.
Solicitor, call the case. Are you ready for trial?

MS. JOSEPH: Yes, Your Honor. The State of South
Carolina v. Justin Adams, Indictment Number
2014-GS-07-0021, Your Honor.

THE COURT: Mr. Brown, Defense ready to proceed?

MR. BROWN: The Defense is ready, Your Honor. Thank
you.

THE COURT: Ladies and gentlemen, as you heard we are
about to begin the selection of a jury in the case of the
State v. one Justin Adams who is charged with the criminal
sexual conduct with a minor under the age of 11.

The indictment, I'll explain the significance or lack
of significance of the indictment to you later. The
indictment alleges in part that Justin Adams, during the
year of 2013, did commit a sexual battery upon a minor
under the age of 11; that minor being one Christian Monroe
in violation of the laws of the State.

During the break I turned my microphone off. I
apologize, so bear with me. As you heard a moment ago,
ladies and gentlemen, we are about to begin the selection
of a jury in the case of the State v. Justin Adams who has
been charged with criminal sexual conduct with a minor
under the age of 11 years of age.

1 The indictment, and I'm explain to you later the
2 significance or lack of significance of an indictment, but
3 the indictment alleges in part that during the year of
4 2013 this Defendant, Justin Adams, did commit a sexual
5 battery upon a minor, namely one Christian Monroe, all in
6 violation of the laws of the state.

7 In just a few moments I'm going to ask you some
8 questions concerning any knowledge you may have about
9 these allegations or about the Defendant or about the
10 minor child, about his family, about the lawyers, about
11 potential witnesses that maybe called in the case. But
12 before I do that I'm going to ask the attorneys who are
13 involved in the case if they will stand and identify
14 themselves to you. Give you the name of potential
15 witnesses that may be called to testify in the case.

16 And after they do all of that I will ask you
17 questions about your relationship with all of those
18 people, meaning the attorneys, the potential witnesses,
19 the minor child, the Defendant himself, and I assume --
20 well, I think that covers it. And we'll begin with the
21 State. Solicitor.

22 MS. JOSEPH: My name is Alex Joseph. I'm with the
23 State. This is my co-counsel.

24 MR. WHETSEL: My name is Dustin Whetsel.

25 MS. JOSEPH: And now this is a list of the State's

1 will be given tomorrow. But based on what you see and
2 hear presented in the courtroom, primarily with witnesses
3 taking the witness stand. There may be some videos.
4 There may be other evidence submitted during the case.
5 But you can't go out on your own and try to find out about
6 this case or cases like this or the lawyers involved in
7 this case or the witnesses that may be called.

8 Is anybody going to have a problem doing any of that?
9 Anybody got a problem being back here at 9:30 in the
10 morning? The bailiff will show you where the jury room
11 is. It is where you will meet up early in the morning.
12 Now, ladies and gentlemen, I will see you tomorrow
13 morning. Have a good evening

14 (WHEREUPON, the jury panel was excused from the
15 courtroom at 1:17 p.m.)

16 THE COURT: See y'all back at 9:30.

17 (WHEREUPON, Court was in recess at 1:19 p.m. and
18 reconvened at 2:20 p.m.)

19 THE COURT: All right. Afternoon, ladies and
20 gentlemen. What's the first thing on the agenda?

21 MS. JOSEPH: Your Honor, I have already handed Mr.
22 Brown two motions from the State. The one, the response
23 one, is copies of the motions the State filed. One
24 July 11th. One last week which state that we are trying
25 to enter the Defendant's -- I'm sorry. The child's out of

1 Court statements into evidence, and these are forensic
2 interviews. We have two motions for that because there
3 are two different videos.

4 And then we have -- I also gave him the resume from
5 the woman who interviewed the child at Hope Haven and then
6 the section of the law -- a copy of the section of the law
7 that we will be citing from the forensic interview.

8 And then next, Your Honor, is a motion. It is
9 labeled a motion, but it is really a response to the
10 Defense's motion to not allow the use of the word,
11 'victim'. So I've already given both of these to
12 Mr. Brown.

13 In addition I've handed Mr. Brown criminal histories
14 for the civilian witnesses that we intend to call during
15 the trial. And so I'm now going to hand Your Honor both
16 sets of motions that I referenced earlier.

17 THE COURT: Thank you.

18 MS. JOSEPH: And, Your Honor, earlier in chambers we
19 discussed the Defense waiving Jackson Denno motion in this
20 case. That was something that the State was prepared to
21 go forward on. So that's not being waived. The State
22 would recommend that we first go forward on the two
23 forensic interviews.

24 THE COURT: Is any question about the Jackson v.
25 Denno statement that we're talking about?

1 MR. BROWN: No. The video recorded statement and to
2 the extent that they seek to introduce that or -- I make
3 no claim against the voluntariness of that statement. I
4 do think it's worth pointing out, Your Honor, for
5 posterity sake, we waive the Jackson v. Denno.

6 THE COURT: All right.

7 MR. BROWN: I think for posterity I ought to point
8 out that I am aware that he was arrested without warrant.
9 And I'm also aware that he was not Mirandized at the time
10 they asked him for consent to search his home. And that
11 search led to the discovery of some marijuana. And for
12 what it's worth that charge that was brought in Municipal
13 Court was dismiss based on that Miranda violation.

14 However, we waive any issues regarding either the
15 warrantless arrest, which had not been ruled on by any
16 court or the Miranda violation. In other words, we never
17 asked the Court it review whether there was probable cause
18 to arrest him or not. And we waive, specifically waive,
19 those two objections. And we waive the Jackson v. Denno
20 hearing.

21 Once again, also, Your Honor, that was a Brady
22 concern just for housekeeping. To provided information
23 for the Courts edification the Child Advocacy Center is
24 100 percent funded by the State's Office of Victim's
25 Assistance. So that is 100 percent a government agency, I

1 guess. I think there may be other things that State
2 agency. One must understand State government funding.

3 We've also got Hope Haven's budget, and it does
4 outline some expenditures and it even has a category there
5 that says, "State funds. State funds." There are at
6 least three I saw that complied with my request. And I
7 can't give you a percentage cause I didn't do the math
8 yet, but there are at least three different line items
9 income part of the budget that show it was State funded as
10 well. So those two I think have been addressed.

11 THE COURT: All right.

12 MR. BROWN: And I would like to at some point in time
13 renew my request for the records that I've not been
14 allowed access to via subpoena. Those were Hope Haven
15 counseling records that Your Honor ruled it on July 29th.

16 I did not get those records at least at that time. I
17 don't want to review them, but I think that it would be
18 better if we get them through testimony and I can renew
19 that afterwards because I think during that testimony is
20 going to support my renewed request for them. And that's
21 kind of it. I think you have my motion and their motion,
22 too.

23 And the question of the victim, there is -- at one
24 point I had considered filing a motion for a more definite
25 statement on the indictment given a 335 day time period or

1 so that this is alleged to have happened. The law is not
2 really on our side that much. But I do intend at the end
3 of the case, point it out now cause we're all looking at
4 it as we go forward, asking for an unanimity instruction
5 for each element.

6 And part of that element would be which act -- there
7 is a case, Richardson v. U.S. It's a Supreme Court case.
8 The man known as the King of the Undertakers or something
9 of that effect. Gang member, and they had tried him under
10 a R.I.C.O. type provision, and the U.S. Supreme Court
11 reversed his conviction because they left open which
12 predicate acts did the jury agree to.

13 They presented you have to prove at least two or more
14 for RICO, and they presented a bunch. And the jury
15 never -- the Judge never instructed the jury that they had
16 to be unanimous as to that. Which is true. If one juror
17 agrees that something happened in January, and somebody
18 says something happened two week ago and the child say a
19 hundred day ago or seven days ago or two weeks ago,
20 because this has come out in some of the information.

21 So while I would like for it to be more definite I
22 guess the better attack -- my client just let everybody
23 know at some point, it would be proper at the end of this
24 case, to just have the jury instructed that they have to
25 be unanimous as to which act occurred.

1 MS. JOSEPH: So is Defense counsel making a motion
2 about the definiteness of the indictment because if he is
3 the State has a written response to that.

4 MR. BROWN: I'm not.

5 THE COURT: He's not.

6 MR. BROWN: I'm not. I just saying evidentiary wise.

7 THE COURT: He said he's not.

8 MR. BROWN: No, I'm not, but I'm kind of just doing
9 this I don't want it to end and it's too hard for us to go
10 back and consider the issue after the trial has been done.
11 And it may be that that's not where the evidence takes us.

12 MS. JOSEPH: Your Honor, it sounds like he's half in
13 half out. I prefer that he ask for -- if we raise this
14 issue we can present our motion and then you can rule on
15 it rather than him just sort of waiting.

16 MR. BROWN: I just giving you fair notice that their
17 very broad indictment leaves in subject to a jury
18 speculating as to which acts that they're agreeing on.

19 THE COURT: Do you have a motion regard that law?

20 MR. BROWN: I do not.

21 THE COURT: There is no such motion?

22 MS. JOSEPH: I'm not going to hand up my response.
23 I'll wait.

24 THE COURT: Not at this time.

25 MS. JOSEPH: Thank you, Your Honor.

1 MR. BROWN: But I'm not raising a motion on the
2 indictment at all.

3 THE COURT: All right.

4 MS. JOSEPH: Your Honor, actually, I think the victim
5 motion would be the briefest motion if you want to hear
6 that one.

7 THE COURT: All right.

8 MS. JOSEPH: This is a motion from the Defense.

9 THE COURT: So really it's a Defense motion?

10 MS. JOSEPH: Yes, Your Honor.

11 MR. BROWN: It is, Your Honor.

12 THE COURT: Okay.

13 MR. BROWN: Very succinctly, Your Honor, and they've
14 got two cases that they cited which I briefly read. Due
15 to the determination like a conclusion based upon the
16 determination in this case the term of art for a person
17 who the jury or the Court has found to have been
18 victimized, to the extent that they get to advocate their
19 position, that's slightly different.

20 We're talking about a witness. That's not the same
21 as me saying my client was -- has been wrongly accused.
22 If I had a witness to take the stand and calls him, 'the
23 wrongly accused' we might have some highly objections.
24 Objections from their side. Interestingly in cases they
25 gave they talk about the trial judge referring to the

1 child as the victim. I had never even thought to ask for
2 a restriction on that, but I do.

3 I don't believe I've ever had a Judge refer to the
4 victim a complainant. And so I would make that objection
5 as well. One that preclude the State's witnesses -- I
6 guess it bars the State's witnesses from saying the word,
7 'victim'. The State's attorneys from saying the word,
8 'victim', and of course, the trial judge from saying the
9 word, 'victim'.

10 I think that may ask for three different rulings. I
11 would note briefly, which I think won't happen, their
12 cases talks about it not being plain error, and even if it
13 is an error that it was not such for reversal. I'm not a
14 North Carolina practitioner, but it appears that they have
15 plenty of errors. I do Fourth Circuit work. I have been
16 for 14 years. And they do have plain error.

17 And plain error doesn't just mean it is plainly on
18 its face error. Plain error is error that is plain on its
19 face and abrogated substantial right of Defendant. And
20 these cases are pretty short on analysis, but I'm assuming
21 that plain error means more than it was wrong to do in
22 North Carolina. I'm assuming it means wrong, realize
23 wrong.

24 So those cases never say it's okay. They never say
25 it's okay to say the word, 'victim'. They are both

1 unobjected to.

2 THE COURT: Well, the converse I guess could be
3 argued -- do you have a citation supporting your position?

4 MR. BROWN: The only thing I can tell you, Your
5 Honor, is that I think it's improper if she called him a
6 convict, if she called him anything that would be assuming
7 the actual, legal term of a person who has been convicted.
8 And that's essentially what's they're doing on the
9 backside.

10 I say that nobody embraced the ultimate fact. When
11 someone makes a statement that somebody is the victim
12 that's not a factual statement. That's an opinion. And
13 that's an opinion regarding the ultimate fact here. I
14 mean if Ms. Dolton or one of these people here says he's
15 the victim that devours it for the entire case.

16 MS. JOSEPH: And, Your Honor, first the State fully
17 recognizes that there is no authority from South Carolina
18 on this point, so we were forced to turn to a sway
19 authority. State v. Jackson, the case that I gave you,
20 was in fact appealed up to the Fourth Circuit and the
21 conviction for that case was upheld. However, the
22 question of the trial court using the term, 'victim' was
23 not brought before the Fourth Circuit. It is still
24 undetermined in our area.

25 However, the State is not seeking to actively use the

1 word, 'victim' to eagerly hold up the victim in front of
2 the jury. However, we recognize that our witnesses are
3 here under something that they view as highly traumatic
4 and testifying to what they know to be true. If the word,
5 'victim' were to come out, not to be elicited by us, that
6 we would not be swept away by objections by Mr. Brown.

7 So, you know, even though you're going to ask for a
8 compromise my compromise that I'm offering now is not
9 using the word, 'victim'. Either of us use the word
10 'victim' in front of the jury, but recognize that it might
11 come out, and to not be faced with objections in that
12 situation.

13 THE COURT: Is that a round about way of saying that
14 you're not going to refer to the Defendant -- to the child
15 as a victim?

16 MS. JOSEPH: No, Your Honor. I think that that may
17 come out from the State as well. Part -- we are on
18 opposite sides. The word, 'victim' while Mr. Brown views
19 it as a term of art the State uses it as a correct label
20 the same way he views his client as the alleged. These
21 terms are just terms that we use in our office.

22 They are how we present our case. The jury is well
23 aware that we are on opposite sides on the issue. So that
24 every word I use he in fact does not agree with. So now
25 I'm promising not to use the word unless you ask me to.

1 I'm merely saying that we're not going to run wild with it
2 by any means. And if you feel like we are we will be
3 happy to approach and go back. But I don't really foresee
4 that being a problem.

5 THE COURT: All right.

6 MR. BROWN: Again, I just need to repeat three facets
7 to you. I think, you know, as I'm thinking about it is I
8 do think that if a witness uses the term, 'victim' that's
9 an opinion that they've got to go through the testimony
10 analysis. And for what it's worth the Court, at least in
11 the Anderson case just a few months ago, was very, very
12 restrictive on what the experts should or could testify
13 to.

14 And that case was reversed regarding testimony of the
15 expertise of a forensic interviewer as well as the
16 testimony of the child suspect. To me this is just one
17 more pile of it to step in, and it's -- certainly their
18 opening and closing they get to advocate their case. And
19 I think that's a different animal all together.

20 But if Your Honor used the word, 'victim' I think
21 that would convey an opinion, and I think likewise if a
22 witness testified to that that's an opinion that somebody
23 is a victim.

24 THE COURT: Okay. I'm going to deny the Defense
25 motion concerning the request to prohibit anyone from

1 referring to the child as a victim.

2 MR. BROWN: Would I then be allowed to ask whether
3 they formed an opinion whether someone has been falsely
4 accused?

5 THE COURT: Say that again. I'm sorry.

6 MR. BROWN: Have they formed an opinion whether
7 someone has been falsely accused?

8 THE COURT: Can you ask who that?

9 MR. BROWN: Anybody. Like his mother. Would you
10 consider him falsely accused. I mean that's the opposite
11 of a victim.

12 THE COURT: No, I disagree. No, I would not agree
13 that you can do that. What about the videos?

14 MS. JOSEPH: Your Honor, we're going to present two
15 videos to you today. Mr. Brown points out that they're
16 both 27 minutes in length.

17 MR. BROWN: Before we get into it I'd like to
18 sequester the witnesses because they are the first
19 witnesses. Some of them are here.

20 MS. JOSEPH: That's true.

21 MR. BROWN: Well, if we're going into -- we're
22 telepathing per advocacy for my objection against what
23 should and should not make these videos admissible. They
24 don't sit in here and learn the pathway of the witness
25 that are going to testify.

1 MS. JOSEPH: Your Honor, we have no objection to
2 sequestering the witnesses. We are going to call Officer
3 Babkiewicz first because he is constrained on time so
4 we're playing with the order.

5 THE COURT: All right.

6 MS. JOSEPH: There is actually experts here. Not an
7 expert, but a woman here from Hope Haven. She is here on
8 behalf of the counseling report. Just briefly ---

9 MR. BROWN: I can excuse her to the extent that I
10 have now subpoenaed, successful subpoenaed, the actual
11 counselor because that counselor, who knew we were coming
12 forward today, decided to dodge my subpoena service for
13 the last little bit and so.

14 THE COURT: Do you want that witness out or not?

15 MR. BROWN: She can actually go.

16 MS. JOSEPH: She can go home.

17 MR. BROWN: That's correct, but I have now served the
18 lady who claims that she can't physically come.

19 THE COURT: Can this witness go -- can leave?

20 MR. BROWN: If I keep her on standby for the rest of
21 the week on this issue she can come back. She works right
22 down the road, about a mile down the road.

23 MS. JOSEPH: Yes. And she would like to approach,
24 Your Honor. Can you say your name and then spell it.

25 MS. LINDSEY: My name is (inaudible) - A-R-I-A-N.

1 Last name is Lindsey, L-I-N-D-S-E-Y. I just wanted
2 clarification about the rest of the week. When we spoke
3 last week I told them I had a training in Columbia on
4 Wednesday afternoon and Thursday and Friday. I just need
5 to make arrangements and also to tell the therapist that's
6 out on medical leave as I do have the proof from her
7 doctor that she would ---

8 MR. BROWN: I would object. She's not a lawyer to
9 present that on behalf of the person I subpoenaed.
10 Another person.

11 MS. JOSEPH: So I have spoke with Ms. Lindsey, and I
12 am confident that we can get this trial over by early
13 Wednesday. And I'm confident that in fact we will be
14 calling you tomorrow.

15 MR. BROWN: I agree with all that, and we told Your
16 Honor as well the scheduling. I would agree it's going to
17 be over midday Wednesday. I don't even think any
18 testimony will go on Wednesday.

19 THE COURT: So can the witness be excused?

20 MR. BROWN: Yes, but subject to the standby subpoena
21 in case she's needed tomorrow as a custodian of the
22 record.

23 THE COURT: That's okay with you?

24 MS. JOSEPH: Yes, sir.

25 THE COURT: All right. Thank you for coming.

JACKSON V. DENNO HEARING

MS. JOSEPH: So we call Officer Joseph Babkiewicz to the stand, and so we have sequestered our witnesses.

JOSEPH BABKIEWICZ, after being duly sworn, testified as follows:

THE WITNESS: Good afternoon, Your Honor.

THE COURT: Good afternoon.

COURT REPORTER: Please spell your last name.

THE WITNESS: Sure. It's B-A-B-K-I-E-W-I-C-Z. One of those commonly spelled names.

DIRECT EXAMINATION

MS. JOSEPH: Officer Babkiewicz, I call you officer, but you have a different title; is that correct?

A. Yes, ma'am.

Q. You are a?

A. Lieutenant.

Q. Lieutenant, all right. Lieutenant Babkiewicz, where are you currently working?

A. With the Bluffton Police Department.

Q. And how long have you worked there?

A. Approximately eight years.

Q. And what is your current?

A. I'm in charge of criminal investigations as well as narcotics investigations.

Q. And what are your duties in that role?

1 A. I supervise both the detectives who work the criminal
2 investigations which vary in type and complaint as well as
3 narcotic investigations where we do any type of undercover
4 work with narcotic officers.

5 Q. And how many interviews have you conducted relating
6 to criminal investigations?

7 A. Close to 500 to a thousand.

8 Q. And how many interviews have you conducted involving
9 children?

10 A. At least a hundred.

11 Q. You have any specific training in the field of
12 interrogation or interviewing?

13 A. I do. I went to two different interrogation classes.
14 The first one was interview and interrogation up in
15 Connecticut many years ago. And then recently about eight
16 years ago -- seven, eight years ago was read interview and
17 interrogation class.

18 Q. How long were your trainings?

19 A. They were both a week long.

20 Q. And any trainings courses as it relates to
21 interviewing children?

22 A. Very minimal discussion as it relates to interviewing
23 children.

24 Q. Why did you decide to interview Minor in this
25 case?

1 A. When we brought -- when [Minor] came into the
2 Bluffton Police Department him and I really hit it off to
3 begin with. We brought him in, basically, to speak with
4 his mom. And I just started talking to him trying to make
5 him feel more comfortable inside the police department,
6 and we really built a bond to the point where he really
7 felt comfortable to talk to me about the situation.

8 Q. And describe the intake and interview process for how
9 you interviewed [Minor]?

10 A. We brought [Minor] into a -- what we call the soft
11 interview room of the Bluffton Police Department. It is
12 video camera as well as audio recorded. We allowed his
13 mother to watch the interview on a computer which shows
14 live data from the interview outside the room.

15 Q. And did you [Minor] the interview was being
16 recorded?

17 A. I don't remember if I did not. I believe I did.

18 Q. And did you tell him about the difference between the
19 truth and a lie?

20 A. Yes.

21 Q. And did you ask open ended questions?

22 A. Yes, I did.

23 Q. Did you ask questions based on the age of the child?

24 A. Yes. When we interview adults and children we have
25 to interview them differently because they don't

1 understand or they don't recognize some of the words we
2 may use as adults. So we do kind of simplify the
3 questioning for children.

4 Q. Can you give me an example of that?

5 A. It's basically in the wording, you know. If we say,
6 'suspect' we might say the words, 'bad guy' with a child.
7 It kind of helps them understand things like that.

8 Q. And what was [Minor] 's age of the time of the
9 interview?

10 A. He was five years-old.

11 Q. And what was his behavior and demeanor like?

12 A. He was very comfortable talking with me. He was
13 calm. He didn't seem to be too upset.

14 Q. Did you make an audio and video recording of the
15 interview?

16 A. Yes, we did.

17 Q. And do you always record these interviews?

18 A. Yes, we do.

19 MS. JOSEPH: Your Honor, at this time I would seek to
20 show the video to the Court.

21 MR. BROWN: I don't mind showing it to the Court as
22 well. I don't know if you want me to ask questions first.
23 However Your Honor wants to do it. It will just break up
24 the questioning with 27 minutes of the video.

25 THE COURT: I might be confused. I thought you said

1 you agreed to the video?

2 MR. BROWN: Coming in? No. This is the interview.

3 I agreed to the video of my client coming in.

4 THE COURT: Oh.

5 MR. BROWN: This is the child's interview.

6 THE COURT: But. Okay.

7 MR. BROWN: Yeah, I agreed to the Jackson v. Denno
8 interview of my client's interview where he was
9 interrogated.

10 THE COURT: Okay.

11 MR. BROWN: All I'm saying is it may be simpler or
12 fast. I mean it's disjointed to play 27 minutes in
13 between.

14 THE COURT: All right. Go ahead.

15 CROSS-EXAMINATION

16 BY MR. BROWN:

17 Q. Would you tell us your training regarding forensic
18 interviewing of child victims?

19 A. I don't have any training in that aspect.

20 Q. All right. And what is your familiarity with the
21 14th Circuit Coordinated Investigative Plan by the M.D.T?

22 A. I don't have any knowledge of that.

23 MR. BROWN: I think, Your Honor, mark this as
24 Defendant's one.

25 THE COURT: Okay.

1 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
2 identification only.)

3 MR. BROWN: May I approach, Your Honor?

4 THE COURT: Sure.

5 BY MR. BROWN:

6 Q. If you would take a look at that packet. Are you
7 familiar with the term, 'a minimum fact interview'?

8 A. No, sir.

9 Q. And let me ask you this. If you had to choose one
10 between being a forensic interviewer or be a first
11 responder what was your role in this case?

12 A. My role in this case is to conduct an interview at
13 that point in time.

14 Q. If you had to choose between one of those two?

15 A. Be a first responder.

16 Q. Okay. And if you look on Page Three a discussion
17 about the first responders doing a minimum facts
18 interview; you see that information under the heading
19 says, "Minimum Facts Interview?"

20 A. Sure. Give me a moment. I'm raiding it. Okay, I
21 see that.

22 Q. Okay. And if you notice one of the things that it
23 says is, "Widely recognized that a child victim should not
24 be subject to numerous investigative interviews." You see
25 that statement?

1 A. I'm sorry. Say that again.

2 Q. It says, "Widely recognized that a child victim
3 should not be subjected to numerous investigative
4 interviews?"

5 A. Okay.

6 Q. Okay. And do you agree with that part of it?

7 A. Well, I agree with it that it says that it should
8 not. It does not say it that it could not.

9 Q. Okay. And do you argue with me that the minimum
10 facts are needed before a forensic interview by a trained
11 person is set?

12 A. Do I argue about the questions? I don't understand
13 your question.

14 Q. Do you think it makes a difference whether you
15 conduct this forensic interview without training before
16 the trained forensic interviewer testifies?

17 A. I think it all depends on the victim.

18 Q. And in this case you asked more than just what
19 happened, where did it happen and who the perpetrators
20 were?

21 A. Yes.

22 Q. Okay. And in fact you tried to build up a rapport at
23 the beginning of interview?

24 A. Yes.

25 Q. And you talked about how y'all both cool kids because

1 you have July birthdays?

2 A. Yes.

3 Q. Okay. And how y'all were buddies and you then
4 deputized him or made him a member, a junior officer of
5 the Bluffton Police Department?

6 A. Yes.

7 Q. Okay. And you gave him stickers?

8 A. Yes, I did.

9 Q. And you drew that sticker on his anatomical drawing?

10 A. I don't know if he did or not. I don't remember.

11 Q. Y'all referred to that, and at the end you reminded
12 him about that part?

13 A. Okay.

14 Q. At the end have him remember?

15 A. Yes.

16 Q. Okay. And I think you had mentioned the leading
17 question part, and when you go through and ask him a
18 little bit about what happened on some of this you asked
19 him about whether or not he knows his mom was outside of
20 the room or outside watching him on the camera?

21 A. I don't exactly remember my exact question with him.

22 Q. Did you ask him to wave at the camera? Wave at his
23 mother?

24 A. I think I did.

25 Q. Okay. And the question like, 'does he touch you

1 anywhere else'. Is that not a leading question?

2 A. I believe that could be conceived as a leading
3 question.

4 Q. Okay. And do you argue whether or not he had talked
5 about any sexual battery before you asked that leading
6 question?

7 A. I believe he talked about it right from the
8 beginning.

9 Q. He talked about massaging the wacker, right?

10 A. Yes.

11 Q. Okay. So sexual battery being actually touched?

12 A. I don't recall if he had or not at that point.

13 Q. Okay. And I guess the video spoke for itself. Let
14 me ask you about the child appropriate questions. When
15 you asked him how long ago this had happened do you
16 remember him saying, 'a hundred days'?

17 A. I'm pretty sure he said seven days because he counted
18 it back or he counted the days since that last occurrence.

19 Q. Right. He said, "A hundred days. Just kidding.
20 Seven days." Does that sound right?

21 A. It does.

22 Q. Okay. Does he seem to have a typical five year old
23 awareness of the temporal elements of life?

24 A. No. He seemed a little more advanced than a five
25 year old would.

1 Q. So tell me about that hundred day part.

2 A. I don't know where the hundred day thing came in. I
3 think what he was talking about this occurred multiple
4 times between that time and the seven days. But I can't
5 put words in his mouth so I can't tell you what he meant.

6 Q. Okay. All right. Well, let me ask you about the
7 room. When you put him in the room and you pointed out
8 that camera when you said it was a room with magical
9 powers to bring out the truth what does that mean?

10 A. I don't know what that meant.

11 Q. And what did it mean when you said that if you didn't
12 tell the truth we would get zapped?

13 A. I don't remember saying that either.

14 Q. And what is your take on giving him stuffed animal at
15 the beginning and two more stuffed animals at the end when
16 you reminded him that he's a junior police officer and
17 y'all are, quote, buds forever?

18 A. We actually have several, hundreds, of stuff animals
19 that we have in our department that we give our victims
20 of -- children victims. And he came out and he said he
21 liked three different animals so we gave him all three of
22 them.

23 Q. And what was that; to reinforce the statements that
24 he made?

25 A. No. It was because he was a victim of a crime, and

1 we wanted to try to comfort him.

2 Q. So that wasn't part of the interview process?

3 A. I don't know if it was or not. I don't know if I
4 used the stuffed animal as a prop for the interview.

5 Q. And you told him that Justin was going to be arrested
6 or he would never hurt him again cause he was going to
7 jail?

8 A. I believe I said that that.

9 Q. Okay. And that was all done at this one interview on
10 December 7th; wasn't it.

11 A. Yes.

12 Q. And at that time did you know that there was going to
13 be a follow-up forensic interviews?

14 A. I knew there was going to be a follow-up forensic
15 interview, yes.

16 Q. Okay. And any idea of whether or not vilifying
17 Justin or awarding Minor might taint any of the later
18 interviews or testimony?

19 A. I didn't see as it would because his interview with
20 me was consistent with what he had already told his
21 mother. There is no variations in their stories.

22 Q. So did it matter whether you rewarded him or vilified
23 Justin?

24 A. I didn't see how it would make a difference. No.

25 Q. Okay. And is there any training that you're basing

1 that on?

2 A. It's just dealing with the victim, a child. A five
3 year-old whose a victim.

4 Q. So you weren't dealing with a suspect at words
5 necessarily, were we? You knew that he was accused
6 though, right?

7 A. Yes, we did.

8 Q. And y'all knew that before you ever went to interview
9 him?

10 A. Yes.

11 Q. Okay. And what was there idea that anybody else had
12 been abused by Justin?

13 A. Had anybody else abused him? Is that what your
14 question?

15 Q. Is there any question about anybody else abusing --
16 being abused by Justin?

17 A. No.

18 Q. Okay. So y'all have gathered evidence in your
19 investigation of Justin?

20 A. Right.

21 Q. Okay. So it's not a first responder issue at that
22 point. Just [Minor] saying. Just [Minor] saying,
23 right?

24 A. At that moment in time, yes.

25 Q. Okay. Even in the police department?

1 A. Um hum.

2 Q. Okay. And is that a yes?

3 A. Yes. I'm sorry.

4 Q. And then y'all know where Justin is because he
5 actually called Tabitha about the same time?

6 A. We don't know where he was at. We just know he's
7 trying to contact her.

8 Q. Right. Right, right, right. But you know where
9 Tabitha is at?

10 A. Right. She was at the police department.

11 Q. And did you know where their other child, **Brother**,
12 was?

13 A. I don't recall if I know where he was at or not.

14 Q. Was he with the step grandmother at that time?

15 A. I can't say for sure or not.

16 Q. Did Justin have **Brother**, the one year old?

17 MS. JOSEPH: Your Honor, asked and answered.

18 MR. BROWN: It's a different question.

19 THE COURT: Overruled.

20 BY MR. BROWN:

21 Q. Did you have any concern that Justin had the one
22 year-old?

23 A. I didn't know where the one year old child was at.

24 Q. Did y'all ever have concern that he was missing or
25 that he was with Justin or anything?

1 A. Again, I didn't know where the child was at. Could
2 be with Justin. Could be with grandparents. I don't know
3 where he was at.

4 Q. That's a good point. So did you ask the adults where
5 the other child was?

6 A. I don't know if I did or the investigating officer
7 did.

8 Q. Did you ever ask [Minor] during that interview
9 where the one year old child or one year old step
10 brother -- I mean half brother was?

11 A. Did I ask [Minor]? I don't think I did.

12 Q. Okay. So the concern didn't have to do with the
13 safety of the community at large or somebody that was
14 loose, did it?

15 A. No.

16 Q. And it didn't have anything to do with protecting
17 [Minor] from some imminent harm from Justin?

18 A. Well, if he got loose we weren't sure where []
19 [Minor] was.

20 Q. Okay. Well, if [] [Minor], [Minor], was
21 with you?

22 A. I'm sorry. Your client.

23 Q. Right. Mr. Adams, y'all didn't know where he was, is
24 that fair enough, but you knew where [Minor] was?

25 A. At that time, yes.

1 Q. Right. All right. So the purpose of the interview
2 wasn't to somehow or another secure the safety of the
3 argument of any alleged misconduct by Mr. Adams, right?

4 A. Sure it was. We can't keep [Minor] in the P.D. all
5 day and all night. I mean eventually [Minor] is going
6 to have to go. We don't know where Justin was at.

7 Q. Let's talk about that. What's your understanding of
8 D.S.S. involvement?

9 A. I don't know if D.S.S. -- I think we contacted D.S.S.
10 after -- afterwards. I'm not sure.

11 Q. Isn't that part of what this multi-disciplinary team
12 and plan for each judicial circuit is supposed to do?
13 Coordinate? If D.S.S. gets there they're supposed to
14 mandatorily involve law enforcement and vice versa. If
15 law enforcement gets there they're supposed to mandatorily
16 contact D.S.S.?

17 A. Sure.

18 Q. Does that sound like some?

19 A. Sure.

20 Q. Okay. Because they're the ones that deal with taking
21 a child to a safe house or making sure the -- can y'all
22 take them in emergency?

23 A. We can.

24 Q. Okay. So you could have just kept [Minor] there if
25 you felt under the circumstances?

1 A. Yes.

2 Q. All right. Did they ever -- did anyone ever -- I
3 don't know how to say it. Did y'all ever have a
4 multi-disciplinary team meeting? I know you didn't know
5 exactly what it was. Anything like that where your
6 agency, Solicitor's Office, D.S.S, Hope Haven or anybody
7 else all got together and talked about the plan there?

8 A. I believe several of us met up at the Hope Haven
9 interview. I don't know who, other than the Solicitor's
10 Office and Hope Haven. I'm not sure if D.S.S. was there
11 or not.

12 Q. Okay.

13 MR. BROWN: If I may approach and mark these items as
14 Two and Three.

15 THE COURT: Sure.

16 (WHEREUPON, Defendant's Exhibit Nos. 2 THROUGH 8 were
17 marked for identification only.)

18 MR. BROWN: May I approach, Your Honor?

19 THE COURT: Sure.

20 BY MR. BROWN:

21 Q. Take a look at those two. I believe those have one
22 of the legal documents and the other is a draft order
23 given. Have you heard anything about that?

24 A. This is notification from D.S.S.

25 Q. Well, I mean all I'm asking are you familiar with it?

1 A. Some of it. Not all of this.

2 Q. And doesn't that discuss the coordination with the
3 other agencies? In fact if you look at Page One under
4 Roman Numeral One, Subpart Three. Doesn't it cite the
5 South Carolina statute to the effect that the interview of
6 a child should be coordinated to avoid unnecessary
7 repeated interviews?

8 A. It does.

9 Q. Are you aware of that statute before you did your
10 interview?

11 A. No, I wasn't.

12 MR. BROWN: I don't have any other questions, Your
13 Honor.

14 COLLOQUY

15 MS. JOSEPH: Your Honor, at this time the State would
16 like to enter the video and play it before the Court. I'm
17 not entering in evidence and playing it before the Court.
18 But after the video is played the State would like to
19 reserve some time to ask Lieutenant Babkiewicz some
20 further questions?

21 THE COURT: All right.

22 MR. BROWN: It's just being played right now?

23 MS. JOSEPH: Right. And, Your Honor, I apologize.
24 The sound is a little low. By tomorrow we will have that
25 fixed.

1 THE COURT: All right.

2 MS. JOSEPH: I apologize.

3 (WHEREUPON, a video was played in open court.)

4 REDIRECT EXAMINATION

5 BY MS. JOSEPH:

6 Q. Is that a fair representation of the video?

7 A. Yes.

8 MS. JOSEPH: Your Honor, at this time the State would
9 move to enter that video into evidence.

10 MR. BROWN: We're not in the trial. Assuming she
11 means for purposes of pre-trial.

12 MS. JOSEPH: That's true, Your Honor.

13 MR. BROWN: For purpose of pretrial, no objection.

14 MR. BROWN: Okay.

15 MS. JOSEPH: Just a Court's exhibit, Your Honor.

16 THE COURT: Okay.

17 MS. JOSEPH: This will be the State's first Court's
18 exhibit.

19 (WHEREUPON, Court's Exhibit No. 2 was marked for
20 identification and received into evidence.)

21 THE COURT: Okay.

22 MS. JOSEPH: And, Your Honor, I actually have no
23 further questions for Lieutenant Babkiewicz. I would just
24 ask for time to argue our motions.

25 THE COURT: Okay.

1 MR. BROWN: If I may briefly.

2 RECROSS-EXAMINATION

3 BY MR. BROWN:

4 Q. Now, here's the disclosure that's on the interview.
5 One of the things that you need to do is corroborate that
6 right according to some of the rules regarding ---

7 THE COURT: Yes.

8 MR. BROWN: --- disciplinary team plans that the
9 police are supposed to go back out and corroborate things.
10 Look at each line by line and corroborate what they can,
11 right?

12 A. Yes.

13 Q. Tell me what y'all did to do that in this case?

14 A. We looked at the statement that [Minor] gave
15 to his mother as well as the statement that he give to me
16 inside the police department. And like I said before it
17 was consistent and did not seem to change in one nature
18 when we spoke.

19 Q. But evidence wise what evidence did you go out to
20 seek do corroborate this information? And if I may refer
21 you to I believe it's marked as Defense Exhibit One, Page
22 9, first full photograph begins, "D.S.S. investigators and
23 law enforcement officers." You can stop there.

24 A. You talking about the ...

25 Q. The Defense One. I believe it's the thickest of the

1 three documents.

2 A. What page was it.

3 Q. Page 9 begin with the first full paragraph?

4 A. Right. Because this occurred seven days ago there
5 was nothing for us to corroborate as far as it being in
6 the shower.

7 Q. What was it? I'm sorry. I didn't hear?

8 A. Because this occurred seven days ago when it occurred
9 in the shower according to our victim there was nothing
10 for us to go and grab from that shower.

11 Q. Okay. So you're understanding of this was that
12 everything was in the shower?

13 A. Not everything. We didn't learn until later that
14 this occurred more -- several other incidents occurred in
15 other parts of the house.

16 Q. Where did you learn that?

17 MS. JOSEPH: Your Honor, I object. This is simply
18 for the purpose of the interview process. At this point
19 Mr. Brown is on a fish expedition. We need to just focus
20 on his qualifications for conducting the interview and the
21 interview itself and the contents therein. Not for his
22 investigation following the interview.

23 MR. BROWN: I'm absolutely questioning him on
24 following the procedures for first responders versus
25 forensic interviews. It is very detailed. It's an order

1 that sets out parts of the order from the Chief Justice.

2 THE COURT: You know, of course, I don't have a copy
3 of any of that.

4 MR. BROWN: And I apologize, Your Honor. I've got a
5 copy right there that he's reading, and I can hand you
6 mine because I do intend for the Court to have the other
7 ones. It will somewhat handicap me, but that's the page
8 I'm looking at. I mean some of it is statutory and all
9 I'm asking him is whether that took that role or not.

10 THE COURT: All right. The last round of questions
11 was?

12 MR. BROWN: Well, he caught me off guard that he
13 didn't find out until later that there were events that
14 occurred in other places other than the shower.

15 THE COURT: Okay. What was your question?

16 MR. BROWN: When did you find out that other stuff.
17 Because one of the things that we're looking at is
18 internal coherence. I say that because I think in
19 statutory terms under the due process you're a gatekeeper
20 of whatever information. And to the extent that it's
21 multiple statements are not consistent with each other.
22 In this case there give two different forensic interviews
23 and there are other interviews.

24 And one of the things that have come out is whether
25 or not, and this is going to come out, during counseling

1 sessions the child says there was ejaculation because they
2 testified -- Lieutenant Babkiewicz in previous hearing
3 said there was no ejaculative to go get. That's why they
4 didn't go get evidence. This is new to me. I mean I'll
5 save the question and come back with a Brady Motion later
6 and recall Lieutenant Babkiewicz.

7 I'll withdraw the question. I mean that's fine. I
8 mean I will call him later for a Brady Motion cause it
9 sounds like there are more allegations. On a variety,
10 Your Honor, I found out that it was alleged ejaculation in
11 this case for the first time in 34 months.

12 THE COURT: Okay. Question is withdrawn. Next
13 question.

14 MR. BROWN: Yes, sir.

15 BY MR. BROWN:

16 Q. Did you photograph anything?

17 A. I was the lead investigator in the case. I myself
18 did not photograph anything. No.

19 Q. When did the lead investigator go to the alleged
20 scene of the crime? When was the first time you went out
21 there? Did he not go out with you at the time of the
22 arrest of Mr. Adams?

23 A. He did. I'm looking for the date.

24 Q. December 7th 2013, does that sound right? The same
25 day this forensic interview?

1 A. Yes, December 7th.

2 Q. Okay. December 2013, and I'm assuming you're talking
3 about Michael Danyov?

4 A. Yes.

5 Q. And he went out there with you during the arrest of
6 Mr. Adams?

7 A. He did.

8 Q. Well, he asked Mr. Adams if he could go in his house?

9 A. We did.

10 Q. And he let you in?

11 A. Yes.

12 Q. And did you take any photographs during that time?

13 A. I don't know if they went in and took photographs.

14 Q. Did you take any photographs?

15 A. No, I did not.

16 Q. Are you aware of any photographs?

17 A. No, I am not.

18 Q. Are you aware of any video taken?

19 A. No, I am not.

20 Q. Are you aware of any evidence collected outside of a
21 small bag of marijuana and some paraphernalia?

22 A. No.

23 Q. Were you aware that there is allegation of
24 ejaculation?

25 A. I was not aware of that.

1 Q. Thank you.

2 COLLOQUY

3 MR. BROWN: I don't have any other questions right
4 now, Your Honor. I would have argument, and I would like
5 to swap with Your Honor and let Your Honor have those
6 three before I lose my copy. And those have been entered
7 as Defense -- yes, yes. That same document is Number One,
8 and Two and Three are the Court's order.

9 THE COURT: Yes, sir.

10 MR. BROWN: That goes along as well. Thank you, Your
11 Honor.

12 THE COURT: Defense has no more questions?

13 MR. BROWN: No, sir.

14 MS. JOSEPH: The State has no more questions for
15 Lieutenant Babkiewicz.

16 THE COURT: All right.

17 MS. JOSEPH: I think he can be excused.

18 THE COURT: Yes. You may step down.

19 THE WITNESS: Thank you.

20 MS. JOSEPH: Don't be stepping down too far. Do you
21 need to sit here. If you do that's okay. Sir, if you
22 will just go sit down here and we'll find you. You can go
23 sit outside, but we will need to talk to you.

24 THE WITNESS: Okay.

25 MS. JOSEPH: Your Honor, the State wants to be heard

1 on this motion. Is it okay?

2 THE COURT: It certainly is. Go ahead.

3 MS. JOSEPH: Your Honor, we believe ---

4 MR. BROWN: I wish to call a lady from Hope Haven,
5 Ms. Marybeth. You're done?

6 MS. JOSEPH: Yes. I was going to say the same thing
7 which is truthfully the strongest case that the State has
8 is that these two videos, there are two forensic
9 interviews which say the same, are very consistent with
10 each other.

11 So if that's true, what the State says is true, then
12 the strongest evidence would be both videos being played
13 and being in fact very consistent. So the State would
14 actually agree that Ms. Hefner should be called now and
15 hear that that's what the Defense wants as well.

16 MR. BROWN: The way I see it, Your Honor, they're
17 asking you for two different rulings. One ruling
18 regarding Babkiewicz's interview.

19 THE COURT: Right.

20 MR. BROWN: And a ruling regarding Marybeth Hefner's
21 interview.

22 THE COURT: Right.

23 MR. BROWN: I'm asking for a tank ruling. I believe
24 we can get it all out through ---

25 THE COURT: Bring the witness.

1 MS. JOSEPH: So we will get Ms. Hefner. I believe
2 she is out outside. We'll get her.

3 MR. WHETSEL: Your Honor, do you mind if I step out
4 briefly.

5 THE COURT: Sure.

6 MR. WHETSEL: If that's okay, Your Honor.

7 THE COURT: It is.

8 MARYBETH HEFNER, after being duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MS. JOSEPH:

12 Q. - Good afternoon, Ms. Hefner.

13 A. Good afternoon.

14 Q. Thank you very much for being here. I'm going to ask
15 you some questions briefly, and then I believe Mr. Brown
16 will ask you some questions and then we're going to see
17 and play the videos which show the forensic interview you
18 conducted. So where do you currently work?

19 A. I currently I am employed with the South Carolina
20 Department of Mental Health and the exact location is
21 Coastal Empire Community Mental Health on Hilton Head.

22 Q. And did you used to work for Hope Haven?

23 A. I did.

24 Q. How long did you work for Hope Haven?

25 A. Seven years.

1 Q. And what was your position there?

2 A. I was forensic interviewer and counselor.

3 Q. And what did that entail?

4 A. Forensic interviewing entails talking to children
5 where there is a suspicion or allegation of abuse,
6 physical abuse or sexual abuse. And also I did counseling
7 with children and their families whenever there was an
8 allegation of or suspicion of abuse.

9 Q. And could you walk us through, first, any degrees you
10 might hold, any certificates or training that you might
11 have had?

12 A. I have a master's degree in professional counseling.
13 I'm also licensed in the State of South Carolina as a
14 licensed counselor. I've had training in forensic
15 interviewing that occurred in 2007 in Columbia. That was
16 sponsored by the Children's Law Center. That was a 40
17 hour training to be certified in the art of forensic
18 interviewing.

19 Also subsequent trainings through the years while
20 employed at Hope Haven. Was ongoing education regarding
21 trauma and counseling for children that were deemed abused
22 and or made allegations of abuse.

23 Q. And earlier you made reference to a forensic
24 interview. What is a forensic interview?

25 A. It is a fact finding mutual interview with children

1 to ascertain details pertaining to an allegation of abuse
2 that they disclosed to others.. Where this is reported to
3 law enforcement and/or social services Hope Haven would
4 get calls from law enforcement and social services and
5 schedule an interview with the child.

6 Q. And you mentioned your training in earlier, but many
7 of those trainings specifically aim towards conducting
8 forensic interviews with children?

9 A. Correct.

10 Q. And is there standard protocol for forensic
11 interviews, R-A-T-A-C?

12 A. Correct. We'll refer to that as R.A.T.A.C. and
13 R.A.T.A.C. is an acronym which stands for Rapport, Anatomy
14 Identification, Touch Inquiry, Abuse Scenario and the
15 closure. The terminating the forensic interview.

16 Q. And is R.A.T.A.C. regularly and widely accepted in
17 the field of forensic interviews?

18 A. It is. It is nationally recognized as the go to
19 interview process when interviewing small or adolescent
20 children.

21 Q. And you also spoke a little bit about the process of
22 setting up the interviews at Hope Haven, but how do you
23 get your referrals?

24 A. Hope Haven served a five county district, and we
25 would be -- receive calls from different counties, law

1 enforcement agencies, and they would call us to set up an
2 interview with the child whenever there is an allegation
3 of abuse.

4 Q. And referred from law enforcement, did you receive
5 anything prior to the interview?

6 A. I'm sorry. Can you repeat that?

7 Q. In a case was referred from law enforcement, did you
8 receive any information from the law enforcement agency
9 prior to interviewing the child?

10 A. Typically, no.

11 Q. And can you describe your intake and interview
12 process?

13 A. Yes. On the day of the interview prior to meeting
14 with the child we forensic interviewer and what we call
15 family advocate meet with the referring agency. In this
16 case it was Bluffton Police Department. Provide some
17 background information about the details of the
18 allegation.

19 After meeting with law enforcement or sometimes
20 social services we would then meet with the caregiver, the
21 non-offending parent or caregiver. And there that's when
22 we would obtain information pertaining to the child's
23 medical history, educational history, background
24 information about family members. Anything that would be
25 needed in order to meet that child's need during the

1 interview.

2 Q. And were there any guidelines or rules for the
3 interview?

4 A. The guidelines or rules would be once the child comes
5 into the room explaining about the camera, the equipment,
6 pointing it out, letting them know specifically that they
7 are not in trouble; that they need to talk about things
8 that are real and true, things that actually happened to
9 them.

10 We mentioned the fact that no one is watching
11 especially caregivers in order for them to feel more
12 comfortable and at ease.

13 Q. And what type of questions are used during forensic
14 interviews?

15 A. The questions?

16 Q. What type of questions?

17 A. Oh. The questions are open ended. We start with
18 open ended questions and move on to a hierarchy of
19 questioning, but the most preferred questioning is the
20 open ended.

21 Q. And do you use different questioning depending on the
22 child's age?

23 A. Yes.

24 Q. Can you give me an example of that?

25 A. Of course, with smaller children, obviously, the

1 language has to be simpler. Smaller children, three and
2 four and five, have difficulty asking about time
3 references and time frames. With small children you
4 mostly ask how and who so -- but whereas with older
5 children you can ask those open ended questions about
6 where, frequency, details, more details.

7 Q. And when you conduct an interview how do you get the
8 child to talk about his or her anatomy?

9 A. What we provide is a diagram of a male's body and a
10 female's body, and this is where we ask the child to
11 identify body parts. And then that's what an interviewer
12 uses during the interview using the child's language.

13 Q. Did you interview the victim in this case, [Minor]
14 [REDACTED]?

15 A. I did.

16 Q. And do you know what day you interviewed him?

17 A. The day -- I think the date was December 11th 2013.

18 Q. And was he referred to you by Buffton Police
19 Department?

20 A. Buffton Police Department, correct.

21 Q. And why was he referred?

22 A. Because there was an allegation of sexual abuse.

23 Q. And how old was [Minor] at the time of the
24 interview?

25 A. He was five.

1 Q. And who was present in the room during this
2 interview?

3 A. Just myself and [Minor].

4 Q. And you had mentioned R.A.T.A.C. Was that used in
5 this case?

6 A. Yes, it was.

7 Q. And what was his behavior, demeanor during the
8 interview?

9 A. Initially he was very engaged in the interview. He
10 maintained eye contact. He was verbal. He seemed very
11 enthusiastic to talk to me and then as the interview went
12 on he became a little more reserved and quiet.

13 Q. And was this interview recorded both visually and
14 audibly?

15 A. Yes, it was.

16 Q. And do you always record these interviews?

17 A. We do.

18 Q. Okay. And previously we had shown you the DVD that
19 held an interview, and you initialled it. Do you remember
20 doing that?

21 A. Yes.

22 Q. And has that video been altered in any way?

23 A. No.

24 Q. And so it depicted the interview you conducted
25 December 2013?

1 A. Yes.

2 MS. JOSEPH: Your Honor, at this time we would seek
3 to play that video and allow Mr. Brown to ask questions
4 first and then after play the video and enter that into
5 evidence for the purposes of this pre-trial motion?

6 MR. BROWN: Thank you. May it please the Court.

7 THE COURT: Sure.

8 CROSS-EXAMINATION

9 BY MR. BROWN:

10 Q. Ms. Hefner, are you familiar with, and ---

11 MR. BROWN: See if I can approach, Your Honor. Yes,
12 sir. If I may present to her Defendant's One. What has
13 been marked as Defendant's Exhibit Number One.

14 BY MR. BROWN:

15 Q. Here. If you're familiar with that?

16 A. I've seen it before. Yes.

17 Q. Okay. And let me ask you. What's the difference
18 between a forensic interview and a minimum facts
19 interview?

20 A. I'm not sure what the difference is between an
21 interview and a minimal facts ---

22 Q. Forensic interview and a minimal facts interview?

23 A. I'm not sure.

24 Q. Okay. Look at Page Three?

25 MS. JOSEPH: Your Honor, I would object. I mean this

1 victim -- the witness has just stated that she does not
2 know what the difference is. He get her to, you know,
3 come up to date with those terms. She has no knowledge of
4 those terms required to testifying.

5 MR. BROWN: However Your Honor wants to do. I take
6 it she doesn't know what I'm talking about. I believe if
7 I'm allowed to ask some more detailed, smaller stepped
8 questions it might facilitate if you like to ---

9 THE COURT: I couldn't understand your last part.

10 MR. BROWN: And I'll withdraw it and rephrase it.
11 I'll repeat it.

12 THE COURT: All right. Question is withdrawn. Go
13 ahead.

14 BY MS. JOSEPH:

15 Q. Generally speaking, Ms. Hefner, is there a preference
16 for a whole bunch of interviews with the child before a
17 forensic interview?

18 A. A forensic, no, there is no preference for multiple
19 interviews prior to a forensic interview.

20 Q. And is it not in fact a statement of widely
21 recognized that they should not be subjected to numerous
22 interviews?

23 A. That's in a perfect world where children should not
24 have multiple interviews so that the child's memory is not
25 tainted or affected.

1 Q. Okay. So there is a purpose and reason for
2 minimizing the number of interviews?

3 A. Correct.

4 Q. Okay. And why do you R.A.T.A.C. or ask any other
5 questions that you want? Why is R.A.T.A.C. used?

6 A. We don't use -- we don't ask any questions that we
7 want. It's a semi-structured protocol. We ask the open
8 ended questions. Who, what, where.

9 Q. Right. Okay. So let me try it again. Why is it
10 important to follow R.A.T.A.C. and not just as willy nilly
11 whatever you want?

12 A. Because it's a nationally recognized protocol.

13 Q. Why is it nationally recognized?

14 A. I'm not sure why it is nationally recognized.

15 Q. Does it have to do with the suggestibility of a young
16 child?

17 A. Correct. Right. And that's why we use the open
18 ended inquiries rather than direct and leading inquiries.

19 Q. Okay. Are you familiar with children who have been
20 suggested to a suggestive interview? Are you familiar
21 with that?

22 A. Partially, yes. Somewhat.

23 Q. Cause it's not like it doesn't happen?

24 A. Correct.

25 Q. So it does happen sometimes?

1 A. I don't know where, but I mean it can happen?

2 Q. The Kelly Michaels case, you ever heard of that?

3 A. What is it?

4 Q. The Kelly Michaels case?

5 A. No.

6 Q. Never heard of the leading case on tainted
7 interviews?

8 MS. JOSEPH: And, Your Honor, once again I think the
9 Defense is asking questions outside of the purview of this
10 witness.

11 MR. BROWN: Well, now, Your Honor, I thought we were
12 gathering facts for my motions as well, too. That's why
13 we weren't going to recall these people.

14 Just procedural, I mention that we can after we
15 interview the witnesses or examine the witnesses argue our
16 motions. I understand her permission, but it can't be
17 more than mutually exclusive. If I win mine the
18 interviews don't come in. In fact the witness' testimony
19 don't come in. If theirs comes in I'm assuming it's not a
20 taint.

21 MS. JOSEPH: Right. He asked her first if she
22 recognized the case and she said no. Then he asked her
23 again. I'm just asking that he not be badgering the
24 witness?

25 A. I'm not badgering. It's a little incredible that my

1 expert told me to ask her about that case. I mean I don't
2 know how to put it.

3 THE COURT: She said she did not know about it.

4 MR. BROWN: She said she did not know the Kelly
5 Michaels case. Absolutely.

6 BY MR. BROWN:

7 Q. Well, let me ask you this. Are you familiar with the
8 proprietary or lack thereof for deputizing a child during
9 the interview?

10 A. Will you repeat that, please?

11 Q. Are you familiar with the proprietary or lack thereof
12 of an interviewer deputizing a child during the interview?

13 A. I'm not sure I understand what that means,
14 deputizing.

15 Q. Okay. Let's break it down. Is it proper for an
16 interviewer to make the subject of the interview a deputy
17 or junior deputy or junior officer?

18 A. I am not understand what -- I don't know what you
19 mean by junior officer.

20 Q. Which part don't you understand?

21 A. Junior deputy officer. I've never heard of that.

22 Q. Okay. Did you see the sticker on [REDACTED] Minor's shirt
23 when he came in for your interview?

24 A. The sticker on [REDACTED] Minor's shirt?

25 Q. Do you remember what color shirt he was wearing

1 during your interview?

2 A. No.

3 Q. Have you reviewed your interview?

4 A. I saw it today.

5 Q. And what color shirt is that?

6 A. All right. I don't ---

7 Q. Black?

8 A. I don't recall.

9 Q. You don't recall a black shirt? One big sticker in
10 the middle that was a junior officer for the Bluffton
11 Police Department. Let me ask you. If a person
12 conducting an interview told the child that he was going
13 to be made a junior officer is that an appropriate
14 distance and objectivity between the interviewer and the
15 interviewee?

16 A. I don't think -- I don't know. I can't make comment
17 I don't understand the context.

18 Q. I don't understand what you don't understand, Ms.
19 Hefner. I'm being respectful. I mean what part of it?
20 I'm talking about deputizing a child during the interview.
21 Is that appropriate? Would it be appropriate for you to
22 make an interviewee an honorary member of Hope Haven?

23 A. No.

24 Q. Why?

25 A. Usually, making promises to children is not

1 appropriate in order -- we are told or trained that we are
2 not to make promises or give candy or ---

3 Q. No rewards?

4 A. Correct.

5 Q. No rewards to a child during an interview; is that
6 correct?

7 A. Correct.

8 Q. Okay. How about vilifying the suspect of the
9 investigation?

10 A. That is not recommended in a forensic interview..

11 Q. Okay. And how about telling the interviewee that the
12 subject of the investigation is going to be incarcerated
13 or has been incarcerated?

14 A. Again, as forensic interviewers we are strongly
15 advised not to discuss that kind of information.

16 Q. Okay. And how about telling them that if they don't
17 tell the truth in that room that will be zapped?

18 A. That is strongly ---

19 Q. I'm sorry?

20 A. That is strongly ill advised to tell a child that
21 they will be zapped.

22 Q. Okay.

23 A. What does zapped mean? I'm not sure what that means.

24 Q. I don't know either, but you would ill advise that?

25 A. That sounds like a threat.

1 Q. It could be a threat?

2 A. As a forensic interviewer we would not want to
3 threaten a child. It's, again, it's an atmosphere and
4 environment for a child to feel confident, comfortable and
5 at peace in order to disclose very delicate, embarrassing
6 and sometimes guilt ridden information.

7 Q. Now, what's the appropriate level of distance between
8 the interviewer and the interviewee supposed to be? I
9 don't mean physical distance. I mean how much of a
10 comrade are y'all supposed to be at the end of it?

11 A. I don't know, comrades.

12 Q. Would you tell them that you're his buddy? Is that
13 appropriate?

14 A. Forensic interviewers are advised not to say that
15 they're an interviewee's friend or buddy or -- forensic
16 interviewing is a very neutral, unbiassed, just fact
17 finding type mission interview.

18 Q. And is that one reason why you want a trained person
19 to do these things correctly?

20 A. Correct.

21 Q. Okay. And is there a risk that if a wrong interview
22 technique is employed that can permeated through the rest
23 of the interviews that follow it?

24 A. Not necessarily.

25 Q. Is that a concern?

1 A. Sometimes that's a concern.

2 Q. That's the taint that we're talking about?

3 A. Taint?

4 Q. Okay. And let me go back and ask this. The leading
5 questions, certainly some leading questions like do you
6 know when your birth day is, that's not what you're
7 talking about being improper?

8 A. No.

9 Q. Is it leading questions regarding the suggest of the
10 interview, right?

11 A. Correct. Regarding the details of the alleged abuse?

12 Q. Right. Such as did he touch you anywhere else would
13 be a leading question, correct?

14 A. Not necessarily.

15 Q. Did any -- does it ask for an open answer or yes or
16 no?

17 A. Well, sometimes with small children because they have
18 difficulty answering those open narrative questions a
19 multiple choice question is recommended or a yes or no.
20 It's not the most favored, but sometimes interviewers have
21 to use it.

22 Q. Okay. But they're not favored?

23 A. They're not favored, but it's not.

24 Q. If somebody says something like did he tell you to
25 keep a secret; that's also a leading question, right?

1 A. Unless the child mentioned it prior to that.

2 Q. Right.

3 A. You can't introduce information that's not already
4 discussed.

5 Q. So if they haven't talked about it before?

6 A. Correct.

7 Q. Then that would not be an appropriate open ended
8 question?

9 A. Usually not.

10 Q. Okay. All right. Now, do you have a
11 multi-disciplinary team in this circuit?

12 A. Yes.

13 Q. Okay. And that's set up with a court reporter?

14 MR. BROWN: Your Honor, may I approach?

15 THE COURT: You may.

16 BY MR. BROWN:

17 Q. Similar to what's shown here in Defense Exhibit
18 Three?

19 A. Correct.

20 Q. Okay. There is one of those for this circuit?

21 A. Correct.

22 Q. Okay. And can you tell me who played point on D.S.S.
23 for this team?

24 A. I'm sorry.

25 Q. Who was the point person from the Department of

1 Social Services?

2 A. Oh. At that time I don't recall. This was three
3 years ago. The director I imagine. I can't remember who
4 now. I can't remember her name now.

5 Q. Okay. You sure that there was actually a team that
6 met on this?

7 A. A team that met on this specific?

8 Q. To coordinate actions between the prosecutor's office
9 and D.S.S. and law enforcement agencies and you and the
10 child advocate center?

11 A. The M.D.T. would meet monthly to talk about children
12 that came to Hope Haven. And it was multi-disciplinary
13 team including educators, Department of Social Services,
14 other counselors, Department of Mental Health.

15 And from there if the child needed further resources
16 the team would make other suggestions.

17 Q. Did y'all meet in this case?

18 A. I can't recall if we met. More than likely we did,
19 but I can't recall discussing this case at an M.D.T.
20 meeting.

21 Q. You can't ever recall?

22 A. We discussed every case, but I can't specifically
23 recall. It was three years ago.

24 Q. Who keeps notes for those meetings?

25 A. At the M.D.T. meetings?

1 Q. Do you keep notes?

2 A. No. It was an employee of Hope Haven, and I believe
3 it was a family advocate.

4 Q. Okay. Would that be Ms. Patel?

5 MS.. JOSEPH: Your Honor, I'm sorry. I have to
6 briefly object. This is, once again, here talking about
7 the interview, and he's talking about the conduct of the
8 Miss Ms. Hefner's interview and I think she's confused.. I
9 know I'm confused as to how this relates to whether or not
10 this forensic interview meets the statute.

11 MR. BROWN: Because it does appear, if I may speak a
12 bit about prior testimony, that it does appear that the
13 law enforcement agency knows anything about M.D.T. or had
14 any M.D.T. meetings.. And they've alleged that they did
15 everything correct. She's contradicted everything that
16 they'd done in there. And she's contradicted the M.D.T.
17 stuff except she may not have had an M.D.T. meeting.

18 And I just think it's curious whether they followed
19 the rules because there are exceptions ---

20 THE COURT: But is it related to the issue before the
21 Court?

22 MR. BROWN: It is in this sense. Lieutenant
23 Babkiewicz says he did this interview, and it's not a
24 minimum facts interview. We know it's not because it
25 doesn't meet the definition of that cause a forensic

1 interview been conducted. And so for what it's worth that
2 brings out what you should and shouldn't do so. And she's
3 given us the questions you should and shouldn't answer,
4 and I'm trying to find out whether ---

5 THE COURT: You didn't answer my question. My
6 question was did this last tangent you went off on have
7 anything to do with the admissibility of this ---

8 MR. BROWN: They didn't follow any of the rules.

9 THE COURT: This is after the fact she's saying.
10 She's saying that the ---

11 MR. BROWN: That starts the minute that they find out
12 about it.

13 THE COURT: Were you asking about who took -- who
14 took minutes of the meeting, the multi-disciplinary
15 meeting.

16 MR. BROWN: Well, I was trying to prove or disprove
17 that they ever did an M.D.T. in this case.

18 THE COURT: But what does that have to do with this
19 being admissible?

20 MR. BROWN: Because under Defense Exhibit One it
21 starts the first time they get the complaint and lays out
22 who does what action. And it doesn't look like they did
23 any of it, and I'm trying to disprove that they did it by
24 proving that they didn't do any of the stuff from
25 hereafter.

1 THE COURT: You can't disprove what they didn't do
2 here by proving they didn't do this. She says she doesn't
3 know.

4 MR. BROWN: I would suggest that they did more to the
5 dog for three years afterward and probably did more the
6 week before.

7 THE COURT: She says she didn't know; isn't that
8 right?

9 MR. BROWN: I know. I was trying to find out if it
10 doesn't matter so I could get a subpoena to find out where
11 those notes are.

12 THE COURT: I'm going to sustain the objection.

13 MR. BROWN: Fair enough.

14 BY MR. BROWN:

15 Q. Well, can you tell me this. What can you tell me
16 about the caretaker's or caregiver's involvement in the
17 interview process?

18 A. Well, the caregivers or caretakers would take the
19 child to the interview the day it was scheduled. Again, I
20 indicated that caregivers are not in the interview room.

21 Q. All right.

22 A. They do not hear the interview while it's being
23 conducted.

24 Q. Okay. Tell me why you wouldn't want the interviewee
25 to know that the caregivers are observing the interview?

1 A. We tell children that caregivers are not observing
2 the interview because, again, children have to report or
3 disclose very embarrassing, guilt producing, shameful
4 information. And many times it might prevent a disclosure
5 if they know that a loved one is watching the interview.
6 Children we find are very protective of parents or loved
7 one for multiple reasons.

8 Q. Okay. So let me make sure I understand this. There
9 can be a bias or taint to the child to please the parents?

10 A. It could be or it could work in the opposite way whey
11 they would withhold information as not to upset a parent.

12 Q. Okay. So either way?

13 A. Right.

14 Q. Okay. So would you ever say to the child, "look at
15 the camera and wave to your mom. She's watching you now?"

16 A. We typically don't say that in a forensic interview
17 because the parent is not watching.

18 Q. What if the parent was watching and it was true. Is
19 that something you should do?

20 A. We just do not have parents watch the interview.
21 It's just part of the protocol.

22 Q. Part of the protocol that you were trained to follow?

23 A. Yes.

24 Q. In your forensic interview training?

25 A. Yes.

1 Q. Okay. And, likewise, they're not there. Do you ever
2 tell the child that they're there?

3 A. We tell the child that parents are not watching the
4 interview.

5 Q. Okay. So you don't have them watching, and you don't
6 tell the children that they are watching?

7 A. Correct.

8 Q. Okay. Two different parts of it? Is that a yes for
9 the record?

10 A. Yes.

11 Q. Okay. And that's part of your forensic training?

12 A. Correct. Part of the protocol is that parents do not
13 watch or view the interview, and we inform the child of
14 that.

15 Q. Okay. You mentioned age appropriateness question in
16 your narrative down here. I do want to ask you this. You
17 had mentioned such things as time are hard questions for
18 somebody more than a three, four, five years old age?

19 A. Correct.

20 Q. Okay. And the child here was five?

21 A. Correct.

22 Q. And let me ask you. If somebody asked when did this
23 happen and the child says, "A hundred days. Just kidding.
24 Seven days." That's consistent with that general idea?

25 A. Correct.

1 Q. Okay. And when a child gives an answer and says,
2 "Just kidding" and changes it without anybody saying
3 anything do they ever gauge the response of the
4 interviewer so the interviewer so the interviewer is taken
5 back by the answer?

6 A. Well, it can be a typical comment of a five years
7 old, you know, just kidding. And, again, time reference
8 for a five year old is much different than four a ten year
9 old.

10 Q. Absolutely. Okay. And let me ask you when a child
11 is asked a question and then repeats the substance of the
12 question instead of answering it is that not a dodge or
13 inability to answer it? And it comes up in your
14 interview, and I've got a specific example.

15 A. I don't know if it's -- what you mean by a dodge.

16 Q. Well, you didn't intentionally try to do it, but you
17 may not know the answer to?

18 A. I don't know. I don't know.

19 Q. Let me ask you. If you ask a child how he knew the
20 word, 'massage', and in response he says, "Yes, I know the
21 word, 'massage'.

22 A. All right.

23 Q. He's not actually answering your question, is he?
24 He's avoiding it. You say, "How do you know it?"

25 A. And that's a difficult question to ask a five

1 year-old for source monitoring of information of knowledge
2 because being five years old ---

3 THE COURT: Let her finish answering the question.
4 Go ahead.

5 THE WITNESS: Is very difficult for a five year-old
6 to understand the source monitoring of the understanding
7 of his knowledge. So for him, children typically just say
8 'cause I know', but they have difficulty explaining how
9 they know. And after -- when you say it's a dodge, I'm
10 not sure what he's ---

11 BY MR. BROWN:

12 Q. That may be another way of not addressing the
13 question cause maybe he doesn't know?

14 A. Maybe he doesn't know. And, again, a five year-old,
15 it's very difficult to identify how they know what they
16 know.

17 Q. Is it an important question to ask the word,
18 'massage', whether it comes from the alleged perpetrator?

19 A. I felt it was.

20 Q. Okay. But it possibly was not within his age
21 appropriateness?

22 A. I thought it was an unusual word for a five year-old.

23 Q. Absolutely. Absolutely. And he never told you that
24 Mr. Adams told him that word, did he?

25 A. No.

1 Q. Okay.

2 MR. BROWN: Beg the Court's indulgence.

3 BY MR. BROWN:

4 Q. I want to ask you something, and you may not know
5 anything about it. What's the way you correct tainted
6 interview or a child that is subjected today an improper
7 interview? How do you fix that?

8 A. You mean as a forensic interviewer who does a
9 subsequent interview?

10 Q. Yes, ma'am.

11 A. I'm not sure how you would do that. I guess it
12 depends on the context of the situation. How one feels it
13 was tainted or -- I mean there are a lot of factors that
14 contribute to that. I mean it's not just one answer.

15 Q. Did you see the interview that was conducted by
16 Lieutenant Babkiewicz?

17 A. No.

18 Q. You've never seen it?

19 A. No.

20 Q. Did you know on December 11th that [Minor]
21 had been interviewed by Lieutenant Babkiewicz?

22 A. I had knowledge that he met with Investigator
23 Babkiewicz. I didn't know the extent of the interview or
24 the interaction.

25 Q. Twenty something minutes in the interview room?

1 A. I wasn't aware of that.

2 Q. Is that normally the way you receive a referral from
3 child ---

4 A. Sometimes we do. Sometimes. Occasionally.

5 Q. Excuse me?

6 A. Occasionally.

7 Q. Do they tell you about it usually?

8 A. Yes.

9 Q. Okay. But they didn't tell you?

10 A. Yes, they did.

11 Q. They told you after the 20 something minutes?

12 A. Yes. May I look at my report? As far as previous
13 interviews I indicated that the Bluffton Police Department
14 briefly interviewed **Minor** ?

15 Q. And when you say, 'briefly' did you take that to mean
16 shorter than your interview?

17 A. I didn't know.

18 Q. Okay.

19 A. Just a brief interview.

20 Q. Okay. Okay. And were you aware that **Minor** had a
21 one year-old half sibling?

22 A. Yes.

23 Q. Steps were taken pursuant to that N.D.T. for that
24 child?

25 A. I don't know.

1 MR. BROWN: I don't have any other questions, Your
2 Honor.

3 MS. JOSEPH: Your Honor, at this time the State moves
4 to play the video after playing we will enter it in
5 evidence for pre-trial purposes.

6 MR. BROWN: I have no objection to it being marked as
7 State's Two or played.

8 THE COURT: Play away.

9 (WHEREUPON, video played for the Court.)

10 MS. JOSEPH: And, Your Honor, since there is no
11 objection from the Defense the State at this time moves to
12 enter as State's Exhibit Two for pre-trial purposes.

13 MR. BROWN: No purpose -- no problem with or
14 objection to it being marked as State's Exhibit Two.

15 THE COURT: Okay.

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

18 MS. JOSEPH: And, Your Honor, I have just a few
19 questions for Ms. Hefner, if you don't mind.

20 REDIRECT EXAMINATION

21 BY MS. JOSEPH:

22 Q. Ms. Hefner, in that interview you hear Minor make
23 a reference to something that his mom told him. Do you
24 remember that?

25 A. Can you remind me of that?

1 Q. His mom said, "Justin's in jail.

2 A. Oh.

3 Q. He says, "I know that Justin's in jail cause that's
4 what me mommy told me." Is it common for the children
5 that you interview at Hope Haven to have been told things
6 by parents, guardians or others from outside influences?
7 Is that common?

8 A. Yes. It's more common than not.

9 Q. Okay.

10 MS. JOSEPH: I have no further questions for
11 Ms. Hefner. I assume Mr. Brown does, and I'll let him ask
12 his questions.

13 THE COURT: Any questions?

14 MR. BROWN: I don't have any questions, Your Honor.

15 MS. JOSEPH: May Ms. Hefner be excused at this time?

16 THE COURT: No objection?

17 MR. BROWN: No objection.

18 THE COURT: Thank you, ma'am. You may be excused.

19 COLLOQUY

20 (WHEREUPON, Court's Exhibit No. 3 was marked for
21 identification and received into evidence.)

22 MS. JOSEPH: Thank you very much, Ms. Hefner. And,
23 Your Honor, we are here both in -- for Defense motion
24 where Mr. Brown is arguing that there has been taint in
25 this case. And the State's motion that both Lieutenant

1 Babkiewicz' and Ms. Marybeth Hefner's interviews be let
2 into evidence. I don't know which motion you want to hear
3 first. Of course, they absolutely overlap as Mr. Brown
4 has pointed out.

5 THE COURT: It's really kind of Mr. Brown's objecting
6 to the interviews.

7 MR. BROWN: I am, Your Honor.

8 THE COURT: And part of it is using the taint
9 argument; is that correct?

10 MS. JOSEPH: Yes, Your Honor. Would you like me to
11 argue they be admitted first or hear from Mr. Brown?

12 THE COURT: Mr. Brown.

13 MR. BROWN: May it please the Court. I'm going to
14 start with the taint part of it.

15 THE COURT: All right.

16 MR. BROWN: Cause if I'm right on that we don't get
17 to the other analysis. Even if it's not a taint, I don't
18 succeed on that, I still don't know if it means everything
19 comes in cause I think a different threshold holds.

20 I submitted a motion to exclude this, the testimony
21 of the minor child. The lead case is the Michaels case
22 out of New Jersey, and it is a long case. I'm handing up
23 a copy of it.

24 THE COURT: Thank you.

25 MR. BROWN: Short version, killed, Michaels' Daycare,

1 34 kids implicated her in wrong doings during the
2 interviews, and long story short, she got convicted and
3 got a very long sentence like 45 years or something.

4 And well into the case the New Jersey -- well into
5 her sentence her convictions were reversed. And not only
6 did they reverse the convictions despite the testimony of
7 34 children that she molested them, the New Jersey Supreme
8 Court then ruled that because of the suggestive
9 interviewing process that the testimony from those
10 children could never be presented because it was
11 unreliable under the two process clause.

12 And they likened it to the Courts kind of going
13 through and they discussed the same vain as IV procedures
14 and that their suggestibility and reliability issues
15 involved, Your Honor.

16 South Carolina has not adopted Michaels. We have not
17 adopted any other test or we have not declined to adopt
18 Michaels. I will point out that Michaels is favorably
19 referenced in two South Carolina opinions neither on
20 point. Neither dealing with taint directly, but one in
21 which you may be familiar where they allowed for a
22 psychological examination of a child sexual assault
23 victim. And they referenced Michaels.

24 And I point that out, Your Honor, these cases are
25 fairly recent cases. One is 2011. The other one was in

1 2005. So both times reference is favorable and one does
2 deal with the taint of a child in the sense that they
3 allowed Court ordered psychological examine.

4 Now, they go further to talk about the different
5 things that are hallmark of good interviews and what are
6 not. And they do a normal law treatatus. They discuss the
7 law and then they go into what happened in this case.
8 And, Your Honor, short version, they talk about the fact
9 that there were leading questions involved. And if I may
10 point out, it's on Page Eight of the copy I sent Your
11 Honor is where that starts.

12 We next turn to the examination of the interrogations
13 conducted in this case. And they note in almost all of
14 the interviews, and these were many children, but in
15 almost all of the interviews reveal an obvious lack of
16 partiality on the part of the interviewer. And they deal
17 with vilification of the accused. They deal with the,
18 quote, mock police badges, that were used to make the
19 children, quote, little detectives.

20 There was no effort made to prevent outside
21 information from affecting the children. We know here,
22 and this is not saying, but in this case this child was
23 interviewed, and I think the State will concede it and if
24 not I can hand up the second interview, once by the
25 grandmother, once on the telephone by the mother, and once

1 in person by the mother. Then again by Lieutenant
2 Babkiewicz and then at the hospital on the same
3 December 7th and then by Ms. Hefner.

4 So we've got at that point in time at least five
5 interviews before Miss Heifer does the interview. In this
6 case in the Babkiewicz interview, and I've got the times
7 cause I think it helps a little bit, I broke it down
8 because it's almost like acting for lack of a better word.
9 I've known Lieutenant Babkiewicz for a while so it's
10 nothing personal. If he conducts it I think very much
11 like a law enforcement interrogation to the two classes he
12 took which they were for interrogation and advanced
13 interrogation of adults and children.

14 But it begins, Your Honor, with what I call the given
15 where he's given the reward and becomes buddies. That's
16 15 seconds into the interview. My time counter has 15,
17 the hours. 15 hours, hourly clicks, 24 hour clock.
18 15:56:15 is when they start with giving him the reward and
19 becoming buddies. That's when he says, "Do you like the
20 dog, the stuffed animal dog? Do you like police officers?
21 Yeah. You do? One just came to my Nana's house. What he
22 say? I don't know. I don't know his name. He's my
23 buddy. So he's your buddy? Why is he your buddy. Cause
24 he's your buddy. Tell you what. I want to be your buddy,
25 too." That's a quote.

1 Then about one minute and 5 seconds later at 15:57:20
2 Lieutenant Babkiewicz and [REDACTED] Minor engage in what I call
3 the both cool kids part of this the second minute into the
4 interview. You know when you were born? Where were you
5 born? What month were you born? Do you know when is your
6 birthday? I don't know. You don't know when your
7 birthday is? Is it January? I don't know. February? I
8 don't know. July? I don't know. Well, I think your
9 birthday is in July. Guess when my birthday is? July."
10 And [REDACTED] Minor says, "July," and Lieutenant Babkiewicz
11 says, "You know what? All the cool kids are born in July.
12 Hey. All right. Give it up for July," and they high
13 five.

14 Forty seconds after that begins Lieutenant Babkiewicz
15 then deputizes him as a junior police officer. And he
16 says, "So the police officer that came, do you like him?
17 Yes. Yeah. Do you want to kind of be like him? Yeah.
18 You want to be a police officer some day?" Like child
19 response, "No cause I could die. A police officer is a
20 very dangerous job." And then Lieutenant Babkiewicz says,
21 "Well, we're not always in dangerous jobs. I'll tell you
22 what. This is what I'm going to do for you. See this?
23 Yeah. Can you read? No, I can't read. Well, that's
24 okay. This says, 'Junior Officer Bluffton Police
25 Department. Will you be a junior police officer for me?"

1 And we're now about two minutes into the first of two
2 interviews that they want in, and there is no objective
3 distance between the interviewer and the interviewee. He
4 proceeds, "We're going to give you this shiny badge. Put
5 it anywhere on your shirt. That's a perfect spot. You're
6 officially a junior police officer. Congratulations.
7 Welcome to the team."

8 Your Honor, notice on the two videos he's wearing
9 that badge in both of them. Now, I don't know whether
10 this is a new sticker or not, but it obviously had an
11 impact on the child when he wore the police sticker into
12 the second interview. That's the only thing on that black
13 shirt, Your Honor. You can see it right there. The same
14 junior police officer sticker. I don't know if it's the
15 same exact one. Same exact type sticker.

16 About three minutes into this interview at
17 15:59:35 -- wait. Let me back up. At 15:58:50 Lieutenant
18 Babkiewicz points at the camera. We're at two minutes
19 and -- two minutes -- excuse me, Your Honor. Two minutes
20 and 50 seconds into the interview. He then points up to
21 the camera and asked [REDACTED] Minor to wave at the camera
22 therefore telling him that his mother is there and having
23 contact back and forth creating essentially a conversation
24 there, Your Honor.

25 And then within 30 seconds of that he talks about

1 knowing about the room. "Do you know what else this room
2 is? What -- do you know what the truth is? What. Do you
3 know what it means to tell the truth. If you tell things
4 that are real, that are right, and that you don't lie,
5 right?" That's a leading question, Your Honor, for what
6 it's worth.

7 "Do you know what else this room is? This room has
8 magical powers. It helps you tell the truth. So you have
9 to tell the truth in this room because if you don't you
10 get zapped."

11 Then about 1600 hour is when they do the drawing.
12 And that goes on for a few minutes. At 1607 they go into
13 the questioning. There are at least three different
14 things that are asked in a leading manner, Your Honor.
15 One he asked about any other touching. The child talks
16 about, quote, massaging the wacker, part of it.

17 Then he asked if there was other touching. That's
18 the first time there is reference in one or either of
19 these two videos to any sexual battery; was in response to
20 a leading question. It's a leading question when he asks
21 about the secret later on which had not been brought up.

22 And then asked if there is anything else at the end,
23 and that's when they go into the oral sex allegation at
24 the end of Lieutenant Babkiewicz' video. The video
25 continues. They leave the room at 1617. They come

1 back -- excuse me. They leaves the room at 1612. While
2 they talk about there being a whole bunch of stuffed
3 animals because it looks like Lieutenant Babkiewicz'
4 intent is to get [REDACTED] Minor to trade the stuffed animal
5 dog for the drawing.

6 And he is hesitant because, quite frankly, it doesn't
7 look like he wants to talk. And so I think Lieutenant
8 Babkiewicz picks up on that. It wasn't enough reward. So
9 they actually at 1617, they came back in and that's when
10 he hands the two stuffed animal birds and the interview
11 ends with the, 'We're buds forever,' plus, "You're a
12 junior police officer."

13 Your Honor, he had no forensic training.. He wasn't
14 familiar with minimum facts interview. R.A.T.A.C., I
15 don't know that I even ask him about that because it would
16 probably be object to, asked and answered. He had no
17 forensic interview training, and I don't know how better
18 to play that off with the responses to my questions that
19 Ms. Hefner gave basically saying that all these were no,
20 no's that violated the training.

21 She was not aware of the details of the prior
22 interview, but she said all of the things that I pointed
23 out that Lieutenant Babkiewicz did are things she's
24 trained not to do.

25 Interestingly, it doesn't appears that she's familiar

1 with the term, 'minimum facts interview' either, and Your
2 Honor, the document, Defendant's One, speaks for itself.
3 And, essentially, it repeatedly references the need to
4 have a minimum number of interviews possible. It
5 references South Carolina statute that discusses that and
6 the coordination needed for that purpose.

7 Your Honor, I could stand up here and go through it
8 over and over again, but the videos speak for themselves.
9 There is not going to be any kind of talismanic word that
10 I get out that's going to make Your Honor say, "Well,
11 that's it. That's no good or that's perfectly fine."
12 But, Your Honor, all of the things that the Michaels case
13 which is the leading case on that issue, because again,
14 they don't cite over the law. They cite need to be
15 bigger, cite Batson, law from the Supreme Court regarding,
16 i.e. procedures the same suggestibility and reliability.

17 I will be candid with Your Honor. Michaels has been
18 rejected by some jurisdictions. It's been accepted by
19 some. We talk about double digits in both. There is no
20 South Carolina law directly on it, but I would point out,
21 and if Your Honor would like the two cases, quite frankly,
22 I went in there and brought up all citations in South
23 Carolina.

24 But there are two, Your Honor, that talk about
25 Michaels favorably, and the one dealing with the

1 psychological exam is interestingly in the interest
2 Michael H. and I've got a copy of that, Your Honor, if
3 Your Honor would like it as well as the other case that
4 makes reference to it. And that case is State v. William
5 Douglas, and I'm passing those up. They're not on point.
6 They address -- I guess I'm going to call them represented
7 issues. But they both gave favorable reference to the
8 Michaels case out of New Jersey. And I think that that's
9 pertinent.

10 Your Honor, on a broad scheme as a general rule out
11 of court statements don't come in. That's the general
12 rule. There are lots of exceptions because I know I
13 wrestled with a few of them with the law school exam and
14 the bar exam and every time I come to Court. And I say
15 that because our legislature created, essentially, a
16 hearsay exception. It might be that those cases, the
17 video, might come from a prior consistent statement at
18 some point in time. But that's not the way it's
19 approached under the statute.

20 And, Your Honor, I point that out because there has
21 to be a danger when the witness is a child. Well, we know
22 that young age is always a concern even if we have this
23 presumption of competency for witnesses because we're
24 dealing with children who may not even know -- have a good
25 concept of things like time or the source of a word that

1 they know.

2 And it's really hard for us. It's nothing
3 blameworthy on the child. It's really hard to put a
4 person's life or liberty or in this case 25 years of life
5 worth of liberty and jeopardy when there is no physical
6 evidence, no attempt to collect any physical evidence.
7 And there are two interviews that they attempt to bring in
8 which if they were not involving C.S.C. with a child the
9 same child's video couldn't come in let's say a D.U.I.
10 case. Let's say that Justin Adams had been drinking
11 before he killed ten people. It wouldn't come in. Or
12 that he said he was going to kill his mother in law before
13 he went over there and shot her. In a death penalty case
14 that would not come in.

15 So what we've got is we've -- and there is no other
16 way to say it. They're tipping the scales in the State's
17 favor by creating this hearsay exception. And then in
18 this case attempt -- essentially there would be a further
19 thumbing in their favor to overlook all of the problems.
20 Surely, the legislature envisioned a situation where the
21 interviews would not come in. Surely, the due process
22 clause excludes unreliable evidence.

23 He's a cute child. There is no doubt about it, but
24 we can -- we even know outside of these videos and it's
25 going to come out that there are inconsistencies that are

1 still coming up.

2 And I think I misspoke when I mentioned that it was
3 just last week I learned about the ejaculate. It was
4 actually the last time it was called. It was an e-mail
5 that I had gotten regarding an interview with the mother
6 back the later part of July. It was on Friday that I
7 learned that the child, Your Honor, told the prosecutor,
8 second chair prosecutor whose notes I have that they
9 greatly appreciate being given those, does not recall any
10 oral sex even though he said that -- supposedly said that
11 in both of those interviews.

12 And why is that pertinent? That may not be pertinent
13 under the statute, Your Honor, for admitting the video
14 recordings, but that is certainly evidence of the taint
15 because the statements are not internally consistent. So
16 we now have ejaculate. You've seen the two interviews.

17 The mother now says that she understands there was
18 some ejaculate that had been referenced at some point in
19 time. And that the child now says there was never any
20 oral sex despite that being in the indictment. And that's
21 suggestive that this evidence is not reliable.

22 So if we use that I.D. with the guy in back of the
23 squad car, it's still a question of whether it is so
24 suggestable it was unreliable. But we have that here,
25 too, now, Your Honor. And then I would be remiss if I did

1 not dovetail that into another motion I've got which is to
2 get counseling records because we've got months of
3 statements that this child made that also discuss this.

4 MS. JOSEPH: And, Your Honor, if could hear the
5 counseling records motions just separately. I just got a
6 chance to address Mr. Brown on that point?

7 MR. BROWN: Absolutely, but it is worth saying at
8 this point. The mother's interview by the prosecutor's
9 office in July is when she revealed the statement that
10 there had been ejaculent. They interviewed the mother.
11 She said she heard that from a counselor following the
12 child's counseling sessions. Now, that's Brady material,
13 but I point that out here that contradicts these two
14 interviews. And that shows they're not reliable because
15 if they're wrong it's hard to think that they're reliable.

16 I don't doubt that they may be reliable. They're
17 just not working. I mean it's -- I would say if you have
18 a justified belief or a justified true belief and not be
19 knowledge. I think this modology, we can dance on the
20 dead horse ---

21 THE COURT: Okay. Anything else regarding your
22 motion?

23 MR. BROWN: Your Honor, no. It's just that I
24 cannot -- Lieutenant Babkiewicz within 12 minutes hits
25 almost every single thing that the Michaels court says you

1 can't do. I mean it's almost a road map. And I think
2 it's because things are good for building a rapport. He
3 was trying to be a good cop to somebody during
4 interrogation. And give him a cigarette. Put the cuffs
5 on you. What a jerk, you know. I'm your buddy. Let's
6 have a cigarette. Let's talk about things. That's
7 exactly how you do that. That is exactly not what you do
8 in a forensic interviewing situation.

9 And he hit them all. The Michaels case that court
10 was not wrong. And, Your Honor, so we believe for that
11 reason it's tainted, Your Honor. Beyond the taint I would
12 say this. I don't believe the statute provides. I just
13 didn't speak to it that there would be two forensic
14 interviews.

15 I would suggest, Your Honor, in a case like this with
16 a child accuser that should the ruling allow two forensic
17 interviews to be played under that statute that in essence
18 the State can go out from the day of arrest to the day of
19 trial interview that child over and over and over again.
20 And in a year long judicial process like 365 interviews
21 and shows how consistent he was ---

22 THE COURT: Wasn't that what Michaels says you can't
23 do?

24 MR. BROWN: That is exactly what our own provision
25 say you're not supposed to do. You're not supposed to

1 have multiple forensic interviews. Your Honor, I would
2 suggest this. My taint motion is going to be to take out
3 all of the interviews from Babkiewicz through any Court
4 testimony of the child.

5 Now, I know there are other statements out there. I
6 don't believe they would come in. There are statements of
7 the grandmother. There is a statement to the mother.
8 There are at least two of them. And I don't believe those
9 can come in. The other reason they didn't pre-date the
10 taint, Your Honor. But otherwise there is no way to fix a
11 taint.

12 THE COURT: We run out of tape?

13 COURT REPORTER: No, sir. We've run out of paper.
14 Okay.

15 THE COURT: Five minutes.

16 MR. BROWN: Yeah. But the long story short is the
17 taint will take everything out of Babkiewicz, and
18 essentially I do believe that would end the case. There
19 are obviously something in between there. I don't know
20 what it is. If Your Honor excluded the worse objection of
21 the two interviews it actually not necessarily beneficial
22 to my client because in you let in the Hope Haven
23 interview that it follows this suggestable interview.

24 And if you take out Lieutenant Babkiewicz' because it
25 doesn't follow forensic interview process, then I'm left

1 with an interview that doesn't look too bad and stuck with
2 the proposition of bringing it in to show how it tainted
3 this later interview.

4 And it's not really what I would call a remedy. It
5 actually gives me a Hobson's choice, and surely my client
6 is not supposed to be in a position where the scales have
7 been thumbed down to accommodate the child's interest to
8 the point where unreliable evidence leads to his
9 conviction. Thank you.

10 MS. JOSEPH: Your Honor, may I be heard?

11 THE COURT: You may have the same amount of time Mr.
12 Brown has.

13 MS. JOSEPH: May it please the Court. Your Honor,
14 I'm going to do four things. First, I'm going to
15 distinguish the Michaels case the Defense presented. Then
16 I'm going to turn your attention to the statute. I can
17 hand up a copy of that statute. It's 17-23-175, and I
18 gave a copy to the Defense so both of you have it.

19 And then I'm going to talk about how reliability is a
20 question for the jury. And, finally, I'm going to argue
21 that the taint is a fact to be argued to the jury if
22 Mr. Brown's taint motion is not granted here today.

23 So for the first action item on my list ---

24 THE COURT: I'm going to go ahead and tell you that I
25 agree with what you're saying.

1 MS. JOSEPH: Okay.

2 THE COURT: At this point. That doesn't mean I
3 disagree with Mr. Brown.

4 MS. JOSEPH: Of course.

5 THE COURT: But I'm saying I agree with what you just
6 said.

7 MS. JOSEPH: Right.

8 THE COURT: If it comes in he can still argue it?

9 MS. JOSEPH: Right. Exactly. So for Point One, I
10 want to say I want to quickly distinguish the New Jersey
11 cases that I passed up because on Page Four of that
12 decision as you see, Your Honor, there are two columns of
13 paragraphs. If you go to the second paragraph, the bottom
14 two paragraphs, it talks about how this case was
15 initiated.

16 Meaning one child came forward with allegations
17 towards his preschool teacher and then the prosecution
18 with the help of the police sought out the other children,
19 and they were interviewed because they were sought out not
20 because they raised allegations in this case.

21 I want to distinguish this case, therefore, on two
22 grounds. First, the way that they found the large number
23 of -- the large volume of victims does not match how
24 **Minor** came forward in this case. In addition, the
25 reason that this case is a poster child for taint and

1 hysteria is because the parents in this case fed off of
2 one another, talked amongst themselves and encouraged
3 their children to be interviewed over and over again by
4 police.

5 That's what led to this case being the poster child
6 for taint, Your Honor, not because one investigator did
7 one interview that, you know, veered the case off course.

8 Second, Your Honor, is that Defense Attorney, Mr.
9 Brown, has stated that the Michaels case is a New Jersey
10 case. It has not be adopted in South Carolina. He then
11 said it has not been rejected by South Carolina.
12 Respectfully, Your Honor, I disagree. I think that
13 Statute 17-23-175 is the statute that the South Carolina
14 Legislature has put in place in order to guide this Court
15 on what types of cases and what type of forensic
16 interviews should be allowed into evidence.

17 If we walk through this case, Your Honor, or this
18 statute, Your Honor, I believe that both interviews come
19 in without question. If you would let me, Your Honor, I'm
20 willing to walk through this statute and talk to you,
21 okay. So the first, under Section A, it talks through the
22 four requirements:

23 Step One is that the statement is given in response
24 to questions conducted during an investigative interview
25 of the child.

1 Step Two, that the audio and video recording the data
2 are preserved on film, videotape or other electronic
3 means.

4 Step Three, that the child is testifying at
5 proceeding and is subject to cross-examination.

6 Step Four, that the Court finds a hearing conducted
7 outside to presence of the jury the totality of the
8 circumstances surrounding the making of the statement
9 provide particular guarantee of trustworthiness.

10 Your Honor, I believe that we have actually met all
11 four of those requirements and that now what the
12 contention here at this hearing is in fact the particular
13 guarantee of trustworthiness. And those, Your Honor,
14 guidelines to help the Court are set out in the following
15 sections. So I think these are what's at issue.

16 So Section B states, "In determining whether a
17 statement possesses particularized guarantee of
18 trustworthiness the Court may consider but is not limited
19 to the following factors:

20 1. Whether the statement was elicited by leading
21 questions. And in that case, Your Honor, I just ask you
22 to recall your memory on taint. The State argued that
23 leading questions are present. But that the majority of
24 both taint open ended questions are used. And
25 specifically in Lieutenant Babkiewicz' question he asked,

1 "Do you know why you're here today," and the child was
2 quickly forthcoming with his recollection of the
3 accusations.

4 Step Two is where the interviewer has been trained in
5 conducting investigative interviews of children. Here,
6 Your Honor, the defendant -- the Defense Counsel, Mr.
7 Brown, made a big point that Lieutenant Babkiewicz is not
8 a forensic interviewer. Lieutenant Babkiewicz, the State
9 contends, is not a forensic interviewer. However, he has
10 had training; how to interview children and in addition to
11 his training he has conducted hundreds of interviews with
12 children.

13 Step Three, whether the statement represents a
14 detailed account of the alleged offense. I believe that
15 Mr. Brown and I agree that there is a great amount of
16 detail. He feels some are conflicting, but I feel like
17 that step is not in question.

18 Four, whether the statement has internal coherence.
19 Your Honor, the State contends that in terms of the
20 hearing whether the statement from beginning to end makes
21 sense. Does the child jump around. Is what he's saying,
22 does it make sense. Is he saying that the allegation
23 happened on mars or is he saying that the allegation
24 happened in a setting where it would make sense. I
25 believe that there was internal coherence in both videos.

1 Step Five, the sworn testimony of any participants
2 which may be deemed necessary by the Court which we have
3 present. We have here.

4 And, finally, Section C of the statute. "The child
5 is under 12 years of age, which he is. And the alleged
6 victim of a crime, which he is. Based on the reading of
7 that statute, Your Honor, both videos come in. If I could
8 some point to the point that I'm making is that Mr. Brown
9 raised it here. We just go interview kids over and over
10 and over again, and my answer to that would be that we
11 don't do that for the exact reason that we're here in
12 Court today which is are the veracity of the interviews in
13 question.

14 And Mr. Brown is free to play these interviews in
15 Court and make the same argument he made to you, Your
16 Honor, to that jury.

17 And, finally, my final point is that over and over
18 again Mr. Brown has questioned the reliability of both
19 interviews, and I think that that is ultimately a question
20 for the jury. And when out of Court statements are
21 allowed to come in, Your Honor, the reliability is always
22 a question and that's always a question for the jury.
23 Thank you very much.

24 MR. BROWN: And, Your Honor, I think it would, for
25 purposes of the record, behove me to introduce the other

1 statements for factor that deals with particularized
2 guarantees of trustworthiness under the totality of the
3 circumstances because I think if the statements aren't
4 true they're not trustworthy.

5 In other words, you can have a false statement that
6 looks trustworthy. You have a guy that's a deacon in the
7 church for years ---

8 THE COURT: What other statement are you talking
9 about? I'm lost.

10 MR. BROWN: Well, there are lots of statements I've
11 got, and they are not consistent with that.

12 THE COURT: I don't know what you're talking about.

13 MR. BROWN: I would like to introduce them. I have
14 copies. I can mark them.

15 THE COURT: Statements by -- just tell me who you are
16 talking about.

17 MR. BROWN: Well, this statement right here would be
18 the statement with the mother, Tabitha. This statement
19 right here has the statement from both Tabitha and
20 [Minor]. This is the one that talks about the semen.
21 That's July 22nd, and this is the interview with [Minor]
22 [redacted] that was done by Dustin Whetsel.

23 And that's where he says that he doesn't recall there
24 being any oral sex. He doesn't think that his dad put his
25 wacker in [Minor]'s mouth or vise versa. And I think if

1 we're adding cause the question is still are these
2 reliable, the factor actually is the Court finds it's
3 outside the totality of the circumstances surrounding the
4 making of the statement provide a particular guarantee of
5 trustworthiness these are outside the making of the
6 statement.

7 MS. JOSEPH: Your Honor, I believe that what Mr.
8 Brown is arguing right now which is extrinsic evidence to
9 go to show that the statements made in the interviews is
10 not in the scope of this hearing; that is testimony or
11 evidence that can be presented to the jury to show -- to
12 prove or disprove whether or not the videos themselves are
13 truthful.

14 You, under this statute, are only asked to look at
15 the videos themselves and determine whether there are
16 particular guarantees of trustworthiness and that's all
17 the State is asking you to do.

18 MR. BROWN: I don't think so. I mean you are allowed
19 to look outside of the videos. That's almost exactly what
20 it says. It says certain cases in the making of the
21 video, Your Honor, though I can't imagine something -- if
22 [Minor] suggesting killed Tabitha and I had a
23 picture of Tabitha alive with [Minor] today I don't
24 think Your Honor could ignore it.

25 THE COURT: Well, wait a minute. Let's not do

1 hypotheticals.

2 MR. BROWN: Yes, sir.

3 THE COURT: Cause we've got these two interviews
4 we've seen today.

5 MR. BROWN: Yes, sir.

6 THE COURT: Let's just suppose, for the sake of
7 argument, that someone else interviewed the child on
8 another occasion.

9 MR. BROWN: Yes, sir.

10 THE COURT: All right. And let's just suppose that
11 that interview contained the statements that you have
12 here.

13 MR. BROWN: Yes, sir.

14 THE COURT: You know, just whatever.

15 MR. BROWN: Yes, sir.

16 THE COURT: Just because it's different evidence
17 doesn't make them necessarily untrustworthy, does it?

18 MR. BROWN: They're contradictory evidence.

19 THE COURT: Oh, I understand.

20 MR. BROWN: Well, different evidence is ---

21 THE COURT: I'm sorry. Contradictory evidence
22 doesn't make it untrustworthy.

23 MR. BROWN: Well, I would suggest the I.D. scenario
24 of an analogy that if somebody later picked someone out
25 and did not picked out the suspect and did later Your

1 Honor would actually consider that to be important.

2 MS. JOSEPH: Your Honor, this is a little bit of a
3 case of the pink elephant in the room. I hate to mention
4 the pink elephant, but Mr. Brown said this would be like
5 saying [Minor] said, you know, Tabitha's dead and then
6 Tabitha in fact is alive. We have no statement that arise
7 to this level.

8 This is a boy who three years afterwards, after the
9 incident that are at issue today in this case, if we
10 interview by our office in preparation for the trial and
11 details have changed. We recognize that. We fully expect
12 Mr. Brown to elicit that from -- they're not inconsistent.
13 They're -- it's almost what he remembers has widowed. He
14 remembers less than he did before.

15 And in addition he sort of wants his cake and eat it,
16 too. He wants to be able to bring up the fact that
17 [Minor] was inconsistent, but then he wants to tie our
18 hands with our ability to bring out what [Minor] said at
19 the time. So I mean that is what the State is seeing.

20 MR. BROWN: Quite frankly, I have to look at keeping
21 all of it out. That's what I said. Unfortunately, there
22 were more proper stuff come in that actually does us no
23 relief which is sometimes there is no effective relief.
24 Probably arrested improperly without a warrant. I don't
25 get any relief out of that.

1 So I mean I can move to have this Court declare his
2 arrest unlawful, but we know that we can't suppress the
3 bond. But in this case we're not dealing with that ironic
4 situation. I mean there is a taint. And I will say for
5 purposes of the taint, forget about the video statute, I
6 think we have a statement of interest.

7 THE COURT: For purposes of this motion?

8 MR. BROWN: Yes, sir.

9 THE COURT: I'll consider them.

10 MR. BROWN: Thank you. If I may just mark them.

11 It's the statement of ---

12 THE COURT: I'm sorry. I'll let you proffer. I'm
13 sorry. It maybe a separate thing as what weight I'll give
14 them.

15 MR. BROWN: I'm marking them for the Court's
16 consideration ---

17 THE COURT: Okay.

18 MR. BROWN: --- for the motion.

19 THE COURT: Okay.

20 MR. BROWN: Patricia Bryant's statement, two page
21 handwritten statement I would mark as Defendant's Exhibit
22 Four. Tabitha Jones two page handwritten statement I
23 would mark as Defendant's Exhibit Five. The July ---

24 THE COURT: While you're doing this tell me who these
25 people are?

1 MR. BROWN: Patricia Bryant is the grandmother.
2 Nana.

3 THE COURT: Okay.

4 MR. BROWN: Tabitha Jones is the mother.

5 THE COURT: Okay.

6 MR. BROWN: And excuse me. July -- July 22nd I
7 received an e-mail, and that e-mail is from Ms. Joseph
8 about the interview she conducted. It then has the
9 interview of both Ms. Jones, the mother, Tabitha Jones,
10 [redacted] Minor and the grandmother, all three in one.
11 And I would mark that as Defendant's Six and Five. And I
12 have a July 20 -- well, it's an August 1st e-mail. It is
13 one of three pages. But it references a July 25th
14 interview, and these are victim's advocates notes of an
15 interview with Tabitha Jones. And I would mark that as
16 Defendant's Seven.

17 And then we have the notes with an e-mail that I've
18 stapled to it which are the interview notes from Dustin
19 Whetsel from Thursday's interview, just three or four days
20 ago, where he says he does not believe that [redacted] Brother's dad
21 put his wacker in [redacted] Minor's mouth or vice versa. That's
22 by a third person.

23 THE COURT: Of course, most of this would never be
24 admissible as evidence, would it?

25 MR. BROWN: It may be under 801(D), (1) at some

1 point.

2 THE COURT: The person that just did that last
3 interview?

4 MR. BROWN: Right there.

5 THE COURT: Okay.

6 MR. BROWN: Well, that's not my prohibition on him
7 testifying. I have repeatedly inquired whose notes they
8 are. I think it is an issue.

9 THE COURT: Are you going to call him?

10 MR. BROWN: Am I? I don't know yet. He may admit it
11 on the stand. These notes were just taken Thursday.

12 [REDACTED] Minor may admit it on the stand.

13 MS. JOSEPH: Your Honor, it's our policy in our
14 office to be present while they conduct interviews. The
15 victim's advocate is always present.

16 MR. BROWN: And one of the notes is her notes, the
17 victim's advocate's notes. And for what it's worth this
18 will be marked as Defendant's Eight.

19 THE COURT: All right. And these people say that
20 they talked to the child and the child tells more or less
21 than what was in these videos.

22 MR. BROWN: Interesting question. And one of them
23 he -- there is reference to ejaculate.

24 THE COURT: If the statements were all exactly word
25 for word, the videos, if they were, wouldn't you but

1 surprised if they were word for word?

2 MR. BROWN: Well, these are actual -- let me make
3 sure this. On September 15th, four days ago, [Minor]
4 [] says he doesn't recall anybody engaging fellatio.

5 THE COURT: Right.

6 MR. BROWN: That's one of the two allegations in this
7 indictment. That's big. That's not a small discrepancy.
8 That may be the biggest development in this case. Bigger
9 than the Babkiewicz video in my opinion.

10 THE COURT: All right.

11 MR. BROWN: Well, he discloses twice that there was
12 oral sex and then they -- and then they now say it may not
13 have happened. They did a great job of giving it do you
14 because they're require to. That's important. Your
15 Honor's position is they may never be -- and all I'm
16 suggesting is when you lose half of their battery claim
17 that doesn't make this other one look very reliable under
18 my ---

19 THE COURT: What if the child testifies to the
20 contrary?

21 MR. BROWN: To the contrary of which one?

22 THE COURT: To the one you just referred to.

23 MR. BROWN: Where he said there was fellatio.

24 THE COURT: Yeah.

25 MR. BROWN: Well, the video looks even better that

1 somebody misrepresented something to the Solicitor on
2 Thursday.

3 THE COURT: Well, I don't know. You know the child's
4 memory may be different.

5 MR. BROWN: I would love to hear from the child.

6 THE COURT: I know. I know you would.

7 MR. BROWN: And he's actually subject to being
8 called.

9 THE COURT: I know that.

10 MR. BROWN: Pretrial for this, and I didn't try to do
11 it but I did ask his mother just for that reason.

12 THE COURT: Okay. Anything else?

13 MR. BROWN: Just, Your Honor, that there is no way
14 Lieutenant Babkiewicz' interview.

15 THE COURT: There is no way what?

16 MR. BROWN: There is no way it was done right. I
17 mean I've been here for a long time.

18 THE COURT: I disagree about the way you see it, and
19 I'm going to go ahead and rule on that.

20 MR. BROWN: Yes, sir.

21 THE COURT: Meaning that I think this issue of
22 leading questions I disagree that there were a lot of
23 leading questions. I think when -- I don't think when an
24 interviewer asks the witness, 'were you touched anywhere
25 else,' I don't think that's a leading question. It

1 (doesn't suggest the answer, you know.

2 But anyway, I don't see the leading questions being
3 asked that to the extent that you see them being asked.

4 MR. BROWN: There were three that I pointed out.

5 THE COURT: And I'm trying to remember which one I
6 specifically wrote a note on. One of them I thought you
7 made an issue of is when you -- the question was did he
8 touch you anywhere else, and you were arguing or
9 suggesting to the witness that that was a leading
10 question, but I just don't see it being a leading
11 question.

12 But at any rate, other things in the Michaels case
13 that say it was an absence of spontaneous recall. And I
14 just don't see that in these interviews. The other --
15 another thing that they said was that the evidence of
16 interviewer bias. I mean I just don't see that here.

17 MR. BROWN: In which one of those two interviews?

18 THE COURT: I don't see that in either one of the
19 interviews, any interviewer bias. Another thing, repeated
20 leading questions, I've already said that. Multiple
21 interviews, but what they're talking about when they say,
22 'multiple interviews' they're talking about interviews of
23 those children repeatedly over a period of two years.

24 And as best I can tell they're talking about law
25 enforcement and others doing the interviews over a period

1 of two years. And I distinguish that also in this case.

2 Ongoing contact with peers, I reference that in their
3 statements. Telling these children what their peers had
4 said. You know, and there was also a failure to videotape
5 or document the initial interview sessions. At any rate,
6 I don't see that Michaels is controlling in this case as
7 to either one.

8 I agree with the position of the State on both of
9 these as argued by the Solicitor as to their admissibility
10 and despite the fact that I understand the argument about
11 taint. For all those reasons as said I'm going to go
12 ahead and rule that they're admissible.

13 What else do we need to do?

14 MR. BROWN: I just want to make sure. They're now
15 allowed to enter -- is there ever a limit, Your Honor, if
16 I may tell you. Is there ever now a limit on the number
17 of recorded interviews that they can do and then get in
18 later on?

19 THE COURT: If they try that -- if you try that then
20 they're going to run directly afoul of this, aren't they?

21 MR. BROWN: How many is that?

22 THE COURT: Well, they've got two. A total of two.
23 Isn't that right? That's all I know of.

24 MR. BROWN: Which is more than one.

25 MS. JOSEPH: Your Honor, a total of two. I think the

1 other issues before the Court, the counseling records
2 issue. I don't know whether Mr. Brown wants to address
3 that based on the mom's testimony at Court?

4 MR. BROWN: I plan to ask her about the statement
5 that she got from the counselor about the ejaculate.

6 MS. JOSEPH: It's the State's contention that you
7 have ruled on this, and that they will remain under seal
8 until Mr. Brown does or does not elicit testimony from the
9 mother. At that time then it would be properly raised
10 again.

11 THE COURT: That's what I thought is that we were
12 going to see where the case went.

13 MR. BROWN: Absolutely.

14 THE COURT: And then ---

15 MR. BROWN: All I can say is that they have given me
16 information now that indicates the ejaculate issue came
17 from the counselor. I think the second part of that is a
18 waiver of privilege. They meet in the room and talk about
19 what the child said to the counselor.

20 MS. JOSEPH: After.

21 MR. BROWN: It's not their privilege.

22 MS. JOSEPH: What we would say about the waiver of
23 privilege is how privilege works is the house is in
24 possession of the records. That house had already been
25 torn down because you, Your Honor, are in possession of

1 the records. So there is no more privilege anymore. The
2 Court, an outside party, has the records now and as
3 reviewed them. The issue now is whether or not there is
4 material contained inside the records that is directly in
5 conflict with the evidence that comes out in Court. Does
6 that make sense?

7 THE COURT: I heard what you said. I don't know
8 about ---

9 MR. BROWN: We would agree they waived privilege.

10 MS. JOSEPH: Your Honor, while getting the records
11 that waiver of privilege in fact has been waived. If
12 privilege exists to keep the records in between the
13 patient, the child, and the counselor and if that's what
14 the privilege is meant to do that's gone now because you,
15 Your Honor, have read those records.

16 So, yes, I believe that it's a determination of
17 whether Your Honor thinks that the records are relate in
18 Court, and they're only relevant if they're materially
19 different than the evidence presented in Court.

20 MR. BROWN: We would at least like to look at them
21 now before we argue if they're relevant or not.

22 MS. JOSEPH: Your Honor, you yourself have made a
23 determination on whether or not they're relevant, and we
24 would just ask that you continue to sort of hold those
25 records in abeyance.

1 MR. BROWN: I'm sorry. I thought your ruling was
2 that they weren't going to get in?

3 MS. JOSEPH: As a gatekeeper, Your Honor.

4 THE COURT: I'm sorry. Say that again.

5 MR. BROWN: They're aren't Brady material that wasn't
6 subject to disclosure under that statute. That the
7 exception for that statute, for the record, explicitly is
8 consent. They agreed with me that there is no privilege
9 anymore. They sought privilege under the statute that
10 says, and I have to pull it out. "Confidences or patients
11 of mental illness or emotional conditions."

12 THE COURT: Well, it's ---

13 MR. BROWN: It's a privilege.

14 THE COURT: Off the top of my head that if anything
15 it may just be a limited privilege subject to the Court's
16 ruling. I mean I don't think that I can destroy the
17 privilege by issuing an order.

18 MR. BROWN: That's wasn't my argument. That's their
19 decision.

20 MS. JOSEPH: Exactly, that's to the Judge. When we
21 initially made this argument before the Court we gave you
22 a South Carolina case that stated that these records were
23 allowed to be reviewed by a judge, and you followed the
24 procedure set forth in that case. We just sort of ask you
25 to continue to act as the gatekeeper of these records.

1 MR. BROWN: That was a Brady case, and if you might
2 recall the posture was I filed to serve a subpoena and
3 then filed a motion to compel, to compel my subpoena
4 production. We thought there was a second ground that I
5 believe I'm entitled to this is that statute puts the
6 burden on me to get the records. Flips the burden of my
7 client's compulsory process.

8 I figure the way that works is I serve a duly issued
9 subpoena. They have the burden to show I don't get it.
10 And so I did that. We show up and they say, 'privilege,
11 privilege, privilege." And I understand that, and in
12 order for me to show that they're not privileged there was
13 never any showing on my Seventh Amendment -- or my Sixth
14 Amendment claim, my compulsory process claim.

15 And then Your Honor rules that you had reviewed them
16 in camera, and they weren't Brady. The South Carolina
17 case is a Brady case. It was not a subpoena. There was
18 no subpoena issued in that case. And I don't know whether
19 there were. Brady subpoena gets up it's not Brady. It
20 gets up it's not valid. If I subpoena the videotape from
21 the convenience store that show my client stuck a gun in
22 someone's face that's not a Brady issue.

23 THE COURT: And so?

24 MR. BROWN: And so, I already said that it was
25 unconstitutional in so far as it puts the burden of my

1 client's constitutional rights under the Sixth Amendment.
2 And I did argue that back in July.

3 THE COURT: You did.

4 MR. BROWN: And so I want to remake that now
5 especially since we sort of hashed out more stuff. But
6 what we have also in addition to this is we have a
7 discussion that happened with one party, Your Honor, where
8 they talked about these counseling records or the
9 chronology. Forget the records part it's the confidences
10 inside there. I don't know that the record ever said
11 there was ejaculent or not. But Your Honor does know that
12 they did discuss whether something came out of his wacker,
13 and, yes, it did. It was yellow.

14 And I asked Babkiewicz about the ejaculate. He never
15 heard of it before today. And I mean that's new, and that
16 came out of counseling. That's Brady. I think it's
17 Brady, but I can't get into it. I mean I subpoenaed the
18 counselor. She is duly subpoenaed now. She has been
19 served. And that's new. That's exculpatory -- excuse me.
20 That is impeachment I believe. Not exculpatory. It then
21 calls for a statement.

22 THE COURT: All right. All right.

23 MR. BROWN: But it's impeachment.

24 THE COURT: Of who?

25 MR. BROWN: Of the statement the child made at Hope

1 Haven. They asked him whether anything came out. When
2 his story changes a whole bunch, but he didn't say one
3 time that my client raped him. He didn't say another time
4 my client pulled a gun on him. He said -- all these
5 things sound bad, but at some point when the, you know,
6 when the sky is falling and the sky is falling, the sky is
7 falling and somebody didn't believe Chicken Little
8 anymore.

9 And I mean I can just try -- I'm just trying to --
10 they're bringing in stuff that doesn't even normally come
11 in. I'm being shielded from stuff I normally get which is
12 other statements the person made about the defense. And
13 we're not talking about introduction in errors but that's
14 not the question of whether I get it for trial prep.
15 That's not the analysis, and certainly it may not come in.

16 But they have talked about this counseling stuff with
17 the mother, and the mother holds the privilege.

18 THE COURT: Who talked to the mother?

19 MR. BROWN: The prosecutor's office has. I just
20 introduced that information.

21 THE COURT: Well, I'm confused about who has talked
22 to the counselor.

23 MR. BROWN: Well, the mother told the prosecutor's
24 office the counselor told her that [Minor] told
25 the counselor. And that's a lot of hearsay. I didn't say

1 anything right now, but you do figure I'm going to ask
2 [Minor] about telling Hope Haven that there
3 wasn't anything but yellow that came out; that he told
4 counselor that some ejaculate came out. That goes to a
5 different issue with the police about not collecting
6 anything but the pot.

7 I mean they got a C.S.C. case. They got a bag of
8 pot. So they come back with it. No photos or anything
9 else, and that is relevant because they didn't try to
10 collect any evidence to disprove or prove the allegations
11 over the ejaculate. They didn't know about the ejaculate.
12 Now there is ejaculate. It sounds confusing. That is no
13 doubt.

14 And they talk about they -- and the privilege is
15 broken by the mother. She can do it. He's a juvenile.
16 The mother can break privilege. I can take my juvenile 15
17 year old's record and go throw them up and down the
18 street. And it's broken the privilege. And they did.
19 They asked. I don't know how it came out in the
20 interview. But they said, "Oh, no, no, no. Didn't say
21 anything about the counseling." I didn't go into that
22 discussion.

23 For what it's worth my client's mother also
24 discussed -- that was reference in the record back in
25 July. She and the child's mother talked about the

1 counseling sessions, too, which I proffered that she
2 didn't come to that part of the hearing. I didn't proffer
3 in the traditional sense, but I did mention to Your Honor
4 that she had information she talked about his irritability
5 with the counselor. They talked about the step
6 grandfather. And I brought that up in July because Patel
7 gave a wrinkled face look, and I recall that because I was
8 trying to look and see what her reaction would be about
9 that.

10 THE COURT: Let me ask you this. Did the mother
11 waive all counseling?

12 MR. BROWN: All I know about is the ejaculate
13 statement which I appreciate cause I think it's Brady, and
14 I'll be glad to turn that over to you cause that is
15 different. And they job Brady. They gave me the Child
16 Advocacy Center records back in June. I mean they're the
17 ones that pulled the 34 month old case back into shame.
18 So I'm patting them on the back for that. I mean I'm just
19 saying there are how many sessions ---

20 THE COURT: No. The mother may waive this week for
21 all I know, today.

22 MR. BROWN: She's already waived.

23 THE COURT: Huh?

24 MR. BROWN: She's already waived.

25 THE COURT: She may agree. I don't know what she's

1 waived. Okay. I don't know what she's talk to who about.
2 I don't know whether she said, "On Session Number One."

3 MR. BROWN: Right.

4 THE COURT: Cause there were a bunch of sessions.

5 MR. BROWN: I don't know. I have no idea how many
6 sessions.

7 THE COURT: Well, there were.

8 MS. JOSEPH: I will agree, Your Honor, that when we
9 get the testimony we're happy, not that we're the Judge,
10 but this issue be raised again. I mean the State
11 understands these arguments, and I don't think this is the
12 proper time for them.

13 MR. BROWN: When I prep for my client's 25 to life
14 trial, but I would suggest this. We have small, little
15 interviews; two, 27 minute interviews. And then we have
16 lots of counseling statements about the same issue. So
17 I've got a tip of the iceberg that I can prep while all
18 this is hidden from everybody -- or excuse me. Hidden
19 from me and no one else. Your Honor has seen it. They
20 have seen it.

21 MS. JOSEPH: We've never seen it.

22 MR. BROWN: They've seen it first. You've seen the
23 records. They have talked to the mother.

24 THE COURT: Has the mother seen the records? Do you
25 have any idea?

1 MR. BROWN: I'm not sure about the records. The
2 confidences. I mean there is a story about a lawyer, I
3 think, and he engaged in no discussions because both of
4 his client's names ended in vowels. And so they would
5 write notes back and forth and then he had the thing, he
6 would light it on fire after the end of the thing. I've
7 heard that from several different people.

8 It was said that way there was no way wiretap his
9 office. He just burned up all the evidence of their
10 discussions that way, but it's the information that was
11 discussed in there. And I will tell you this, and I don't
12 mind putting it on the record. The counselor has dodged
13 my subpoena. It took a lot to get her served. She hung
14 up on the police detective -- the police officer that went
15 to serve her.

16 Told her she would not give out her address. I mean
17 it has been one thing after another. And that's a red
18 flag of 20 years of practicing law when somebody dodges
19 you. There is something there that they don't want to
20 reveal. I didn't do. It may be something bad. I don't
21 mean -- Your Honor, I would suggest you can put a
22 protective order. I can't talk with anybody, even my
23 client.

24 I have in similar cases all the time when my client
25 turned over all kinds of records that are marginally

1 relevant, and his grandmother, they share a bank account,
2 and her tax returns. And they put a protective order on
3 grandma's taxes.

4 THE COURT: When we were here in July or whenever it
5 was you wanted those records because you just didn't know
6 what was in the records is my recollection.

7 MR. BROWN: That's why I subpoenaed them to turn them
8 over to the State. Yes, sir, that's exactly right.

9 THE COURT: Now you think there maybe something
10 specific in that record?

11 MR. BROWN: From their statements, yes.

12 THE COURT: I didn't mean it's in the record.

13 MR. BROWN: Or that it's privileged.

14 THE COURT: What I'm trying to tell you is it doesn't
15 mean it's in the record.

16 MR. BROWN: I understand that, Your Honor. Well
17 that's even further impeachment. I mean if they're saying
18 somebody said it now, the mother said it was talked about,
19 the counselor doesn't have it in her notes. I mean that's
20 reasonable doubt.

21 THE COURT: Let's come back about 9:15 in the
22 morning. I'll get from the Clerk's Office the notes in
23 this file.

24 MR. BROWN: They are under seal if you recall that.

25 THE COURT: Yes.

1 MS. JOSEPH: He wants the notes.

2 THE COURT: There is a file that goes with this case
3 in the Clerk's Office.

4 CLERK OF COURT: Yes, sir.

5 THE COURT: I don't need it now. I'll get it in the
6 morning. I'll look at it. What else we need to do before
7 we adjourn?

8 MS. JOSEPH: Nothing from the State, Your Honor.

9 MR. BROWN: I was going to try to find you that -- I
10 apologize. Try to find you the statement that had the
11 ejaculate statement in it. That is in the July 22nd
12 e-mail, Your Honor.

13 THE COURT: Okay.

14 MR. BROWN: Which is -- I don't know which number it
15 was introduced.

16 THE COURT: They're in the process of getting marked.

17 MR. BROWN: Yes, sir.

18 THE COURT: All right. We are adjourned until 9:15
19 tomorrow morning.

20 MR. BROWN: And my client will remain out on bond?
21 He is on Able Monitor. Has not had any violations in 34
22 months, Your Honor. No prior arrests.

23 THE COURT: What's the State say?

24 MR. BROWN: He is still out on bond.

25 MS. JOSEPH: Your Honor, tomorrow we have one witness

1 about the jury we'll bring in front of Your Honor, okay?

2 THE COURT: Okay. But first answer the question
3 about whether or not the State has a position on the
4 defendant remaining out on bond on ankle monitoring as he
5 has been for 34 months?

6 MS. JOSEPH: We have no issue. That's fine. That's
7 fine, Your Honor.

8 THE COURT: Continue on his bond.

9 MR. BROWN: Yes, sir.

10 THE COURT: Of course, he understands -- well, let's
11 put that on the record.

12 MS. JOSEPH: Yes, Your Honor.

13 THE COURT: Mr. Brown, your client does he understand
14 that if he doesn't appear tomorrow ---

15 MR. BROWN: No problem.

16 THE COURT: --- it is highly likely the case will go
17 forward even in his absence?

18 THE DEFENDANT: Yes, sir.

19 MR. BROWN: Yes, sir, Your Honor.

20 THE COURT: Thank you. 9:15.

21 MS. JOSEPH: Thank you, Your Honor.

22 THE COURT: Thank you.

23 MR. BROWN: There is a juror issue. If we can just
24 that briefly address.

25 MR. WHETSEL: Your Honor, I can address it. Master

1 Sergeant Michael. Juror Number Two on our panel, Juror
2 Number 213, her last name was Love. I believe Michael or
3 Michaels. Excuse me. Basically, Master Sergeant Mike,
4 M-I-K-E, is the last name.

5 MR. BROWN: Of who?

6 MR. WHETSEL: Of Michael. Last name's Mike. he saw
7 that last name and he saw the address, like the city that
8 she's from, and made him think of a person that was
9 convicted some time ago of some sex offenses and a person
10 is on the sex offender registry. Well, during the lunch
11 break he came up and said, "I don't know, but I think this
12 person -- could possibly be related to this person."

13 And then he came back and said, "I'm not a hundred
14 percent sure. I don't know." It was more a hunch, if you
15 will. The long short of it is that this juror may not
16 have a relative that was a convicted sex offender. We
17 just -- I have no clue. It was just something that the
18 Master Sergeant brought up because he recognized the last
19 name.

20 MS. JOSEPH: And the area.

21 MR. WHETSEL: And the area, and he, may be, maybe
22 not.

23 MR. BROWN: Well, I can tell you there are two or
24 three jurors that know me by name. I know them by name.
25 They never stood up and didn't -- two females work for my

1 wife never said anything either.

2 THE COURT: Well, we were -- we weren't asked that
3 question.

4 MR. BROWN: I'm sorry, sir?

5 THE COURT: We didn't ask that question.

6 MR. BROWN: I just want to bring it to the Court's
7 attention.

8 THE COURT: Oh.

9 MR. WHETSEL: I was going to tell Mr. Brown first,
10 but since it kind of came out there it's out in the open
11 that the whole purpose of that ---

12 MS. JOSEPH: There was no point this -- putting it on
13 the record.

14 THE COURT: All right. In the morning.

15 MS. JOSEPH: Thank you, Judge.

16 END OF TRANSCRIPT OF RECORD
17
18
19
20
21
22
23
24
25

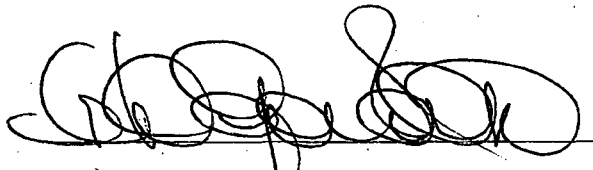
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

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
Beaufort County, South Carolina, on the 19th day of
September, 2016.

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

September 9, 2017

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
COUNTY OF BEAUFORT) 2014-GS-07-00021

STATE OF SOUTH CAROLINA)
PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
JUSTIN ADAMS) VOLUME II OF III
DEFENDANT)

September 19-21, 2016
Beaufort, South Carolina

B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH, JUDGE; and a jury.

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

ALEXANDRA M. JOSEPH, ASSISTANT SOLICITOR
Attorney for the State

DUSTIN WHETSEL, ASSISTANT SOLICITOR
Attorney for the State

JAMES A. BROWN, JR., PUBLIC DEFENDER
Attorney for the Defendant

JOSEPH BABKIEWICZ,
MARY BETH HEFNER,
JOHN DESTACIO,
PATRICIA BRYANT,
TABITHA JONES,
Minor

A P P E A R A N C E S (continued):

CHARLES BRYANT,
KRISTIN DALTON,

HATTIE O. GORDON
Circuit Court Reporter

COLLOQUY

1
2 THE COURT: I thought I was going to have an
3 opportunity to review these records before we had that
4 meeting, but I have not. I've only had a chance to skim
5 through it, the records. So let me postpone that meeting
6 for a little while I read.

7 MR. BROWN: Thank you for that. Also serves as a
8 double duty for my client regarding his tardiness. I will
9 say this. He doesn't own a car. He is subject to riding
10 with the entire family. Not a real excuse.

11 THE COURT: All the jurors are present I'm informed.
12 State's Exhibit One and two.

13 (WHEREUPON, State's Exhibit Nos. 1 AND 2 were marked
14 for identification only.)

15 THE COURT: Mr. Brown, you were asking about the
16 contents of the counseling session records concerning the
17 child?

18 MR. BROWN: Yes, sir. I subpoenaed the documents and
19 obviously at some point I'd like access to the information
20 that is depositive as confidential under the statute. And
21 I say information. More than just what's in the written
22 order. They have asserted confidentiality at some point.
23 That's what's they're basis to prevent the production of
24 the subpoenaed items back in July.

25 But yesterday they did say they weren't privileged

1 any more. I think Sixth Amendment compulsory process
2 analysis. I subpoena them, I get them, they're no
3 privileged.

4 THE COURT: Tell me why they're not privileged.

5 MS. JOSEPH: Your Honor, I was simply addressing Mr.
6 Brown's argument that the mother can breach the privilege.
7 I'm brings a very limited scope argument namely that if
8 the mom in very briefly referencing the counseling records
9 our office had breached the record for the purpose of this
10 court case I think that it was only in so far as the
11 records would come in as evidence.

12 And you in fact would act as the gatekeeper. I
13 wasn't saying that the privilege is gone. The records are
14 out there. I was merely saying that Tabitha, the mother
15 in this case, actions in briefly discussing the records
16 did not call for further action. The action is already
17 been taken meaning that the records have already been
18 taken out of Hope Haven and given to Your Honor.

19 That the type of action that would happen if Tabitha
20 had spoken about the records and we had never, ever
21 previously discussed the topic about the record and Mr.
22 Brown said, "Well, now they have to be turned over." That
23 would be our argument. Turned over to you which had
24 already been done. So I think that the remedy has already
25 been done, Your Honor.

1 MR. BROWN: Well, I'm not arguing at this point at
2 they're admissible. I'm not arguing that they're
3 admissible.

4 THE COURT: Right.

5 MR. BROWN: That's not the standard for ...

6 THE COURT: I understand.

7 MR. BROWN: Well, it's the compulsory process clause.
8 Actually, the burden is on them. The Supreme Court late
9 out, and I did submit that with my motion back in July to
10 compel that the standard was to quash the subpoena
11 essentially. Admissibility is a separate issue. I'm not
12 saying that they would necessarily be admissible. I would
13 just say this as a matter of fairness. There seems to be
14 no dispute that they spoke to adverse witness about the
15 contents of the counseling.

16 THE COURT: Say that again.

17 MR. BROWN: The state spoke with a witness and the
18 discussion included the protected information. So now
19 we've got is one side has been privy to it, and I haven't.

20 MS. JOSEPH: But just to be clear, and I think this
21 was lost yesterday when we spoke with the victim's mother,
22 a woman named Tabitha, it was very brief. It was in
23 passing. And her discussion to me, and I'm the one
24 speaking with someone who was present in the room as well,
25 it seems to me that she had spoken with the child's

1 counselor outside the counseling section briefly about the
2 content of the counseling session just like any parent
3 could be expected to ask their child pediatrician, you
4 know, what's going on. Or any parent could be expected to
5 ask their child, 'hey, what's going on' like a brief
6 checkup.

7 And two things. One, I have information, a brief
8 sort of recount of the checkup the mother received from
9 the doctor, and Mr. Brown has that information. I have
10 passed it on to him. This is what the victim's mother
11 said to me.

12 And, Two, because of the nature of the disclosure of
13 the mom I don't think that this really even references the
14 counseling records. Instead this is her saying that the
15 counselor's view of how -- of the progress of the
16 counseling session.

17 So I struggle to think that the counseling records
18 either in their entirety or at all are included in her
19 very brief disclosure.

20 MR. BROWN: That the counselor told the mother what
21 the child told the counselor. That's ---

22 THE COURT: Now, is that right? I'm lost now in this
23 conversation.

24 MR. BROWN: I don't have the number. It's marked
25 under Defendant's Exhibit Six. The second paragraph there

1 are notes of the interview that I'm assuming Ms. Joseph
2 refers to. If Your Honor will go down to the one, two,
3 three, fourth line it says, "She didn't fully believe him
4 until he went to a therapist and was consistent with his
5 disclosures.

6 Now, that's talking about the disclosure. And then
7 he goes on and he starts to talk about semen coming out of
8 Justin's penis, and according to her, he would not have
9 known this unless Justin was messing with him. I mean
10 that's the therapist saying that's the counselor.

11 Ms. Jones discussing with the prosecutor told the
12 counselor told Ms. Jones. Now, I'm not disputing that the
13 child's privilege, because the minor would also cover the
14 communications with the parent, I take the same position.
15 I mean the parent of a minor child, I take it that it's
16 all privileged because the adult is in fact an extension
17 of the child.

18 There the child is not an independent person, but
19 when this mother talks about the prosecutor it's broken.

20 THE COURT: Solicitor, sorry.

21 MS. JOSEPH: Your Honor, I just feel like this has
22 been remedied in so far that Ms. Tabitha Jones, the mother
23 in this case, breached the confidentiality which she may
24 or may not have done with this disclosure. And, again,
25 I'm the one that typed those notes as to what happened.

1 The State contends that the exhibit that Mr. Brown is
2 introduced is a 100 percent accurate to my recollection.

3 In so far as she has breached confidentiality that
4 breach has already been remedied. The Court in possession
5 of those records and then that's tier one and it falls
6 back to a second tier of our argument which is that you
7 act as the gatekeeper.

8 The law of South Carolina gives you the ability to
9 review those records, ascertain whether they are relevant
10 about the material which they should come in. And I
11 believe we already addressed that at the hearing. So in
12 my mind we've already sort of done this.

13 MR. BROWN: This was not presented.

14 THE COURT: I'm sorry.

15 MR. BROWN: This was not presented before. And I've
16 got to be honest with you. July 22nd, three days of our
17 hearing, and at that point in time I had not called yet.

18 MS. JOSEPH: Were you given it prior to?

19 MR. BROWN: There is no question that you didn't
20 know. And it doesn't change, even though you rumored to
21 what is was back then ---

22 MS. JOSEPH: But Defense counsel ---

23 MR. BROWN: I'm sorry. I's like to finish my
24 statement. Even though it wasn't presented back then,
25 Your Honor, a broken privilege, you can't seal it back up.

1 It happens all the time. An accident, people talk about
2 things their lawyer told them. Once it's out the gate
3 it's out the gate. If the privilege is broke, and for
4 what it's worth, it's not just the statement about the
5 semen cause that would be a limited disclosure.

6 THE COURT: Right.

7 MR. BROWN: She You can have a limit disclosure she
8 didn't believe him until he went to a therapist and was
9 consistent with his disclosures. In other words we're
10 talking about the whole kit and kaboodle. I don't know.
11 Do you want to talk to Tabitha about what she told the
12 State. Here's my -- the were two people I know in that
13 room when that privilege was breached, Ms. Joseph and
14 Ms. Jones.

15 And if we're talking about, first question, is there
16 still a privilege. Because if the statute decides that
17 Your Honor agreed with their position that I don't get
18 these records the release is one of the ways around it.
19 Release the records. Released by the child being
20 counseled or in fact it's not a child statute. So it
21 didn't talk about children. That's counselor records.
22 That's for everybody.

23 So whether it's somebody's divorce case or anything
24 else the records are considered to be off limits and
25 privileged. And one of the exceptions, Your Honor, is if

1 they're released by the patient. I mean I just use that
2 word. I don't know a better way to say it.

3 MS. JOSEPH: Your Honor, cann we leave this in the
4 Court's discretion. You fully understand the State's
5 position, and I think that you also understand Mr. Brown's
6 position. So thank you.

7 THE COURT: Okay. I find it's a limited release of
8 the privilege to the extent that that statement was made.
9 That does not open the entire record. That's the ruling
10 of the Court. Are you ready for the jury?

11 MR. BROWN: What do I get for the limited release?

12 THE COURT: You get to ask that witness about that
13 statement.

14 MR. BROWN: I don't get to look at any of the records
15 and see if they have that in there?

16 THE COURT: Have what in there?

17 MR. BROWN: He's starting to talk about semen coming
18 out of Justin's penis. It's obvious. Is that in the
19 record?

20 THE COURT: I don't know.

21 MR. BROWN: And I don't know. I'm the only one that
22 hasn't seen them. I mean this is just not fair.

23 MS. JOSEPH: The State also has not seen the records.

24 THE COURT: I don't think the State has seen the
25 records.

1 MR. BROWN: They got to discuss with the person that
2 held the privilege of the records. I mean that is amply
3 unfair.

4 THE COURT: I've already ruled.

5 MR. BROWN: I understand that. Thank you.

6 THE COURT: Are we ready for the jury?

7 MS. JOSEPH: The State is ready. Oh, sorry. My
8 co-counsel has one more matter like to bring up.

9 MR. WHETSEL: Your Honor, I have a procedural
10 question. I'll be doing the direct exam of [Minor], the
11 minor child. I asked Mr. Brown this off the record. I
12 just want it clarified. Does the Court, prior to the jury
13 hearing from him, do I need to go through a series of
14 questions as far as ascertaining his ability to tell the
15 truth?

16 And the second part of that would be do I need to do
17 that in front of the jury? I don't know how the Court
18 wants me to handle that.

19 THE COURT: Mr. Brown.

20 MR. BROWN: I'm not arguing, but there's a caveat
21 here. With the information I have here today I'm not
22 arguing any competency issues. Brief reference in
23 Michaels H. case and the Judge ordered a psychological
24 examine of the minor child. It's cited in the Michaels
25 case for the taint. And I mention that because I have

1 reason to believe now that those records contain
2 information that would enable me to request and obtain an
3 order for a phycological exam of the minor child.

4 THE COURT: And so you don't have a position on how
5 the child should be presented to the jury.

6 MR. BROWN: I would be answering it blind to his
7 medical history.

8 THE COURT: So you don't have any objection or
9 position on it?

10 MR. BROWN: I object to the extent that I can't look
11 at his counseling records to determine whether he is
12 competent.

13 THE COURT: You ask the questions in the presence of
14 the jury.

15 MR. WHETSEL: Yes, sir, I'll do that.

16 MR. BROWN: And I'm going to ask whether or not he's
17 been counseled and any issues regarding his ability to
18 tell the truth. If we're doing competency that's a mental
19 heath issue.

20 MR. WHETSEL: I don't think competency in the sense
21 of mental heath is competency as far his ability to
22 testify. 601 say, "Any witness is presumed competent to
23 testify," and that's all I'm talking about the scope from
24 this.

25 THE COURT: Right.

1 MR. BROWN: It's already presumed then there is no
2 need to ask. I'm not waiving the issue because I don't
3 know the issue.

4 THE COURT: He's going to ask the child the standard
5 questions concerning right from wrong.

6 MR. WHETSEL: Yes, sir.

7 THE COURT: And testifying truthfully.

8 MR. BROWN: In a non-leading way.

9 THE COURT: I don't know how he's going to ask it.

10 MR. BROWN: It's going to be ---

11 THE COURT: I asked you for your input, and you don't
12 want to have any input.

13 MR. BROWN: Well, I do. I would like to examine the
14 report so I can make an intelligent decision.

15 THE COURT: We've already ruled on that, Mr. Brown.

16 MR. BROWN: I absolutely understand that.

17 THE COURT: Mr. Brown, we've already ruled on that.

18 MR. BROWN: I absolutely understand that. This is an
19 issue of competency. Did they ducktail ---

20 THE COURT: We've already ruled on that issue.

21 MR. BROWN: On which issue?

22 THE COURT: The records.

23 MR. BROWN: You asked me about competency, and the
24 record is preventing me from giving my client
25 representation on the issue of competency. For the

1 record.

2 THE COURT: All right.

3 MR. BROWN: And, Your Honor, there was another ---

4 THE COURT: Are you ready for the jury. I'm sorry.

5 Are we ready for the jury?

6 MR. BROWN: I am ready for the jury, but there was
7 one additional disclosure to -- by the mother. That was
8 reference in July as well.

9 THE COURT: Okay. State's ready for the jury?

10 MS. JOSEPH: Yes, Your Honor.

11 THE COURT: Let's bring the jury in.

12 MS. JOSEPH: And, Your Honor, we have witnesses here.
13 Would you like them sequestered?

14 MR. BROWN: I would.

15 MS. JOSEPH: And I believe that the Defense would
16 actually ---

17 MR. BROWN: I don't -- and actually, I don't mind the
18 sequestration. During the examination is when I'd like
19 it.

20 MS. JOSEPH: Okay. And I believe Defense's witnesses
21 as well.

22 MR. BROWN: I have one potential witness.

23 MS. JOSEPH: And she can be sequestered as well.

24 MR. BROWN: During the testimony. That's all I'm
25 asking.

1 THE COURT: During whose testimony?

2 MR. BROWN: During the witness testimony.

3 THE COURT: Isn't that ---

4 MR. BROWN: We're doing openings right now, I assume?

5 MS. JOSEPH: Right.

6 MR. BROWN: I would request an open. I know they're
7 not required by law.

8 THE COURT: All right.

9 MS. JOSEPH: During the questioning, Your Honor.

10 THE COURT: Let's start all over again. Are we
11 sequestering witnesses?

12 MS. JOSEPH: Yes, sir, Your Honor.

13 MR. BROWN: I would ask during the testimony of the
14 other witnesses they be sequestered.

15 THE COURT: So each of you are going to make sure
16 after opening statements the witnesses are going to leave
17 the courtroom?

18 MS. JOSEPH: We're just getting our witnesses out
19 now, Your Honor.

20 THE COURT: Okay.

21 MR. BROWN: And I'll ask mine to leave when the
22 testimony starts.

23 THE COURT: Okay.

24 MS. JOSEPH: Thank you, Your Honor.

25 (WHEREUPON, the jury panel enters the courtroom at

1 10:12 a.m.)

2 THE COURT: Good morning, ladies and gentlemen. I
3 apologize for keeping you waiting. The first thing we're
4 going to do this morning is have the Clerk administer to
5 you your oath as jurors. Madam Clerk.

6 (WHEREUPON, the jury panel was sworn in at
7 10:12 a.m.)

8 THE COURT: Just a few things before we begin, ladies
9 and gentlemen. As I told you before the Defendant in this
10 case is charged by way of an indictment with criminal
11 sexual conduct with a minor. The elements of this offense
12 will be explained to you at a later time, but I wanted to
13 let you know that the indictment is not evidence of
14 anything. It's simple the vehicle that brings the case
15 into the Court. It should not create any inference of any
16 kind just as though the Defendant presumably was arrested
17 and charged and so on.

18 But none of that is evidence. The Defendant has pled
19 not guilty to this indictment. Therefore, that puts the
20 burden upon the State to prove each of the elements of
21 this offense to your satisfaction beyond a reasonable
22 doubt. And it would be your duty, ladies and gentlemen,
23 to determine whether in State meets that burden.

24 Your purpose as jurors is to determine the facts of
25 the case. You, ladies and gentlemen, are the sole judges

1 of the facts of the case. My duty or obligation is to
2 preside over the trial of the case, to rule on the
3 admissibility of evidence and tell you the law that
4 applies in the case. You must accept my rulings and the
5 law as I tell you it is even if you might disagree with
6 me.

7 The same law that makes you the judge of the facts of
8 the case makes me the judge of the law of the case also
9 says that I cannot make any comment about the facts of the
10 case in your presence. For that reason the attorneys may
11 ask to see me at a side bar or may ask to approach, and
12 we'll go to this corner over here and whisper things that
13 we think you can't hear. And the reason that we do that
14 is not necessarily to try to keep facts from you or keep
15 secrets from you.

16 It's because most of the time I'm required to discuss
17 a matter of law with the attorneys and in doing that it
18 may require me to discuss the facts of the case with the
19 attorneys. As I already told you I can't do that in your
20 presence. Until, as told you the other day or yesterday,
21 until this case is over you can't let anybody talk to you
22 about the case. You can't talk to anybody about the case.
23 And believe it or not even in the jury room until the case
24 is completely over. You can't talk about the case among
25 yourselves. You can talk about the weather. You can talk

1 about politics if you want to go there. You can talk
2 about anything you want to, but not the facts of this
3 case.

4 In just a few moments the attorneys will make what is
5 called an opening statement to you should they choose to
6 do so where they try to tell you that they think the facts
7 of the case may show or may not show. After that we'll
8 have typically witnesses who testify and maybe other
9 evidence introduced during the trial of the case. And
10 after all of that is completed the attorneys may then make
11 their closing arguments to you where they try to convince
12 you to see the facts of the case the way they see it.

13 Then I tell you about the law that applies in the
14 case and then you begin -- you retire to the jury room and
15 begin your deliberations. We'll begin with the State
16 Solicitor.

17 OPENING STATEMENT BY MR. WHETSEL

18 MR. WHETSEL: May it please the Court, Your Honor.
19 Good morning, ladies and gentlemen. This past July
20 [Minor] turned eight. Three years ago in 2013 he
21 was five years old. And, [Minor], he had a secret, but
22 it wasn't a secret that most children his age would have.
23 It was the most, as you've probably guessed by now, the
24 most terrible kind of secret. And [Minor] is going to
25 testify later. He will tell you about that secret. He is

1 going to tell you what the Defendant, right other there,
2 Justin Adams, did to him back in 2013 when he was five
3 years old.

4 Justin is going to tell you -- I mean Chris is going
5 to tell you that the Defendant, who was his mother's
6 fiancée, his mother, Tabitha, they lived together in 2013.
7 And near the end of 2013 the Defendant would take showers
8 with [Minor]. Now, [Minor]'s mom, Tabitha, the
9 Defendant, [Minor] and a little boy named [Brother] lived
10 together. And [Brother] was the biological son of the
11 Defendant and Tabitha, [Minor]'s mom. He was a newborn
12 near that end of 2012. And then [Minor] also lived in
13 that household.

14 Now, initially, Tabitha, she stayed at home with
15 [Brother] taking care of him, but at some point went back to
16 work. She worked nights. Justin worked days. And near
17 the end of 2013 it began. Justin started taking showers
18 with [Minor]. Initially, Tabitha wasn't that concerned
19 about it as you will hear when Tabitha testifies.

20 She was just happy for the help. She was a new mom
21 again with another fairly new -- newborn child. And she
22 was a mom who going back to work. And she was happy for
23 that and initially didn't think much about it. And as you
24 will hear her testify that one time that she didn't think
25 much about it. But she asked. She asked the Defendant

1 why, and she will tell him -- and as she will tell you he
2 gave an excuse. That's how it used to go.

3 BAILIFF: Speak up a little bit.

4 MR. WHETSEL: Okay. And as she will tell you he gave
5 an excuse. Okay. Another time [Minor] came out of the
6 bathroom after taking a shower with the Defendant.

7 [Minor] had an erection. Again, it was a little bit
8 strange. Again Tabitha asked the Defendant about it. He
9 made some kind of excuse. She didn't want to believe that
10 her fiance, [Minor]'s stepdad, would do anything. But
11 then again as you will hear December 7th of 2013 [Minor]
12 finally did tell this secret.

13 As you will hear from his Grandmother, Patricia
14 Bryant, Tabitha's mom, he told her something and he told
15 Tabitha something.

16 MR. BROWN: Object.

17 THE COURT: I'm sorry?

18 MR. BROWN: He's going to get to hearsay. It will be
19 an objection.

20 MR. WHETSEL: I'm not getting into hearsay, Your
21 Honor.

22 THE COURT: Unless you're sure you can prove it.

23 MR. WHETSEL: I understand.

24 THE COURT: Don't say it.

25 MR. WHETSEL: Absolutely.

1 THE COURT: Okay.

2 MR. WHETSEL: This led to an investigation, and
3 that's the evidence that you're going to hear today.
4 You're going to hear about an investigation. You're going
5 to hear from [Minor]. You're going to hear from
6 Tabitha. You're going to hear from the grandmother.
7 You're going to hear from the investigating officer. And
8 you're going to at the end of the State's case, when this
9 is all said and done, we're going to have to prove to you
10 that Justin Adams, the Defendant, engaged in a sexual
11 battery with somebody under the age of 11. That's what we
12 have to prove.

13 And when all the evidence is before you, after you
14 have heard everything, after having the ability to judge
15 the credibility of the witnesses, once this case is done
16 it's in your hands. We're going to come back, and we're
17 going to ask you to hold the Defendant accountable; that
18 you hold him accountable and find him guilty of criminal
19 sexual conduct. Thank you.

20 THE COURT: All right. Thank you. Mr. Brown.

21 MR. BROWN: May it please the Court.

22 OPENING STATEMENT BY MR. BROWN

23 MR. BROWN: Suggestibility: Subject to impression.
24 Please. These are all things you're going to hear about
25 as we go through. You're going to hear testimony from a

1 young child who was even younger in years. Ask yourself
2 whether or not this child has gone through a polishing
3 process. The number of times he was interviewed or
4 questioned in this case. One? Two? Three? Four? Five?
5 Six? Seven? How many times they met with these people.
6 How many times they came to the courtroom to rehearse what
7 was going to be said.

8 Look at where the name Justin Adams came from when
9 this complaint was made. I want you to look at what was
10 followed in the investigation and the very intense,
11 rigorous training in a case involving allegations about a
12 child. Look where the people who were involved did. Look
13 where they were ever trained. Look what they did when
14 they went to collect any evidence to corroborate this.

15 One of the things you will hear going through you're
16 going to have statements that are not subject to
17 corroboration, and so if we're doing a coin toss I find a
18 50, 50 chance. There is nothing else but the statement
19 because [REDACTED] Minor comes in and says my client did it.
20 Mr. Adams tells you he didn't do it. He did that when he
21 pled not guilty, and we asked for this trial. At the
22 point they picked up Mr. Adams they did so disregard of
23 the Constitution.

24 They never asked for a determination by a magistrate
25 with whether or not there was probably cause. They went

1 there and cuffed him. They don't read Miranda. They take
2 him to the police station, put him in a hard interview
3 room. For bad -- not a soft interview room. And in there
4 they asked him whether he did it.

5 And you're not going to hear any admission from Mr.
6 Adams. What you are going to hear is that they developed
7 the date they believe this may have happened. Never went
8 and got any work records to see if he was there or not.
9 Whether they were Ms. Jones' or Mr. Adams' work records.
10 There never collected them.

11 D.N.A. forensic evidence. Boy, we have come a long
12 way with D.N.A. typing or we just give blood types and
13 things like that. Very precise D.N.A. We trace the
14 mother's and father's line. Its got very complexed.

15 We know that material that produces the D.N.A.
16 analysis persists. I think it's common knowledge
17 Lowenski's dress was dry cleaned. Still got D.N.A. on it.
18 When they go pick up Mr. Adams without a warrant, without
19 probably cause determination, without Miranda, nothing to
20 prove.

21 And they did collect some evidence. They did bring a
22 camera. They asked him about the marijuana. The smell of
23 marijuana in the house. So they collected a small bag of
24 marijuana. He tells them it was, you know, on my dresser
25 at the end of my bed. They're in the bedroom. There is

1 evidence. Never collected one sheet, one towel, one
2 comforter. Never come back to take photos of the
3 marijuana that they collected there, but they weren't
4 there for a simple possession of marijuana case. They
5 were there following up on allegations of child sexual
6 battery. Don't collect one thing. Go back to those
7 guidelines what's supposed to safeguard this because we
8 know children are impressionable.

9 They are subject to suggestion. They like to please.
10 I tell you all that because some things like time, for
11 instance in this case, it's not even contact the child has
12 had or the source of word knowledge. Massage. You will
13 hear that word. The child doesn't even know what the
14 question means when asked where he learned that. And
15 that's why we had to go out.

16 Because we don't like to put a man in the shadow of
17 the penitentiary based on the word of a five year old.
18 And sometimes you're never going to feel they're not
19 telling the truth. But the child is smart for
20 volunteering and being truthful. I admit that child was
21 smart and volunteered for a child to. And that's why we
22 seek corroboration because there is no second chance on a
23 jury verdict.

24 You already know by now how somebody gets to that
25 chair, and I'm telling you the rest of this process is how

1 somebody gets out of that chair because we rely upon you
2 to be the truth finders, for polygraph, what happened.
3 And at the end your analysis is not whether we proved he
4 didn't do it, Mr. Adams, didn't get the collected evidence
5 when he sat in the jail for ten months.

6 He didn't get to interview the child with an eye
7 towards the defense. Everybody who interviewed the child
8 was against Mr. Adams or worked for the State. And that's
9 the way it is. But any taint or bias got put on that case
10 from the beginning then I'm stuck with what I can do right
11 here in this courtroom. Everybody here, except me and
12 Justin Adams, works for the State of South Carolina.

13 So whatever his family can do to provide us with the
14 resources, which does not include a hard or soft interview
15 or forensic training techniques or the ability to go ask
16 the child to come to an interview so we can it conducted.
17 We don't get that. As much as it's fair it's stacked
18 against the accused from the beginning.

19 That's all right. To give you some dynamic here,
20 okay, about the -- and there was a lot of discussion
21 during the jury selection about anything. And I say that
22 because names. We've got Justin Adams and he lives with
23 Lisa and his father, Paul. He's got a sister with autism.
24 Grew up in Jasper County. Lives there for the last --
25 back with his parents for the last 31 months with a G.P.S.

1 monitor. The government tracking his every move. They
2 know when he comes to visit me. They know whether he's
3 doing wrong since. And certainly an investigation doesn't
4 end with arrest. So there are GPS records show taken of
5 children at the playgrounds you bet you would hear it.

6 On the other side we have Tabitha Jones. Now,
7 Tabitha and Justin are in a relationship back in 2013.
8 Prior to that Tabitha had a child, [Minor]. That
9 child's father was [Minor], and you're going to
10 hear reference to him, the child's father, as we go
11 through. You're going to find out that that child's
12 father came back into the child's life so to speak when
13 these allegations were made.

14 Before [Minor] lived with Justin and
15 Tabitha, Tabitha and [Minor] had lived with her parents,
16 Patricia and Charles Bryant. They live in a traditional
17 house. So Tabitha lived there. She briefly moved out
18 when she had her first child. I think that lasted a
19 couple of weeks. Her stepfather, Charles, and Tabitha
20 back home. The child is raised for at least four years
21 essentially by Patricia and Charles. Tabitha is a
22 teenager. She can't take care of a child. She's still in
23 her early 20's right now.

24 [Brother] was born. Justin made it a point when his
25 child was born that they didn't live in someone else's

1 house. He worked at Boeing. He provided a home by
2 leasing a two bedroom trailer. In-laws, talk what they
3 want. Small. Well less than 1,000 square feet for four
4 people. And this is where all this was occurring right
5 under her nose without her knowing it.

6 And that's some of this family dynamic that we've got
7 going on. Now. We know a little more. There are a lot
8 of names here. Look at the actions of those same people
9 around this allegation. Would the mother of a sexually
10 abused child continue a relationship with -- like Tabitha
11 had with Justin. Does she sneak her own child in the
12 bedroom despite being restricted by her mother. Does she
13 try to set up a birthday party for Brother yesterday for
14 his fourth birthday and her mother coming in and denying
15 entry.

16 Does she go to the bowling ally and take selfie
17 pictures of her kissing Justin with Brother. Is that what
18 happens in 30 something months you find out that this same
19 guy had been molesting your oldest son, your oldest son.
20 Is that consistent? Is that believable. Because momma
21 knows best, right? And momma doesn't know how to.

22 Now, let's look what happened after this allegation.
23 The allegation is made. Tabitha comes back home and fear
24 of homelessness. Justin's been arrested. That's exactly
25 right. Tabitha lose home. Brother lose home. Minor

1 lose home and Justin is gone. Please understand there is
2 no way to erase an erroneous jury verdict because what you
3 find is forever submitted. It's not supposed to be based
4 on emotion. It's based upon an analysis of the evidence.

5 Listen to whether the statements that you might hear
6 from [REDACTED] Minor are consistent with the allegations. If
7 that indictment says he committed fellatio, oral sex, is
8 that what he's going to say here today? Is he going to
9 say, "I don't remember any of that?" If he tells you,
10 "I've been interview five, six, seven, eight, nine, ten
11 plus times." They went through Court process to say it
12 was oral sex.

13 And he says, "I didn't know anything about oral sex."
14 What that tells you about quality. So is it corroborated
15 by outsiders? Is it corroborated by any other
16 disclosures? Is there a way this was suggested? Was the
17 impressionable child given the opportunity, given
18 permission to say that it didn't happen? Has he ever ben
19 given that permission?

20 We took a lot of time yesterday picking y'all. I say
21 that it's hard to figure out what jury you want to give
22 your client a fair shot. Deal we got the jury and try to
23 get you to listen to us because if it was just an
24 allegation that would convict, once that officer decides
25 he was fired up and he go out and puts the cuffs on

1 Mr. Adams, we've reduce our justice system to just
2 accusers for the system back in the day.

3 Prove your innocence. Trial by order. Trial by
4 fire. Trial by combat. We don't do any of that. That's
5 why we have the physical evidence, corroboration. That's
6 why we're appalled in that somewhere like Illinois has a
7 50 percent innocent rate on death penalty. Because we're
8 humans, and we're subject to all the things I talked about
9 earlier. Influence testimony.

10 I did my best to bring all those up. So I apologize
11 for my advocacy only to the extent that it bothers someone
12 else. I don't apologize for sticking up for my client and
13 I ask you that you consider that and consider how fair
14 some of this is and whether or not we're stuck here
15 dealing with something that can never be proven and one
16 way or there other.

17 Thank you for your careful consideration.

18 THE COURT: Thank you, Mr. Brown.

19 MR. BROWN: Thank you, Your Honor.

20 THE COURT: Solicitor, you may call your first
21 witness.

22 MS. JOSEPH: State call Sergeant Destacio.

23 JOHN DESTACIO, after being duly sworn, testified
24 as follows:

25 THE WITNESS: John Destacio. D-E-S-T-A-S-I-O.

DIRECT EXAMINATION

BY MS. JOSEPH:

Q. Good morning, Sergeant Destacio?

A. Good morning.

Q. You going to have to speak up. It's a big courtroom.

A. All right.

Q. Where do you currently work?

A. For the Bluffton Police Department.

Q. And how long have you worked there?

A. Just over nine years.

Q. And I called you Sergeant. So is that your current title?

A. Yes, ma'am.

Q. And in December of 2013 what was your title and role?

A. I was an M.P.O. which is a parole -- patrol officer.

Q. And what did you do?

A. I responded to 911 calls.

Q. Did you recall -- did you respond to a 911 call in this case?

A. Yes, ma'am.

Q. And what was the alleged offense?

A. Criminal sexual conduct with a minor.

Q. What did you do after receiving that 911 call?

A. I arrived on scene at 21 Fairfax Street which is in Beaufort County. At that time I met with the victim's

1 mother who briefly described the situation that was going
2 on. At that time I informed my sergeant at that time. He
3 then informed me to contact our Investigation's Unit.
4 After that I went back talking with the mother. Talk with
5 the grandparents and had everyone write written
6 statements. And then after that I informed them that the
7 investigator will be contacting them later in the day in
8 order to take over the investigation.

9 Q. And did you conclude your work on this case?

10 A. Yes, ma'am.

11 Q. And what was the date of that 911 call?

12 A. December 7th 2013.

13 Q. Thank you.

14 MS. JOSEPH: No further questions from the State.

15 THE COURT: Mr. Brown.

16 MR. BROWN: May it please the Court.

17 CROSS-EXAMINATION

18 BY MR. BROWN:

19 Q. You say you took written statements?

20 A. Yes, sir.

21 Q. You recall the people you took those statements from?

22 A. It was the victim's mother and grandparents. Yes,
23 sir.

24 Q. Would the name Patricia Dean Kirby Bryant ring a
25 bell?

1 A. Yes, sir.

2 Q. Would the name Charles Allen Bryant sound familiar?

3 A. Yes, sir.

4 Q. How about the name Tabitha Jones?

5 A. Yes, sir.

6 Q. And did you also do a property listing of seized
7 evidence?

8 A. No, sir.

9 Q. I see you have your police report with you?

10 A. Yes, sir.

11 Q. Would you turn to what's listed as Page One, date
12 12/7/2013. It's got Sergeant Gonzalez -- Gonzalez listed
13 as the approving officer?

14 A. Yes, sir.

15 Q. And it says, 'seized' at the top?

16 A. Yes, sir.

17 MR. BROWN: May I ask that this be marked as
18 Defendant's Nine, please.

19 (WHEREUPON, Defendant's Exhibit No. 9 was marked for
20 identification only.)

21 BY MR. BROWN:

22 Q. Ask you to speak up for the court reporter.

23 A. Yes, sir.

24 Q. And ask you to take a look at the page I turned to on
25 Defendant's Nine for I.D. only?

- 1 A. Yes, sir.
- 2 Q. Does that refresh your recollection?
- 3 A. No, sir. I was not there for that.
- 4 Q. Make sure I understand. What name is at the bottom
- 5 of that report as reporting officer of this report?
- 6 A. That is my name, sir.
- 7 Q. Did you affix that name to that report?
- 8 A. Yes, sir.
- 9 Q. And what did -- does it reference seized evidence?
- 10 A. Yes, sir.
- 11 Q. Okay. And what is the seized evidence?
- 12 A. Suspected marijuana and drug paraphernalia.
- 13 Q. How much?
- 14 A. One gram.
- 15 Q. One gram. Do you know about how much that is?
- 16 A. No, sir.
- 17 Q. Would you say it's a large amount or a small amount?
- 18 A. Small amount.
- 19 Q. And thank you. And, again, why did you do the report
- 20 on that?
- 21 A. I was the responding officer for the 911 call.
- 22 Q. So you did the marijuana report?
- 23 A. No, I did not do the marijuana report, sir.
- 24 Q. But its got your name on it?
- 25 A. Yes, sir.

1 Q. As having done that report?

2 A. Yes, sir.

3 MR. BROWN: No further questions.

4 REDIRECT EXAMINATION

5 BY MS. JOSEPH:

6 Q. Sergeant Destacio?

7 A. Yes, ma'am.

8 Q. Why is your name on that report?

9 A. Because I was the first officer on the scene. I take
10 the initial report.

11 Q. The standard protocol?

12 A. Yes, sir. Yes, ma'am.

13 Q. No further questions. Thank you.

14 A. You're welcomed.

15 MR. BROWN: Very briefly.

16 RECROSS-EXAMINATION

17 BY MR. BROWN:

18 Q. And you were the responding officer to Palmetto
19 Bluff?

20 A. No, sir. 21 Fairfax Street.

21 Q. Fairfax Street?

22 A. Yes, sir.

23 Q. Is that where Mr. Adams lived?

24 A. No, sir. I believe he lived at [REDACTED]

25 [REDACTED].

1 Q. Okay. You're doing a report regarding marijuana from
2 Fairfax Street?

3 A. No, sir. I'm got doing a report on marijuana at all.
4 I'm doing a report on the criminal sexual conduct with a
5 minor that occurred at [REDACTED].

6 Q. Maybe I misunderstood her question to you. She asked
7 why you did the report with the marijuana incident?

8 A. I did the main report. There is other officers that
9 do supplement reports to that report.

10 Q. I'm talking about the question Ms. Joseph asked you
11 on redirect.

12 A. Yes, I took the report.

13 Q. Took the report regard marijuana?

14 A. No. The criminal sexual conduct.

15 Q. Okay. The seized one gram of marijuana report has
16 your name on it?

17 A. My name is on the bottom of every page. Yes, sir.

18 Q. Okay. Of every page of what?

19 A. Of this report.

20 Q. Right. So you did the report for the seized
21 marijuana?

22 A. No, sir.

23 Q. Who affixed your name to that?

24 A. My name is on the report. Another officer did a
25 supplement, but everything goes on one report.

1 Q. You're telling me that those detective's reports with
2 your name on them were also done by you or not done?

3 A. No, sir. But there were two other officers names on
4 here as well as mine.

5 Q. Who is the reporting officer on the marijuana page?

6 A. I am, sir.

7 Q. Okay.

8 MR. BROWN: No further questions.

9 MS. JOSEPH: No further questions from the State,
10 Your Honor. May this witness be excused?

11 THE COURT: No objection?

12 MR. BROWN: Without objection.

13 THE COURT: Yes, sir. Thank you for coming. You may
14 step down. Thank you, sir. You may call your next
15 witness.

16 MS. JOSEPH: Your Honor, the State next calls
17 Patricia Bryant.

18 MR. BROWN: Your Honor, sequestration? I'm just
19 asking the question.

20 THE COURT: I don't know. Have y'all discussed that?

21 MR. BROWN: Well, I would ask that apply.

22 MS. JOSEPH: You want us to approach regarding
23 sequestration, Your Honor?

24 (WHEREUPON, a bench conference was held off the
25 record in the presence of the jury, but out of the

1 hearing of the jury.)

2 BAILIFF: Please watch your step.

3 PATRICIA BRYANT, after being duly sworn,
4 testified as follows:

5 BAILIFF: Thank you. Please state your first and
6 your last names, spelling your last name for the court
7 reporter.

8 THE WITNESS: My name is Patricia Bryant. Patricia,
9 P-A-T-R-I-C-I-A. Bryant, B-R-Y-A-N-T.

10 DIRECT EXAMINATION

11 BY MS. JOSEPH:

12 Q. Ms. Bryant.

13 A. Hello.

14 Q. I'm going to ask you to speak up, all right?

15 A. Okay.

16 Q. This is a big courtroom, okay?

17 A. Okay.

18 Q. Okay. Ms. Bryant, you have any children?

19 A. Yes.

20 Q. And what are their names?

21 A. Tabitha and Jason.

22 Q. And how old is Tabitha?

23 A. Tabitha just turned 27.

24 Q. And does Tabitha have any children?

25 A. Yes.

1 Q. And who are her children?

2 A. [Minor] and Brother [].

3 Q. How old are they?

4 A. Brother just turned four, and [Minor] is eight.

5 Q. Okay. And where does [Minor] live?

6 A. He lives with us.

7 Q. And what does he call you by the way?

8 A. Nana.

9 Q. And where does Tabitha, your daughter, live?

10 A. She stays with us.

11 Q. Okay. And around 2013 where did Tabitha live?

12 A. 2013, what month?

13 Q. The whole year of 2013 when Brother was born?

14 A. I think she stayed at Palmetto Bluff.

15 Q. And who did she live with?

16 A. With Justin.

17 Q. Did [Minor] live there, too?

18 A. Yes.

19 Q. And, Miss. Bryant, did [Minor] make a disclosure to
20 you?

21 A. Yes, he did.

22 Q. And where did he tell you that the alleged incident
23 took place?

24 A. In Palmetto Bluff at the trailer they were staying
25 in.

1 Q. Okay. And when did these alleged incidents take
2 place?

3 MR. BROWN: Object to hearsay.

4 MS. JOSEPH: Your Honor, may we approach?

5 THE COURT: All right.

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

9 BY MS. JOSEPH:

10 Q. Ms. Bryant, I'm going to ask you the question again,
11 okay? When did the alleged incident take place?

12 A. You mean where did it?

13 Q. When?

14 A. Between November and December.

15 Q. Of what year?

16 A. 2000. I'm not sure. 2005. Maybe later.

17 Q. All right. Thank you very much, Miss Bryant.

18 MR. BROWN: May it please the Court.

19 CROSS-EXAMINATION

20 BY MR. BROWN:

21 Q. I want to make sure I heard that. 2005?

22 A. I'm not sure.

23 Q. Okay. We think about 2005 is when this happened?

24 A. It may be later.

25 Q. Okay. Okay. All right. And you're talking about

1 the incident that we're here for on trial today?

2 A. Yes, sir.

3 Q. Okay. About 11 years?

4 A. No, it wasn't 11 years ago. It was only -- had to be
5 2012. Somewhere around there.

6 Q. 2012?

7 A. Um hum. Cause its been three years since all this
8 been going on. Almost three years.

9 Q. Three years?

10 A. That we been waiting to come to Court.

11 Q. That you been waiting to come to Court?

12 A. Um hum.

13 Q. So somewhere between 2005 and 2012?

14 A. Yes, sir.

15 Q. All right. Thank you so much.

16 MS. JOSEPH: Your Honor, I'm showing Defense counsel
17 something.

18 MR. BROWN: May we approach?

19 (WHEREUPON, a bench conference was held off the
20 record, but out of the presence of the jury.)

21 REDIRECT EXAMINATION

22 BY MS. JOSEPH:

23 Q. Miss Bryant, do you remember giving a written
24 statement in this case?

25 A. Yes, I do.

1 Q. If I handed you that written statement would it help
2 you refresh your memory?

3 A. Probably. Yes.

4 Q. I'm going to hand you this statement. Please don't
5 read it out loud. Just use it to refresh your memory?
6 Okay.

7 A. Okay.

8 MR. BROWN: That's marked as State's?

9 MS. JOSEPH: I'm not intended to enter this into
10 evidence.

11 MR. BROWN: But for purposes of the record it's
12 State's Exhibit. It's not their records. So it's State's
13 Three. So somewhere it needs to be recorded for later for
14 posterity.

15 MS. JOSEPH: Your Honor, it will be marked as State's
16 Exhibit Three.

17 MR. BROWN: Thank you.

18 THE COURT: All right. We'll mark it as State's
19 Three then.

20 (WHEREUPON, State's Exhibit No. 3 was marked for
21 identification only.)

22 BY MS. JOSEPH:

23 Q. Miss Bryant, does that refresh your memory?

24 A. Yes.

25 Q. Okay. And about what time did the alleged incident

1 happen? When I say time I mean date. Around what date
2 did the alleged incident happen?

3 A. Around December. It was right before the Christmas
4 break. They were into the Christmas break.

5 Q. Of what year?

6 A. 2013.

7 Q. When you said 2005 earlier why did you say that?

8 A. I was confused.

9 Q. Okay. No further questions. Thank you.

10 THE COURT: Any recross?

11 MR. BROWN: Briefly.

12 RECROSS-EXAMINATION

13 BY MR. BROWN:

14 Q. Did anybody else reference any complaint made by
15 [Minor] before the complaint that you talk about
16 in that paper?

17 A. Say it again, please.

18 Q. Did anybody reference a complaint that [Minor]
19 [] made about Justin Adams before the complaint that
20 you put in that statement?

21 A. No.

22 Q. You're the first person?

23 A. Yes.

24 Q. You like Justin?

25 A. Yes, I do. I have no problem with him.

1 Q. Would you let him see his son on his son's birthday?

2 A. No.

3 Q. Thank you.

4 MS. JOSEPH: No further questions for this witness.

5 THE COURT: Thank you, ma'am. You may step down.

6 And I would ask you not to discuss your testimony with any
7 of the other witnesses until after they have testified.

8 THE WITNESS: Okay.

9 THE COURT: Thank you. You may call your next
10 witness.

11 MS. JOSEPH: Yes, sir. The State next calls Tabitha
12 Jones, Your Honor.

13 TABITHA JONES, after being duly sworn, testified
14 as follows:

15 BAILIFF: Thank you. Would you please state your
16 first and your last names, spelling your last name for the
17 court reporter.

18 THE WITNESS: Tabitha Jones. J-O-N-E-S.

19 DIRECT EXAMINATION

20 BY MS. JOSEPH:

21 Q. All right, Miss Jones, this is a bit courtroom so I'm
22 going to ask you to speak loud, okay?

23 A. Okay.

24 Q. You have to speak slowly for the court reporter.

25 Miss Jones, and I've never called you Miss Jones before.

1 Tabitha, how many children do you have?

2 A. Two.

3 Q. How old are they?

4 A. Eight and four.

5 Q. What are their names?

6 A. [Minor] and [Brother].

7 Q. Who is Justin Adams?

8 A. [Brother] s dad.

9 Q. And how old is Mr. Adams?

10 A. Twenty-four.

11 Q. And did you ever live with him?

12 A. Yes.

13 Q. For how long?

14 A. A year. Year and a half.

15 Q. Around what time?

16 A. July of 2012 to November of 2013.

17 Q. How do you remember those dates?

18 A. Because I know it was two months before I had [Brother],
19 and it was at the same time of this incident that I moved
20 out.

21 Q. And did [Minor] live with you and Justin?

22 A. Yes.

23 Q. And your other son, [Brother]. As well?

24 A. Yes.

25 Q. Okay. And what was the address of this residence?

- 1 A. [REDACTED].
- 2 Q. And where is that located?
- 3 A. Palmetto Bluff.. Beaufort County.
- 4 Q. And why did you move in with Justin?
- 5 A. He was my fiance at the time, and we had a kid on the
- 6 way.
- 7 Q. And were you working when you moved in with Justin?
- 8 A. When I first moved in, no.
- 9 Q. And after you had the baby?
- 10 A. Yes.
- 11 Q. When did you start back working?
- 12 A. A couple months before the incident.
- 13 Q. Was Justin Adams ever alone with [REDACTED] Minor, your son?
- 14 A. Yes.
- 15 Q. When were they alone together?
- 16 A. At night when I worked my nighttime shift.
- 17 Q. Okay?
- 18 A. From around 5:00 to 10:00.
- 19 Q. Did they ever take showers together?
- 20 A. Yes.
- 21 Q. When did the showers start?
- 22 A. When I went back to work.
- 23 Q. Okay. And why did they start taking showers
- 24 together?
- 25 A. Because I was not there at night to help him take

1 showers, and he could take showers by himself but every
2 time he did and I was there I would have to send him back
3 to the shower because he wouldn't wash all of the shampoo
4 out of his hair or he would forget a spot, and I would
5 have to send him back in.

6 Q. And did Justin give you another reason for why they
7 were taking showers together?

8 A. To conserve water.

9 Q. And was that a problem in your trailer?

10 A. No.

11 Q. Was that ever a problem in your trailer?

12 A. No.

13 Q. Did you observe any odd behavior between Justin and
14 [Minor] during shower time?

15 A. There was a couple of incidents where [Minor] would
16 be in the shower with him and I would go to take clothes
17 in the bathroom or something for [Minor] and the
18 bathroom door would be locked. Or for one occasion I got
19 off work and I walked in the door. Didn't see any of
20 them. So I walked to the bathroom, and they were both in
21 the bathroom and the door was locked.

22 So I knocked on the door, tell them I was going to
23 bring him clothes and when [Minor] walked out the
24 bathroom -- excuse my French. I don't know if I can say
25 this. He had a boner, and I asked him why when he walked

1 out the bathroom and [Minor] turn and looked at Justin
2 and Justin said, "Shhhh" real quick. And turned his head
3 and Justin said, "Don't worry about it."

4 Q. Did you become concerned about this behavior?

5 A. I did, but Justin had told me that he had had an
6 accident in his pants before he got in the bathroom. And
7 that's why he told him to shush because he didn't want him
8 to tell me and then for [Minor] to get in trouble.

9 Q. A Justin the only adult in the bathroom with
10 [Minor] when they showered together?

11 A. Yes.

12 Q. Did [Minor] like Justin?

13 A. Yes and no.

14 Q. Can you explain.

15 A. He liked him. I didn't think he had anything
16 personal against him, but then he didn't like him at the
17 same time because it was not his dad and it was a male
18 figure walking into the picture that made him listen and
19 tried to discipline him and he didn't like that.

20 Q. Is Justin in the courtroom today?

21 A. Yes.

22 Q. Can you point him out and describe him?

23 A. Yes.

24 Q. Okay. Can you describe what he's wearing?

25 A. Short blond hair, a gray suit.

1 MS. JOSEPH: Please let the Court know that he's been
2 identified.

3 BY MR. BROWN:

4 Q. Did [Minor] make a disclosure to you?

5 A. He did.

6 Q. Where did he tell you the incident happened?

7 A. At our house.

8 Q. And when did he say the incident took place?

9 A. At night when I was working.

10 Q. And after the disclosure how did [Minor] act?

11 A. After the disclosure he didn't like being around any
12 males at all. He got very nervous, skitterish around any
13 male. He had -- he started having accidents at night. He
14 was having bad nightmares.

15 Q. I have no further questions at this time. Mr. Brown
16 is now going to ask you some questions.

17 A. Okay.

18 THE COURT: Mr. Brown.

19 MR. BROWN: May it please the Court.

20 CROSS-EXAMINATION

21 BY MR. BROWN:

22 Q. Had there been discussions about [Minor]'s feelings
23 towards your stepfather?

24 A. Okay.

25 Q. Have there been discussions about that?

1 A. Has there been discussions about it? Um hum. Yes.

2 Q. Because you mentioned that he didn't like being
3 around any males?

4 A. He did other than his Poppa. His Poppa since the
5 incident has been like his security blanket.

6 Q. Okay. Let me ---

7 A. His safety zone.

8 Q. Let me ask you. You and Lisa Adams did talk about
9 his problems talking about Charles?

10 A. Me and her did have a discussion about it thinking at
11 one time could it possibly have been someone else and not
12 him. And it was discussed that his Poppa is the only
13 other male that he has been around. I don't believe that
14 it's possible that his Poppa would have done it.

15 Q. You did at one time?

16 A. Huh?

17 Q. You did at one time entertain that thought?

18 A. I didn't entertain his Poppa being the one that did
19 it, but I did entertain could it have possibly been
20 someone else and not him in the beginning.

21 Q. Okay. And let's talk a little bit about that. Did
22 you ever tell Lisa the reaction Minor had talking
23 about your stepfather, Charles Bryant? Did you ever talk
24 to her about his -- him not wanting to talk about Charles
25 or the relationship with Charles?

1 A. He hasn't had any problem with talking to him.

2 Q. You never told Lisa?

3 A. No.

4 Q. Okay. All right. Let's talk a little bit about the
5 living conditions. Y'all live in Palmetto Bluff. Tell me
6 about that house. Large house? Small house?

7 A. A small house.

8 Q. Okay. About how many square feet would you say?

9 A. I don't know.

10 Q. And let me ask you. How many bedrooms?

11 A. Three. I mean two. Two.

12 Q. Two. Okay. How many people live there?

13 A. It's a two bedroom. Three. Four.

14 Q. Four. And when you went to work who kept **Brother**

15 A. Justin did.

16 Q. Okay. And he was an infant?

17 A. Yes.

18 Q. All right. And did you previously live with

19 **Minor** and **Minor**'s dad?

20 A. When -- yes.

21 Q. Okay. And about when was that?

22 A. Between when I had **Minor**, and he was about two or
23 three months old when I moved out.

24 Q. Okay. And we're talking about somewhere around 2008?

25 A. Between 2008 and 2009.

1 Q. Okay. And about how long did you live -- did
2 y'all -- did you three live together?

3 A. The three of us for maybe six months.

4 Q. Okay. And did your stepfather, Charles Bryant, at
5 some point go over to get you out of that house?

6 A. Yes.

7 Q. Okay. Did he use a gun?

8 A. No.

9 Q. He never threatened [Minor]'s father with a gun?

10 MS. JOSEPH: Objection, Your Honor. Asked and
11 answered.

12 MR. BROWN: That was a different question.

13 THE COURT: Overruled. Go ahead.

14 THE WITNESS: He never pulled one out, but I cannot
15 exactly tell you if he threatened him or not.

16 BY MR. BROWN:

17 Q. He didn't like you living with [Minor]'s father?

18 MS. JOSEPH: Your Honor, objection. Relevance.

19 MR. BROWN: I'm talking about him. We're talking and
20 whether there are potential our suspects now.

21 THE COURT: Well, I sustain the objection.

22 BY MR. BROWN:

23 Q. Let me ask you this. When these allegations were
24 made that [Minor]'s father returned to the area?

25 A. A couple months beforehand, yes.

1 Q. Okay. Tell me about the tension [Minor] had about
2 calling Justin dad or calling his real father dad.

3 A. [Minor] decided to call Justin dad on his own.
4 When his dad came back into the picture he made a big deal
5 to him that he didn't want [Minor] calling Justin dad
6 because that was not his dad and that he didn't like that.

7 MS. JOSEPH: Your Honor, may we approach.

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 BY MR. BROWN:

12 Q. [Minor]'s father came back to the -- on the scene
13 from where?

14 A. I believe from Savannah he had been staying in a
15 shelter and came back took his mom's house to stay.

16 Q. Okay. All right. Now, in that house are there any
17 video games?

18 A. Yes.

19 Q. [Minor] talk about wanting to play Justin's video
20 games?

21 A. Yes.

22 Q. Okay. And you familiar with the game Grand Theft
23 Auto?

24 A. Yes.

25 Q. And they shoot people in that game?

1 A. Yes.

2 Q. In fact they shoot the good guys and the bad guys?

3 A. Yes.

4 Q. Okay. And doesn't that game also contain graphic
5 sexual content?

6 A. Not that I've seen or he would not have been playing
7 it.

8 Q. Okay. Does it contain it though?

9 A. I don't know.

10 Q. Okay.

11 A. I did not see that.

12 Q. Okay. You're not familiar with whether Grand Theft
13 Auto has parts of the game that requires the characters to
14 engage in sexual conduct?

15 A. No. If it has that I didn't see it.

16 Q. Did you ever play it? She needs you to speak up?

17 A. Oh, sorry. No, I did not see that.

18 Q. Did you ever play that game?

19 A. Yes, I have played it.

20 Q. Okay. All right. Now, tell me about your fear of
21 homelessness that you referenced with Lisa Adams?

22 A. I haven't had any fear of homelessness.

23 MS. JOSEPH: Objection. Relevance, Your Honor.

24 MR. BROWN: Motive to misrepresent. It's already in
25 the opening statement that if he's arrested she ends up

1 homeless or had to move back home. It's unobjected to in
2 my opening statement.

3 THE COURT: It's not evidence.

4 MR. BROWN: This is evidence.

5 THE COURT: No. Your opening. It's not evidence.

6 MR. BROWN: I understand she waived the topic.

7 THE COURT: I disagree.

8 MR. BROWN: I understand, but this is still a motive
9 to misrepresent 608.

10 MS. JOSEPH: Your Honor, she's denied remembering the
11 statement. She has denied there was a fear of
12 homelessness. I believe that he, therefore, got the
13 answer to his question.

14 THE COURT: All right. I'll overrule the objection
15 let you pursue it.

16 MR. BROWN: All right.

17 BY MR. BROWN:

18 Q. Did you text Lisa?

19 A. I text Lisa on several occasions.

20 Q. You text Justin, too, don't you?

21 A. I have texted him on a couple of occasions, too.

22 Q. Recently?

23 A. Recently, yes. When I have needed diapers or
24 something for Brother, yes.

25 Q. And involvement still with Justin?

1 A. No.

2 Q. None?

3 A. No.

4 Q. None since this?

5 A. No involvement in that kind of way. I have met up
6 with him on a couple occasions randomly when I've needed
7 diaper. I've needed clothes or something for his son and
8 I've not been able to get it.

9 COLLOQUY

10 MS. JOSEPH: Your Honor, may we approach.

11 MR. BROWN: Your Honor, I ask that this be on the
12 record from now on. I don't know any other way to do it.
13 So it needs to be on the record.

14 THE COURT: You mean for all of the objections?

15 MR. BROWN: For now. I think it's better off for my
16 client.

17 THE COURT: I'll see you in a side bar and we will
18 argue in front.

19 MR. BROWN: Thank you.

20 (WHEREUPON, a bench conference was held off the
21 record in the presence of the jury, but out of the
22 hearing of the jury.)

23 COLLOQUY

24 THE COURT: Ladies and gentlemen of the jury, I'm
25 going to ask you to step in the jury room and hope to back

1 with you shortly. And remind you it's too early to
2 discuss the case.

3 (WHEREUPON, the jury panel was excused from the
4 courtroom at 11:14 a.m.)

5 THE COURT: A moment ago there was an objection by
6 the State to -- tell me.

7 MS. JOSEPH: Yes, Your Honor, if I could restate my
8 objection. At this time the State feels Mr. Brown is
9 seeking to enter paragraphs of the Defendant and the
10 witness, Tabitha Jones. These documents are undated.
11 Their source is unclear. That was the State's first
12 ground for the objection.

13 In addition currently Mr. Brown, the Defense
14 attorney, is trying to impeach Ms. Jones on a ground that
15 it not material to this case. It's the collateral issue,
16 namely whether or not she speaks to the Defendant, Mr.
17 Adams, years after the allegation.

18 This would have the affect, if he were able to go
19 forward, of attacking her credibility. But her
20 credibility, first and foremost, is a question for the
21 jury. In addition, Your Honor, her credibility only
22 matters in so far as it concerns the event of this -- the
23 reason that we're here today.

24 And the only thing to speak to, Your Honor, is first,
25 her son, when he disclosed and where he disclosed the

1 incidents took place which she had done on the record. As
2 far as I can tell Your Honor that this is completely
3 immaterial that Mr. Brown is trying to impeach the witness
4 on.

5 THE COURT: All right. Mr. Brown.

6 MR. BROWN: To begin, I have no problem with their
7 objection regarding all identification of the documents.
8 I have no not laid the foundation yet.

9 THE COURT: All right.

10 MR. BROWN: There is no foundation laid to introduce
11 them in evidence.

12 THE COURT: Okay.

13 MR. BROWN: We agree with that.

14 THE COURT: All right.

15 MR. BROWN: I haven't offered them yet.

16 THE COURT: Okay.

17 MR. BROWN: And I was going to ask if they -- if she
18 presents them to her, ask her if she recognizes those
19 items that refreshes her recollection regarding -- she has
20 said that she has not had any contact with my client. I
21 need to mark these because we referred to them before they
22 were marked. We have one that's marked as Ten sitting up
23 there for I.D. For what they're worth they're pictures of
24 them kissing with their child, **Brother**, one of them -- with
25 their child, **Brother**, three years old. And he was one at

1 this time.

2 That's classic impeachment. The statement about them
3 being together, whether it's relevant or not, it is asked
4 and answered. And now I get to impeach with information
5 if in fact that refreshes her recollection.

6 THE COURT: What about the argument that it is
7 collateral to the issues before the Court?

8 MR. BROWN: They raised the issue in their opening
9 statement; that, first, the mother didn't believe it.
10 They raised that because I had concern about being able to
11 get in the mother's belief. And it is now been argued by
12 both sides in open statements.

13 As I said, mother knows best and mother doesn't know.
14 And they specifically said at first they didn't believe
15 it.

16 MS. JOSEPH: Let Mr. Whetsel reply to that.

17 MR. WHETSEL: Your Honor, because I gave the opening
18 I thought it would be appropriate if I addressed that. At
19 no point did I reference in opening if Tabitha believed or
20 did not believe. All I said was that, "Minor had a
21 secret and he told his mom. He told his grandmother."

22 I left it at that. He had an objection as far as
23 hearsay. We didn't go into whether she believes or
24 disbelieves. What this is going to have the affect of is
25 he can ---

1 MR. BROWN: --- to argue the objection ---

2 THE COURT: Hold, hold, hold, hold, hold. Hold it.

3 MR. BROWN: --- pay attention.

4 THE COURT: I permit it. All right. Let him finish.

5 MR. WHETSEL: I was asking permission just cause he
6 addressed the opening, as I did the opening, I was asking
7 the Court's permission if I address this argument.

8 The second piece of this if Mr. Brown is allowed to
9 try to impeach her with those photographs it's going to
10 give the impression that she does not believe [Minor].
11 What that means, though, is that's an issue that should
12 not be before the jury because the jury should determine
13 whether they do believe it or do not believe it.

14 Whether Miss Jones knew is immaterial. He can
15 certainly ask her, 'Do you believe your child'. That
16 would be objectionable. This has the same affect.
17 Credibility is within the purview of the jury as well as
18 determining if they believe or disbelieve her. Ms. Jones,
19 whether being implied or saying explicitly that she
20 believes or disbelieves [Minor] would certainly be
21 improper.

22 MR. BROWN: If I may reply. The opening statement,
23 Justin Adams gave an excuse. There was another time where
24 [Minor] had an erection. This is the State's
25 opening. Tabitha Jones did not want to believe it. Their

1 opening statement. Absolutely wondered how I could get
2 this information in, and they brought the door wide open
3 when they made that accusation.

4 THE COURT: Okay. All right. I disagree. I find it
5 to be collateral and sustain the objection.

6 MR. BROWN: Well, may I at least proffer the items.

7 THE COURT: Yes.

8 MR. BROWN: And get them marked. I haven't gotten
9 that far yet.

10 THE COURT: I think you can.

11 MS. JOSEPH: Thank you, Your Honor.

12 THE COURT: Why don't we go ahead and take a five
13 minute recess.

14 (WHEREUPON, Court was in recess at 11:20 a.m.)

15 (WHEREUPON, Defendant's Exhibit Nos. 10 THROUGH 13
16 were marked for identification only.)

17 MR. BROWN: Initially, she denied that she had been
18 with my client despite the evidence cause she did deny
19 that, and that's not truthful testimony before this Court.

20 THE COURT: I've already ruled on it. I understand
21 your objection.

22 MR. BROWN: And I just think it's their obligation to
23 correct false testimony.

24 THE COURT: I'm sorry.

25 MR. BROWN: I just think it's their obligation to fix

1 false testimony from their witness.

2 THE COURT: Okay. I understand. It's collateral is
3 the ruling of the Court.

4 MR. BROWN: I understand, but now there is testimony
5 that she wasn't involved with my client afterwards.
6 That's in the record.

7 THE COURT: That's the third time I've ruled on it.
8 I've already ruled.

9 MR. BROWN: But not on that issue.

10 THE COURT: I've ruled. Okay. It's collateral. I
11 don't think it's an obligation on the part of the State to
12 correct her testimony.

13 MR. BROWN: Because it's not false?

14 THE COURT: I'm sorry.

15 MR. BROWN: Because it's not false.

16 THE COURT: Because it's collateral.

17 MR. BROWN: Right. If it's false, it's still false.

18 THE COURT: Not if it's not material. That's the
19 ruling of the Court.

20 MR. BROWN: I understand that.

21 THE COURT: Well, I've tried to say it three times.
22 So that's the ruling of the Court.

23 MR. BROWN: I understand. It's collateral.

24 THE COURT: Collateral. Now, are we ready for the
25 jury?

1 MS. JOSEPH: Yes, sir. Your Honor, we will wait to
2 recall Ms. Jones until the jury is seated. Is that okay?
3 And also Mr. Brown has these photographs that are put out
4 in the open. If they can be put away before the jury gets
5 back to the room?

6 THE COURT: Okay.

7 MS. JOSEPH: Thank you. And, yes, we're ready for
8 the jury.

9 THE COURT: Defense ready for the jury?

10 MR. BROWN: Yes, Your Honor.

11 THE COURT: Bring the jury in when they're ready.

12 (WHEREUPON, the jury panel enters the courtroom at
13 11:31 a.m.)

14 THE COURT: Welcome back, ladies and gentlemen.
15 Please bring the witness back.

16 MS. JOSEPH: Yes, sir. Your Honor, at this time the
17 State recalls Miss Tabitha Jones.

18 THE COURT: I remind you that you're still under
19 oath.

20 THE WITNESS: Yes, sir.

21 TABITHA JONES, after previously being duly
22 sworn, testified as follows:

23 THE COURT: And, Mr. Brown.

24 FURTHER CROSS-EXAMINATION

25 BY MR. BROWN:

1 Q. You mentioned speaking to Lisa Adams about things
2 such as needing diapers?

3 A. Yes.

4 Q. And you're talking about for [Minor] or are you
5 talking about for [Brother]?

6 A. For [Brother].

7 Q. Okay. [Brother] is four?

8 A. Yes.

9 Q. Okay. You asked her about needing diapers last week?

10 A. Yes.

11 Q. Four year old that needed diapers?

12 A. Yes.

13 Q. All right. And I just asked you that. You also
14 spoke with law enforcement about this case, right?

15 A. Yes.

16 Q. And they asked you about your recollections of
17 things, discussions, you had with [Minor]? Is that a
18 yes?

19 A. Yes.

20 Q. And did they ask you about your discussions with
21 Justin?

22 A. Yes.

23 Q. Okay. And they asked you about your observations?

24 A. Yes.

25 Q. Okay. And did you meet with the prosecutors?

1 A. Yes.

2 Q. And did they ask you about these things?

3 A. Yes.

4 Q. Okay. How much times did you meet with the
5 prosecutor's office?

6 A. Three to four.

7 Q. Three to four times. Was one around July 22nd?

8 A. Yes.

9 Q. One around July 25th?

10 A. Yes.

11 Q. Okay. You met since then with them?

12 A. Yes.

13 Q. Okay. Did they ask you about information that you
14 had to offer as evidence in this case?

15 A. Yes.

16 Q. Okay. And did that include the, quote, possibilities
17 that we need to discuss that might could help Justin out?

18 A. No.

19 Q. Do you recall a conversation where you told that to
20 Lisa Adams on March 5th 2014 in Beaufort, South Carolina?

21 A. No.

22 Q. You do not recall making that statement?

23 A. No.

24 Q. Do you recall that statement also including concern
25 about of shit goes sour you got to promise not to let me

1 and munchkin be homeless?

2 A. Yes, I had made that statement.

3 Q. And may I ask what, quote, shit would go sour that
4 would leave you homeless?

5 A. If he went to jail. I was worried about being
6 homeless that time.

7 Q. On March 5th 2014?

8 A. Yes.

9 Q. And where did you live then?

10 A. Then I was with my parents.

11 Q. Okay. So Justin went to jail you would be homeless
12 because you lived with your parents?

13 A. Yes.

14 Q. How would you be homeless if you lived with your
15 parents and Justin went to jail?

16 A. Because they've been talking about moving.

17 Q. In 2014?

18 A. In 2014.

19 Q. March 5th?

20 A. Yes.

21 Q. And do you know whether the statement that you made
22 was followed by a visit with Ms. Adams?

23 A. I don't recall.

24 Q. A meeting at Wal-Mart?

25 A. Possible.

1 Q. In Hardyville, South Carolina?

2 A. Possibly.

3 Q. On March 5th? Do you recall on March 5th 2014 at the
4 Wal-Mart in Hardyville, South Carolina saying that you
5 were certain that your parents had coerced [Minor]
6 [] to make false allegations?

7 A. No.

8 Q. You deny making that statement?

9 A. Yes.

10 Q. You mentioned [Minor] taking a shower. Did he also
11 take a shower with Charles Bryant?

12 A. No.

13 Q. He never showered with Charles Bryant?

14 A. No.

15 Q. Okay. And you never told Lisa Adams that?

16 A. No.

17 Q. Back in 2014 while you were in Beaufort, South
18 Carolina?

19 A. No.

20 Q. Do you recall any statement [Minor] made about
21 rubbing Charles Bryant's back and legs?

22 A. Back, yes. Legs, no.

23 Q. You never heard [Minor] say that?

24 A. I never heard him say anything about rubbing his
25 legs. He does scratch Poppa's back.

1 Q. You recall telling Lisa Adams that you had been put
2 on restriction by your mother?

3 A. No.

4 Q. Do you recall telling Lisa Adams in 2014 while in
5 Beaufort County, South Carolina that they told you that
6 you couldn't talk to Justin?

7 A. Yes.

8 Q. Who is they?

9 A. My parents.

10 Q. And you didn't talk to Justin aside for asking for
11 incidents?

12 A. Up until the last year I had still associated with
13 him. The last year I have not other than just for
14 diapers.

15 Q. Okay. What does the word, 'associate' mean to you?

16 A. Talk to, see, meet up with.

17 Q. On a social basis?

18 A. Yes.

19 Q. I'm sorry?

20 A. Yes.

21 Q. Was **Minor** there?

22 A. No.

23 Q. Was **Brother** there?

24 A. Yes.

25 Q. Who else was there?

1 A. Sometimes Lisa.

2 Q. Sometimes nobody else?

3 A. Nobody else.

4 Q. Say that again.

5 A. Yes.

6 Q. Yes, sometimes no. Just y'all three?

7 A. Just us three and occasionally Lisa.

8 Q. Okay. Now, you recall a meeting that you had with a
9 counselor in this case in May of 2014?

10 A. Yes.

11 Q. Okay. And that counselor worked for Hope Haven?

12 A. Yes.

13 Q. Okay. And do you recall following that meeting
14 having a discussion with Lisa Adams?

15 A. Possibly.

16 Q. Do you recall May 1st 2014 while at in Beaufort
17 county, South Carolina saying, "They got evidence to prove
18 it?"

19 A. Yes.

20 Q. What evidence was that?

21 A. Evidence that she had said that on one occasion in
22 the shower that it was believed that it was true because
23 there was ejaculation that came out and hit the side of
24 the shower.

25 Q. Okay.

1 A. Which made evidence a lot more believable.

2 Q. Okay. So they got evidence because there was
3 ejaculate?

4 A. Yes.

5 Q. And you told Lisa Adams that in May of 2014?

6 A. Yes.

7 Q. When was the first time you told the prosecutor's
8 office that information?

9 A. Not sure.

10 Q. Have you ever told law enforcement that information?

11 A. Yes. No.

12 Q. You did?

13 A. No. This was after therapy, so no, I did not tell
14 law enforcement that. I do not recall if I told my
15 Solicitor that.

16 Q. Okay. Was there ever a solicitor that you met with
17 besides these two?

18 A. No.

19 Q. Okay. So they didn't work here before 12 months ago
20 this would have been the last 12 months?

21 A. Yes.

22 Q. Okay. So two years goes by, at least a year after
23 this information, and you don't tell the prosecutor's
24 office that there is physical evidence? You didn't
25 answer.

1 A. I didn't know if it could be used as physical
2 evidence or not because it is not physical. It is
3 [Minor]'s word. It is not on examination, doctor
4 records.

5 Q. That's a good point. So when you left the police on
6 December 7th you had been told Justin been arrested?

7 A. Um hum.

8 Q. Is that a yes?

9 A. Yes.

10 Q. And so you were told by Lieutenant Babkiewicz?

11 A. Yes.

12 Q. And Lieutenant Babkiewicz tells you he's going --
13 doesn't see a judge before he tells you he's going to go
14 arrest him?

15 A. Doesn't what?

16 Q. He doesn't tell you, 'I'm going to see a magistrate.'
17 He says, "We're going to pick him up," didn't he?

18 A. He told me he was going to get him, yes.

19 Q. Okay. And as far as you know he was picked up?

20 A. Yes.

21 Q. He gets picked up by the police on December 7th and
22 you recall his spending ten weeks in jail?

23 A. Yes.

24 Q. Okay. And being released on ankle monitor?

25 A. Yes.

1 Q. And as far as you understand he's still on ankle
2 monitoring?

3 A. Yes.

4 Q. Okay. And being in jail he couldn't go back into the
5 Palmetto Bluff home, could he?

6 A. No.

7 Q. And when you went back there did they have the yellow
8 crime scene tape around it?

9 A. No.

10 Q. Did they ask you for permission to go in and search
11 it?

12 A. No.

13 Q. Did they ever tell you not to go back into that place
14 so they could process it?

15 A. No. The only restrictions that they gave me was not
16 to take Minor back into that house.

17 Q. Okay. All right. The house was in whose name?

18 A. His.

19 Q. Okay. His being Justin's?

20 A. Yes.

21 Q. Okay. And with Justin in jail were you able to
22 continue to rent that same house?

23 A. No.

24 Q. Okay. And you remember being interviewed by
25 Lieutenant Babkiewicz?

1 A. Yes.

2 Q. You remember them recording that interview?

3 A. Yes.

4 Q. And Michael Danyov was also an investigator in that
5 room?

6 A. I don't remember all these different names. This was
7 three years ago if you want me to be honest with you. I
8 can't remember who was who.

9 Q. You remember it being two investigators from the
10 Bluffton Police Department?

11 A. Yes..

12 Q. Okay. And you recall them asking you questions about
13 Justin's background?

14 A. Yes.

15 Q. And you recall them talking to you about things like
16 whether you had any idea this was happening?

17 A. Yes.

18 Q. Okay. And do you recall talking about not wanting
19 you to believe it?

20 A. Yes.

21 Q. Okay. Now, you recall asking them if they were going
22 to arrest Justin?

23 A. Yes.

24 Q. And you brought that up?

25 A. Yes.

1 Q. And they told you they were?

2 A. Yes.

3 Q. So the moment you learned that they were going to
4 arrest Justin you knew you then be homeless if you didn't
5 move back in with your parents, isn't that true?

6 A. Yes, I knew that.

7 Q. I don't have any other questions. Thank you.

8 THE COURT: Any redirect?

9 MS. JOSEPH: No redirect, Your Honor. May this
10 witness be excused, please?

11 MR. BROWN: She's under my subpoena, and I'd like to
12 keep her under it.

13 THE COURT: All right. You may leave the courtroom,
14 but I remind you that you cannot talk to any other
15 witnesses about your testimony.

16 THE WITNESS: Yes, sir.

17 THE COURT: All right. Thank you. You're still
18 subject to subpoena though.

19 THE WITNESS: Okay.

20 THE COURT: You may call your next witness.

21 MS. JOSEPH: Your Honor, our next witness has a
22 lengthy video as part of it, and we were wondering if the
23 Court might consider that in whether or not to break.

24 THE COURT: Twenty-seven minute video?

25 MS. JOSEPH: Yes, Your Honor.

1 THE COURT: We just took a break. That put us close
2 to 12:30.

3 MS. JOSEPH: That's okay, Your Honor. The State's
4 next witnesses is Sergeant Babkiewicz. And, Your Honor, I
5 believe Ms. Jones needs to sit outside as part of
6 Mr. Brown's subpoena. She can't be present for this.

7 MR. BROWN: I think the Court's sequestration rule
8 would apply still since she's still an essential witness.

9 THE COURT: I'm sorry or I missed what you're talking
10 about.

11 MR. BROWN: Ms. Jones is in the courtroom, and there
12 is a sequestration order. We talked about the witnesses
13 weren't to hear other witnesses' testimony, and since
14 she's still subject to being recalled under my subpoena I
15 think that's what she is asking.

16 THE COURT: She would need then to exit the
17 courtroom.

18 JOSEPH BABKIEWICZ, after being duly sworn,
19 testified as follows:

20 CLERK OF COURT: Please state your first and last
21 name, spelling your last name for the court reporter.

22 THE WITNESS: Joseph Babkiewicz, B-A-B-K-I-E-W-I-C-Z.

23 DIRECT EXAMINATION

24 BY MS. JOSEPH:

25 Q. Common spelling?

1 A. Common spelling.

2 Q. Sergeant Babkiewicz, I want to remind you to be sure
3 to keep your voice loud. This is a big courtroom.

4 A. Yes, ma'am.

5 Q. Where do you currently work?

6 A. I work with the Bluffton Police Department in
7 Bluffton, South Carolina.

8 Q. And how long have you worked there?

9 A. I've worked there for eight year.

10 Q. And what are your current duties?

11 A. My current duties are I am the lieutenant in charge
12 of the overall operation of the investigative division to
13 include criminal investigation, drug investigation and
14 we're preparing to start a canine unit.

15 Q. How many interviews have you conducted that relate to
16 criminal investigations?

17 A. Anywhere between 100 to 500.

18 Q. And how many of those interviews involved children?

19 A. Well, as far as children go, whether they're the
20 victim, witnesses, I'd say about a hundred.

21 Q. And have you undergone any training specifically for
22 interrogation or interview?

23 A. Yes, ma'am. I've been to two different interview
24 interrogation classes. The first one was approximately 10
25 to 12 years ago when I was a police officer up in

1 Connecticut. And the second one was down here with the
2 Reed Interview and Interrogation Class and advance class
3 while I was down here in South Carolina.

4 Q. And did any of those training specifically talk about
5 children or talking to children?

6 A. Very minimal training in either of those classes.
7 They do cover it a little bit but not much.

8 Q. Why did you decide to interview [Minor] in this
9 case?

10 A. With [Minor], when we first met [Minor] he came
11 to the police department. I quickly developed a rapport
12 with him being a father and a coach and myself I learned
13 to talk to kids. I built this rapport with him because he
14 felt comfortable with me, and I felt comfortable with him
15 to talk to him about this issue.

16 Q. And can you describe the interview process you used
17 here?

18 A. Yes. With the interview process we bring them into a
19 separate room that is video camera and audio recorded.
20 The mother, Tabitha, is able to watch the interview on a
21 camera live while we're conducting the interview.

22 Q. Did you tell [Minor] that he was being recorded?

23 A. Yes, I did.

24 Q. Did you try to ask open ended questions?

25 A. Yes, I did.

1 Q. Do you ask different questions when interviewing
2 children of different ages?

3 A. Absolutely. When you interview a child it's
4 different than interviewing somebody older, say 20 years
5 or older because they don't understand certain words as
6 opposed to an adult. So for example, we would tell the
7 child bad guy instead of suspect. Something like that. we
8 will change the words to fit their knowledge and
9 perception.

10 Q. How old was [Minor] at the time of the interview?

11 A. [Minor] was five years old.

12 Q. And did you make an audio, video recording of this
13 interview?

14 A. Yes, ma'am, I did.

15 Q. You voice record these interviews?

16 A. Yes, we do.

17 Q. Lieutenant Babkiewicz, I'm now handing you what's
18 been marked as State's Exhibit One. And what is that
19 exhibit?

20 A. This is a copy of the interview.

21 Q. And how do you know it's a copy of the interview?

22 A. Because it has my initials on the DVD as well as the
23 folder or the envelope it's in.

24 Q. Did you have a chance to review the interview prior
25 to coming to Court today?

1 A. Yes, I have.

2 Q. Has it been materially altered in any way?

3 A. No, it has not.

4 MS. JOSEPH: Your Honor, at this opportunity the
5 State would like to enter State's Exhibit One into
6 evidence.

7 THE COURT: Subject to prior objections, yes.

8 MS. JOSEPH: Your Honor ---

9 MR. BROWN: Subject to previous objections, same
10 rulings?

11 THE COURT: Yes, objection noted.

12 MS. JOSEPH: And we would seek, of course, the
13 Court's permission to publish this video to the jury.

14 THE COURT: Sure.

15 MR. BROWN: Same objection.

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

18 THE COURT: I understand it, and same ruling.

19 MR. BROWN: Yes, sir.

20 MR. WHETSEL: Your Honor, beg the Court's indulgence
21 one moment to sit up.

22 THE COURT: Okay.

23 (WHEREUPON, State's Exhibit Number One was played for
24 the jury in open Court.)

25 BY MS. JOSEPH:

1 Q. Lieutenant Babkiewicz, is that you on the video?

2 A. Yes, ma'am, it is.

3 Q. And what date was that interview conducted?

4 A. December 7th 2013.

5 Q. And do you know what day the incident was reported to
6 the Bluffton Police Department?

7 A. It was reported to us earlier that day.

8 Q. So you interviewed him that same day?

9 A. Yes, ma'am.

10 Q. What other steps did you take as part of your
11 investigation?

12 A. Woe also spoke with Tabitha, the mother. And the
13 reason why we did that is because we knew he had a
14 conversation with him -- with her before he came into the
15 police department. And we wanted to see if his story had
16 changed at all from when he speak with me to when he spoke
17 with Tabitha.

18 And after speaking with her in fact it had not. It
19 was very consistent in nature.

20 Q. Did you take any photograph as part of this
21 investigation?

22 A. We did not take any photographs.

23 Q. Why not?

24 A. Often times when we investigate a sexual abuse case
25 with a child they often report several days, sometimes

1 months, sometimes even years later. And this is such a
2 case the last offense according to [Minor] was over
3 seven days old. It was also reported that it happened
4 inside the shower.

5 So there was no trace evidence for us to collect.
6 There was nothing for us to take photos of because of the
7 time lapse and also where it had reportedly occurred.

8 Q. I think you just answered my question, but did you
9 collect any D.N.A. in this case?

10 A. No, we did not.

11 Q. Okay. And at the conclusion of your investigation
12 did you arrest Justin difficult Adams?

13 A. Yes, we did.

14 MS. JOSEPH: I have no further questions for the
15 investigator at this time.

16 THE COURT: Cross examination.

17 MR. BROWN: May it please the Court.

18 CROSS-EXAMINATION

19 BY MR. BROWN:

20 Q. Is that referred to as the soft interview room?

21 A. Yes, that is the soft interview room.

22 Q. And there is a different interview room named
23 something else?

24 A. Yes, we have a hard interview room.

25 Q. Okay. Do they come with different ball caps?

1 A. No. If -- you want me to explain them?

2 Q. Okay. You had that New York cap on here. Says,
3 "NY"?

4 A. It said, "N.Y.P.D.," yes.

5 Q. And I see a little bit that you're a Boston fan and
6 you go to the soft room and you have the Boston Red Socks?

7 A. Yes.

8 Q. Good enough. I just bring that out. I thought that
9 was interesting. I didn't know if you wore a different
10 cap for a different room?

11 A. No.

12 Q. All right. Now, what is the Child or Children's Law
13 Center?

14 A. I'm sorry. Say that again.

15 Q. Do you know what the Children's Law Center is?

16 A. I do not.

17 Q. You ever heard of that word or phrase, name?

18 A. No.

19 Q. Okay. Do you know what a multi-disciplinary team is?

20 A. Yes, sir, I do.

21 Q. Okay. And what is a multi-disciplinary team?

22 A. It's a group of individuals that are -- a group of
23 different organizations that come together to handle a
24 certain task whether it be narcotics or different types of
25 investigations. It a combination of a bunch of different

1 agencies.

2 Q. Do you know how that applies to investigation of
3 child sexual assault allegations?

4 A. No, I do not.

5 Q. Okay. Do you recall yesterday being asked very
6 similar questions?

7 A. Yes.

8 Q. Okay. Do you know what a minium facts or minimal
9 facts interview is?

10 A. I do after you told me about it yesterday, yeah.

11 Q. Okay. But you weren't familiar with that before?

12 A. No, I was not.

13 Q. And as part of the multi-disciplinary team procedure
14 is there a circuit protocol to coordinate agencies such as
15 law enforcement, the prosecutor's office, Hope Haven,
16 D.S.S.?

17 A. Yes, sir, there is.

18 Q. Okay. All right. And do you know what, generally
19 speaking, the different didn't roles let's say between law
20 enforcement and D.S.S? What are those roles?

21 A. I can speak on behalf of what law enforcement roles
22 are.

23 Q. Okay.

24 A. Law enforcement roles are to do the basic
25 investigation of the case when a crime is reported to them

1 whether it be child sexual abuse or anything like that.

2 Q. Okay. And what does D.S.S. do as part of that team?

3 A. We report the incident to D.S.S. As far as what they
4 do that's not for me to testify to.

5 Q. Okay. And does South Carolina law not require you to
6 contact D.S.S.

7 A. Yes, we are mandated reporters for D.S.S.

8 Q. So not only are you involved in the case you have to
9 contact them immediately?

10 A. I don't think it says immediately. We do have to
11 contact them. Yes.

12 Q. And you're not sure it says, quote, early as possible
13 time?

14 A. Early as possible time, but not immediately.

15 Q. Okay. All right. Who made the call to D.S.S. in the
16 case?

17 A. I'm not sure who made that phone call to D.S.S.

18 Q. Are you aware of anyone making a call to D.S.S.?

19 A. I do not know that answer.

20 Q. All right. Are you aware of any D.S.S. involvement
21 regarding Mr. Adams contacts with Brother [REDACTED]?

22 A. Not that I'm aware of.

23 Q. And is that because y'all didn't believe that was a
24 concern?

25 A. No. I don't know why D.S.S. wasn't called. I did

1 not contact D.S.S.

2 Q. Good point. Whose the lead detective in this case?

3 A. It was Investigator Daniel.

4 Q. Okay. And you say, 'was'. Is he still the lead
5 investigator?

6 A. Yes, he's still the lead investigator of the case.

7 Q. Okay. Are you his supervisor?

8 A. Yes, I am.

9 Q. Okay. So even if his responsibility ultimately is it
10 your responsibility to see that he does his
11 responsibility?

12 A. Absolutely. As supervisor, yes.

13 Q. Okay. And are you -- did you follow up looking
14 through the file to see about the D.S.S. coordination in
15 this case?

16 A. I did not.

17 Q. Okay. And I did not ask you this, but same thing
18 about D.S.S.'s involvement?

19 A. I believe you have.

20 Q. Okay. And overnight did you go back and look at it?

21 A. I looked at the report. I didn't see any D.S.S.
22 involvement from us.

23 Q. Okay. And did you speak with the prosecutor's office
24 about your testimony here today?

25 A. I did not.

1 Q. Okay. Did you speak with anyone else about your
2 testimony?

3 A. I did not.

4 Q. Okay. And you didn't go ask Daniel about his file?

5 A. No.

6 Q. Okay. All right. Now, tell me about forensic
7 interview training dealing with interviews of young
8 children?

9 A. What do you want me to tell you about?

10 Q. Have you had any forensic interview training or
11 interviewed children who are alleged victims of sexual
12 abuse?

13 A. No, I have not had any forensic interview training.

14 Q. And in your other interview I think you said,
15 "Interview and interrogation?"

16 A. Yes, sir.

17 Q. Okay. And that's not -- the video we saw, that's not
18 interrogation, is it?

19 A. No. That's interviewing.

20 Q. Okay. All right. All right. And does -- are you
21 familiar with issues such as suggestibility?

22 A. No. You would have to be a little more specific
23 about that.

24 Q. About the suggestibility during an interview of a
25 young child? Does that mean -- does that concern mean

1 anything to you?

2 A. I don't even know what that means.

3 Q. Okay. How about an appropriate distance between the
4 interviewer and the person being interviewed?

5 A. Yes, I'm aware of distance.

6 Q. Okay. And in that you're not supposed to develop too
7 much of a rapport?

8 A. No. It all depends on to type of interview that
9 you're doing. Different variations of interviews you want
10 to -- sometimes you want to close the gap during the
11 interview.) Sometimes you want to keep a distant with
12 certain people.

13 Q. Okay. Let me ask you. Was an appropriate distance
14 to tell [REDACTED] Minor that y'all both are cool kids?

15 A. Sure. During that time you're building up a rapport
16 and during the entire interview with [REDACTED] Minor that's what
17 we're doing when we say things like that we do that to
18 build up a rapport with him.

19 Q. And you're supposed to tell him that he's now a
20 junior police officer?

21 A. Absolutely. It helps to make him feel more
22 comfortable.

23 Q. That's part of the training that you got for doing
24 interviews with children?

25 A. Yes. It's not just training, but from my experience.

1 When you make them feel more comfortable they're more apt
2 to tell you the truth.

3 Q. And are you supposed to vilify the subject of the
4 investigation?

5 A. Can you re-word that? What do you mean by vilify?

6 Q. Sure. Are you supposed to tell him that you think
7 the person that he's making the complaint about is the bad
8 guy?

9 A. Often times, like I said before, you will say bad
10 guys instead of suspect. It's easier for a child to
11 understand.

12 Q. Okay. Are you supposed to tell him that you believe
13 that the person being complained about is the bad guy?

14 A. I believe he told me his name first before I said
15 anything about him.

16 Q. Oh, I understand.

17 A. Okay.

18 Q. Are you supposed to give your opinion about it?

19 A. You can give your opinion.

20 Q. Okay. And how about telling him that his -- how
21 about tell Minor that his mother was watching?

22 A. Sure. Often times we want to tell the child that
23 their parents are watch just so they know nothing -- you
24 know, nothing inside that room is a secret.

25 Q. And are you supposed to engage in conversations

1 between the child being interviewed and the family on the
2 outside where they see him and he waves back? Is that
3 appropriate?

4 A. Well, again, that's just making him feel comfortable
5 inside that room.

6 Q. Okay. All right. And let me ask you a little bit
7 about telling the subject that -- telling the child being
8 interviewed that the subject of the investigation is being
9 arrested?

10 A. Yes. Again, with **Minor** he was obviously afraid
11 of Justin. He was afraid that he was going to do this
12 again. So based upon what he was telling me, his story
13 being consistent, I felt comfortable telling him that he
14 was going to be arrested if he did this again.

15 Q. And all of that is appropriate for an interview of a
16 child in a sexual misconduct allegation case?

17 A. Yes, sir.

18 Q. All right. But that's not based on the Children's
19 Law Center or anything like that?

20 A. Again, I'm not aware of the Children's Law Center.

21 Q. All right. Well, and let me ask you. What does the
22 law say about minimizing the number of interviews?

23 A. I believe it says that it should be done with the
24 minimum amount of interviews possible.

25 Q. Okay. And so you interviewed **Minor**. That's the

1 fourth interview?

2 A. No. When I interviewed [Minor] it was the first
3 interview.

4 Q. He was interviewed by my grandmother and then an
5 written statement?

6 A. Okay.

7 Q. And your went back to see if it was consistent,
8 right?

9 A. Yes.

10 Q. Okay. And he was interviewed by his mother? That's
11 a yes?

12 A. Yes. Yes.

13 Q. And then he was interviewed by Detective Duke?

14 A. I don't know when he was interviewed by The Detective
15 duke.

16 Q. Well, he responded out to the place?

17 A. I believe Sergeant Destacio responded out to the
18 place.

19 Q. And did Duke not tell that -- he not tell Duke --
20 excuse me. [Minor] said to Duke?

21 A. I don't know what he told Duke.

22 Q. Okay. So he talking about he had a law enforcement
23 officer earlier at his house earlier that day?

24 A. Yes.

25 Q. And they were are buds?

1 A. Again, I don't know what he told to Detective Duke.

2 Q. He told you that they were buds?

3 A. I think he told me that we were buddies.

4 Q. And he told you that the officer out there was
5 buddies, and you said, "Can we be buddies, too?"

6 A. Okay.

7 Q. Does that sound right?

8 A. It does.

9 Q. It speaks enter itself. I don't want to misquote
10 you. Let's see. He's my buddy. [Minor] said. He
11 said, "He's your buddy. Why is he your buddy?" Did any
12 of that sound familiar?

13 A. Okay.

14 Q. Let's see About 15 seconds into the interview?

15 A. Yes.

16 Q. Okay. All right. Just make sure we got that. All
17 right. And so to kind of follow up a little bit tell me
18 about the Hope Haven interview? Were you present for
19 that.

20 A. Yes, I was.

21 Q. And that was four day later?

22 A. It was on the 12th.

23 Q. Sure not the 11th?

24 A. 11th. Excuse me. 11th. Four days later.

25 Q. Okay. All right. So on the 11th you go to Hope

1 Haven?

2 A. Yes, I do.

3 Q. Okay. And you speak with a lady named Mary Beth
4 Hefner?

5 A. Yes, I do.

6 Q. And y'all speak about your interview?

7 A. Yes, we do.

8 Q. Okay. And did you speak with her again after the
9 interview?

10 A. I think we spoke briefly after the interview.

11 Q. And you privy to the interview. Did you actually get
12 the chance to view the contents?

13 A. Yes, I did.

14 Q. Okay. And at that point in time, on December 11th,
15 Justin was still in jail?

16 A. I don't know if he had bonded out at that point or
17 not.

18 Q. That sound like ten weeks later he had a bond hearing
19 y'all attended?

20 A. I don't remember.

21 Q. Okay. And after that interview you were aware that
22 there were allegations of misconduct occurring in the bed
23 and not just in the shower?

24 A. I believe that came from Tabitha. She had told me
25 about that.

1 Q. And that was on December 7th?

2 A. No. That was on the 11th.

3 Q. Tabitha told you that on the 11th?

4 A. Yes, sir.

5 Q. Okay. And you deny that [Minor] told Mary Beth
6 Hefner that there were acts in the bed on December 11th?

7 A. I don't remember if he did or not.

8 Q. Okay. All right. But if it's on the video that
9 interview it's on?

10 A. Absolutely.

11 Q. Okay. and did you go back out to the house then to
12 collect forensic evidence to take a team out to look for
13 evidence?

14 A. No, we did not.

15 Q. And this came up yesterday. When was the first time
16 that you were told that there was ejaculate involved in
17 this case?

18 A. I believe it was yesterday when I heard it from you.

19 Q. Okay. And didn't hear it back in May of 2014?

20 A. No, sir.

21 Q. And you didn't follow up any other interviews with
22 anyone to find out any more details on that?

23 A. No. We didn't know about it.

24 Q. Okay. And if you had known about ejaculate back then
25 would you have done a forensic interview or a forensic

1 exam?

2 A. Had we known the timeframe, and if it was an
3 appropriate timeframe, yes, we would have had gone to the
4 house and applied for a search warrant and looked for any
5 particular clothing the suspect might have been wearing or
6 bed sheeting if [Minor] was able to describe the bed
7 sheeting or wherever it occurred.

8 Q. Do you recall speaking with Tabitha about the
9 contents of the report?

10 A. I remember a conversation with Tabitha about the
11 room.

12 Q. Okay. And you recall asking her about any
13 pornography or inappropriate material Mr. Adams may have
14 had?

15 A. I don't remember that.

16 Q. Did you ever search the room for any of that
17 material?

18 A. No, we did not.

19 Q. But you did go in the room?

20 A. No, sir. I never went in the room.

21 Q. You never went inside that room?

22 A. I never went inside the room.

23 Q. Okay. Do you recall asking Mr. Adams' permission to
24 go in the bedroom?

25 A. Yes.

1 Q. Do you recall detectives from the police department
2 going into that room?

3 A. Yes, they did.

4 Q. And how many was that?

5 A. I believe it was two other detectives.

6 Q. Okay. And did Investigator Daniel have a camera?

7 A. I'm not sure if he did or if Detective Perez had the
8 camera.

9 Q. Okay. And were pictures taken?

10 A. Not of the room, no.

11 Q. Were pictures taken while at the house?

12 A. I believe there were some pictures taken.

13 Q. What do those pictures depict?

14 A. Of some evidence that was found in the room.

15 Q. What was that evidence?

16 A. Marijuana.

17 Q. And does that marijuana prove or disprove the
18 allegations against Mr. Adams here in Court?

19 A. It does neither for that charge.

20 Q. Okay. Tell me about the layout of that house. Did
21 y'all draw a schematic of it?

22 A. I don't know the layout of the house. I don't
23 remember.

24 Q. How small the bedroom was?

25 A. Again, I wasn't in the room. I couldn't tell you.

1 Q. And do you recall anyone that did go in telling you
2 that the kitchen was next to the master bedroom?

3 A. No.

4 Q. And that the door that opened to the bedroom ---

5 A. No.

6 Q. --- would have put you in the kitchen?

7 A. No, nobody told me about that. No.

8 Q. All right. And you didn't go in?

9 A. I went into the house, the main portion of the house,
10 but I didn't go all the way in the back where they were
11 at.

12 Q. Okay. So you went in the house and saw the kitchen?
13 Did you walk in the kitchen on the left?

14 A. I don't even remember. We were -- we walked in and
15 there was a room. That's all I remember.

16 Q. Okay. And on bedroom on one side and bedroom on the
17 other side?

18 A. Again, I don't remember. I'm not going to testify to
19 something I don't remember.

20 Q. Did Justin let you in the house?

21 A. Yes, he did.

22 Q. No issues?

23 A. No issues.

24 Q. You didn't Mirandize him?

25 A. No, we did not.

1 Q. He was already in handcuffs?

2 A. I don't know if he was handcuffed before or after.

3 Q. Wasn't put in cuffs for officer safety by Officer
4 Danyov's testimony?

5 A. Okay. Then he was handcuffed before.

6 Q. Okay. All right. No warrant?

7 A. No warrant. No.

8 Q. But this was after you told Tabitha Jones you were
9 going to pick him up?

10 A. I'm sorry. Say that again.

11 Q. It's after you told Tabitha Jones you were going to
12 pick him up?

13 A. Yes.

14 Q. Okay. All right. Now, what does the
15 multi-disciplinary team say about the search for
16 corroborative evidence after the forensic interview?

17 A. I don't know.

18 Q. But you are aware that there is a multi-disciplinary
19 team for child sexual assault investigations?

20 A. Yes.

21 Q. Okay. And that each law enforcement agency is
22 supposed to join that agreement?

23 A. I don't know what it says about each law enforcement
24 agency making it mandatory to join that agreement.

25 Q. Okay. And what position are you at in the police

1 department.

2 A. A lieutenant.

3 Q. Okay. How many people are above you?

4 A. The deputy chief and the chief.

5 Q. Okay. So you're number three in charge over there?

6 A. Yes.

7 Q. How many people do you have working in that agency?

8 A. I believe we have 54 sworn right now.

9 Q. So essentially there is 51 people below you?

10 A. Yes.

11 Q. All right. And needless to say I guess you didn't
12 sign that agreement on behalf of the Bluffton Police
13 Department?

14 A. Right. I did not.

15 Q. Okay. All right. And is there not effort needed to
16 go back and collect any physical evidence in a case where
17 the allegations change?

18 A. Sure. If we can substantiate a reason to get a
19 search warrant to go into the house then, yes, we would go
20 back. However, we had no substantiated evidence to even
21 apply for a search warrant to go in that house.

22 Q. Let me ask you a couple of things on that. Y'all
23 were actually in the house with consent, right?

24 A. Yes, we were.

25 Q. Okay. And you certainly had Tabitha Jones'

1 cooperation, right?

2 A. Yes.

3 Q. And she's okay with that?

4 A. She does.

5 Q. Okay. And she had the ability to let you in?

6 A. Yes, she did.

7 Q. Did you ask her?

8 A. No, we did not.

9 Q. Okay. And if she would have let you in you wouldn't
10 have needed a search warrant?

11 A. No, we would not.

12 Q. You did apply for an arrest warrant after you already
13 picked Justin up, didn't you?

14 A. Yes, we did.

15 Q. Okay. And that probable cause determined by a judge
16 the he committed this offense?

17 A. Yes.

18 Q. Okay. And where was this location that you put in
19 this warrant?

20 A. I believe the location was 170 Palmetto Bluff Road.

21 Q. Okay. And so you presented a judge with information
22 claiming probable cause, [REDACTED] Minor [REDACTED] had been the
23 victim of a crime at the same house?

24 A. Yes.

25 Q. And that's not also the same evidence you used for

1 the search warrant? For probable cause of the house of
2 the very same crime?

3 A. Again, there was no indication that there was any
4 evidence where [Minor] reported the incident had
5 occurred and how long ago it had occurred.

6 Q. Okay. And the reason you didn't go back on
7 December 11th?

8 A. There was no report of ejaculation on the bed sheets
9 or anything such as that nature for us to go back to?

10 Q. Okay. So there was no report of ejaculate at that
11 time?

12 A. Any type of evidence. The only thing that was
13 reported to us on the 11th was that [Minor] reported to
14 Tabitha that something also occurred in the bedroom.

15 Q. He didn't say in the bed?

16 A. He -- I -- bed, bedroom. I'm not sure.

17 Q. Okay. Have you gone back and listened to
18 Ms. Heifer's interview?

19 A. I listened to a little bit of it yesterday.

20 Q. Okay. And you're sure he didn't say in the bed?

21 A. I don't know what he said, Mr. Brown.

22 Q. Okay. No evidence to go back out there? Take a
23 team? Take a U.V. light and look?

24 A. No.

25 Q. If you found D.N.A. material from Mr. Adams D.N.A.

1 material on [Minor] would you have considered
2 that probative evidence for the jury?

3 A. We didn't find D.N.A. evidence.

4 Q. I understand that. If you found any would that be
5 probative?

6 A. What do you mean probative?

7 Q. Would you think that would be evidence of his guilt
8 if you, let's say, saliva and some other type of sweat or
9 ejaculate, any other bodily fluids, between Mr. Adams and
10 [Minor]?

11 A. If you can somehow link it to the date and time that
12 our victim, [Minor] said, then yes.

13 Q. Okay. So if it was dated it would be important? If
14 it was just a mixture of [Minor] s D.N.A. and Mr.
15 Adams' D.N.A. without data you wouldn't care?

16 A. I wouldn't say I wouldn't care, but it would be very
17 difficult to prove that that was the result of the
18 reported incident that [Minor] reported.

19 Q. What would that be the result of?

20 A. Two people sleeping on a bed. Sweat coming off of
21 them.

22 Q. Did you ask whether that happened?

23 A. No.

24 Q. Did you ask Tabitha whether that ever happened?

25 A. No, I don't believe I did.

1 Q. Now, are you supposed to tell the child being
2 interviewed that the room is magic and that he will get
3 zapped if he didn't tell the truth?

4 A. Again, that's something we say to children. Not
5 exactly always those terms, but just to let them know that
6 it's important that they are truthful with law enforcement
7 and that they don't tell any lies.

8 Q. I want to ask you a little bit. And you were trained
9 in that procedure?

10 A. That's just from experience.

11 Q. Okay. All right. And you do have prior law
12 enforcement experience?

13 A. Yes, sir, I do.

14 Q. And when did you move down here?

15 A. Eight years ago.

16 Q. Okay. That was about 2008?

17 A. Yes, sir.

18 Q. Before that you were in Connecticut?

19 A. Yes, sir.

20 Q. There is a man named Dale Roberts. Do you know who
21 that is?

22 A. Yes, sir.

23 Q. What is the relationship between you moving down here
24 and Dale Roberts?

25 MS. JOSEPH: Objection, Your Honor. Relevancy.

1 MR. BROWN: Mr. Roberts made a claim of false arrest
2 in a Federal court in civil rights litigation.

3 THE COURT: I sustain the objection.

4 MR. BROWN: I'll withdraw the question.

5 BY MR. BROWN:

6 Q. Now, Justin Adams speak with you after you Mirandized
7 him down at the police station?

8 A. He asked for his attorney.

9 Q. Before or after you asked him about these
10 allegations?

11 A. We advised him of his rights, and he asked for an
12 attorney.

13 Q. And you advised him of his rights?

14 A. Yes.

15 Q. And you told him the allegations?

16 A. Yes, we did.

17 Q. And he responded to that, didn't he?

18 A. Yes, he did.

19 Q. Okay. Then he asked for the lawyer when you told him
20 [Minor] was the witness?

21 A. Yes, he did.

22 Q. Okay. But before you told him that [Minor]
23 was the witness you asked him about these allegations?

24 A. Yes, we did.

25 Q. You even asked him any -- had any witnesses that he

1 didn't do, didn't you?

2 A. I don't recall. I think something along those lines.

3 Q. And he said, "Go ask [Minor]. He will tell
4 you I didn't do it."

5 A. Yes, he did. He did say that.

6 Q. You question him and he only invoked his Miranda
7 rights when you told him that, "No, [Minor] did tell us
8 you did this."

9 A. Yes.

10 Q. Okay. And first he did speak with you about this?

11 A. Briefly, yes.

12 Q. And you had read him Miranda at that point in time?

13 A. Yes, we did.

14 MR. BROWN: I beg the Court's indulgence.

15 THE COURT: All right.

16 BY MR. BROWN:

17 Q. The last two things I want to ask you about. And
18 some of my other questions and your answered may have
19 already answered this, but I want to make clear. Are you
20 aware of a Child Forensic Interview Corroboration Chart
21 completed for this case?

22 A. No, I'm got.

23 Q. Have you ever heard of that term?

24 A. No. I haven't.

25 Q. And tell us about G.P.S. monitoring. Do you know

1 what that is?

2 A. I don't know what that is.

3 Q. You've never heard of a G.P.S. monitor?

4 A. You mean something that can be monitored on G.P.S.
5 like a G.P.S. system? I don't know what you're talking
6 about.

7 Q. Like an ankle monitor for someone?

8 A. Okay, yes.

9 Q. So you are familiar with that?

10 A. With ankle monitors, yes.

11 Q. Okay. And they use GPS tracking?

12 A. Yes.

13 Q. And one of those programs is run by a gentlemen who
14 has an office in the same building as the prosecutor's
15 office?

16 A. I don't know where he's at.

17 MS. JOSEPH: Objection, Your Honor. Relevance.

18 THE COURT: Sustained.

19 BY MR. BROWN:

20 Q. And wherever the location of the monitor is ---

21 MS. JOSEPH: Sorry, Your Honor, to clarify the
22 objection. That was any ankle monitor questions.

23 THE COURT: I understand. Sustained.

24 MR. BROWN: And I've already got that in, too.

25 BY MR. BROWN:

1 Q. Did you follow up any other investigation of Mr.
2 Adams' conduct after his release on bond in February of
3 2014?

4 A. No. No, sir.

5 Q. No other investigation of him?

6 A. Not that I'm aware of.

7 Q. Okay. I don't have any other questions. Thank you.

8 THE COURT: Redirect?

9 MS. JOSEPH: Thank you, Your Honor. May it please
10 the Court.

11 REDIRECT EXAMINATION

12 BY MS. JOSEPH:

13 Q. Lieutenant Babkiewicz, you arrested the defendant,
14 Justin Adams, at his residence; is that correct?

15 A. Yes, ma'am.

16 Q. And [REDACTED] Minor, the victim, was there as well?

17 A. Yes.

18 Q. And is that in fact the residence whee the alleged
19 conduct occurred?

20 A. Yes, it is.

21 Q. Would you have been surprised to find Justin Adams'
22 D.N.A. in that house?

23 A. No because he lives in that location.

24 Q. Would you have been surprised to find Justin Adams'
25 D.N.A. in the shower of that house?

1 A. No, ma'am.

2 Q. No further questions. Thank you.

3 THE COURT: Any recross?

4 RECROSS-EXAMINATION

5 BY MR. BROWN:

6 Q. Was that the reason y'all didn't search it?

7 A. No. We didn't search it because we didn't have
8 anything to search it for.

9 Q. Because there had been no allegations of anything
10 that produced present information?

11 A. That is correct.

12 Q. But you knew there was going to be a forensic
13 interview done in few days later?

14 A. Yes.

15 Q. And is that interview usually more detailed than
16 yours?

17 A. It depends on how comfortable the child is.
18 Somethings it's more detailed. Sometimes it's not.

19 Q. Are they forensically trained to conduct a child
20 sexual assault?

21 A. Yes, they are.

22 Q. Okay. And did you make any effort to secure the
23 alleged scene pending that interview?

24 A. No, we did not.

25 Q. Thank you.

1 MS. JOSEPH: Your Honor, no further question for this
2 officer, and we ask can he be excused?

3 MR. BROWN: He is under my subpoena. I ask that he
4 remain under that. Thank you.

5 THE COURT: Thank you. You may step down. Remind
6 you that you should not discuss your testimony with any
7 other potential witnesses.

8 THE WITNESS: Yes, sir. Thank you.

9 THE COURT: Thank you, sir. Lunch till 2:00?

10 MS. JOSEPH: Yes, Your Honor.

11 THE COURT: Ladies and gentlemen let's take a lunch
12 break. Ask you to try to be back by two o'clock. Remind
13 you don't let anybody talk to you about the case. You
14 don't talk about the case. See you back.

15 (WHEREUPON, the jury panel was excused from the
16 courtroom at 12:48 p.m.)

17 COLLOQUY

18 THE COURT: The State still feel like we're going to
19 finish today?

20 MS. JOSEPH: I think we may finish early tomorrow
21 morning, Your Honor.

22 THE COURT: Yes. Okay. Then I guess we needed to do
23 during lunch break.

24 MR. BROWN: Briefly. Juror -- let me see. Three,
25 four, five, six, seven, eight is given. Probably me, too.

1 If that's the criticism you can have cause I think she may
2 be dozing off a little during this.

3 THE COURT: I couldn't understand you.

4 MR. BROWN: I think this juror in the seventh seat is
5 sleeping, I guess, to bang her feeling on our --
6 nevertheless, not necessarily the best thing for my
7 client.

8 THE COURT: Well, if y'all see that again please
9 bring that to my attention. Usually the bailiffs if they
10 notice it will do something about it or bring it to my
11 attention. So, please -- on this side, Jim?

12 MR. BROWN: The lady I think with the plaid -- I call
13 it felt. Well, actually, in fact if you count Juror
14 Number Eight. Juror Eight, the young African American
15 lady. I'm not asking for anything.

16 THE COURT: I'll check on it.

17 MR. BROWN: I don't want it to be an issue later on.

18 THE COURT: All right. If y'all see it again please
19 let me know. Anything else?

20 MS. JOSEPH: Nothing from the State, Your Honor.

21 MR. BROWN: Nothing from the Defense at this time.

22 THE COURT: Recess until two o'clock.

23 (WHEREUPON, Court was in recess at 12:51 p.m. and
24 reconvenes at 2:05 p.m.)

25 (WHEREUPON, the jury panel enters the courtroom at

1 2:03 p.m.)

2 THE COURT: Good afternoon, ladies and gentlemen.
3 Welcome back. I believe we're ready to resume the
4 presentation of evidence by the State. Solicitor may call
5 his next witness.

6 MR. WHETSEL: Yes, sir. State next calls Minor

7 [REDACTED].

8 [REDACTED] Minor, after being duly sworn,
9 testified as follows:

10 THE COURT: Can you state your whole name for the
11 Court. Your first and your last name.

12 THE WITNESS: [REDACTED] Minor.

13 THE BAILIFF: Thank you. I just need you to talk
14 right into that.

15 MR. WHETSEL: May it please the Court, Your Honor.

16 THE COURT: Yes.

17 DIRECT EXAMINATION

18 BY MR. WHETSEL:

19 Q. [REDACTED] Minor, how are you doing?

20 A. Good.

21 Q. Hey, you're in a big room so I'm going to stand over
22 hear. I just want you to talk really loud, okay?

23 A. Okay.

24 Q. You hear me okay?

25 A. Yes.

- 1 Q. Minor, how old are you?
- 2 A. Eight.
- 3 Q. When is your birthday?
- 4 A. .
- 5 Q. . You just turned eight in July?
- 6 A. Yes.
- 7 Q. You have any brothers or sisters?
- 8 A. One brother.
- 9 Q. What is your brother's name?
- 10 A. Brother.
- 11 Q. How old is Brother?
- 12 A. Four.
- 13 Q. He's four now? You go to school?
- 14 A. Yes.
- 15 Q. Where do you go to school?
- 16 A. .
- 17 Q. What grade are you in?
- 18 A. Third.
- 19 Q. You have a favorite subject?
- 20 A. Math.
- 21 Q. Do you do anything special with math?
- 22 A. One. I go to advanced classes for math.
- 23 Q. You do. Minor, where do you live?
- 24 A. .
- 25 Q. And do you know what city that's in?

- 1 A. Bluffton.
- 2 Q. Who do you live with?
- 3 A. My grandma and grandpa and my mom, and lots of pets,
- 4 too.
- 5 Q. Do you live with anybody else?
- 6 A. My brother also.
- 7 Q. Is that Brother?
- 8 A. Yes.
- 9 Q. Your grandmother, what do you call your grandmother?
- 10 A. Nana.
- 11 Q. And, Minor, you know what a lie is?
- 12 A. Huh?
- 13 Q. Do you know what a lie is?
- 14 A. Yes, it's when you're not telling the truth.
- 15 Q. If I told you right now -- you see the Judge right
- 16 there? Right there beside you?
- 17 A. Yes.
- 18 Q. If I told you the Judge's robe was the color red
- 19 would that be true or a lie?
- 20 A. Lie.
- 21 Q. That would be a lie. If I told you that we were of a
- 22 building right now would that be true or would that be a
- 23 lie?
- 24 A. True.
- 25 Q. It would be true. Is it right or wrong to tell a

1 lie?

2 A. Wrong.

3 Q. Are you going to tell us the truth today?

4 A. Yes.

5 Q. All right. Minor, who is your mom?

6 A. My grandma's daughter.

7 Q. Your grandma's daughter. That is correct. What do
8 you call your mom?

9 A. Mom.

10 Q. You know what her first name is?

11 A. Tabby.

12 Q. Her first name is Tabby. What about your dad? What
13 is your dad's first name?

14 A. Minor.

15 Q. Now, what about Brother? Who is Brother's dad?

16 A. The person that I'm here for.

17 Q. Do you know his name?

18 A. Justin.

19 Q. Do you and Brother have the same dad?

20 A. No.

21 Q. How do you know Justin?

22 A. Because he used to be my mom's boyfriend.

23 Q. Did you ever live with Justin?

24 A. Yes.

25 Q. Do you know about how long ago that was?

1 A. I think about three years. I don't know the exact
2 time.

3 Q. That's okay. When you lived with Justin who else did
4 you live with?

5 A. My mom and my brother.

6 Q. When you say, 'brother' that's Brother? The same
7 brother we're talking about?

8 A. Yeah, Brother.

9 Q. Do you remember how old you were when you lived with
10 Justin?

11 A. I think five. I'm not sure.

12 Q. Okay. You know why you're here today?

13 A. Yes.

14 Q. Can you tell us why you're here today?

15 A. To put Justin in jail.

16 Q. Okay. Do you -- I'm sorry the court reporter didn't
17 hear you. Can you tell us why you're here today?

18 A. To put Justin in jail.

19 Q. When you used to live with Justin did you ever take
20 showers at that place where you lived?

21 A. I'm not sure. I think it was only baths.

22 Q. You took baths?

23 A. I'm not completely sure.

24 Q. Okay. Did anybody take baths with you?

25 A. Yeah.

1 Q. Who would take baths with you?

2 A. Justin.

3 Q. When you would take baths with Justin was anybody
4 else in the bathroom with you?

5 A. No.

6 Q. What would happen when you took baths with Justin?

7 A. He would do something really bad.

8 Q. Can you tell us what else he would do?

9 A. He would touch my wacker.

10 Q. Okay. When you say, 'wacker' what do you mean by
11 wacker?

12 A. The thing that you pee with.

13 Q. Okay. The thing a boy would pee with? Is that yes
14 or no?

15 A. Yes.

16 Q. I'm sorry. You nodded, but you have to say the
17 answer so that the court reporter can write it down.
18 That's the only thing I ask of you. That's fine. You
19 said that he touched your butt, too?

20 A. Yes.

21 Q. What do you mean by that.

22 A. The think that you pee with.

23 Q. Okay. Minor, I know you're talking as loud as
24 you can, but can you talk just a little bit louder if you
25 can. If you're able to?

1 A. Yes.

2 Q. Okay. Thank you. I'm going to ask you that question
3 again because I don't think the court reporter heard you.
4 What did you mean by Justin would touch your butt. Will
5 you explain what you mean by that?

6 A. He would stick it through.

7 Q. When you say, 'stick it through' what do you mean?
8 Stick what?

9 A. The buttohole.

10 Q. Okay. What would be stuck into your buttohole though?
11 I'm sorry. That's what I meant.

12 A. His finger.

13 Q. His finger. Okay. How many times did this happen?
14 Do you know.

15 A. I do not know.

16 Q. Okay. Was it just one time?

17 A. No. No, it was more than once.

18 Q. Okay. When Justin would touch your wacker and put
19 his finger in your butt was he washing you?

20 A. Yes.

21 Q. How's do you know -- like what was he was doing
22 exactly? Can you explain?

23 A. I'm not sure if I can.

24 Q. Okay. Well, can you try to explain what he was doing
25 when he touched your wacker and he touched your butt?

1 A. Well, we were in the bath.

2 Q. Okay. Where was -- was there any soap or water being
3 used? Do you remember.

4 A. Not at that time, no.

5 Q. Not at that time. What do you mean by that, 'not at
6 that time'?

7 A. He would do it while we are waiting for the water to
8 warm up.

9 Q. Okay. When this happened do you know where your mom
10 was?

11 A. I think in her room.

12 Q. Okay. Was mom in the bathroom with you?

13 A. No.

14 Q. When Justin touched your wacker and put his finger in
15 your butt did he say anything to you?

16 A. I do not remember.

17 Q. Okay. Did you ever tell anybody about this?

18 A. Yes.

19 Q. What happened with that?

20 A. Well, I told my mom at first. I'm not completely
21 sure.

22 Q. Okay. Do you remember if anything happened with
23 Justin?

24 A. I don't think so, but I might be wrong.

25 Q. Okay. But do you remember him touching your wacker

1 and putting his finger in your butt?

2 A. Yes.

3 MR. BROWN: Objection. Leading and asked and
4 answered.

5 THE COURT: Overruled.

6 BY MR. WHETSEL:

7 Q. Minor, why did you tell your mom this happened?

8 A. Because she was wanting to know why my wacker was
9 sticking out.

10 Q. Okay.

11 A. So I told her.

12 Q. What did you tell her?

13 A. That Justin was touching my wacker and butt.

14 MR. WHETSEL: Beg the Court's indulgence just for a
15 moment, Your Honor?

16 THE COURT: All right, sir.

17 BY MR. WHETSEL:

18 Q. Minor, I'm almost done, okay?

19 A. Okay.

20 Q. Do you remember if Justin ever told you to keep this
21 a secret if that did happen or that didn't happen?

22 A. Yes, I think he told me to keep it a secret.

23 Q. Okay.

24 MR. WHETSEL: Your Honor, I have no further questions
25 for Minor.

1 THE COURT: Cross, Mr. Brown.

2 BY MR. WHETSEL:

3 Q. Mr. Brown is going to ask you some questions, okay?

4 A. Okay.

5 MR. BROWN: May it please the Court.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. BROWN:

9 Q. Minor, have we ever met before?

10 A. I'm not sure.

11 Q. Okay. All right. Do you know if we've ever spoken
12 before?

13 A. Still not sure.

14 Q. Okay. All right. Do you remember speaking with
15 these people last week about this case?

16 A. Yes.

17 Q. Okay. And do you remember coming up to this
18 courthouse?

19 A. Yes.

20 Q. Okay. And y'all come into the courtroom?

21 A. Well, we went into a courtroom, but I don't think it
22 was this courtroom.

23 Q. Okay. All right. And do you remember them asking
24 use whether or not Justin had done anything with his mouth
25 or you did anything with your mouth?

1 A. Yes.

2 Q. Do you remember asking you that?

3 A. Yes.

4 Q. Do you remember that you told them that you didn't
5 remember anything like that?

6 A. Yes, that's what I told them.

7 Q. That's what you told them. All right. And besides
8 the two prosecutors here that you spoke with who else have
9 you spoken with about what happened?

10 A. Them.

11 Q. Okay. Them being your grandmother, your Nana?

12 A. No, the other two people beside them. Yes, I was
13 talking about this with my grandma.

14 Q. Okay. And the two people that are working for the
15 prosecutor's office ---

16 A. Yes.

17 Q. --- on the other side of your Nana?

18 A. Yes.

19 Q. How many times did you talk to them about this case?

20 A. I think three times.

21 Q. Okay. And then you talked to your mom about this?

22 A. Yes.

23 Q. Okay. And you're -- do you know who Charles Bryant
24 is?

25 A. Yes, he's my grandfather.

1 Q. Okay. And did you -- was he there when you talked
2 about this?

3 A. No.

4 Q. He was never there when you talked about it?

5 A. He was there when I was talking to my grandma, but
6 she was not there when all this happened.

7 Q. He wasn't here?

8 A. No.

9 Q. He wasn't here in the courthouse?

10 A. No, he wasn't like in the house I was in when all of
11 this started.

12 Q. Okay.

13 A. When I -- on the day that I first told my mom he
14 wasn't ---

15 Q. Okay.

16 A. --- in the house.

17 Q. Okay. Let's talk a little bit about that first day.
18 You mentioned that there was a time that you came out of
19 the bathroom, and you, I think your mom had stated, there
20 with -- I beg the Court's indulgence.

21 Do you remember just telling this man that you talked
22 to your mom about it because your wacker was sticking out?

23 A. Yes.

24 Q. Okay. It that when you told your mom?

25 A. Yes. But I'm not sure who I told first. If it was

1 my grandma or my mom, but if it was my mom then, yes, this
2 is what I remember happening.

3 Q. Okay. So if it was your mom you remember it being
4 the same day that your wacker was sticking out?

5 A. Yes.

6 Q. Okay. And you told your mom. So that was at the
7 house with Justin when you told her?

8 A. Yes.

9 Q. Okay. That was not at the house with your Nana?

10 A. Yes. Well, if it was at -- well, if I was talking to
11 my grandma first about it which I'm not sure if it was my
12 mom or my grandma. But, yes, I would be at her house if
13 it was by my grandma.

14 Q. Okay. And if it was your mom you talked to first it
15 was at the house with Justin?

16 A. Yes.

17 Q. Okay. Right. And did you tell your grandma at her
18 house, your Nana?

19 A. Huh?

20 Q. Did you tell your Nana at her house?

21 A. Well, if I told my grandma, yes, it was at my grandma
22 and grandpa's house.

23 Q. Okay. So if you told her that it was at their house?

24 A. Which I used to live there, but then I moved to
25 where -- to the house where all this happened. But I

1 moved. I live with them again now.

2 Q. Okay. Whose house is bigger?

3 A. I'm not completely sure, but I think my grandma's
4 house.

5 Q. Is bigger. Do you remember ---

6 A. But they're both not very big.

7 Q. Not very big. You have your own bed at your
8 grandma's house?

9 A. No. I sleep with my grandpa.

10 Q. All right. You sleep with your grandpa. Let me --
11 do you remember telling a lady named Mary Beth that you
12 used to rub your grandfather's back and legs?

13 A. No.

14 Q. You don't remember saying that. Okay. And do you
15 remember telling her anything about your real dad?

16 A. No.

17 Q. Okay. All right. Do you remember a Junior Bluffton
18 Police Officer Badge you had? Was a sticker?

19 A. Yes, I remember that.

20 Q. And did you get two stickers or one?

21 A. I'm not sure. I might have got one, but I might have
22 got two. I don't remember.

23 Q. Okay. You may have got two of them?

24 A. Yes.

25 Q. Okay. All right. Do you remember Justin having a

1 video game?

2 A. Yes.

3 Q. Okay. And do you recall that shooting game?

4 A. Yes, it was a shooting game.

5 Q. Okay. Also have driving, too?

6 A. Yes.

7 Q. Okay. And did you ever get a chance to watch him
8 play at least?

9 A. I didn;t really watch him play, but I have played it.

10 Q. Okay. You played that game?

11 A. Yeah, but I haven't played it since all this
12 happened.

13 Q. So that game was at the house where you lived with
14 Justin?

15 A. Yes.

16 Q. Okay. All right. And you said when this stuff was
17 happening you thought your mom was in her room?

18 A. Yes.

19 Q. Okay. And let me ask you this. In that house did
20 you share a room with Brother?

21 A. I don't remember. I might have, but I also might not
22 have.

23 Q. Because you just can't remember back that far?

24 A. Yes. It was a few years ago.

25 Q. Okay. All right. And do you know if Brother -- do

1 you know if Brother and Justin still talk?

2 A. Huh?

3 Q. Do you know if Brother still talks to Justin?

4 A. Yes.

5 Q. Okay.

6 A. But only so just he can buy my brother diapers.

7 Stuff like that.

8 Q. How do you know that's the only reason they talk?

9 A. Because my mom doesn't like being around Justin.

10 Q. Okay. She doesn't go around Justin?

11 A. No. Unless she only needs him to buy a few stuff for
12 Brother.

13 Q. Okay. But you're not there when she meets with
14 Justin?

15 A. Yeah, no, I'm not there. I'm not allowed to be in
16 the same place with him anymore.

17 Q. Okay. And so you know that she's only there so he
18 can buy diapers, right.

19 A. Yes.

20 Q. Okay. But you don't know that because you were
21 there?

22 A. Well, I know that's why she was going because that's
23 what she told me. But I didn't go with her. She just
24 told me that's why she was going to see him.

25 Q. Okay. That's how you know what she does with Justin?

1 A. Yes.

2 Q. Because she told you?

3 A. Yes.

4 Q. Thank you.

5 MR. BROWN: Your Honor, no more questions for

6 Minor. No further questions.

7 THE COURT: Thank you, Minor. You may step down.

8 You may call your next witness.

9 MS. JOSEPH: Your Honor the State next calls Mary
10 Beth Hefner.

11 MARY BETH HEFNER, after being duly sworn,
12 testified as follows:

13 BAILIFF: Thank you, ma'am. Have a seat up there.
14 Please state your first and your last name and spell your
15 last name for the court reporter.

16 THE WITNESS: My first name Mary Beth. Hefner,
17 H-E-F-N-E-R.

18 DIRECT EXAMINATION

19 BY MS. JOSEPH:

20 Q. Thank you, Ms. Hefner. I need you to speak up. This
21 is a big courtroom?

22 A. Okay.

23 Q. Ms. Hefner, where do you currently work?

24 A. Currently I'm employed at Costal Empire Community
25 Mental Health.

1 Q. And did you used to work for Hope Haven?

2 A. I did.

3 Q. And what is Hope Haven?

4 A. Hope Haven is a child advocacy center and a rape
5 crisis center that's located in Beaufort.

6 Q. And does Hope Haven in Beaufort only serve Beaufort?

7 A. No, it serves five counties. It serves Hampton,
8 Allendale, Colleton, Beaufort County and Jasper County.

9 Q. What was your position when you worked at Hope Haven?

10 A. My position there was a forensic interviewer and
11 counselor.

12 Q. And how long did you work there?

13 A. I worked there for seven years.

14 Q. Do you have any professional licenses or degrees that
15 apply to your work at Hope Haven?

16 A. I do. I have a Master's degree in professional
17 counseling, and I am licensed as a professional counselor
18 in the State of South Carolina.

19 Q. Now, when you talk about Hope Haven you spoke about
20 forensic interviews. What are forensic interviews?

21 A. Forensic interview are where you have a situation
22 where a report of an allegation of either physical abuse
23 or sexual abuse is reported to Social Services, Child
24 Protective Services or law enforcement. Hope Haven
25 receives the call from either entity and then schedules an

1 interview with the child who has made the allegations.

2 Q. How many forensic interviews have you conducted?

3 A. Approximately 2,000.

4 Q. And you spoke about the process for setting up an
5 interview at Hope Haven. Is it safe to say that most of
6 your referrals come from law enforcement?

7 A. Most of them do, yes.

8 Q. Can you describe the general interview process for
9 any case?

10 A. The interview is scheduled as a semi-structured
11 process where during the interview it's semi-structured.
12 It's broken into five components which we refer to as
13 R.A.T.A.C. The initials stand for a piece or a component
14 of the interview. R is, the beginning of R.A.T.A.C., is
15 for reportability. A is for anatomy identification. T is
16 for touch inquiry. A is for the child to disclose the
17 abuse. And C is for closure, bringing the meeting to a
18 respectful end.

19 Initially, when we receive a referral we speak to the
20 referring agency and set up a time and a date. And then
21 initially we meet with the caregiver, the non-offending
22 caregiver, and obtain information about the child's
23 background, medical information, other information
24 pertaining to medical issues, educational issues. And
25 then after the meeting with the parent the interviewer

1 meets with the child alone in an interview room that is
2 audio taped and videotaped.

3 Q. So can't remember exactly the phrase you used,
4 semi-structured?

5 A. Yes.

6 Q. Does that mean your approach may change based on the
7 child's different communication styles?

8 A. Based on the child's verbal skills and also based on
9 the child's age, questions and the series of the
10 components could be interchangeable.

11 Q. What type of questioning is preferred for forensic
12 interviews?

13 A. The most preferred type of questioning is open ended
14 questioning so that the child can disclose their abuse to
15 an open narrative, so to speak, so that no questions are
16 leading or suggestive.

17 The next preferred line of questioning is multiple
18 choice. You give a child an option. This is to protect
19 against suggestibility and the least preferred is yes, no.
20 But typically yes, no questions are used with very small
21 children because it's very difficult for small children to
22 talk about things in an open narrative type way.

23 Q. And when you say, 'small children' what age are you
24 talking about?

25 A. Age three to six years of age.

1 Q. And then children older than six, thereabouts, should
2 be able to answer more and more open ended questions?

3 A. More and more different kinds of open ended
4 questions. With the older children we can ask who, what,
5 when, where and how and also time references. But with
6 little ones it's very difficult to assess for timeframes
7 or sequences of events. Most children three to six can
8 answer who and what happened.

9 Q. When you are talking to children and recording how do
10 you get them to understand anatomy when you talk about
11 anatomy?

12 A. We try to develop a common language with the child.
13 So what we present to them is a diagram of a male figure
14 and a female figure. And then have the child identify the
15 parts of the body and in the interview I use that common
16 language of the child.

17 Q. Did you interview the victim in this case, Minor
18 [REDACTED]?

19 A. I did.

20 Q. What date did you interview him?

21 A. That was December 11th 2013.

22 Q. And who was he referred by?

23 A. He was referred by Bluffton Police Department.

24 Q. And where did the interview take place?

25 A. It took place at Hope Haven.

1 Q. And what was his age at the time of the interview?

2 A. His age was five.

3 Q. Now, earlier I had asked you to look at the DVD of
4 your interview, and I'm handing it to you now. Now, you
5 initialed that copy of the DVD, correct?

6 A. Correct.

7 Q. And prior to testifying today in Court you reviewed
8 that video, correct?

9 A. Correct.

10 Q. And is that a true and accurate depiction of that
11 video?

12 A. It is?

13 Q. Has it been materially altered in any way?

14 A. No.

15 MS. JOSEPH: Your Honor, at this time the State moves
16 to enter State's Exhibit Two, the interview from Hope
17 Haven into evidence?

18 MR. BROWN: Subject to my prior objection.

19 THE COURT: Subject to the prior objection.

20 (WHEREUPON, State's Exhibit No. 1 was previously
21 admitted into evidence.)

22 MS. JOSEPH: Thank you. And at this time, Your
23 Honor, I would like to publish this interview to the jury.

24 THE COURT: Certainly.

25 MR. WHETSEL: Your Honor, may I have a moment to sit

1 up?

2 THE COURT: You may.

3 (WHEREUPON, State's Exhibit Number Two was played for
4 the jury in open Court.)

5 BY MS. JOSEPH:

6 Q. Ms. Hefner, that's you in that video?

7 A. Yes.

8 Q. And [Minor] during that video he talked about -- he
9 makes reference to the fact that he had talked to his mom
10 about this. He had talked to his grandmother. Is it
11 unusual for the children you interview to talk to people
12 about what happened to them?

13 A. Not at all. You mean about the abuse?

14 Q. Yes.

15 A. Being victimized?

16 Q. Yes.

17 A. Usually, for smaller children it's more common for
18 them to disclose rather than older children because older
19 children have a lot of the guilt feelings, the shame, the
20 embarrassment ---

21 MR. BROWN: To that extent that calls for an expert's
22 opinion. I think that moves us to other evidentiary
23 procedures. It does ask for an opinion.

24 MS. JOSEPH: That's true. So I will just ask about
25 her own experience. So in your experience -- I can repeat

1 the question.

2 THE COURT: I'll sustain that objection.

3 MS. JOSEPH: Okay.

4 THE COURT: Go ahead.

5 MS. JOSEPH: So I will move on. Thank you.

6 BY MS. JOSEPH:

7 Q. And was [Minor]'s responses to your questions
8 typical for someone his age?

9 A. Yes.

10 Q. No further questions. Thank you?

11 MR. BROWN: I want to ask for a break if that will be
12 okay with the Court. If that's okay with the Court I have
13 a personal request.

14 THE COURT: Ladies and gentlemen, if any of you need
15 to take a break at any other time other than when it's
16 regularly scheduled you let me know also. Otherwise,
17 let's take a ten minute recess.

18 MR. BROWN: Thank you, Your Honor.

19 (WHEREUPON, the jury panel was excused from the
20 courtroom at 3:02 p.m.)

21 THE COURT: We will be in recess ten minutes.

22 MS. JOSEPH: Thank you, Your Honor.

23 MR. WHETSEL: Thank you very much.

24 (WHEREUPON, Court was in recess at 3:02 p.m. and
25 reconvenes at 3:15 p.m.)

1 (WHEREUPON, the witness returns to the witness
2 stand.)

3 MS. JOSEPH: Thank you, Your Honor.

4 THE COURT: Y'all ready for the jury?

5 MS. JOSEPH: Absolutely, Your Honor.

6 THE COURT: Okay. Bring them in.

7 (WHEREUPON, the jury panel enters the courtroom at
8 3:16 p.m.)

9 THE COURT: Welcome back, ladies and gentlemen.
10 Ready to resume with the examination of the witness.

11 MR. BROWN: May it please the Court, Your Honor.

12 THE COURT: Sure.

13 CROSS-EXAMINATION

14 BY MR. BROWN:

15 Q. How are you today, Ms. Hefner.

16 A. Fine.

17 Q. Let me ask you. Can you tell the jury a little bit
18 about the Children's Law Center?

19 A. The Children's Law Center is located in Columbia,
20 South Carolina. That is where I attended my training for
21 the R.A.T.A.C. training that was called Child First
22 Training. It was sponsored by the Children Law Center,
23 and it occurred at the Child Advocacy Center in Columbia.

24 Q. And let me say this. The Child Advocacy Center,
25 those are essentially State funded, you know that?

1 A. The one I worked at was non-profit.

2 Q. Right. Funded by the government, though?

3 A. Non-profit. No, it was funded by contributions,
4 personal contributions and grants.

5 Q. The Child Advocacy Center.

6 A. Yes.

7 Q. Hope Haven receives 25 percent of its funding from
8 the State, doesn't it?

9 A. Not that I'm aware of. Of course, I'm not really
10 sure about what their financial situation is. Now ---

11 Q. Y'all receive ---

12 A. I haven't been there in two years.

13 Q. Okay. Y'all receive SOVA funding? Do you know what
14 SOVA is?

15 A. Yes.

16 Q. Okay. Needless to say, State Office of Victim
17 Assistance?

18 A. Yes.

19 Q. Okay. So that is some State funding source?

20 A. Some. Some. Yes.

21 Q. Okay. All right. Do you know an Allison Foster?
22 Doctor Foster?

23 A. I've heard of Allison Foster. Yes.

24 Q. And she's affiliated with the Children's Law Center?

25 A. Correct.

1 Q. Okay. And part of the reason you go there is to get
2 training in forensic interviewing?

3 A. Correct.

4 Q. All right. And let me ask you. You've got a fair
5 amount beyond just stuff at the Children's Law Center?

6 A. Correct.

7 Q. Okay. Do you need to have that to do these
8 interviews at all?

9 A. Your continuing training, is that what you're asking?

10 Q. Well, do you need training to do forensic
11 interviewing or just there?

12 A. There is all kinds of on going new trends in forensic
13 interviewing, new research. Articles are published by
14 education theorist and psychologist that publish new
15 material about how children disclose, how -- about memory.
16 Yes, so it does require ongoing information.

17 Q. So it's not just training. It's ongoing training
18 that you have to have?

19 A. Correct.

20 Q. Okay. And suggestibility is an issue?

21 A. Yes.

22 Q. You ever heard of a situational demand
23 characteristics?

24 A. No.

25 Q. How about source monitoring or source attribution?

1 A. Source monitoring I have.

2 Q. Okay. And one of the questions you asked to

3 **Minor** involved the source of his knowledge of the
4 word, 'massage'. Do you remember asking him that?

5 A. Yes.

6 Q. Okay. And you asked him if he knew the word,
7 'massage' or where he learned that word or how he knew
8 that word?

9 A. Correct.

10 Q. Okay. He never gave you a source, did he?

11 A. No, he didn't.

12 Q. Is that a part of the developmental vulnerability
13 that leads to this concern about source attribution,
14 source memory?

15 A. It's part of the development of a child. It's
16 characteristic of a child. I don't know if I would refer
17 to it as a vulnerability. It's just characteristic of a
18 child.

19 Q. Well, let me ask you this. Is one characteristic of
20 a child that they're vulnerable to suggestion?

21 A. Yes.

22 Q. Okay. Is that why you have to be careful about
23 asking the right type of question?

24 A. Absolutely.

25 Q. Okay. And let me ask you a little bit about that

1 process. Are you aware of the multi-disciplinary team?

2 A. Yes.

3 Q. Okay. And are you aware of the team that was
4 involved in this case?

5 A. Yes.

6 Q. Okay. And the agency for law enforcement would have
7 been?

8 A. The Bluffton Police Department.

9 Q. Okay. And who is the person that was appointed from
10 the Department of Social Services?

11 A. I can't recall the source three years ago. I don't
12 recall who was the point person for Social Services.

13 Q. Do you have your file with you here today?

14 A. Not with the M.D.T. notes, no.

15 Q. Okay. Are you certain that there ever was D.S.S.
16 involvement in this case?

17 A. I'm not a -- no, I don't know what D.S.S, their
18 involvement was.

19 Q. Okay. All right. So you don't -- I'm just saying
20 you don't have any recall of D.S.S. action at all in this
21 case?

22 A. None.

23 Q. And there was an allegation or at least there are
24 facts that there is another child?

25 A. Yes.

1 Q. Okay. A young child?

2 A. Correct.

3 Q. And a child that still has contact with Travis? He
4 was out on bond?

5 A. That was [Minor]'s brother, the one year old,
6 correct.

7 Q. Right. Well ---

8 A. I don't know if he had contact with the Defendant. I
9 don't know.

10 Q. Right. And that's his child? I need you to answer.

11 A. I didn't know that.

12 Q. [Brother] []?

13 A. Correct. I didn't know that, okay.

14 Q. Justin Adams, Tabitha Jones.

15 A. I thought that was [Minor], [Minor]'s
16 father's child as well.

17 Q. Let's speak for a second about that. There is some
18 confusion at the end when you ask him about the dad and
19 his stepdad, and actually, Justin refers or [Minor]
20 refers to Justin as stepdad at the end of that video,
21 doesn't he?

22 A. I thought he referred to Poppo. Poppo and Nana.
23 Poppo.

24 Q. It's Tabitha's stepdad was Poppa?

25 A. Oh, okay.

1 Q. And he refers to Justin's stepdad, doesn't he?

2 A. Yes.

3 Q. And he refers to his real dad as dad in that video?

4 A. Correct.

5 Q. And is that the one he says been to jail more than
6 anyone else has been?

7 A. Correct.

8 Q. Okay. Because of stealing pills or medicine, getting
9 people drunk?

10 A. Correct.

11 Q. Okay. All right. And he actually seemed to have
12 some affection for his real father, didn't he?

13 A. It appears so.

14 Q. Okay. All right. Did you ever explore the
15 relationship or the dynamics with the family and his real
16 dad?

17 A. No. Not during the interview I did not.

18 Q. Okay. And let me ask you this. Y'all did talk a
19 little bit about his physical contact with his
20 step-grandfather?

21 A. Yes.

22 Q. Okay. And he talked about rubbing his legs, rubbing
23 his back?

24 A. Scratching his back, yes.

25 Q. And vice versa?

1 A. Correct.

2 Q. Okay. All right. And that one, and of course, the
3 video speaks for itself, [Minor] says that he rubs his
4 Poppa's legs?

5 A. Okay.

6 Q. Okay. The video speaks for itself, but do you recall
7 that part?

8 A. Yes.

9 Q. All right. Now, let me ask you about the minimum
10 facts interview. What does that mean?

11 A. From what I recall in my training minimum facts
12 interview is an interview where you ask a child just who,
13 what, when, and where. That's a minimum facts interview.

14 Q. Okay. And are roles split between, for instance,
15 trained interviewers like yourself and law enforcement?

16 A. Many times law enforcement does attend the
17 forensic interview training.

18 Q. Okay. Absolutely.

19 A. Many times.

20 Q. And let me ask you. What does the Child Advocacy --
21 does the Children's Law Center say about the division of
22 roles under multi-disciplinary team agreement?

23 A. I'm not sure what they say?

24 Q. May I approach?

25 A. Sure.

1 Q. Take a look at Defendant's One.

2 A. They just stress the importance of minimizing the
3 number of interviews on the child.

4 Q. And does it not indicate that the number of
5 investigative interviews should be limited to one wherever
6 possible?

7 A. That's the recommendation.

8 Q. Okay. And is actually the recommendation they site
9 from the American Prosecution Research Institute?

10 A. Correct. In a perfect world, yes, one interview.

11 Q. Okay. And would that interview involve things like
12 giving the children toys? Is that proper to give them a
13 reward at the beginning and end of the interview?

14 A. Not typically. At the beginning to give them a
15 reward could subject that you're bribing or in exchange
16 for disclosure?

17 Q. How about vilifying the person who is the subject of
18 the criminal investigation?

19 A. A good interview would be very neutral reserving
20 comment or judgment.

21 Q. And how about deputizing the child or making him a
22 junior police officer? Is that at an appropriate
23 distance?

24 A. Yes.

25 Q. To make ---

1 A. You know, you wouldn't, you know, ask a child for
2 disclosure in exchange for a promise or a reward. That
3 would be ill advised.

4 Q. Okay.

5 A. Forensic interviewers are strongly advised not to
6 make promises of gifts or treats or candy in exchange for
7 a disclosure.

8 Q. Okay. And let me ask you this. Did you notice the
9 junior officer sticker on [Minor]'s otherwise black
10 shirt that he's wearing in your interview?

11 A. Yes, I saw a sticker on his shirt.

12 Q. Okay. And do you know whether Investigator
13 Babkiewicz gave him that sticker at the meeting at Hope
14 Haven?

15 A. I do not know.

16 Q. Have you ever seen the interview that Lieutenant
17 Babkiewicz did with [Minor]?

18 A. No, I did not.

19 Q. Did you know that he had conducted a 27 minute
20 interview himself?

21 A. I did not know the length of the interview.

22 Q. And did he ever tell you he gave the child three
23 different stuffed animals?

24 A. He did not tell me that.

25 Q. And you asked a question about how [Minor] knew

1 that Justin had been arrested?

2 A. Correct.

3 Q. Okay. Why did that give you concern?

4 A. I wanted to know who -- asking children those
5 questions how they know is important to understand how
6 they know what they know. So just as I asked the
7 question, "How did you know that word, 'massage'?" because
8 it seemed a sophisticated word for a five year old. So I
9 wanted to understand how he knew that word and how he knew
10 about the Defendant being in jail.

11 Q. Is that something you tell the people that you
12 interview; that somebody has been arrested or locked up?

13 A. No.

14 Q. Do you think that's appropriate to do?

15 A. Typically, not. Again, it's best to keep the
16 interview as neutral as possible without judgment or
17 comments of that nature.

18 Q. Now, did [Minor] ever tell you any time you talked
19 to him, may not have been recorded, that there was any
20 type of ejaculate or semen involved?

21 A. He didn't use the words, 'ejaculate' or 'semen'.

22 Q. What did he use?

23 A. He said that there was pee.

24 Q. Okay?

25 A. He used the word, 'pee'.

1 Q. And did you took that to mean more than urine?

2 A. No. That's why I asked him if that occurred in the
3 bedroom as well.

4 Q. And you asked him what color?

5 A. Yes.

6 Q. All right. You never heard that that there was semen
7 or ejaculate.

8 A. He never used the words, 'semen or 'ejaculate.

9 Q. Okay. And did Lieutenant Babkiewicz -- did y'all
10 talk after the interview was over?

11 A. Did Lieutenant Babkiewicz and I speak?

12 Q. Yes, ma'am?

13 A. Yes.

14 Q. Okay.

15 A. He was present for the interview.

16 Q. And he was present watching on the screen?

17 A. Correct.

18 Q. And did you tell [Minor] that Lieutenant
19 Babkiewicz was watching on the camera?

20 A. No.

21 Q. And did you tell him -- did you ever tell his mom or
22 his nana that they could watch from the camera?

23 A. No.

24 Q. Okay. Would you ever have a child that's being
25 interviewed engage in more or less communication through

1 the camera while the interview is going on?

2 A. No.

3 Q. Would you ever tell the child, "Your mom's out there.
4 Wave at her?"

5 A. No.

6 Q. And why is that?

7 A. It's for a child to feel comfortable and at ease
8 during an interview. We always ask that the parents, the
9 caregivers not watch the interview and not be present. It
10 is to for the ease of the child to disclose without shame
11 or embarrassment.

12 Q. And is there ever concern -- children like to please,
13 don't they?

14 A. Yes.

15 Q. Okay. Now, is there any question about some
16 allegations involving the bed or bedroom area?

17 A. He did mention that.

18 Q. Okay. And I say that. If you look at Defendant's
19 One that I already gave you that Children's Law Packet.
20 Are you familiar with a child forensic interview
21 corroboration chart?

22 A. No, I don't recall that.

23 Q. Okay. So we don't have one of those in your folder
24 in this case?

25 A. I don't see it.

1 Q. Okay. On my Defense Exhibit One it's on Page 20.

2 A. Okay.

3 Q. And did Lieutenant Babkiewicz ever ask you how he
4 could help you with this chart?

5 A. No, he did not present this chart to me on the day of
6 the interview.

7 Q. Okay. And if we go back a few pages part of having a
8 multi-disciplinary team is to divide up the tasks?

9 A. Correct?

10 Q. So not everybody goes out to search the scene. Is
11 that fair to say?

12 A. Correct.

13 Q. And not everybody does the interview?

14 A. Correct.

15 Q. And not everybody does the prosecution?

16 A. That's right.

17 Q. Okay. So we've got that. All of us have a role
18 there. Who is it that followed back to try to corroborate
19 the claims that were made during the interview? Would
20 that be you or would that be law enforcement?

21 A. That would be -- that would not be Hope Haven as an
22 advocacy center. We work part of the investigation. We
23 simply provide a forensic interview and counseling, trauma
24 focused counseling, for the children.

25 Q. But there is no question that law enforcement plays a

1 role here; isn't that correct?

2 A. It was their case, law enforcement.

3 Q. Right. And so who would you expect to go out and do
4 the search to corroborate or to dispute the allegations?

5 A. I don't know. That would be their case. That
6 wouldn't not anything we discussed.

7 Q. And let me ask you this. If you go to Page 9 of that
8 report?

9 A. Yes.

10 Q. The first full paragraph. Again, D.S.S. What's the
11 Children's Law Center say about who is supposed to do that
12 thing?

13 A. It indicates D.S.S. and law enforcement.

14 Q. Okay. And they should take photographs of the crime
15 scene? That's Number Two?

16 A. Yes.

17 Q. Okay. And they should search the perpetrator's home?

18 A. Yes.

19 Q. And possibly looking for pornography?

20 A. Yes.

21 Q. And in fact that's one of the things you asked

22 **Minor**, isn't said?

23 A. Yes.

24 Q. "Have you ever seen anything that depicts nudity?"

25 A. Yes, I did.

1 Q. And he tells you he had a gun game that was Justin's
2 game?

3 A. Correct.

4 Q. They couldn't play [Minor]'s game because that have
5 to play Justin's game shooting people?

6 A. Right.

7 Q. All right. We have no idea what exactly that game
8 was, do you?

9 A. No, I don't.

10 Q. Okay. And he did say that that game had bad words in
11 it, and he just couldn't use those same bad words and say
12 it?

13 A. Correct.

14 Q. Okay. Some other things is go out an interview
15 witnesses include siblings or other relatives?

16 A. Yes.

17 Q. Okay. Are you aware of any interviews conducted of
18 the Adams'?

19 A. No, I am not.

20 Q. Do you think that's significant?

21 A. And, again, Hope Haven was there just to conduct the
22 interview and provide the counseling for [Minor].

23 Q. Did you -- are you aware of the extent of the
24 involvement the Adams' had with Justin and -- with

25 [Minor] and [Brother]?

1 A. No, I'm not.

2 Q. Did anybody ever suggest to you that that might be a
3 source of information?

4 A. No, they did not.

5 Q. At the end of this statement of the interview

6 **Minor** says, "If I don't tell the cops -- if I didn't
7 tell the cops he wouldn't go to jail," you recall that?

8 A. I didn't hear that at the end of the interview. I
9 did not hear that.

10 Q. Would you like me to play that back?

11 A. Sure.

12 MR. BROWN: It will take a second, Your Honor. I beg
13 the Court's indulgence.

14 (WHEREUPON, a portion of the video was played for the
15 jury in open Court.)

16 MR. BROWN: I apologize to the use of time. I'm
17 trying to find it.

18 (WHEREUPON, the video continued to be played for the
19 jury in open Court.)

20 BY MR. BROWN:

21 Q. If he didn't tell the cops Justin wouldn't go to jail
22 for it. Tell me a little bit that cause and effect on
23 that?

24 A. Say that again. I couldn't hear it. What.

25 Q. **Minor** says if he didn't tell the cops he wouldn't

1 go to jail for it?

2 A. Okay.

3 Q. It's more than just a factual recall, isn't it?

4 That's a causal discussion, isn't it?

5 A. Most likely. Yes.

6 Q. Okay. Cause it's not a fact he observed?

7 A. No.

8 Q. Cause he never saw Justin arrested?

9 A. Correct.

10 Q. Okay.

11 A. I think he's astute enough to know from what he
12 disclosed that there was a consequence.

13 Q. With -- this follows the discussion about how he told
14 his nana, he told his mother?

15 MR. BROWN: Correct.

16 Q. And then told law enforcement because if he didn't
17 Justin wouldn't go to jail? That's a series of questions
18 there.

19 MR. BROWN: I beg the Court's indulgence.

20 THE COURT: All right, sir.

21 BY MR. BROWN:

22 Q. Let me ask you this last thing. Does your interview
23 room zap anybody? Does it zap people that don't say what
24 they want?

25 A. Are you saying zap?

1 Q. Yes, ma'am?

2 A. No.

3 Q. Would you ever tell a child that if he didn't tell
4 the truth he would be zapped?

5 A. No. That would be strongly ill advised to tell a
6 child that.

7 Q. Thank you?

8 MR. BROWN: No further questions.

9 THE COURT: Redirect?

10 MS. JOSEPH: Thank you. May it please the Court.

11 REDIRECT EXAMINATION

12 BY MS. JOSEPH:

13 Q. Ms. Hefner, when you worked at Hope Haven you
14 conducted these interviews?

15 A. That is correct.

16 Q. And then after you were done or maybe before you were
17 done did you fill out a report?

18 A. Yes.

19 Q. And is that report just a form that every single
20 person fills out when they conduct a forensic interview?

21 A. When you saw, 'every single person'?

22 Q. At Hope Haven, sorry?

23 A. Correct. The forensic interviewers.

24 Q. And in fact it's a Hope Haven form? I'm looking at
25 it right now, and it says, 'Hope Haven' on it?

1 A. Yes.

2 Q. And you have that form in front of you; that is
3 correct?

4 A. I do.

5 Q. And can you read the title of Section One? It says,
6 "Section One," and what's under that?

7 A. Section One states, 'referral information'.

8 Q. Great. On that same first page you move your eyes do
9 down there is a bolded sentence towards the very bottom of
10 the page. What does that say?

11 A. "Documents reviewed prior to interview."

12 Q. And what documents did you review prior to this
13 interview?

14 A. That was the Bluffton Police Department Incident
15 Report.

16 Q. Okay. And then on the second page of the report --
17 sorry. I apologize. It's the third page of the report to
18 Question Six. Can you read Question Six and read your
19 answer?

20 A. "Have previous interviews been conducted. The
21 response is, 'Yes. The Bluffton Police Department briefly
22 interviewed [Minor] ."

23 Q. So you were aware that [Minor] had been interviewed
24 by the police?

25 A. Yes.

1 Q. And you made a note of it?

2 A. Yes.

3 Q. And this is the place in your report where that note
4 goes?

5 A. Correct.

6 Q. And you followed all Hope Haven procedures when you
7 did this interview?

8 A. Yes, I did.

9 Q. And that chart that Mr. Brown handed you earlier have
10 you ever seen that chart before?

11 A. Never.

12 Q. No further questions. Thank you, Ms. Hefner.

13 MR. BROWN: Very briefly.

14 THE COURT: All right.

15 RECROSS-EXAMINATION

16 BY MR. BROWN:

17 Q. And when we take a look back at that chart that chart
18 is an attachment to the children's law enforcement
19 document, isn't it?

20 A. Correct.

21 Q. Okay. They are more or less the authority in this
22 state?

23 A. Yes.

24 Q. They train all of y'all across the state?

25 A. Correct.

1 Q. And that chart appendix that they put on their
2 procedure for multi-disciplinary team, isn't it?

3 A. Correct.

4 Q. Thank you.

5 MS. JOSEPH: Your Honor, the State has no further
6 questions for this witness.

7 THE COURT: Thank you, ma'am.

8 MR. BROWN: I have no further questions. She's not
9 under my subpoena.

10 THE COURT: Thank you, ma'am. You may step down and
11 you are relieved from your subpoena.

12 MS. JOSEPH: Our next witness is Charles Bryant.
13 Your Honor, Mr. Bryant is in the restroom. Thank you,
14 Your Honor.

15 CHARLES BRYANT, after being duly sworn,
16 testified as follows:

17 CLERK OF COURT: State your name, first and last
18 name, and spell your last name for the court reporter.

19 THE WITNESS: Charles Bryant. B-R-Y-A-N-T.

20 DIRECT EXAMINATION

21 BY MS. JOSEPH:

22 Q. Hi, Mr. Bryant?

23 A. Good afternoon.

24 Q. Afternoon. You're a bit of a quiet speaker so I need
25 you to speak up, okay?

1 A. Okay. Sorry.

2 Q. Thank you. Mr. Bryant, how are you related to

3 [Minor] ?

4 A. He's my grandson.

5 Q. Okay. And is he your grandson by blood?

6 A. By marriage.

7 Q. By marriage. But you consider him your full
8 grandson?

9 A. Yes, ma'am.

10 Q. How long have you been in his life?

11 A. As long as he's been alive, eight years.

12 Q. He's eight years old?

13 A. Yes, ma'am.

14 Q. And you've been married to?

15 A. Trish Bryant for 25 -- it will be 25 years December
16 31st.

17 Q. You know more than most men. All right. Does
18 [Minor] live with you?

19 A. Yes, ma'am.

20 Q. And has he always lived with you?

21 A. Except for the time he lived in Pritcherville, and
22 that was -- otherwise, yes. When he was born he came to
23 our house and lived and was there until they moved to
24 Pritcherville.

25 Q. Okay. Was Pritcherville with Justin?

1 A. Yes, ma'am.

2 Q. Okay. And when Minor lives with you do you help
3 him get ready or do you help him at all?

4 A. I help him with homework and stuff like that. He's
5 in the third grade this year and an honor student and has
6 made me very proud. And, yes, I help him a lot of ways
7 like that as far as homework, sometimes getting dressed.
8 You know, the usual.

9 Q. And he lived with you before he was living with
10 Justin. So he lived with you when he was little?

11 A. Yes, ma'am, when he was born.

12 Q. Right. So when he was little did you help him get
13 dressed?

14 A. Get dressed, changed his diaper, the whole nine
15 yards.

16 Q. Did you help him in the shower?

17 A. Yes, ma'am.

18 Q. And what -- well, can you explain what helping him in
19 the shower looks like?

20 A. Well, when you -- when he was a baby we didn't put
21 him in the shower. Of course, we had a thing to wash him
22 there and change his diaper a couple hundred times before
23 he got potty trained. And after that when he finally got
24 of age where he didn't want to baths anymore, he wanted to
25 take a shower. So I had to show him, and he didn't like

1 the water hitting him in the head and just usual things
2 with a child.

3 Q. And I hate to ask this question, but did you ever put
4 your finger or your hand inside of his butt?

5 A. No.

6 Q. Okay. This is the horrible question. Now, did you
7 ever get back scratches from Minor ?

8 A. Yes, ma'am.

9 Q. Did you ever scratch his back?

10 A. Yes, ma'am.

11 Q. And did he ever rub your legs or your feet?

12 A. No.

13 Q. Did you rub his legs or his feet?

14 A. I rub his feet in particular because he's got growing
15 pains and his feet hurt. So I massage his feet.

16 Q. And I may have already asked you this, but what does
17 he call you?

18 A. I'm Poppa.

19 Q. Okay. You're Poppa. And what is your wife called?

20 A. Nana.

21 Q. Nana. All right. No further questions at this time.
22 Please speak up, you're doing a great job, for Mr. Brown's
23 questions.

24 A. Thank you.

25 MR. BROWN: May it please the Court.

1 THE COURT: Certainly.

2 (WHEREUPON, Defendant's Exhibit No. 14 was marked for
3 identification only.)

4 CROSS-EXAMINATION

5 BY MR. BROWN:

6 Q. Mr. Bryant, you recall meeting with the police on
7 December 7th of 2013?

8 A. Yes.

9 Q. You recall writing a statement?

10 A. Yes, sir.

11 MR. BROWN: If I may approach, Your Honor.

12 BY MR. BROWN:

13 Q. You review what's been marked as Defendant's Exhibit
14 14?

15 A. I have.

16 Q. Okay. In that -- does that statement -- does that
17 reflect your reporting of what you heard during the
18 discussion between your wife and [Minor] on
19 December 7th?

20 A. Yes.

21 Q. Okay. Anybody put these statements in there for you
22 or did you do that?

23 A. I did that.

24 Q. All right. And is it safe to say that when [Minor]
25 said he had a secret that your wife kept after him to talk

1 about it?

2 A. She kept asking him to -- what the secret was.

3 Q. Okay. Did you use in fact the phrase that she kept
4 after him?

5 A. I wouldn't I used the phrase, but ...

6 Q. Is that how you described it back then?

7 A. I said, "Here she kept on and he said."

8 Q. Fourth line below your name does it say, quote, she
9 keep after him?"

10 A. Yes.

11 Q. Okay. And then two lines down, it says that, "She
12 keep on," and he said that Justin Adams had been touching
13 him?

14 A. Yes.

15 Q. Okay. And that touching involved him using shampoo?

16 A. That's what I understand. Yes.

17 Q. Okay. How old -- I'm changing the subject. How old
18 was Minor when you were doing the leg massages?

19 A. We still do those to today.

20 Q. Okay.

21 A. Not leg massages, but foot massages.

22 Q. Okay. And that word, 'massage' who told y'all to do
23 the foot massage?

24 A. Nobody. He asked me to do them.

25 Q. Okay. He asked you to massage his feet?

1 A. Yes, cause he had growing pains. He has a lot of
2 pain right there in his feet. And he's growing up, and I
3 sit there and massage them with my thumbs, you know, on
4 the top of his foot.

5 Q. Is that something that would have been going on when
6 Justin was in the picture of your family?

7 A. No. I don't know. I wasn't there.

8 Q. Was that ---

9 A. No.

10 Q. --- in the household at the same time Justin was
11 living ---

12 A. No.

13 Q. --- either with y'all ---

14 A. No.

15 Q. --- or they were living alone?

16 A. No. This has been within the last year, year and a
17 half because of he's growing pretty quickly now.

18 Q. I want to make sure I understand this. There was no
19 massaging of his feet for growing pains that occurred
20 prior to Justin's arrest?

21 A. Not that I'm aware of. I don't remember.

22 Q. Okay. All right. Thank you very much.

23 MR. BROWN: No further questions. I'm sorry.

24 MS. JOSEPH: No further questions. The State would
25 ask that this witness be released.

1 MR. BROWN: Not subject to my subpoena.

2 THE COURT: You may step down, and you're excused
3 from your subpoena. Call your next witness.

4 COLLOQUY

5 MS. JOSEPH: Your Honor, the State's next witness is
6 not available until tomorrow morning, and I would ask that
7 we be allowed to break until then.

8 THE COURT: Don't have any other witness we can call?

9 MS. JOSEPH: No, Your Honor.

10 MR. BROWN: I would say before you send the jury home
11 we have legal matters that maybe we can talk about before
12 we send them home for the day. Just my suggestion for
13 economy.

14 THE COURT: Before we send the jury home?

15 MR. BROWN: Yes, sir. I don't mind giving a speaking
16 statement, but I'm trying not to.

17 THE COURT: All right, ladies and gentlemen ---

18 MR. BROWN: They may not have to come back in the
19 courtroom, but.

20 THE COURT: --- give me a couple of minutes to talk
21 to the attorneys. I'm going to ask you to step in the
22 jury room. I may send word and say, "Thank you so much.
23 See you at 9:30 tomorrow morning." But if I do that also
24 means between now and 9:30 don't let anybody talk to you
25 about the case. You don't talk to anybody about the case.

1 I will either see you back in here in a few minutes or
2 I'll send word to you in a few minutes.

3 (WHEREUPON, the jury was excused from the courtroom.)

4 THE COURT: Legal matters.

5 MS. JOSEPH: It's Mr. Brown's motion, Your Honor.

6 MR. BROWN: Well, it's more than that motion. They
7 want to put up a lady who did an examination with the
8 Child Advocacy Center, and her name is Chris Dolton, who
9 this has gone back and forth. There is a, for what it's
10 worth in only referencing it for purposes of identifying
11 it, there was a report that I got in I say early July of
12 this year from the lady that did a physical examination.

13 And I only point that out because they're going to
14 put her up, and I don't know if they're -- they talked
15 about before qualifying her as an expert. And the
16 Anderson case that deals with qualifications of a forensic
17 interview expert which I said we don't do in South
18 Carolina. And then they also talk about being err to use
19 an child abuse assessment expert, and they specifically
20 talk about the person who did the examination not being an
21 expert.

22 That kind of common. Psychiatrist, treating
23 psychiatrist, forensic psychiatrist. I'm not exactly
24 certain what they're going to officer Miss Dolton for.

25 THE COURT: Well, let's try to find out.

1 MS. JOSEPH: That's why I bring this up. Before the
2 jury -- I guess the jury could go home. I guess we're
3 going to rest and if they put her up or going to put her
4 up later would be tomorrow. But I just thought before we,
5 you know, if we waited. It ends up that they don't put
6 her up then we can rest in front of the jury today.

7 THE COURT: Or we can rest in the morning.

8 MR. BROWN: I didn't mean it that way. Just trying
9 to help the Court.

10 MS. JOSEPH: Two things, one, I do believe we should
11 send the jury home since even if we cannot use Ms. Dolton
12 as an expert it is the State's contention that she still
13 may have valuable testimony and we fully intend to put her
14 up anyway. So in that whether -- isn't that the question
15 of whether she's an expert is up in the air? It is our
16 intention that we're going to use her regardless.

17 THE COURT: Okay.

18 MS. JOSEPH: My second point is that believe that ---

19 MR. BROWN: That's fine.

20 MS. JOSEPH: --- we believe that she is an expert,
21 and this is what we intend for her to testify to.

22 In her report, first of all, she does forensic
23 interviews for children, medical exams. I mean she
24 examines the children's genitals and determines whether
25 they're abnormal, whether there is tearing, bruising, etc.

1 and photograph it as part of her report.

2 In her report she states that, "There are no findings
3 in this case." She then states in her report, because she
4 was explaining her findings in a brief paragraph, that
5 "Those findings are consistent with the disclosures that
6 the victim made to her." Namely, the victim is basically
7 describing a touching case, and those types of cases you
8 don't find tearing. You don't find bruising.

9 And it's a little bit of a late disclosure. Once
10 again, leading to why there would not be any tearing or
11 bruising. So when she uses the word, 'consistent' she was
12 basing that on her medical finding compared to what the
13 victim told her. And that's the testimony that we would
14 seek the elicited tomorrow. No more, no less.

15 THE COURT: All right. Go ahead.

16 MR. BROWN: I think some of it is more improper than
17 some other parts of it is improper, and I think that the
18 delayed report is going to be beyond her scope.

19 I say that. I don't have a CD. I don't know who the
20 lady is. She's a nurse at a local pediatric doctor's
21 office. And I'm not trying to sit around a long time,
22 well, that's protected. That's protected. That's
23 protected. I know the doctors office. I was a client to
24 one of the doctors there, so it's not like I'm saying that
25 she's a quack. I don't know that she's an expert in

1 delayed reporting. She's a nurse.

2 She's been trained and she works with the Child
3 Advocacy Center, and we're -- you know, maybe I'm better
4 off letting it in because it's not damning cause part of
5 our argument is this -- the idea of a touching allegation
6 doesn't produce trauma is not an expert thing. That's the
7 flip side of it. You don't put in an expert to testify to
8 something that is not going to aid the jury if they
9 already know it.

10 And there are plenty of cases that talk about that.
11 And so you've kind of got on one side, you know, delayed
12 report might allow the injury to heal. And I'm not sure
13 where we're getting the expertise on that because that
14 doesn't deal with the psychological issues of delayed
15 report.

16 And then scientific medical view as to healing and
17 than also the other one is a touching case would not have
18 any trauma. And as Judge Nettles also said when we first
19 talked about this you would think that just common sense.
20 And I say all that to say this isn't my first case in this
21 area. And, certainly, the word, 'consistent' gets kind
22 of -- it has this other meaning that6 somebody kind of
23 wants it to mean. It's consistent so it's corroboration.

24 I mean the fact that the sun rises in the east is as
25 consistent with my client's innocent -- innocence or

1 guilt. It doesn't prove anything. And then that's -- you
2 don't put people up -- that's why we don't let everybody
3 ---

4 THE COURT: All right. We'll continue this in a
5 minute. Tell you what. Let the jury go cause ---

6 MR. BROWN: Yes, sir. I'm sorry I made that
7 suggestion.

8 THE COURT: But let me do this. Does anybody also
9 object to me also asking the bailiff if the jurors when
10 they come back in the morning -- no. If the jurors before
11 they leave today to select a foreperson.

12 MS. JOSEPH: No objection.

13 MR. BROWN: No objection.

14 BAILIFF: Before they leave today?

15 THE COURT: Before they leave today ask if they can
16 select a foreperson. Once they leave -- once they do that
17 they can leave and see them back at 9:30 in the morning.

18 BAILIFF: 9:30, yes, sir.

19 THE COURT: Tell them the Judge said don't talk to
20 anybody about this case. Okay. Now back to the
21 Solicitor's response to the objection.

22 MS. JOSEPH: Oh, Your Honor, I believe that Mr. Brown
23 is arguing the type of argument that I would expect to
24 hear when I am in fact attempting to qualify her. She is
25 basically saying that she doesn't think the way that

1 disclosures are a part of her expertise, and he doesn't
2 believe that she can speak to consistent findings. We do
3 believe that. So I would like the chance to lay the
4 foundation for expertise and then allow him to do voir
5 dire on whether she's an expert in this field.

6 And, again, if the Court finds she's not, that's
7 fine. Just move forward with her testimony in a
8 non-expert capacity.

9 THE COURT: Which would be generally speaking what?

10 MS. JOSEPH: That she did a medical examine. There
11 were no findings. Period.

12 MR. BROWN: I think that's a factual observation,
13 and, obviously, you know, it's a little conclusory for
14 everybody to say it's a conclusion in life. I agree she
15 looked at his body and she saw normal.

16 MS. JOSEPH: Right.

17 MR. BROWN: I think that I do not object to that.

18 MS. JOSEPH: Right. And we want to put her on the
19 stand even if she's not an expert to show that medical
20 care was ---

21 THE COURT: I understand.

22 MR. BROWN: No objection to that. I would say this.
23 If you don't rule until the morning I'd like to know what
24 they're offering her tonight because I want to know what
25 she's being offered as an expert.

1 THE COURT: I agree.

2 MS. JOSEPH: A forensic expert medical -- forensic
3 medical exams. I sent her CV to Mr. Brown. I had it from
4 a previous case. I apologize to the Court for not giving
5 it to him earlier. And as far as I knew she has performed
6 over 400 forensic medical exams. That was very hard to
7 say, four hundred.

8 MR. BROWN: Four hundred forensics.

9 MS. JOSEPH: Forensics. Thank you, Your Honor.

10 MR. BROWN: And the only thing I can say right now is
11 that the medical part I don't dispute. She's been there
12 for a long time. I saw her when before she was there.
13 Actually, my family doctor shortly therefore. But we
14 don't doubt that she's a medical expert. The delayed
15 reporting stuff is a psychological issue in my opinion.

16 THE COURT: Well, I can see how it could be, but it's
17 not necessarily. Are we talking about two different
18 delayed reporting issues?

19 MS. JOSEPH: The idea is ---

20 THE COURT: Passage of time ---

21 MS. JOSEPH: Exactly.

22 THE COURT: --- is what you're talking about.

23 MS. JOSEPH: I'm not asking her ---

24 THE COURT: That's what she's talking about, I think.

25 MS. JOSEPH: Yes, Your Honor. Yes. I'm going to

1 stop talking. You're correct.

2 THE COURT: It's not delayed reporting. It's passage
3 of time.

4 MR. BROWN: I don't think she'll say injury heals
5 with the passage of time. I don't have a problem with
6 that. That's a minor ---

7 THE COURT: Yes.

8 MR. BROWN: I think that's common since. I don't
9 have a problem with her saying that.

10 MS. JOSEPH: Yes. That's exactly with I was trying
11 to say.

12 MR. BROWN: I don't mind her saying that without
13 being qualified as an expert. If that's what they're
14 limiting to, but she may talk about delayed reporting is a
15 phenomenon ---

16 THE COURT: No, I don't think she's ---

17 MS. JOSEPH: No, not ---

18 THE COURT: I haven't heard anything to indicate that
19 she's qualified to talk about that.

20 MS. JOSEPH: Right. Obviously.

21 MR. BROWN: Injuries heal is what she's going to talk
22 about.

23 MS. JOSEPH: She will be talking about injuries. She
24 will be talking about the victim's behavior in this case
25 namely why he acted the way he did. Why he chose to

1 report the way he did. Anything like that.

2 THE COURT: She's not?

3 MS. JOSEPH: Absolutely off the table.

4 THE COURT: That's right.

5 MS. JOSEPH: We need the find ---

6 MR. BROWN: Anderson is not directly on point. It
7 dealt with two different experts and it flipped on both of
8 those.

9 THE COURT: Okay.

10 MS. JOSEPH: Okay.

11 THE COURT: So I think we know what we're doing
12 tomorrow.

13 MS. JOSEPH: I think so, Your Honor.

14 MR. BROWN: And would you like to have a charge
15 conference?

16 THE COURT: Well ---

17 MR. BROWN: I mean we're a little early. There is
18 only one witness.

19 THE COURT: Let me -- I don't know. Let me find out.
20 Is this the last witness for the State?

21 MS. JOSEPH: This will be the last witness for the
22 State, yes. Yes, Your Honor.

23 THE COURT: Which could be a short witness?

24 MS. JOSEPH: I fully expect it to be a short witness,
25 but for Mr. Brown.

1 MR. BROWN: My exam is pretty short, contrary to
2 some.

3 THE COURT: All right. Which then brings us to --
4 where does that leave us?

5 MR. BROWN: Well, my client may need advisement
6 today. It may be good to advise him about his rights. I
7 told him Your Honor would do it. I prefer Your Honor to
8 actually advise him about his right to testify versus not.
9 I have done so. I have done so with his mother there.

10 THE COURT: I'm sure you have.

11 MR. BROWN: I would like you to do it. I told him ou
12 would do it, and I thought it might be an opportune time.
13 He can go home, and we have been thinking about our
14 presentation whether we do that or not.

15 THE COURT: It would actually shock me if you had not
16 discuss that with your client his right to testify. Well,
17 I have a script. I just found it.

18 MR. BROWN: Your Honor, may I get his mother in here,
19 too? I know they're going to go home and talk about it.
20 She was sequestered.

21 THE COURT: That's fine.

22 MR. BROWN: She's right outside. I can either run
23 around there or somebody.

24 THE COURT: What's her name?

25 MR. BROWN: Lisa Adams.

1 THE COURT: For the bailiff. All right. I'm
2 prepared to discuss with Mr. Justin Adams his right to
3 testify or not testify. And you are Mr. Justin Adams?

4 MR. ADAMS: Yes, sir, Your Honor.

5 THE COURT: I'm getting ready to explain some things
6 to you. I need for you to let me know if you don't
7 understand anything I say or if you wish for me to repeat
8 it or try to speak more clearly.

9 MR. ADAMS: Yes, sir.

10 THE COURT: But we have now reached the stage of the
11 proceedings where you have the right to claim the
12 protections given to you by the Fifth Amendment of the
13 Constitution of the United States in America which states
14 in part as follows:

15 No person should be compelled in any criminal case to
16 be a witness against himself. This means you can't be
17 required to testify. You have the right to testify, but
18 no one can make you testify. This is a personal right
19 that you have that no one can waive except you.

20 If you decide to testify, though, you would be
21 subject to the same rules that govern other witnesses and
22 you would be examined and cross examines only any relevant
23 issue in the case.

24 In addition, if you have any convictions that involve
25 false statement or crimes punishable by imprisonment for

1 more than one year and your -- and the Court determines
2 that the probative value of admitting this evidence
3 outweighs its prejudicial affect to you the Solicitor
4 would be able to introduce your record to attack your
5 creditability.

6 If you decide to testify the decision on your part
7 must be made freely and voluntarily with the knowledge of
8 the protections given to you by the Fifth Amendment and
9 the consequences of your decision to testify.

10 If you decide not to testify I will instruct the jury
11 the fact that they cannot give that fact that you didn't
12 testify any consideration whatsoever because there is to
13 be no prejudice to you because you do not testify. It's
14 left entirely up to you as to whether you do this.

15 You can discuss this with your family, friends, of
16 course, your attorney or anyone else, but the final
17 decision is up to you. Do you understand so far or thus
18 far what I've said?

19 MR. ADAMS: I do, Your Honor.

20 THE COURT: Do you have any questions about it at
21 all?

22 MR. ADAMS: I do not.

23 THE COURT: You don't have any questions?

24 MR. ADAMS: I do not.

25 THE COURT: Have you yet decided?

1 MR. ADAMS: I have not.

2 THE COURT: Well, we will revisit this in the
3 morning.

4 MR. ADAMS: Yes, sir. Thank you.

5 THE COURT: Assuming the case goes to the jury.

6 MR. BROWN: Yes, sir.

7 THE COURT: You know, at this stage I'm just assuming
8 that it will. As far as charges are considered.

9 MR. BROWN: Yes, sir.

10 THE COURT: Anybody have any special concerns?

11 MS. JOSEPH: We do. Your Honor, we'll print out a
12 copy if you will just give us one moment we can hand it to
13 you.

14 THE COURT: Okay.

15 MR. BROWN: And I'm going to be honest. I don't have
16 the main charge I'm going to ask, but it's going to
17 involve an unanimity issue as to the factual allegations
18 about which incident if any happened because they've
19 alleged there was more than one. And so you get into a
20 multiplicity question where you have multiple charges on
21 one charge. Multiple allegations in one charge.

22 Joe had drugs on January 5th and 20th and so forth.
23 The indictment on its face, I don't believe, violates that
24 multiplicity rule. And they presented evidence, and I
25 don't think the evidence was present -- wrongfully

1 presented.

2 THE COURT: All right. If you will prepare the
3 verdict form and I guess you could.

4 MR. BROWN: And, actually, I am still going back and
5 talk to another lawyer in Columbia and there is precedent
6 for a special verdict form.

7 THE COURT: If you will prepare it what would you
8 propose?

9 MR. BROWN: I have not yet figures that one out, Your
10 Honor. Mainly, unfortunately, because we don't have
11 access to the affidavits, so I have no way to reference.
12 That's the problem.

13 THE COURT: But, let's say ---

14 MR. BROWN: But that doesn't make -- but here's the
15 real problem about it. The fact that it's more vague
16 means it's harder to get a jury to be specific. They need
17 to be specific enough that the fact that the evidence is
18 really vague makes it even more likely that they won't
19 easily be able to agree on which incident occurred.

20 But so there are two things. One, the special
21 verdict form will avert the jury instruction and so I do
22 intend to offer Your Honor a jury instruction. There is a
23 case and I mentioned it, Richardson v Edwards. I don't
24 know his name. And I didn't put up the cite, but it's a
25 Supreme Court cite -- case, and he is the, quote, king of

1 the Vice Lord Undertakers in Chicago which is the way I
2 can always find that case.

3 And I don't mind sending it, it's a federal criminal
4 case involving the career criminal enterprise statute that
5 involves a -- there has to be a series of conduct, and
6 thankfully, essentially, it is RICO. It's not RICO. But
7 there has to be more than one act to make it a series of
8 acts to be a continuing enterprise.

9 And the U.S. Supreme Court reversed it's conviction
10 saying that the judge did need to charge that they were
11 unanimous as to which of his 24 years of activities in the
12 City of Chicago would constitute a continuing criminal
13 enterprise.

14 THE COURT: Okay. So you're going to have that case
15 for us?

16 MR. BROWN: I think that that case is a great
17 overview. It's a plurality of opinion. It's has horrible
18 ones where you've got ---

19 THE COURT: Okay. Let me hear what the Solicitor
20 says about your idea.

21 MS. JOSEPH: Well, Your Honor, I'm a bit confused.
22 It sounds like Mr. Brown is arguing two different things.
23 One, the time is an issue in this case. And once again I
24 do have a motion I prepared in case the Defense argued
25 that the indictment should be quashed on vagueness of the

1 date. But we have moved past that. The jury has been
2 sworn, so he can't really attack the indictment on
3 vagueness.

4 But my motion is still applicable because if you look
5 at the two major cases on this issue, namely Baker and
6 probably it's Cumbleson, both of those state that Baker
7 was a period of six years which was found to be over
8 broad. The other case, Your Honor, stated that a period
9 of several months or I'm sorry, three years was not too
10 indefinite.

11 THE COURT: Right.

12 MS. JOSEPH: So I think that the period of time can't
13 be attacked at this point because the jury has been sworn
14 in. In addition, our one year timeframe is fair given the
15 fact that we knew that [Minor] lived with the Defendant
16 for approximately that year. And based on the testimony
17 it just seems fair to us.

18 THE COURT: Okay.

19 MS. JOSEPH: It's not too vague.

20 THE COURT: All right.

21 MS. JOSEPH: And then the second thing or second
22 point, not thing. The second point, Your Honor, seems to
23 be he wants the jury to be unanimous about the indictment.
24 So the indictment has a to wit section in it, and it
25 states that, "Both fellatio," so oral or genital contact

1 happened.

2 In addition, his, the victim's, anus was penetrated.
3 Anal protrusion with a finger. Both these things are
4 alleged.

5 THE COURT: Okay.

6 MS. JOSEPH: And the indictment uses the word, 'and'.
7 The State would argue, Your Honor, that an indictment is
8 merely notice documents. And while the indictment exists
9 significantly more important is the statute in this case.
10 If you turn to the statute which is Section 16-3-655, and
11 we're dealing with Section One, it states that, "The actor
12 engaged in sexual battery with a victim who is less than
13 11 years of age."

14 And then, Your Honor, in the definition section of
15 the statute which is Section 16-3-651, sexual battery is
16 defined as, "Meaning sexual intercourse, cunnilingus,
17 fellatio, anal intercourse, or any intrusion, however
18 slight, of my part of a person's body or of any object in
19 the genital or anal opening of another person's body."

20 The statute is very clearly, or. We only have to
21 prove one of those actions whether it's the fellatio or
22 the penetration into the anal opening in order to meet the
23 definition of sexual battery under the statute.

24 THE COURT: Okay.

25 MS. JOSEPH: And, therefore, we do not agree with

1 this unanimous -- that this needs to be unanimous
2 consensus by the jury about what act the Defendant
3 perpetrated. The case that has been cited by the Defense
4 is a RICO case. It's not factually in line with this case
5 at all. In addition, the prosecution in that case was
6 alleging several actions over a course of a decade. One
7 again, that is not what is at issue here.

8 For those reasons, both because the case is not in
9 line with the facts here, and because while the indictment
10 is a notice document if you look at the statute, which is
11 what the Court will in fact charge, it is clear from the
12 statute that in order for sexual battery we only have to
13 prove one of those actions. Thank you, Your Honor.

14 THE COURT: All right. But you're going to get me a
15 case to look at?

16 MR. BROWN: I've got the cite, and I can give you the
17 broad whole ---

18 THE COURT: You don't have a copy of it?

19 MR. BROWN: Not here today with me, Your Honor. I
20 didn't know we were going to get exactly here. I actually
21 intend to bring you a proposed jury instruction in the
22 morning which is why I thought we better talk about it
23 today.

24 Let me start with the cite. It's Richardson v.
25 United States, and it's 526 US 813. And, short version, a

1 jury in Section 848- -- case of a career criminal
2 enterprise must unanimously agree that not only that the
3 Defendant committed some, quote, continuing series of
4 violations, but also about which specific violations made
5 up that series. And, again, the reason I tell you that
6 the case talks about not having to unanimously on the
7 means.

8 So if Joe Blow died as a result of a stab wound and a
9 gunshot wound the jury doesn't have to agree. They do
10 have to agree that, you know, that Jack the Ripper killed
11 John Doe if the indictment had two options or something
12 like that. The case does a great job of outlining
13 history. It talks about unanimity as the aggravating
14 circumstances or definitely significant. That is why I
15 mentioned that case. Not because it's very close to ours,
16 but because it gives a nice Scalia written breakdown of
17 all the law regarding the unanimity issue.

18 For what it's worth, unanimity is not required in
19 federal law or at least in the U.S. Constitution, but it
20 is in the State Constitution. So I will agree that that
21 case marginally doesn't have any prejudicial value to the
22 extent that unanimity is not priored by the Constitution.
23 It is required in this case. And I think, certainly, we
24 probably followed the same unanimity rules.

25 THE COURT: All right. We'll look at the case and

1 talk about the case and the pros and cons in the morning.

2 MR. BROWN: Yes, sir. And, essentially, I agree with
3 them that they put up different means of violation. So I
4 give you the perfect world would be on December 1st, you
5 know, Justin Adams did commit a sexual battery, you know,
6 by means of fellatio or digital penetration or digital
7 intrusion. That would be, you know, the most precise.

8 I'm not arguing that the indictment is defective
9 about an issue in pre-trial. I'm not arguing the law is
10 not on my side on that. And, but, so, I'm not saying that
11 the indictment needs anything done with it. Just that the
12 jury needs to be instructed that they have to be unanimous
13 about which violation. Not the means of the violation,
14 but it can't be when somebody says it was when they were
15 locked in the bathroom and his wacker was sticking out or
16 it was when they were in the bed.

17 And they -- I mean they have to agree which -- it
18 wasn't all one day. You know, these were distinct acts.
19 Then we've got the risk of multiplicity, and there is
20 South Carolina law on that.

21 THE COURT: Okay.

22 MS. JOSEPH: Your Honor, would you want to move past
23 this argument and want a copy of the Statute 16-03-655 or
24 the definition statute that I referenced earlier?

25 THE COURT: Well, perhaps I do.

1 MS. JOSEPH: Okay, Your Honor. I'm going to hand
2 both of those up to you, and I have a copy for Mr. Brown
3 as well.

4 THE COURT: The ---

5 MR. BROWN: And I can have my office, before Your
6 Honor leaves, bring us a copy of Richardson real fast.
7 That's not a problem. My office is right across the
8 street.

9 THE COURT: All right.

10 MR. BROWN: If you'd like me to just shoot an e-mail.

11 THE COURT: Shoot them.

12 MR. BROWN: Absolutely.

13 THE COURT: And, Solicitor, which -- you were talking
14 about which --

15 MS. JOSEPH: I'm just going to hand them up to you.

16 THE COURT: Well, there you go.

17 MS. JOSEPH: In addition, Your Honor, if I can hand
18 up our proposed jury instruction. Your Honor, if I can be
19 heard on this proposed jury instruction.

20 MR. BROWN: That case, there is a recent case on
21 this.

22 THE COURT: I thought there was, too.

23 MR. BROWN: It said you couldn't charge on the facts.

24 THE COURT: I thought it wasn't a -- okay. Go ahead.
25 Solicitor wants to be heard on it.

1 MR. BROWN: Yes, sir. I'm sorry.

2 MS. JOSEPH: Your Honor, the State is not aware of
3 this recent case that Mr. Brown provided us a copy.

4 MR. BROWN: Sure.

5 THE COURT: I thought there was a case on it, but I
6 can't tell you the name of the case. I thought that this
7 was very much like the issue of flight that you can argue?

8 MR. BROWN: Honestly, what I think happened is we
9 were originally date set in April. Set for July. The law
10 changed since then that we had back in April.

11 MS. JOSEPH: That's exactly what happened, Your
12 Honor.

13 MR. BROWN: I mean that's true. I'm not faulting
14 her. If she prepped this thing back in April, May or
15 June.

16 MS. JOSEPH: You can rip that up. Your Honor, so
17 instead of having jury instruction we would ask for
18 permission to argue to the jury.

19 THE COURT: Sure.

20 MS. JOSEPH: Thank you, Your Honor. At this time the
21 State has proposed jury instructions.

22 THE COURT: Normal standard child as a witness
23 charge?

24 MR. BROWN: I'm not familiar with that. Sound like
25 charging on the facts.

1 THE COURT: Well, let me just give it to you real
2 quick. It's in my charge book. Y'all tell me what
3 objections you have to it. If neither one of you want it?

4 MR. BROWN: You stating where.

5 THE COURT: I'm sorry?

6 MR. BROWN: You stating the reasonable doubt is a
7 doubt that would cause a reasonable person to act.

8 THE COURT: I give both.

9 MR. BROWN: Yes, sir. Yes.

10 THE COURT: So, short, do it and go. Testimony of
11 children, proposed, from, my charge book. "During this
12 trial you have heard the testimony from a child. Where a
13 witness is a child you must determine as with any witness
14 whether that testimony is believable. In deciding
15 believability you may consider not only matters that are
16 already discussed with you, but also may consider the age
17 of a child as well as the child's ability to observe and
18 remember the facts. And the child's ability to understand
19 and answer questions.

20 Because young children may not fully understand what
21 is happening here it is up to you to decide whether the
22 child has understood the seriousness of appearing as a
23 witness in the criminal trial, whether the child has
24 understood the questions. Whether the child has a good
25 memory and whether the child understands the difference

1 between lying and telling the truth.

2 In addition, young children may be influenced by the
3 way the questions are asked. It is up to you to decide
4 whether the child understood the questions asked."

5 MS. JOSEPH: Your Honor, there is no objection with
6 that.

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

8 THE COURT: I'm checking to see whether the statute
9 has been modified since this was put in the charge book,
10 so y'all listen.

11 MR. BROWN: Can we answer that in the morning, Your
12 Honor?

13 THE COURT: All right. Well, while we're on the
14 subject of proposed charge, criminal sexual conduct with a
15 minor in the first degree. The Defendant is charged with
16 first degree criminal sexual conduct with a minor. The
17 State must prove beyond a reasonable doubt that the
18 Defendant engaged in a sexual battery with the victim. A
19 sexual battery, sexual intersexual, cunnilingus, fellatio,
20 anal intercourse or any intrusion however slight of any
21 part of a person's body or any object into the genital or
22 anal openings of another person's body except when the
23 intrusion is accompanied for recognized medical treatment
24 or diagnostic purposes.

25 The State must then prove beyond a reasonable doubt

1 that the victim was less than 11 years of age at the time
2 of the sexual battery. Consent, willingness or
3 indifference on the part of the minor, if any, as to what
4 was taking place does not in any way affect the charge of
5 criminal sexual conduct with a minor because a minor under
6 the age of 14 cannot legally consent to sexual
7 intercourse." And does that straighten ---

8 MS. JOSEPH: That's perfect, Your Honor. The State
9 has no objection with that particular charge.

10 MR. BROWN: And the last words that you used was,
11 'sexual intercourse'?

12 THE COURT: Yes.

13 MS. JOSEPH: Okay.

14 MR. BROWN: In this case I don't know if there is an
15 allegation ---

16 THE COURT: Of sexual battery.

17 MR. BROWN: --- of sexual battery. I think ---

18 THE COURT: Sexual battery.

19 MS. JOSEPH: Yes, Your Honor. Sexual battery would
20 better fit the allegations.

21 MR. BROWN: The only question I've got is whether
22 consent has been raised. I think it's an accurate
23 statement of law. I just don't know this is a consent
24 case.

25 MS. JOSEPH: I agree that consent hasn't been raised.

1 If you want to strike through that portion.

2 THE COURT: I can.

3 MR. BROWN: Yeah, I think that's my only objection to
4 the rest of it. We're not arguing consent as a defense.

5 MS. JOSEPH: So I see, therefore, Your Honor, that
6 your charge ending under the medically recognized
7 treatment for diagnostic purposes; that is correct, Your
8 Honor?

9 THE COURT: No. Must prove beyond a reasonable doubt
10 that the victim was less than 11 years of age.

11 MS. JOSEPH: And then it goes into it. Yes, Your
12 Honor. Okay.

13 MR. BROWN: Criminal intent? It doesn't provide one
14 in the statute. But, surely, there has got to be
15 something in between just saying for purposes of the --
16 we're not -- I'm not conceding there were any acts. The
17 act of washing the child in the shower is not the same
18 as -- gosh, I guess I can say this. As my buddy used to
19 say, "If you washed it more than twice you're playing with
20 it." And I think the act is the same.

21 THE COURT: I don't know.

22 MR. BROWN: It's not the strict liability test
23 because it has to be criminal sexual conduct. It's the
24 word, 'criminal' that is leading here.

25 THE COURT: Well, consent doesn't have anything to do

1 with it. It's the age. It's just the age.

2 MR. BROWN: Correct. But he accidentally did
3 something, and I'm only using that as an example. There
4 has been some mens rea. I don't want to dispute that
5 there had to be some touching over time, but they took
6 showers together. So did in other people that gave the
7 child a bath -- I raised three kids. I've got three kids.
8 May I submit something?

9 THE COURT: I have an intent charge.

10 MR. BROWN: Yes, sir.

11 THE COURT: But the question is, and I guess we'll
12 hear from the Solicitor.

13 MS. JOSEPH: Your Honor, can you read the proposed
14 charge, please?

15 THE COURT: I'll do that.

16 MS. JOSEPH: Thank you, Your Honor.

17 THE COURT: And, Hattie, I will give you a copy of
18 all this if you like. This is a little longer. Well, "In
19 order to accomplish criminal liability criminal intent is
20 required. For example, the mental state required to be
21 proven by the State for a particular crime might be
22 purpose, intent, knowledge, recklessness or criminal
23 negligence.

24 Criminal intent must be proven by the State beyond a
25 reasonable doubt. Criminal intent is always a matter that

1 must be determined by the jury from the circumstances
2 surrounding certain situation. There is no way to prove
3 intent to a mathematical certainty. There is no way for
4 medical science to dissect a person's brain and determine
5 what the person had in mind.

6 The law says criminal intent may be inferred from the
7 circumstances shown to have existed. This is how you make
8 a determination of whether or not the element requiring
9 intent was present. It's not necessary to establish
10 intent by direct and positive evidence.

11 Intent maybe established by inference in the same way
12 as other facts are taken into consideration, the acts of
13 the parties and all facts and circumstances of the case.

14 Criminal intent is a mental state and conscious
15 wrongdoing. It's up to you to determine what the
16 Defendant intended to do based on the circumstances shown
17 to have existed. Criminal intent can arise from action or
18 a failure to act. It may arise from negligence or
19 recklessness or an indifference to duty or the
20 consequences that is considered by the law to be the
21 equivalent of criminal intent."

22 MS. JOSEPH: Your Honor, I think that that charge
23 does not fill the allegation in this case. This is a
24 touching case. In order for the jury to find the
25 Defendant guilty they have to believe that the Defendant

1 penetrated the victim's anal cavity.

2 In addition they have to believe ---

3 THE COURT: Or.

4 MS. JOSEPH: Or that he put the victim's penis in his
5 mouth or put he his own penis in the victim's mouth.
6 These are not -- this I believe would only apply in a
7 situation where accident is being argued. It is necessary
8 to mens rea to tie up in the allegations, and basically,
9 if he put his finger in the victim's butt then he was
10 acting, and therefore, he had the criminal intent.

11 MR. BROWN: I would say this. To the extent that
12 they argue that there was oral penetration with the penis
13 that if that in fact happened I can't argue in any way
14 with a straight face that that wasn't with criminal
15 intent. But as far as the touching of the private body
16 parts, and again, that's the part she's vague on the
17 child, and I'm not conceding that that has happened.

18 THE COURT: I understand.

19 MR. BROWN: I think it's undisputed that bath the
20 child; bathed or showered with family members; that's not
21 unusual. There has got to be some criminal intent. Some
22 aspect of it. The age part of it is strict liability.
23 There is no question about it.

24 THE COURT: I'm mean I'm just -- I'm not sure the
25 intent charge that I have here I just don't see it being

1 appropriate.

2 MR. BROWN: The first part of it I thought was pretty
3 normal. No matter what the intent rule is, intentional,
4 reckless, must be proven beyond a reasonable doubt.

5 THE COURT: Of course, you know, if we're going to do
6 that, you know, with beyond a reasonable doubt on
7 everything.

8 MR. BROWN: Whatever the criminal intent is it has to
9 be proven beyond a reasonable doubt. That part I think is
10 pretty -- I mean to the extent that it's stating the
11 obvious, we don't have to have various jury instructions.
12 But otherwise that element, the criminal intent element,
13 is not going to be in your jury instruction anywhere.
14 That's my concern.

15 THE COURT: Well, let's think about this.

16 MR. BROWN: Yes, sir.

17 THE COURT: Under the charge that we're going to
18 give, under the statute ---

19 MR. BROWN: Yes, sir.

20 THE COURT: --- that the touching doesn't apply, does
21 it?

22 MR. BROWN: You mean touching only part? Well,
23 absolutely because -- and that's what's of interest. I
24 was going to bring this up at some point in time. I
25 assume that they are not asking for a lessor included

1 offense?

2 THE COURT: I think not.

3 MR. BROWN: So it's got to be battery? It's got to
4 be penetration?

5 THE COURT: I think the Solicitor's already said
6 that.

7 MR. BROWN: Okay. Because there is ---

8 MS. JOSEPH: Yes, Your Honor.

9 MR. BROWN: And I say that because there is
10 discussion about it not being oral. The child doesn't
11 recall saying that. Doesn't recall there being oral.

12 THE COURT: Yes.

13 MR. BROWN: That's one of the two battery parts.

14 THE COURT: Okay.

15 MR. BROWN: If that's the case then we're down to the
16 whether or not the finger went inside the butt because
17 there are still other, and I just use the language,
18 massaging of the wacker, didn't get him anywhere on this.

19 THE COURT: That's right.

20 MR. BROWN: But the jury may believe that that
21 happened, but there was no oral sex.

22 THE COURT: But you're going to tell them ---

23 MR. BROWN: I absolutely ---

24 THE COURT: --- what I'm getting ready to charge
25 them --

1 MR. BROWN: --- requires penetration ---

2 THE COURT: Requires; that's right. You're going to
3 tell them probably ten times that that -- if they believe
4 that if there was a massaging of the wacker they must, and
5 that's the only thing that was done wrong, you're going to
6 tell them ---

7 MR. BROWN: And I don't know whether they were going
8 to ask for the lessor.

9 MS. JOSEPH: There is no lessor included, Your
10 Honor.

11 THE COURT: There are not?

12 MS. JOSEPH: No, there really isn't any lessor
13 included. If there was a lessor included I would be
14 arguing for a lessor included. There is no lessor.

15 THE COURT: I have no ---

16 MS. JOSEPH: I haven't been in --

17 THE COURT: I am not required -- I have not had any
18 requests for such a charge.

19 MR. BROWN: I understand. That's why I didn't
20 mention it. I mention it because the only think I wanted
21 to ask one thing. And so, Your Honor, to me there has to
22 be some type of criminal intent. I don't think a person
23 faces 25 to life on strict liability.

24 I understand the age and just like a drug
25 trafficking, facing 25 to 30, strict liability is the

1 weight of the drug, but you still have to knowingly
2 possess it and know the substance is illegal.

3 THE COURT: If the Court does not grant your request

4 ---

5 MR. BROWN: Yes.

6 THE COURT: --- for a special verdict ---

7 MR. BROWN: Yes, sir.

8 THE COURT: --- and we're going to talk about that
9 tomorrow ---

10 MR. BROWN: Yes, sir. Yes, sir.

11 THE COURT: --- then I may just give them the
12 indictment and have them make a finding of plain old
13 guilty, not guilty, on the back of the indictment, sign
14 it, and we don't need any ---

15 MR. BROWN: I don't ---

16 THE COURT: If we don't. If we don't.

17 MR. BROWN: I'm not necessarily oppose -- I think my
18 chance of getting a special verdict on lessor than your
19 instruction on unanimity I'm put my shoulder in one. Not
20 the other, Your Honor.

21 THE COURT: Okay. What else? You got somebody
22 bringing a case over?

23 MR. BROWN: And, actually, Mr. Whetsel is printing it
24 for me. I appreciate that, and I have this one copy. I
25 think he's printing two. I will hand it up. It is --

1 it's a splintered Supreme Court opinion, so it's not
2 necessarily a speed read. I don't mind saying that. I
3 think Judge Connard -- but it does cite shared with the
4 death penalty cases that dealt with unanimity on the
5 aggravated circumstances and things like that.

6 And so as I goes through that, and obviously, Your
7 Honor, that I think there is an hour or less of reading
8 for me to get through to be able to try to make the square
9 peg go through the square whole.

10 THE COURT: So at 9:15 in the morning we'll be back
11 after we've had an opportunity to all read.

12 MR. BROWN: Yes, sir.

13 THE COURT: Richardson.

14 MS. JOSEPH: Your Honor, if I may. I have read this
15 case.

16 THE COURT: Oh, you have? I haven't.

17 MS. JOSEPH: It's just that he mentioned it earlier
18 or not.

19 THE COURT: He did.

20 MS. JOSEPH: But just to be very clear not only do
21 the facts not matter or the fact not match. This is a
22 drug case. We're deal with a sexual assault case or a
23 sexual battery case. This is a case where the prosecution
24 is alleging numerous acts over a very long period of time.

25

1 THE COURT: Right.

2 MS. JOSEPH: This is not what's at issue here. In
3 addition, we have a statute here that says the word, 'or'.
4 It's the State's contention that we can argue if you
5 believe the Defendant does one of these things, and the
6 jury -- Juror One, who believes he did one of those two
7 things, and Two, may believe something else. And as long
8 as they believe a sexual battery has occurred, which is
9 required under the statute, because the definition of
10 sexual battery in a different section than we can get our
11 verdict.

12 And the fact that they not be unanimous on what was
13 the sexual battery only that a sexual battery occurred.
14 Here they were not unanimous on which of the acts that
15 constituted the underlying offense. That's not what the
16 issue is here.

17 MR. BROWN: I agree with her. They don't have to be
18 unanimous as to the means. Six can say it was digital
19 penetration. Six can say it was fellatio on the same
20 charged act. You don't get to charge a series in an
21 indictment. That's the multiplicity.

22 That's right back -- and, in fact if you read the law
23 on multiplicity, and I did this actually, I want to say
24 for Your Honor on a P.C.R. on a drug trafficking case,
25 which you ruled against me on it, I think the way you

1 signed the order, but it dealt with multiplicity. And in
2 fact, the cases either talk about multiplicity or
3 unanimity because it was the same issue in a charge that
4 is improperly multiplicatous by runs the risk of violating
5 the unanimity requirement, and that's what the law talks
6 about.

7 I agree that if the battery is alleged to be December
8 1st, and the child says, 'he massaged my wacker, he put
9 his mouth on my penis and he stuck his finger in my butt',
10 they don't have to agree. They just have to agree that
11 the battery occurred on that day. Not the means.
12 Richardson exactly talks about the that.

13 They don't have to agree on the means, but they do
14 have to agree on the act occurring. When I say, 'act',
15 I'm talking about a series of acts. I mean they weren't
16 through.

17 THE COURT: I'm going to read it.

18 MR. BROWN: Yes, sir.

19 THE COURT: Anything else?

20 MR. BROWN: Nothing, Your Honor.

21 THE COURT: 9:15.

22 MR. BROWN: Yes, sir.

23 MS. JOSEPH: Thank you, Your Honor.

24 MR. BROWN: Thank you, Your Honor.

25 END OF TRANSCRIPT OF RECORD

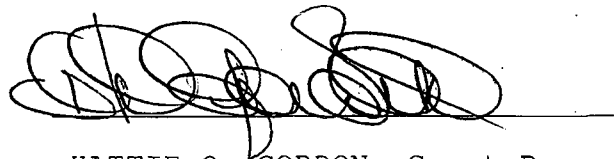
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

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
Beaufort County, South Carolina, on the 20th day of
September, 2016.

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

October 5, 2017

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

HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF BEAUFORT) 2014-GS-07-00021

STATE OF SOUTH CAROLINA)
) PLAINTIFF
) vs.) TRANSCRIPT OF RECORD
)) VOLUME III OF III
JUSTIN ADAMS)
) DEFENDANT

September 19-21, 2016
Beaufort, South Carolina

B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH, JUDGE; and a jury.

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

ALEXANDRA M. JOSEPH, ASSISTANT SOLICITOR
Attorney for the State

DUSTIN WHETSEL, ASSISTANT SOLICITOR
Attorney for the State

JAMES A. BROWN, JR., PUBLIC DEFENDER
Attorney for the Defendant

KRISTIN DALTON,

HATTIE O. GORDON
Circuit Court Reporter

COLLOQUY

MR. BROWN: Thank you, Your Honor. This is upon request. If I may hand this up. Defendant Jury Instruction Proposed Number One and mark it. So I'm going to hand you a copy.

MS. JOSEPH: The State has no objection to this charge.

THE COURT: All right. And it's likely that we will charge it.

(WHEREUPON, Court's Exhibit No. 4 was marked for identification and received into evidence.)

MR. BROWN: The second is the specific unanimity requirement, I don't know If Your Honor has got the copy of that. Defendant's Proposed Jury Instruction Number Two.

(WHEREUPON, Court's Exhibit No. 5 was marked for identification and received into evidence.)

MS. JOSEPH: I can give you my copy, Your Honor.

THE COURT: I haven't seen it.

MR. BROWN: And, Your Honor, it is marked as Court's Exhibit Five. It is something that I drafted after reading a bunch of cases including, and I must back up. I've got my inference and implication wrong so to speak. I called it multiplicity yesterday. Duplicity. Multiplicity is charging the same conduct more than one

1 count. So possession with intent to distribute drugs on
2 Count One for drugs in his pocket -- for cocaine in his
3 pocket and charge in Count Two with possession -- simple
4 possession for the same drugs is a separate count that
5 would not be proper as being multiplicatous.

6 MS. JOSEPH: That's not what the issue is.

7 MR. BROWN: That's correct. We're dealing with
8 duplicity.

9 MS. JOSEPH: And that's not what the issues say.

10 MR. BROWN: Then I submit that, and I have a slew of
11 cases starting with State v. Samuels, which is a South
12 Carolina case penned by Justice Hearn and it's got a
13 nice, and I've got copies as well since this is my motion,
14 and long story short, let's see. "Duplicity is ill
15 favored quality in both life and the law." The way
16 Justice Hearn begins it.

17 And the best way I can say because I supported this
18 with -- and, unfortunate, the Fourth Circuit is not the
19 most prolific of circuits on this. The Fifth Circuit has
20 been very prolific about it. And essentially, as I've
21 list it cause there has to be a requirement of substantial
22 agreement as to principle, factual element underlying a
23 specific offense.

24 There is a prerequisite of the jury's consensus as to
25 the Defendant's course of action. And in these cases,

1 Your Honor, that I'm going to hand up, and for what it's
2 worth, it's going straight to Samuels. Samuels dealt with
3 one charge. Essentially, an assault charge against two
4 people. And they found that there was duplicity. They
5 charged two different counts, two separate and distinct
6 criminal acts. Each one of which would be sufficient, but
7 they charged them both in one count.

8 But they applied Fourth Circuit precedent that says
9 that, "If there is no prejudice you don't get a reversal."
10 They found in this case, citing the same Fourth Circuit
11 case, that the prejudice can be corrected -- or any
12 prejudice can be eliminated by an appropriate jury
13 instruction. And in this case it was both -- in the
14 Samuels' case the judge gave both a jury instruction and a
15 special verdict form.

16 And in that case they said that the jury had to be
17 unanimous as to whether the assault was against Alleged
18 Victim A or Alleged Victim B. That's and unfortunately, I
19 can only cite from my page section. I handed you my copy
20 of it which is the West Law copy of Samuels. And if you
21 look at Page Four of that Samuels case, beginning with
22 Head Notice Five on Page Four. It's the last paragraph in
23 the second column.

24 They talk about in spite of duplicity the actions did
25 not prejudice him because a duplicitous indictment

1 potential prejudice can cure from a jury instruction and
2 use of a special verdict. And in that -- in this case,
3 the Samuels' trial, the circuit court instructed the jury,
4 "A guilty verdict requires unanimous agreement among the
5 jurors that Samuels assaulted Daniels, or in agreement he
6 assaulted Speaks." They also employed a special verbal
7 form requiring them to make special findings.

8 And that case is a little easier than this one
9 because it's two acts and two victims. So there is an
10 assault against one, possible handgun somebody. And then
11 there is an assault against the other being struck by that
12 same handgun. So there are two different acts, and there
13 are two different people charged in one count.

14 Now, if I can turn to what I believe is the leading
15 case which is United States v. Holly. It's 1991 case from
16 the Fifth Circuit. In that case the Fifth Circuit held,
17 quote, that failure to give the jury an animosity charge
18 is reversible error. And in that case, Your Honor, he was
19 charged with perjury.

20 And what was interesting is that they put one hand
21 saying that he committed perjury in a statement and then
22 asserted at trial that there were multiple false
23 statements contained within that one statement. And they
24 actually, if you've got to go through, even actually
25 pointed to some including the paragraph on the counts as

1 well as some of the underlying factual stuff.

2 The short version, they talked about some cases that
3 only require a general unanimity requirement and some that
4 require a specific unanimity requirement, Your Honor. And
5 there is some other things there. Unanimously appears on
6 my Page Five under the B Section. It says that "Unanimity
7 if you go to the quoted paragraph on the second column,
8 the last full paragraph, "In the routine case the general
9 unanimity instruction will ensure the jury looks for the
10 factual -- factual basis for a conviction even when the
11 indictment alleges numerous factual basis for liability.

12 Now, such instruction will be inadequate to protect
13 the Defendant's constitutional rights to a unanimous
14 verdict where there exist a genuine risk that the jury is
15 confused or that a conviction may occur as the result of
16 different jurors concluding that the Defendant committed
17 different acts."

18 And that's exactly the same issue present in Samuels,
19 and that case did not have reversal on it because it was
20 cured by the jury instruction. I have other cases
21 supporting it. Bens is one of the cases that is
22 repeatedly cited as well as Gibson. They are both older.
23 They are both Fifth Circuit cases. Bens was from 1964.
24 Bens was quoted in Gibson which is quoted in Holland.
25 Gibson is from 1977, and for what it's worth, every one of

1 those cases resulted in a reversal on this issue. And,
2 again, Samuels conviction was saved because of the jury
3 instruction.

4 Now, I'm going to be candid with Your Honor. I
5 cannot envision, because of the lack of detail in the
6 testimony, how I would create a special verdict form
7 because I don't know how to reference the different acts.
8 I can say the day they were in the shower with the door
9 locked, guilty or not guilty. Or the day that they were
10 in the bedroom, guilty or not guilty. But there is not
11 sufficient detail.

12 Now, at the end of the State's case I'm going to urge
13 that that problem should lead to a directed verdict unless
14 I hear something more. Because unlike Samuels I can't be
15 cured by that special verdict form. But on the other
16 hand, Your Honor, the other cases don't -- the Fifth
17 Circuit cases don't have specific verdicts, but they do
18 have the jury instruction. And that is true in all four
19 of those cases. You will see reference to the Shad case.

20 THE COURT: Do we know if the State objects to
21 Proposal Number Two?

22 MR. BROWN: I don't know, Your Honor.

23 MS. JOSEPH: The State does object to Proposal Number
24 Two?

25 THE COURT: Okay.

1 MS. JOSEPH: And, in addition, because he didn't give
2 me a chance to speak the State does object to a special
3 verdict form.

4 THE COURT: Okay.

5 MR. BROWN: And for what it's worth, Your Honor, I
6 drafted this. I went through all of those cases. I went
7 through 11th Circuit cases. I went through Fourth Circuit
8 cases. Unfortunately, nobody helped me out by including
9 the proposed instructions that weren't charged which led
10 to the reversals.

11 THE COURT: Okay.

12 MR. BROWN: But I did list this language -- parts of
13 this language out of the cases, and I don't know how else
14 to say it. I refer to it as prohibited acts or conduct.
15 I don't know how else to instruct the jury because here is
16 what we do know. The law is clear. They can't say, and
17 I'll make up a date so we don't know them. Some jurors
18 can't say on November 15th when Tabitha came home with the
19 door locked that six jurors say he's guilty of C.S.C.
20 first or sexual battery for date and then six jurors say
21 there was a sexual battery on a different date when mom
22 was in the kitchen.

23 And that's clearly not the same day. She's not in
24 the kitchen on the same day she comes home from work
25 early. And when she's in the kitchen the door is unlocked

1 was the testimony. And those are, and I'll say this,
2 those are separate and distinct allegations. It might
3 suffice -- I might concede my directed verdict motion. It
4 might suffice for a jury verdict. Therefore, getting to
5 the jury. Those are not -- and the way it would be
6 charged if we knew dates.

7 Essentially, Judge, Justin Adams stole \$500 from the
8 Quickie Mart on November 1st. And he stole \$500 from the
9 Quickie Mart on December 1st. And I think better practice
10 would be charge as Count One and Count Two. And if for
11 some reason they can join together that would be
12 different.

13 I didn't object to joinder here, and I've got to
14 point this out, Your Honor, they do not allege a pattern
15 of different acts. And if Your Honor would take reference
16 to that indictment where it says, 'he did commit -- and
17 the article that's used is 'a'; that he did commit a
18 sexual battery. And then one.

19 THE COURT: All right.

20 MR. BROWN: And I've seen indictments that allege
21 that over the course of how many years touched the child a
22 whole bunch.

23 THE COURT: All right. Anything else on Defendant's
24 Request Number Two? Anything else, Mr. Brown?

25 MR. BROWN: No, Your Honor. If I can cite some of

1 the cases. Like I said they reference their circular --
2 they reference each other. So I suggest Holly. Holly is
3 the most recent of the three Fifth Circuit cases. There
4 are Fifth Circuit case -- there aren't Fifth Circuit cases
5 that reference Samuels. Not one of my three, but the
6 proposition is the same.

7 THE COURT: All right.

8 MR. BROWN: And so unless Your Honor needs more
9 specific legal analysis.

10 THE COURT: Well, let me hear what the State has to
11 say, and we may come back and revisit it.

12 MR. BROWN: Yes, sir. Yes, sir. Thank you.

13 MS. JOSEPH: Your Honor, Mr. Brown's two cases, I'm
14 handing those up to Your Honor as well if I may approach.
15 However, Your Honor, before I address the cases that I
16 handed up to you, and before I address the case law that
17 Mr. Brown has discussed I want to first renew the State's
18 objection to the special verdict form. I also want to
19 draw attention to the fact ---

20 THE COURT: Let me make sure I understand. Is there
21 a request for a special verdict form?

22 MR. BROWN: I haven't drafted one.

23 THE COURT: All right.

24 MS. JOSEPH: All right. I also want to note that
25 time is not an element of the offense in this case. Your

1 Honor, the State views this as a back door attempt to
2 attack the indictments in this case. That moment has
3 passed. Once the jury is sworn the Defense's opportunity
4 to attack the indictment has passed. So the fact that
5 he's pointing to the indefiniteness term of our indictment
6 and the indefiniteness or the vagueness of time, that
7 moment has passed.

8 I have, however, chosen to respond to Defense's
9 motion even though I feel that this is a back door attempt
10 to attack the indictment. First, Your Honor, I give you
11 State v. Tumbleson. In that case, Your Honor, which was a
12 South Carolina case, the indictment was challenged as
13 being over broad in terms of a time limit. Here there
14 were four indictments, but it still a series of acts that
15 result in a C.S.C. case.

16 And the fact that numerous acts were alleged in each
17 indictment was not a problem, and it was over a three year
18 period of time. That indictment was properly attacked
19 prior to jury being sworn in, and it was found that three
20 years was not overly broad such that the Defense could not
21 properly put up a defense.

22 In addition, Your Honor, I handed you State v.
23 Sheppard. This is another South Carolina case that is on
24 point. It's an earlier case, a 1966 case. And just for
25 clarity sake, it's a D.U.I. case. It's not a case that

1 deals with criminal sexual conduct. In this case, Your
2 Honor, if you turn to Page Two. It's a short decision.
3 At the bottom of Page Two in the opinion section it
4 states, "In this situation is well settled that an
5 indictment is not duplicitous for charging the accused in
6 conjunctive terms with having committed the offense by
7 more than one means specified by the statute."

8 Your Honor, the State contends that this case is
9 perfectly on point and that the jury does not have to be
10 unanimous about what act constitutes sexual battery.

11 However, at this time the State is going to address
12 the cases that were referenced by the Defense. First --
13 or not first. In random order we have State v. Samuels.
14 This case can be clearly and swiftly distinguished because
15 in this case the Defendant was charged in one indictment
16 with perpetrating assault against two victims. And if he
17 had been found guilty he would have been found guilty of
18 that one indictment but it would have resulted in him
19 being found guilty of two offenses.

20 That is not possible in this case. If the Defendant
21 is found guilty of fellatio and anal penetration in this
22 case he is not liable of being found guilty of two C.S.C.
23 with a minor convictions.

24 In addition, Your Honor, in the Holly case while the
25 State has not had an opportunity to actually review that

1 decision I would simply point out that that is persuasive
2 authority Fifth Circuit case.

3 And, finally, Your Honor, turning to the Richardson
4 case that was discussed in some depth yesterday, I would
5 say that first and foremost the term, 'series' is in
6 dispute in the Richardson case. The federal government in
7 that case had to prove the Defendant perpetrated a series
8 of events. The word, 'series' is not in the criminal
9 sexual conduct statute in South Carolina. In fact the
10 term, 'sexual battery' is clearly defined in the statute
11 and the word, 'or' is clearly in that section statute. So
12 we clearly have our marching order on what we have to
13 prove.

14 In addition, Your Honor, sexual battery is an element
15 of the offense that the Defendant is charged with, and
16 Richardson v. the United States is very clear that the --
17 if you turn, sorry, to Page Seven of the decision. It's
18 the bottom left paragraph. I'm going to use the analogy
19 used by the Court.

20 "Where for example an element of robbery is force or
21 threat of force some jurors might conclude that he used a
22 knife to create the threat. Others might conclude he used
23 a gun. But that disagreement and disagreement about means
24 would not matter as long as all 12 jurors unanimously
25 concluded that the government has proved the necessary

1 related elements, namely that the Defendant threatened
2 force."

3 Here the necessary element is sexual battery. The
4 means is fellatio or anal penetration. And the State is
5 only tasked with proving that a sexual battery occurred
6 and therefore, the jury does not have to be unanimous.
7 They should not be given instructions on being unanimous,
8 and a traditional jury form should be sent out with the
9 jury.

10 Finally -- sorry. I'm not done. I just want to turn
11 to the real world consequences of your decisions here.
12 Just as Mr. Brown admitted that he wouldn't know how to
13 craft a special verdict form in this case, if you were to
14 order that the jury be unanimous in this case criminal
15 sexual conduct cases involving minors would be almost
16 impossible to prove.

17 It is very difficult to get a specific timeline from
18 a child under the age of six. It is very difficult to get
19 them to say even where events occurred. And, therefore,
20 we ask you not find that unanimity is required. Thank
21 you, Your Honor.

22 MR. BROWN: Your Honor, the meat of the analysis in
23 Holly, Holly cites Bens and then Gibson again. I don't
24 now how else to say it. We're not -- the time issue is
25 not on our side, and so we're not objecting to the

1 timeframe. But the testimony here has not been one event.
2 The testimony has been that -- as to more than one date
3 that they alleged some touching. And if you notice in
4 Holly, Holly speaks to exactly what I just said.

5 Holly contends each count, because he was charged in
6 more than one count, but each count alleges multiple false
7 statements knowingly and materially made so that each
8 separate count or each separate statement contained within
9 that one count is sufficient basis for a violation.

10 So, in other words, if Justin makes a nibble on his
11 penis one day and that constitutes a sexual battery then
12 that date is a violation sufficient to convict him. If on
13 another date he anally penetrated him with his finger that
14 would be in itself sufficient to be a sexual battery. But
15 the law is clear. I don't -- I'll be honest. I haven't
16 heard the prosecutor speak to it so I assume they're in
17 agreement:

18 There has to be unanimity as to which act. That's
19 the phrase used in the court cases which act that he did.
20 Now, I'm not saying that they can't be charged as
21 alternate means. That's the Sheppard case. Sheppard
22 doesn't give a date because there is no date issued. On
23 the day that Sheppard was driving they think he was under
24 the influence of drugs and alcohol, and those are all
25 alternative means. They charged alternative means here,

1 and for what it's the worth, Judge, on the face of the
2 indictment it does not charge severed incidents. The
3 indictment says, "A sexual battery," and I do plan to have
4 a directed verdict motion as to that.

5 But what they've got now is proof of more than one
6 date of sexual battery that has been offered to the jury,
7 and the fact that it's hard for them to convict because
8 the evidence is not clear that is exactly the question
9 that the jury is supposed to resolve. And the fact that
10 there is less evidence doesn't mean that the scales get
11 tilted in their favor. That's not the law.

12 Because young children have problems talking about
13 more than one event. I didn't even hear them say that.
14 They just said the time factor. I've never objected to
15 the timeframe. Time is not an element of the offense. We
16 agree with that. It's not a notice issue. We know what
17 they're saying; that there was a battery.

18 And, Your Honor, again Holly, Gibson -- I mean the
19 Holly case, the Gibson Case, the Mens case all discuss it.
20 They are all very on point. Their indictment is very
21 specific. This one is not, but it doesn't free us from
22 the duplicity concern. While Samuels is the first real
23 case analysis on duplicatousness in South Carolina these
24 I'd say are indictment type issues, but not the
25 duplicitous issue.

1 Unfortunately for me and Mr. Adams and Your Honor and
2 everybody else it has both multiple acts, an assault with
3 the pistol being pointed and an assault with the person
4 being pistol whipped. Those are separate acts. That's
5 what we have here is duplicitous. But, unfortunately,
6 that case involves separate acts towards separate victims,
7 too. So it's hard to see what the court would have done
8 pointing a pistol at one person and then pistol whipping
9 them.

10 I would also suggest this. They do not allege that
11 that was a single course of conduct. The proof offered is
12 that there was a sexual battery on unknown date one.
13 There is a sexual battery unknown date two. They're not
14 the same dates. And it's very clear the child is talking
15 about my mom is in the room and then in the shower. Mom
16 is in the kitchen, and they're in the bedroom or mom's at
17 work and comes home early and the door is locked. Those
18 all all different incidents that they have to agree.

19 If I knew how to pinpoint those somehow, if it was
20 you have to agree -- I can do a special verdict form --
21 you have to agree unanimously was the sexual conduct at
22 the Palmetto Bluff residence or the Fairfax Street
23 residence. But they made all the allegations at an
24 unknown time at the same location.

25 And, Your Honor, like I said the Court is aware of

1 the recent -- I mean the higher courts are aware this is a
2 concern, and for that matter -- for that reason we believe
3 that our instruction -- and, Your Honor, I did the best I
4 could to draft that instruction. I'm certainly open to
5 modification of the wording. I would be remiss if I
6 didn't propose something, and that's why I put both acts
7 or conduct because, you know, I'm trying to fit it, you
8 know, the cases use the word, 'acts', A-C-T-S.

9 And so that's why I put that in there. I through
10 conduct in. You know, I don't know if that makes it
11 better or worse.

12 THE COURT: All right. Thank you, Mr. Brown.

13 MR. BROWN: Thank you.

14 THE COURT: Anything in reply?

15 MS. JOSEPH: Nothing in reply, Your Honor.

16 THE COURT: All right. The Court agrees with the
17 argument and position of the State and denies Defense's
18 request for Jury Instruction Number Two. Anything else?

19 MR. BROWN: Yes, sir. I have a mens rea request.
20 And I will start by saying this, I can find no C.S.C. with
21 a minor cases that discuss mens rea other than to age.
22 And I would cite two cases that talk about a general mens
23 rea requirement when the allegations are an offense that's
24 valid in se, I think, according to valid prohibitum. The
25 difference being that one is an immoral act in itself.

1 And if it's an immoral act in itself, which is what
2 we have here, let's say going 56 in a 55 which is a valid
3 prohibitum the law requires mens rea. And for that I
4 would cite, and I've got two cases. There is the general
5 proposition under State v. Fergusson as well as -- as well
6 as the now unpublished -- it's a little unique, State v.
7 Mimms. And it's unpublished. There are rules generally
8 regarding citing unpublished decisions. Our Appellate
9 Court rules.

10 And so if there is a finding, Your Honor, it is worth
11 pointing out that at one point it was unpublished, and
12 then it was depublished. Pretty unusual step, but that's
13 also goes and talks about mens rea issues. And they talk
14 about common law statutes, etc.

15 And, Your Honor, we just point out that this is a
16 case that can have an act that can be criminal and done in
17 a way that is not criminal. There is no question, and I'm
18 not trying to be graphic, I have three children; that to
19 wash a child's butt that's dirty because he's messing up
20 his pants or he doesn't use soap -- we've heard that
21 testimony here. Didn't like to get his hair wet. Didn't
22 like to clean himself well which that is kind of abnormal
23 for a child. I think my kid's middle school -- take the
24 top and wet the top of their heads and say that they wash
25 their hair.

1 What we've got here there is nothing necessarily
2 criminal about cleaning a child's -- I don't know how else
3 to say it, anis cavity. I'm not talking about probing it,
4 but there is definitely no question that that touching of
5 that area, which some penetration no matter how slight,
6 could be a battery. And it could be somebody washing a
7 child who is dirty, and I'm going to say this: I don't
8 think with a four year old still in diapers in one
9 household that that child is necessarily being cleaned by
10 everybody.

11 And I point that out, Your Honor, because I'm
12 suggesting that that's necessarily our defense. I cannot
13 be clairvoyant as to the jury's concerns, but we know this
14 much. It would be certainly a mistake, should somebody
15 get convicted in a situation where they engage in an act
16 that could be criminal but didn't do it for criminal
17 reasons.

18 And, unfortunately, the statues does address some of
19 that. It says, "For medical purposes, etc," but it
20 doesn't reference, unfortunately, an act that was done for
21 another innocent purpose. And I craft it as willful
22 because none of the other ones -- I looked at intentional
23 and I looked at knowing and those deals with whether the
24 first act was done volitionally as opposed to reckless or
25 negligent. The word, 'negligence' rarely appears cause of

1 mens rea. It's gross negligence which is akin to
2 recklessness.

3 Willfulness requires that the person did it to break
4 the law. Now, lewd act, you can deal with that because
5 I'm assuming that the law contemplated -- the Legislature
6 contemplated that under the lewd act statute that there
7 could be touchings of a child's private parts that were
8 not done to -- for purposes of satisfying a curid interest
9 I think was the phrase she used in that lewd act statute if
10 Your Honor will recall.

11 The criminal sexual conduct statute does not write
12 that in cause I guess they couldn't imagine some type of
13 penetration, etc. This may be about the only type of
14 penetration that you can think of being done in some way
15 innocently. Although, I'm going to suggest this to you:
16 The C.S.C. statute arguably makes it misconduct for
17 anybody part to penetrate any orifice for somebody to
18 stick a finger in somebody's mouth, and that's not the
19 case we have here.

20 THE COURT: All right. Thank you.

21 MR. BROWN: And, Your Honor, did you get my Proposed
22 Instruction Three?

23 THE COURT: Yes.

24 MR. BROWN: Okay. And, again, we're open to a mens
25 rea instruction. Your Honor did suggest one. I would

1 prefer this one, but we would ask for a mens rea
2 instruction as cited in those case. Thank you, Your
3 Honor.

4 THE COURT: And, Solicitor.

5 (WHEREUPON, Court's Exhibit No. 3 was marked for
6 identification and received into evidence.)

7 MS. JOSEPH: May it please the Court. We have had a
8 chance to mark three -- I want to hand you three more.
9 Thank you. Your Honor, I want to be very clear about what
10 the State is alleging in this case. We're alleging that
11 the Defendant took his finger and put it inside of
12 [Minor]'s anal cavity. [Minor] testified in both
13 interviews that this occurred and that this hurt. And he
14 also testified that this was done while the water was
15 heating up not always when they were in the shower
16 together.

17 Nothing about that conduct could be done
18 accidentally. If this were a touching case I would be
19 agree that willfully could be argued. However, all the
20 actions that the State is alleging would have had to be
21 done willfully. What the Defense is arguing right now is
22 that this one was a mistake; that this is what happens
23 when you wash boy. It's stuff that he can argue to the
24 jury. It has no place in the jury instructions. Thank
25 you.

1 MR. BROWN: Very briefly. We're not arguing
2 accident. She conceded that their allegations are done
3 willfully. And we believe it's not a strict liability
4 because washing a child's butt your finger accidentally
5 goes through the cavity or through the opening no matter
6 how slight, I don't think that makes somebody all of a
7 sudden a sexual predator because he bathed vigorously.

8 The jury may not decide that's what's going on. May
9 not believe that it happened at all. That part I don't
10 know, but it doesn't viscerate the requirement of mens
11 rea. Again, this is not strict liability. Even under the
12 drug statutes, Your Honor, strict liability may apply to
13 some elements but not to all such as weight which I make
14 akin to age requirement here.

15 THE COURT: All right. Let met finish reading
16 Fergusson and I'm almost through underlining. Well,
17 Fergusson also talks about the intent of the Legislature.

18 MR. BROWN: Yes, sir.

19 THE COURT: All right. The Court agrees with the
20 position and arguments brought forth by the State and
21 denies the request of the Defendant's Number Three.

22 (WHEREUPON, Court's Exhibit No. 6 was marked for
23 identification and received into evidence.)

24 MR. BROWN: As to the request for a mens rea charge.

25 THE COURT: And a request for -- okay. Well, I can

1 only turn down what's requested.

2 MR. BROWN: Well, in the alternative I'd ask for you
3 to charge what you read us yesterday on mens rea.

4 THE COURT: All right. And the Court will deny that
5 charge -- request. I'm sorry.

6 MR. BROWN: May I argue mens rea?

7 THE COURT: We just argued mens rea, didn't we?

8 MR. BROWN: Not to the jury.

9 THE COURT: Oh, yeah.

10 MS. JOSEPH: Yeah.

11 THE COURT: Sure.

12 MR. BROWN: They require evidence of mens rea.

13 THE COURT: No. You can argue that, you know, you
14 believe -- well, I don't know the evidence is going to
15 show so I can't tell you what you're going to argue.

16 MR. BROWN: I understand. I'll argue that he didn't
17 have a criminal intent.

18 THE COURT: Well, no, cause I'm not giving them a
19 charge on that.

20 MR. BROWN: Okay. Then I would say it thwarts my
21 client's ability to even defend the allegations. So this
22 goes back to his right to present a defense. I would go
23 back and ask about the unanimity requirement.

24 Your Honor, I'm assuming, is going to charge then
25 under a general unanimity charge. That is South Carolina

1 law.

2 THE COURT: Well, I've told you what I was going to
3 charge, haven't I?

4 MR. BROWN: You mentioned the general unanimity
5 charge.

6 THE COURT: Yeah.

7 MR. BROWN: And the reason that I say that is I do
8 plan to argue that they have to be unanimous as to whether
9 the act they believed happened and he did it. I mean
10 that's basis defense if you can't believe unanimously that
11 he did this act.

12 THE COURT: I'll probably tell the jury that three or
13 four different times during the ---

14 MR. BROWN: And I plan to argue that if we've got a
15 little evidence on something here and a little evidence on
16 something here you don't get to add the little evidence
17 together and make evidence of one or the other. I just
18 need to know if I can argue that without objection.

19 THE COURT: I guess I'm going to have to wait and see
20 what you have to say on it.

21 MR. BROWN: And I don't plan to say that the law
22 requires you to unanimously believe because Your Honor is
23 not giving you that law. I think it does require they
24 unanimously agree that each act or conduct ---

25 THE COURT: That what ---

1 MR. BROWN: I think the law does require in all those
2 cases that they unanimously agree as to the act or conduct
3 that he did. And that's -- all those cases talk about
4 whether you give the instruction or not.

5 MS. JOSEPH: Your Honor, the State would object to
6 that. The statute is very clear that sexual battery is
7 defined as fellatio or anal penetration. Therefore, if
8 the State proves one of those elements; that he has
9 committed a sexual battery with a minor under the age of
10 11 years old, then we have proven our element.

11 THE COURT: That's what I'm going to tell them.

12 MS. JOSEPH: And that's ---

13 MR. BROWN: I hear what you're going to tell them.
14 Your Honor, I get to make a closing argument. I surely
15 get to argue more than what your instructions are.

16 THE COURT: Right.

17 MR. BROWN: I would like to be able to agree that
18 they have to agree on a day that something happened, and
19 that happened they can't -- three jurors can't say that it
20 was when the mom came home early and the bedroom or
21 bathroom door was locked and nine jurors decide it was the
22 day that she was in the kitchen and they were on the bed.
23 That's not the meaning of this agreement as to what he
24 did.

25 MS. JOSEPH: In so far as the Court always alerts the

1 jury to the fact that the law is your domain and the facts
2 are their domain, and we're simply arguing -- I mean
3 Mr. Brown is correct if we believe the sky is green. Here
4 I think as a representative of the State he is arguing
5 something that the statute does not say. But if he would
6 like to argue incorrect law that is his purview. I mean I
7 do recognize that this is his closing argument and it's
8 purely an argument.

9 THE COURT: All right.

10 MR. BROWN: So I can argue it?

11 THE COURT: I think so.

12 MR. BROWN: Okay. Essentially, what I put in that

13 ---

14 THE COURT: Without objection..

15 MR. BROWN: Essentially ---

16 THE COURT: Without objection.

17 MR. BROWN: Essentially, what I put in that jury
18 instruction I can argue without saying that the law
19 requires. Just a unanimity.

20 THE COURT: You can say, "I think ---

21 MR. BROWN: Unanimity ---

22 THE COURT: --- that you must ---

23 MR. BROWN: --- have. Yes, sir. Now, we still would
24 object to the failure to charge it. I have a right to
25 present a defense. I have a right to present an effective

1 representation of counsel, and we just generally believe
2 it's a due process violation as well as a violation of the
3 South Carolina State Constitution's Unanimity Requirement.

4 And it is worth pointing out that the feds require it
5 only in federal cases cause they have not been
6 incorporated. That unanimity requirement has never been
7 incorporated from the federal government. But Samuels
8 cites an issue and cites -- because we assume that they're
9 going to them, Your Honor.

10 THE COURT: Anything else?

11 MR. BROWN: A bathroom break?

12 MS. JOSEPH: Your Honor, the State has a proposed
13 verdict form.

14 THE COURT: All right.

15 MS. JOSEPH: It would be the same time that ---

16 MR. BROWN: I -- except I don't like that offer that
17 she made.

18 MS. JOSEPH: The State is opposed to the indictment
19 offer Your Honor made. Your Honor may prefer a regular
20 indictment form.

21 MR. BROWN: I didn't have a chance to ---

22 THE COURT: Tell me -- well, have you shared your
23 proposal?

24 MS. JOSEPH: Your Honor, I don't think he will be
25 opposed to it.

1 MR. BROWN: Are you sending the indictment back?

2 MS. JOSEPH: It was not the State's intention to send
3 the indictment back. Once again, Your Honor, the
4 indictment is a notice document. The Defense had their
5 opportunity to challenge the indictment. It is the
6 State's contention that all we have to prove at trial is
7 the statute, and that's what we intend to argue to the
8 jury. So what the indictment says it doesn't matter. I
9 know that sounds crazy, but once the jury is sworn the
10 indictment can be ripped up.

11 MR. BROWN: That is not -- true is not true; that
12 last part. That last part about her being able to rip up
13 the charge is not true. And they can even seek an
14 amendment as long as it's not a material amendment. So
15 that is not the reason why we ---

16 THE COURT: What is your objection to this?

17 MR. BROWN: None if you're going to send the
18 indictment back.

19 THE COURT: And I'm not sure. The State objects to
20 the indictment going back.

21 MR. BROWN: They agreed yesterday that the indictment
22 being the verdict form. So I'm kind of handcuffed. They
23 pulled the rug back out.

24 MS. JOSEPH: Your Honor, may we be allowed to sleep
25 on some things as well as Mr. Brown?

1 MR. BROWN: I'm not disagreeing with that fact.

2 THE COURT: Okay.

3 MR. BROWN: But there is a difference between you
4 sending the verdict form back and sending the allegation.
5 The actual allegation that they assert. Cause they are
6 bound by the allegation in the indictment. You can move
7 that there is a very they charge; that Justin Adams
8 committed some battery against Joe Blow in Jasper County.

9 That was their proof and the indictment itself is
10 sufficient on its face. They have to prove that in
11 directed verdict. Even if they prove C.S.C. with a minor
12 in the testimony it differs from the indictment. That's
13 failed. I mean the law is clear on that. They have to
14 prove the allegation in the indictment.

15 THE COURT: All right. I'm going think on -- I'm
16 going to take it under advisement, the issue whether the
17 indictment will go back or not. Now ---

18 MR. BROWN: Yes, sir.

19 THE COURT: --- let's take five, and then you're
20 going to put up a witness?

21 MS. JOSEPH: Yes, Your Honor. Ms. Dalton is here.

22 THE COURT: Has your client made a decision yet?

23 MR. BROWN: We have made a decision contingent upon
24 how this testimony comes out.

25 THE COURT: I understand.

1 MR. BROWN: And we would like to have our pretrial --
2 I mean mistrial motions as well cause we do plan to renew
3 our request for the records.

4 THE COURT: Well, certainly.

5 MR. BROWN: The counseling records cause that
6 counselor is still under subpoena, and at the appropriate
7 time if we could put her in it changes -- if we're putting
8 up a case my client will be a part of that.

9 THE COURT: Okay. Let's take five.

10 MS. JOSEPH: Thank you, Your Honor.

11 (WHEREUPON, Court was in recess at 10:06 a.m. and
12 reconvenes at 10:15 a.m.)

13 THE COURT: State ready for the jury?

14 MS. JOSEPH: Yes, Your Honor.

15 THE COURT: Defense ready for the jury?

16 MR. BROWN: Yes, Your Honor.

17 THE COURT: All right. Sir, please bring in the
18 jury.

19 (WHEREUPON, the jury panel enters the courtroom at
20 10:16 a.m.)

21 THE COURT: Good morning and welcome back, ladies and
22 gentlemen. And it looks like I have to, again, apologize
23 for keeping you waiting. Sometimes things are out of my
24 control. It is my understanding that the jury has
25 selected Jury Number 98, George Forsythe, to serve as

1 foreperson. Would that be you, Mr. Forsythe?

2 JURY FOREPERSON: Yes, Your Honor.

3 THE COURT: Court agrees with that. I believe we're
4 ready to resume the presentation of evidence by the State.

5 MS. JOSEPH: Yes, Your Honor. The State calls
6 Kristin Dalton.

7 KRISTIN DALTON, after being duly sworn,
8 testified as follows:

9 BAILIFF: Thank you. You may have a seat. State
10 your first and last name, and please spell your last name
11 for the court reporter.

12 THE WITNESS: Kristin Dalton, D-A-L-T-O-N.

13 DIRECT EXAMINATION

14 BY MS. JOSEPH:

15 Q. Good morning, Miss Dalton. Where do you currently
16 work?

17 A. Beaufort Pediatric, and I'm a consulting provider for
18 Hope Haven, our children's advocacy center.

19 Q. And where is Beaufort Pediatric?

20 A. It is right down the road.

21 Q. You're right down the road.

22 A. Yes.

23 Q. What do you do there?

24 A. I'm a pediatric nurse practitioner. I see children
25 from age birth to 21 for primary care and take care of

1 them when they're sick.

2 Q. What do you do as a consultant? You have two roles.
3 What is your second role?

4 A. About eight hours a week I am the medical examiner
5 for children who are being evaluated for any type of
6 abuse, sexual/physical neglect or drug exposure.

7 Q. And what are your certifications, trainings or degree
8 that allows you to do that?

9 A. I have a bachelor in nursing from the University of
10 Virginia. I have a masters in nursing from Indiana
11 University. I am nationally certified as a pediatric
12 nurse practitioner, State board certified. And I, since
13 '19 -- '03 have been annually certified in -- as a child
14 abuse medical provider.

15 Q. What is that last requirement require you to do? You
16 said it was annual?

17 A. Um hum. I'm part of a group in South Carolina.
18 There are 22 of us in the State of South Carolina who do
19 the forensic medical exams on children victims of abuse,
20 and when we initially start doing the exam we training
21 courses. I took training courses in Salt Lake City and
22 Minneapolis. These are week long courses, and after you
23 do that you are required to obtain 16 hours per year of
24 continuing education in child abuse medical exams.

25 Q. There is 22 of those types of medical examiners in

1 the State of South Carolina?

2 A. Correct. We're all in one team.

3 Q. And what areas of the State do you cover?

4 A. I cover the 14th Judicial Circuit.

5 Q. And how many counties is that?

6 A. It is five counties. Beaufort, Jasper, Allendale,
7 Hampton and Colleton.

8 Q. And how do you get these cases brought to you?

9 A. When children are being investigated when they've
10 alleged abuse law enforcement or the Department of Social
11 Services may request an exam. It doesn't necessarily have
12 to be law enforcement.

13 I also work through the hospital emergency room.
14 Doctors may call me when they have concerns about a
15 victim -- about a patient that they're seeing possibly
16 being a victim of abuse.

17 Q. And how many forensic exams have you conduct?

18 A. Over 750.

19 Q. In addition have you ever been qualified as a
20 pediatric forensic medical examiner before?

21 A. I have.

22 Q. And how many times have you been qualified?

23 A. It's at least 16.

24 MS. JOSEPH: And, Your Honor, at this time the State
25 would move to offer Ms. Dalton as an expert in the field

1 of pediatric forensic medicine.

2 MR. BROWN: Subject to Your Honor's rulings during
3 our discussion yesterday.

4 THE COURT: Okay. Court will grant the motion. Let
5 me just briefly tell the jury what we've done here.
6 Ladies and gentlemen, this witness been qualified as an
7 expert in pediatric forensic medical. Normally, witnesses
8 are not permitted to give their opinion about things. An
9 exception is made for expert witnesses who based on their
10 education or training or experience are permitted to give
11 their opinion. And I'll tell you more about that later.
12 Go ahead.

13 MS. JOSEPH: Thank you, Your Honor.

14 BY MS. JOSEPH:

15 Q. Mr. Dalton, would you go through the process of a
16 general exam?

17 A. Sure. The children are brought to me at my office in
18 Beaufort Pediatrics. Initially, I will do an interview
19 with the non-offending caretaker. I get a medical
20 history. I get a social history and a behavioral history.
21 I then interview the victim very briefly in order to guide
22 my medical exam. I usually do that interview without the
23 caretaker present.

24 And then I do a head to toe physical exam including
25 an exam of the genitalia. I use a special scope called a

1 colposcope. It's a very high powered microscope with a
2 very powerful light. It allows me to take images,
3 photographic images, of that area when necessary. And
4 when I finish with the exam I talk to both the victim and
5 the non-offending caretaker about my findings and
6 recommendations.

7 And then I type up the report and it is given to
8 people who need it, the solicitors and law enforcement and
9 D.S.S.

10 Q. Prior to speaking with the child or parent do you
11 speak with law enforcement or D.S.S.?

12 A. Yes, but usually instead of actually having direct
13 contact with them I am given the incident report, the
14 police incident report, and if the child has already had a
15 forensic interview I'm given a copy of that interview.
16 And I will be given some of the intake information that
17 Hope Haven has when they are called about the particular
18 case.

19 Q. Is the parent usually present during these medical
20 exams?

21 A. It depends. my goal is to have the child be as
22 comfortable as possible. So there are some children that
23 are more comfortable having, you know, some personal
24 space. And then there are others that want their
25 caretaker with them. So I will make that clear to the

1 parent and the child that whatever the child wants during
2 the exam is what will happen.

3 Q. Can you talk act that scope. What is that scope
4 called?

5 A. A colposcope.

6 Q. And you do photos with that?

7 A. Correct.

8 Q. Do you collect any other physical evidence?

9 A. Physical evidence, as far as D.N.A. evidence, is not
10 obtainable in children after about 36 hours of last
11 contact so ---

12 MR. BROWN: Your Honor, I would suggest this is
13 outside her opinion. I haven't heard her qualified as a
14 D.N.A. expert.

15 MS. JOSEPH: I'm asking her about whether she
16 collects D.N.A. during the medical exam, and she's
17 testified about when she does or does not report.

18 MR. BROWN: And that I have a problem with that she's
19 pontificating about how long D.N.A. exists.

20 MS. JOSEPH: She is giving the basis for how she
21 makes her decision during the medical exam.

22 THE COURT: I'll sustain the objection.

23 MR. BROWN: Thank you.

24 BY MS. JOSEPH:

25 Q. Did you examine [Minor] in this case?

1 A. I did.

2 Q. When did you examine him?

3 A. I believe it was December 12th 2013.

4 Q. And to your knowledge has he been examined by any
5 other doctors in relation do this incident of abuse?

6 A. It had been reported to me that he was seen in the
7 Beaufort Memorial Hospital Emergency Room about a week
8 prior.

9 Q. Okay. Did you first meet with [Minor]'s mother in
10 this case?

11 A. I did.

12 Q. Why did you meet with her?

13 A. Because it's very important in medicine to get a good
14 history before doing your exam. So I needed to find out
15 from his mother any concerning physical symptoms or
16 behavioral changes in her son.

17 Q. Was anyone else present during your medical exam of
18 [Minor]?

19 A. Yes. I always have a victim's advocate. Someone
20 from the Children's Advocacy Center who is during the
21 exams and the interview.

22 Q. Was anyone else present?

23 A. No.

24 Q. Okay. And had there already been a forensic
25 interview done at Hope Haven prior to your medical exam of

1 [REDACTED] Minor ?

2 A. There had. He had his forensic interview the day
3 prior to my exam.

4 Q. And did you do anything differently for a child that
5 has already been forensically interviewed?

6 A. Well, my goal is to avoid questioning the child as
7 much as possible. That's the reason I get the interview
8 so that I can find out what the child has already stated
9 has happened to them. In this case, since the interview
10 was don't just the day prior to the exam I was given a
11 report from the victim advocate about what he had said.
12 And then briefly interviewed him.

13 Q. And why did you briefly interview [REDACTED] Minor ?

14 A. Because it's standard practice in a medical exam that
15 you need to ask the patient what's going on. You need to
16 ask them about symptoms and concerns that they have.

17 Q. And what did [REDACTED] Minor tell you in response to your
18 questions?

19 A. [REDACTED] Minor was very cooperative with me and with the
20 exam; that he did not want to speak with me about the
21 abuse. And he stated that he didn't want to talk about
22 it. In that case I asked him if he would just tell me a
23 little bit about where he was touched, and I offered him
24 the option of pointing with his finger to where he was
25 touched rather than saying the words. And he did. He

1 pointed to his groin and his buttock.

2 Q. And did he say what the abuser used to touch him?

3 A. I asked him what he was touched with, and he said,
4 "His finger." I asked him was he touched with anything
5 else, and he declined to answer. He did not want to talk
6 any further about the abuse.

7 Q. What were the results of your exam?

8 A. He had a normal exam.

9 Q. That means there were no injuries?

10 A. Correct. Well, it means that there were no injuries
11 on the day that I saw him.

12 Q. Okay. And what could be -- is it common to find
13 injuries in cases involving sexual abuse of children?

14 A. It's extremely rare. The national average is about
15 3 percent of the child sexual abuse exams will have a
16 physical findings.

17 Q. Okay. And your interview was conducted on
18 December the 12th 2013. Do you know when the abuse in
19 this case was first reported?

20 A. I believe he told his grandparents on December 6th
21 and was seen in the E.R. It was reported to law
22 enforcement on the 7th.

23 Q. Okay. And is it unusual after a seven day period
24 that there would be no physical findings?

25 A. Not at all. Not expect any findings that late.

1 Q. Why is that?

2 A. Because the genital tissue, the anal tissue is very
3 similar to the tissue in your mouth. It has an extremely
4 good blood supply and heals very rapidly. So you might
5 think about in the past when you've injured your cheek by
6 biting it. And it might be very painful, and you might
7 bleed, but none of us can look in the mirror and see all
8 the prior injuries that we've caused to our cheeks. And
9 it heals very quickly, so the anal -- the anal area
10 usually heals in about three days.

11 MS. JOSEPH: No further questions for this witness.

12 MR. BROWN: May it please the Court.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. BROWN:

16 Q. You mentioned three percent of the cases in which
17 there were allegations of a physical finding?

18 A. Yes.

19 Q. How many cases of those involved false claims?

20 A. I have no idea.

21 Q. Okay. So if it was 50 percent of those claims are
22 false is actually 6 percent of the cases, right?

23 A. I guess so.

24 Q. Okay. I mean correct me if I'm wrong. I'm trying to
25 get my math on that?

1 A. Well, what I would say is that the number, the
2 statistic of 3 percent, comes from a number of studies
3 where there is believed to be either photographic proof of
4 abuse, such as someone filmed the event or physical
5 findings or D.N.A. findings or the perpetrator was found
6 guilty in Court.

7 Q. Okay. And how many were they found not guilty in
8 Court?

9 A. I don't know the court results. I just know that the
10 numbers, that statistic of 3 percent of victims, comes
11 from a collection of victims who met one of those
12 criteria. Either video proof that they had been abused,
13 D.N.A. proof supporting they'd been abused or the
14 perpetrator was convicted.

15 Q. Can you provide that study to me today?

16 A. I have it in my office. I do not have it with me,
17 and yes, I would be happy to provide it. I actually have
18 more than one study if you'd like to see them.

19 Q. That has 3 percent only on ones that have physical
20 evidence, physical photos. Now, when you say, 'physical
21 evidence' you mean that someone paragraphed the child
22 while they were being abused?

23 A. Correct.

24 Q. Okay. And those cases, are we talking about a
25 batter -- which sexual battery is fine. It's actually an

1 intrusion or some type of penetration?

2 A. Correct.

3 Q. All right. Do those cases include touching cases or
4 are they always intrusion cases?

5 A. What do you mean by touching?

6 Q. Touching where there is no intrusion or penetration?

7 A. No, they wouldn't have a case where somebody touched
8 a child's breast or touched the --

9 Q. But that's abuse though, right?

10 A. By the law it is.

11 Q. Okay. The reason why I asked that is that you said
12 complaint of sexual abuse is 3 percent of those findings.
13 I'm trying to make sure that these were only cases with
14 penetration; is that right?

15 A. Correct. No. No. No. Not -- I'm saying it had to
16 be one of those not just -- it didn't have to meet all
17 those criteria.

18 Q. Does it have the penetration allegation?

19 A. It doesn't have to be necessarily penetration if
20 you're talking about how far something goes inside
21 somebody's body cavity. I don't think that was part of
22 the study ---

23 Q. Okay. That study could involve non-penetration
24 allegations or do you know?

25 A. I believe it's all penetration, oral, anal, vaginal.

1 Q. Okay. So it was 100 percent penetration cases?

2 A. Correct.

3 Q. And they all had photographs?

4 A. Correct.

5 Q. Or they all had a guilty finding?

6 A. Correct.

7 Q. Or they had some type of -- what was the other one
8 you mentioned?

9 A. I think that was it. Oh, D.N.A. evidence.

10 Q. D.N.A. evidence, and these are the only ones you
11 considered in that that were considered in that study?

12 A. Well, it wasn't my study. That was what the study
13 is, and that, you know, the study -- the purpose of that
14 study, sir, was to point out that evidence, physical
15 evidence in child sexual; abuse exams is extremely rare.

16 Q. Okay.

17 A. So the purpose was to say even when we have evidence
18 that strongly supports that this child was sexual abused
19 the chance of us having physical findings are 3 percent.
20 And that was the reason they wanted the children to meet
21 those standards. They didn't want children who had said
22 they had been abused and there wasn't anything to really
23 support that.

24 Q. Okay.

25 A. They were going to say, "Wow, folks. Chance of

1 having physical evidence, you're not going to find it."

2 Q. So. Let's make sure we understand this. In this
3 case, according to your review of the information, doesn't
4 have any of those, does it? He hasn't been convicted.
5 There is no video proof of it or D.N.A; is there?

6 A. Correct.

7 Q. So that study is not even pertinent to this case, is
8 it?

9 A. I'm not saying whether the study is pertinent to this
10 case. I think that the question was, 'what are the
11 chances of finding physical evidence'? And I'm stating
12 that the chance of finding physical evidence is extremely
13 rare.

14 Q. In cases where there is proof of penetration through
15 D.N.A, video or a conviction?

16 A. Correct.

17 Q. Okay. And that's not what we have in this case at
18 all, is it?

19 A. I don't have any of those things. Do you?

20 Q. You were the ---

21 A. I did the review of all the stuff ---

22 Q. But it doesn't matter. I've been through all the
23 file. But now since you've asked me I'll answer it. I've
24 been through the file and there is no physical proof this
25 happened, and there is no D.N.A. in this case.

1 A. Correct.

2 Q. So I don't mind answering that. Let me ask you to
3 take a look at what I'm going to have marked as
4 Defendant's 15.

5 (WHEREUPON, Defendant's Exhibit No. 15 was marked for
6 identification only.)

7 MR. BROWN: Thank you. If I may approach, Your
8 Honor.

9 BY THE COURT: Sure.

10 BY MR. BROWN:

11 Q. Would you take a look at what's been marked as
12 Defendant's 15 for I.D. only and see if you're familiar
13 with that document?

14 A. These are the results of the sexually transmitted
15 infection testing that was done on the victim when he was
16 seen at the Beaufort Memorial Emergency Room.

17 Q. Okay. Right. Are you familiar with that document?

18 A. Yes. I did look up the results.

19 Q. Okay. And they -- what were the results?

20 A. Negative.

21 Q. All right. And when you mentioned that the E.R.
22 visit was a, quote, a week prior to your exam ---

23 A. Approximately, yeah.

24 Q. Well, let's get more approximate than that, okay? On
25 December 12th he came to your office?

1 A. Correct.

2 Q. Okay. On December 7th he disclosed?

3 A. I'm not positive of the date of disclosure. I
4 thought he had disclosed to his grandparents on the 6th.
5 I don't have my report in front of me, but anyway, there
6 was a visit on the 6th to E.R. and that's when the STD
7 testing was done.

8 (WHEREUPON, Defendant's Exhibit No. 16 was marked for
9 identification only.)

10 BY MR. BROWN:

11 Q. Let's take a look at what's been marked as
12 Defendant's Exhibit 16. I?

13 MR. BROWN: Approach, Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. BROWN:

16 Q. I ask that you take a look at what's been marked for
17 I.D. as Defendant's 16 and see if that refreshes your
18 recollection of the date that the complaint was made?

19 A. I have here that the intake referral date at Hope
20 Haven was December 7th.

21 Q. Okay. And any other thing refreshes your
22 recollection of -- and your term was -- term was in the
23 report, 'he disclosed'. If you look at the third page in
24 the box. See if that refreshes your recollection?

25 A. Which box? The top box?

1 Q. Yes, ma'am.

2 A. I'm sorry, you're asking me?

3 Q. Date this allegation first came up?

4 A. Which means, specifically, the date the child first
5 told another adult that he was being sexually abused?

6 Q. First made his claim, that is correct?

7 A. Okay. So in my notes I have he spent the night with
8 his maternal grandparents on Friday, December 6th, and
9 then in the morning he had disclosed to them that he had a
10 secret that he had to keep with Justin Adams who is his
11 mother's boyfriend. And that the grandmother had ---

12 Q. The date is what, Ms. Dolton?

13 A. The date that he told his grandmother was December
14 7th.

15 Q. Okay. Are you aware of any date prior to that?

16 A. Of what?

17 Q. That he made this claim?

18 A. Not from the information that I was given on this.

19 Q. Okay. You reviewed all of it, pretty much? Police
20 report? Hope Haven stuff? Okay. All right.

21 And I say that because he comes to see you on the
22 12th. Probably getting to a simple point. All right.
23 Disclosure is on the 7th. That's five days. Is there any
24 question that the E.R. visit was after December 7th?

25 A. No.

1 Q. Okay. So you say about a week. We're not talking
2 about him going to the E.R. for a complaint that predates
3 any kind of allegation made to another adult? The E.R.
4 visit was after this process started, right?

5 A. Yes.

6 Q. Okay. So that wasn't really clear to me. Your
7 testimony you said that he had been taken to the E.R. But
8 that referral came from the police, didn't it?

9 A. Oh, you mean was he taken to the E.R. just because he
10 had a cut on his head or something?

11 Q. No, ma'am, that's not what I'm saying.

12 A. Oh.

13 Q. Did he go to the E.R. regarding these allegations
14 before December 7th?

15 A. No. He went to the E.R. on December 7th for an exam
16 related to these allegations?

17 Q. After he spoke to the police?

18 A. Correct.

19 Q. Okay. And that doctor made no findings either, did
20 he?

21 A. He did not.

22 Q. Okay. And let me make sure. What type of findings
23 would you believe would exist or be appropriate if
24 Mr. Adams didn't do it and this was a false claim? What
25 would you expect to find?

1 A. No findings.

2 Q. And what did your find here?

3 A. No findings.

4 MR. BROWN: No further questions.

5 THE COURT: Redirect?

6 MS. JOSEPH: Thank you, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. JOSEPH:

9 Q. Ms. Dalton, does no findings mean there was no abuse?

10 A. No.

11 Q. Looking at your report on Page Two there is a box in
12 the middle of the page. It says, 'other checks', and then
13 there's a box where you can give a narrative. Can you
14 read out that narrative?

15 A. "Last contact with the perpetrator ---

16 MR. BROWN: Objection. Hearsay.

17 MS. JOSEPH: Your Honor, this is Exception Rule
18 803(4), statements for purpose of medical diagnosis or
19 treatment, when ascertaining whether or not to search the
20 area or in fact to search for D.N.A. she was asked when
21 the last contact was with the perpetrator.

22 In addition, Your Honor, Mr. Brown opened the door by
23 using the report.

24 MR. BROWN: I didn't introduce the report. Quite
25 frankly, she refreshed her recollection with it. But,

1 Your Honor, if I may the child did not disclose this
2 information. It's hearsay. It came from somebody else.
3 She told you that the child would not disclose that
4 minimum information. So this is not a statement the child
5 gave.

6 MS. JOSEPH: Your Honor, Ms. Dalton uses the
7 information from the non-offending caregiver, any other
8 family that is present and the alleged victim in order to
9 gather as much information she can or to make a medical
10 diagnosis. And that's in fact what makes up her report,
11 and I laid the foundation for that in my previous
12 question.

13 MR. BROWN: Let me just say this for simplification.
14 I'll withdraw my objection.

15 THE COURT: All right. You may answer the question
16 then.

17 THE WITNESS: "Last contact with the perpetrator was
18 December 5th 2013. Child was not able to determine date
19 of most recent abuse."

20 BY MS. JOSEPH:

21 Q. And why is it important for you to know the last
22 contact date with the perpetrator?

23 A. Because we know that the last time they had contact
24 would be the last time that the abuse could have occurred.
25 I didn't mean that when they -- because they had contact

1 on the date that the abuse occurred on that date. It's
2 just giving us an idea when was the last possibility of
3 abuse.

4 Q. That was December 5th, and when did you say the E.R.
5 visit was?

6 A. On the 7th.

7 Q. And when was your visit again?

8 A. On December 12th.

9 Q. And then how quickly do injuries heal in the anal
10 area?

11 A. By three days.

12 MS. JOSEPH: No further questions.

13 MR. BROWN: I do have a follow up on that.

14 RECROSS-EXAMINATION

15 BY MR. BROWN:

16 Q. What is an anal fissure?

17 A. It's a tear in the anus.

18 Q. And how do you determine whether there is an anal
19 fissure?

20 A. You look at it.

21 Q. Okay. And you have to look at it within 36 hours?

22 A. Well, if it's there you have to -- I mean ---

23 Q. Does it have to be within 36 hours to find an anal
24 fissure?

25 A. Within 36 hours of abuse?

1 Q. Yes.

2 A. Most likely, but there are situations where an anal
3 fissure would not heal. So if somebody had severe
4 constipation and sustained an anal fissure from sexual
5 abuse from penile or anal penetration I would expect that
6 the fissure may remain visible beyond the three days.

7 Q. And tell me what's the difference between an anal
8 fissure and a scar?

9 A. A fissure is an active, open lesion or tear. And a
10 scar implies that there has been healing although it's
11 rare to have scars in that area because like I said before
12 with the high blood supply to that tissue.

13 Q. Well, what does blood supply have to do with
14 scarring?

15 A. The more blood supply the better the body is able to
16 heal itself.

17 Q. Okay. Let me ask you this. So if you have high
18 blood supply to an area does a scar disappear over time?

19 A. They may and they may not.

20 Q. Okay. And have you seen fissures that were created a
21 long time, greater than 36 hours?

22 A. Well, I never know the exact time that the fissure
23 was created. When I take my history maybe somebody has
24 been suffering from constipation. It could be a child
25 with Krone's Disease, and they tend to have fissures at

1 all times because the issue is unhealthy.

2 Q. How about scarring? How long you see the scarring?

3 A. I rarely see scarring in that area once the anus
4 heals, unless they have had a tremendous injury or a
5 surgical procedure. Some people are born without an
6 opening in the anis and they have to have surgery, and
7 that's such a deep procedure that that may leave something
8 that's more of a permanent nature.

9 Q. Knowing that there was no allegation made within 36
10 hours why did you even conduct the exam if the healing
11 would make it disappear?

12 A. Just to make sure everything was okay. I mean, you
13 can assume that even those most anal injuries will heal in
14 three days something much more traumatic that would be
15 typical in sexual abuse. Say somebody had been abused
16 with a sharp object. And it might cause more severe
17 trauma than you might expect it would take a little longer
18 to heal.

19 Q. And given the no findings by the E.R. doctor WHY DID
20 you do that one hear?

21 A. Because I have a colposcope, and I can do a little
22 bit better exam with that.

23 Q. So there is a no finding from the first doctor and
24 then you do a more intense one and there is no finding?

25 A. Correct.

1 Q. A fissure and no scar?

2 A. Correct.

3 Q. Now. This report was then transmitted where cause
4 you mentioned that you then transmitted your report to
5 who?

6 A. To Hope Haven.

7 Q. And you gave this report back to Hope Haven?

8 A. Correct.

9 Q. Okay. And did you meet with the multi-disciplinary
10 team involved in this case?

11 A. I would have to go back and look at my records on
12 when that meeting might have been if I was involved.

13 Q. Sure. Go ahead.

14 A. I mean I don't have that with me.

15 Q. You didn't bring your records in this case for your
16 testimony?

17 A. I didn't bring the records of the multi-disciplinary
18 team meetings that we hold.

19 Q. Are you sure you have one?

20 A. No, I'm not. I can look at that.

21 Q. If you would specifically look at who was involved
22 with D.S.S. on that team. Who was involved with the
23 Bluffton Police Department on that team?

24 A. Okay. The report that I fill out does not require
25 that information. I do have that information in a file

1 who D.S.S. and who law enforcement were that were involved
2 in the case.

3 Q. Not involved in the case. The multi-disciplinary
4 team plan that you set up.

5 A. I don't set up any multi-disciplinary teams. We meet
6 once a month.

7 Q. All right.

8 A. And we discuss cases if there is something that needs
9 to be discussed. Not every case needs to be discussed.
10 Sometimes when law enforcement or D.S.S. has question
11 about something they might need to be asking me or
12 somebody involved in therapy of the patient. That's the
13 purpose of that meeting.

14 Q. Your Honor, may I approach the witness?

15 MS. JOSEPH: And, Your Honor.

16 CLERK OF COURT: The witness with Defendant's Exhibit
17 One.

18 MS. JOSEPH: The State would object to this line of
19 questioning under relevance.

20 MR. BROWN: She said she turned it over to the
21 appropriate people. Plenty of testimony about what that
22 process is supposed to be. And if you want me to say it
23 here; they haven't done it with any other witness. They
24 don't know who D.S.S. was involved with. Bluffton Police
25 said they never heard of the multi-disciplinary team.

1 THE COURT: I thought the witness said she wasn't
2 sure whether they met or not.

3 MR. BROWN: She said it's not required, and I don't
4 think that's consistent with prior -- I mean I hate to
5 speak -- response to the objection.

6 THE COURT: Pardon me.

7 MS. JOSEPH: That's her response. I mean he might
8 not think that's sufficient, but that's her response, so.

9 THE COURT: All right. Overruled. go ahead.

10 MR. BROWN: Thank you.

11 BY MR. BROWN:

12 Q. Ask you to take a look at Defendant's Exhibit One.
13 I'm turning my back to you to pull out my copy. Are you
14 familiar with the Children's Law Center?

15 A. I am. This is a 22 page document. Is there anything
16 specific that you would like me to focus on it or ask you
17 about?

18 Q. Part of that process is to figure out who's going to
19 do what part of each case, right? Law enforcement doesn't
20 necessarily do the examination, the physical exam, that
21 you do, right?

22 A. I mean that's part of. You don't need to figure that
23 out. We know in general that law enforcement does an
24 investigation. D.S.S. does an investigation. Medical
25 people do medical exams. Therapist give therapy.

1 Q. And South Carolina law doesn't suggest that this
2 process is what you're supposed to do?

3 A. South Carolina law doesn't suggest that what process
4 what who is supposed to do?

5 Q. South Carolina law does not ask that law enforcement,
6 the Department of Social Services and other agencies --
7 "All State law enforcement agencies providing welfare
8 should coordinate their services." That's not required in
9 South Carolina law as referenced on Page Two at the
10 bottom?

11 A. Okay. And what is your question to me? I'm sorry.

12 Q. Is it not and maybe we're looking under the heading,
13 quote, Requirement For Coordinated Investigations of Child
14 Maltreatment?

15 MS. JOSEPH: Your Honor, we would object to this is
16 outside the scope of the witness' knowledge.

17 MR. BROWN: It maybe. She can say she never heard of
18 it.

19 THE COURT: Is the document in evidence?

20 MR. BROWN: No, sir. She may not know.

21 THE COURT: I'll sustain the objection.

22 MS. JOSEPH: Thank you, Your Honor.

23 BY MR. BROWN:

24 Q. Do you know what the requirements are?

25 A. The requirements consistently use the word, 'may'.

1 Q. Okay?

2 A. So it may be done and it may not be done, and I
3 believe they are allowing for individual expertise in
4 making decisions. For instance, I might see a child for
5 an abuse exam, and I my medical opinion may be that there
6 needs to be no further discussion of this case at a
7 medical -- multi-disciplinary team. So I'm given the
8 option ---

9 Q. Do you remember D.S.S. ever having concern about Mr.
10 Adams? Ms. Jones' other child, the sibling of [Minor]?

11 A. I don't talk -- I did not talk to D.S.S. about their
12 concerns about the other children in the home or.

13 Q. Did you ever give this report to the police
14 department?

15 A. I only give the report to the children's Advocacy
16 Center, and the Children's Advocacy Center is responsible
17 for giving the report to the involved parties who need to
18 see it or request it.

19 Q. And who would that be?

20 A. Whoever request it. There is a consent form that is
21 filled out, and the parent signs and allows me to --
22 allows Hope Haven to submit the report to investigative
23 parties who may need to read it.

24 Q. Okay. So what I'm asking is who did you give this
25 report to?

1 A. I gave it to Hope Haven.

2 Q. Okay. You said, "Child Advocacy Center?"

3 A. Well, that's the same thing. That's the name of the
4 Child Advocacy Center. Hope Haven. They all have
5 different names because there are several across the
6 state.

7 Q. Well, you mentioned that because it doesn't have Hope
8 Haven at the top of your report, does it?

9 A. No.

10 Q. And Hope Haven has their own letterhead, too, right?

11 A. I'm assuming.

12 Q. I'm getting to the point?

13 A. Okay.

14 Q. When asked earlier about your funding you're 100
15 percent funded by the State of South Carolina?

16 A. Who is?

17 Q. You. You're paid by the State for this work?

18 A. No. Much of the time I will be paid by Medicaid.
19 You know, it depends on the insurance. If you want to get
20 specific it's Medicaid is State money.

21 Q. Okay.

22 A. We -- the last thing we want to do is burden the
23 family with a bill. If they have private insurance and
24 they have to pay a copay the State, often Victim's
25 Assistance, will pay for the exam. And if they have

1 Medicaid which does not require any copay, although it
2 still comes from a State pot, we would more likely bill
3 the Medicaid.

4 MR. BROWN: Your Honor, we need to approach.

5 THE COURT: All right. If you would like to stand
6 and stretch, ladies and gentlemen, while I see ---

7 MS. JOSEPH: Your Honor, if we need to do this
8 outside the presence of the jury we need the witness for
9 this.

10 THE COURT: Okay. Ladies and gentlemen, ask you to
11 step in the jury room.

12 (WHEREUPON, the jury panel was excused from the
13 courtroom at 10:50 a.m.)

14 THE COURT: And, Mr. Brown.

15 MR. BROWN: Your Honor, I received an e-mail
16 regarding my Brady request about the State funding. And
17 the response I got was that she was 100 percent State
18 funded. Remember we had a Brady issue. She just denied
19 that in her response.

20 THE WITNESS: I'm sorry. I think I -- I understood
21 it to be how was this funded. How did I bill ---

22 BY MR. BROWN:

23 Q. I said, 'how are you paid'?

24 A. What I'm trying to explain is that when I was asked
25 the question I thought I was being asked how was I being

1 paid for this exam. I'm paid by the State for all my
2 exams. Now, what I'm trying to explain to you, sir, is
3 Medicaid is a State program as is the State Office of
4 Victim Assistance. There are different pots of money. It
5 doesn't matter to me who pays for it, whether it's
6 Medicaid or the State Office.

7 What matters to me is that I'm not bill private
8 insurance which could cause a burden, a financial
9 burden -- it's not just me. It's everyone in the state
10 that does this work. We do not want to burden victims
11 with a copay or perhaps they had a \$7,000 deductible and
12 we're going to bill them for this exam, no.

13 So if they have Medicaid the State pays from the
14 Medicaid pot. And if they have no Medicaid but private --
15 either no insurance or no private insurance the State pays
16 out of the State Office of Victim Assistance pot.

17 Q. So that's 100 percent paid by the State?

18 A. Correct.

19 Q. Okay.

20 A. So you weren't -- I'm sorry. It wasn't very clear on
21 what you were saying about the different, you know -- I
22 didn't understand. You were not very clear on that at all
23 in my opinion about what you were asking me. So in my
24 opinion this -- okay -- my answer is the State pays for
25 all the exams.

1 Q. All right.

2 A. They come from different pots.

3 Q. Okay?

4 MR. BROWN: And, Your Honor, if I may reask that
5 question just for clarification.

6 THE COURT: Sure.

7 MR. BROWN: Thank you.

8 MS. JOSEPH: And, Your Honor, the State would ask
9 that she be allowed to answer Mr. Brown but then give an
10 explanation.

11 MR. BROWN: I have no problem with that.

12 THE COURT: All right.

13 MR. BROWN: But the answer was no.

14 THE COURT: Okay.

15 MS. JOSEPH: In addition, Your Honor -- sorry. We
16 would like to, and we are welcomed to wait until the jury
17 is back. At this time we're going to object as far as
18 relevancy as well.

19 MR. BROWN: That's fine. She's paid by the State who
20 is against my client. I made that argument in opening. I
21 made the same argument with Ms. Hefner about being
22 partially funded by S.O.V.A, and that's fine. Who pays
23 the witness. They're not intended to be paid by the
24 State, and that's pretty typical. Who paid the expert.
25 That's pretty typical impeachment theory biased on the

1 side she said. She didn't have to say that.

2 THE WITNESS: So I'm biased with every patient I see
3 in my office?

4 (WHEREAS, both parties speaking at the same time.)

5 THE WITNESS: I apologize. Excuse me.

6 MR. BROWN: Evidence of bias is always admissible.
7 608(C). We struck a juror. She gave money. Is that
8 okay?

9 MS. JOSEPH: Your Honor, the State will amend it's
10 objection. This question answer the State is fine with
11 coming in, and we would object for any questions about
12 financial bias going forward.

13 I understand his motivation getting in this question,
14 but I don't want this to be a fishing expedition where
15 Ms. Dalton has account for thousands of dollars where her
16 funding comes from.

17 MR. BROWN: I'm not making any financial misconduct.

18 THE COURT: All right. Let's tell the jury we're
19 ready when they're ready.

20 MS. JOSEPH: Thank you, Your Honor.

21 (WHEREUPON, the jury panel enters the courtroom at
22 11:04 a.m.)

23 THE COURT: Welcome back, ladies and gentlemen. I
24 believe we are ready to resume the cross-examination of
25 the witness. Mr. Brown.

1 MR. BROWN: May it please the Court.

2 BY MR. BROWN:

3 Q. I asked you briefly before the jury left and they're
4 back in, are these exams 100 percent funded by the State?

5 A. Yes.

6 Q. Thank you.

7 MR. BROWN: No further questions.

8 THE COURT: Any re-redirect?

9 MS. JOSEPH: No re-redirect, Your Honor. May this
10 witness be excused.

11 MR. BROWN: Without objection.

12 THE COURT: Thank you, ma'am. You may beck step
13 down. You're excused from your subpoena. You may call
14 your next witness.

15 MS. JOSEPH: Your Honor, at this time the State
16 rests.

17 THE COURT: State rests. I hate to do this to you,
18 ladies and gentlemen, but I am required by law to discuss
19 with the attorneys some matters of law before we can move
20 any further in this case. So I ask you to please retire
21 to the jury room and hope to be with you as soon as we
22 can.

23 (WHEREUPON, the jury panel was excused from the
24 courtroom at 11:05 a.m.)

25 COLLOQUY

1 THE COURT: Any motions?

2 MR. BROWN: I do, Your Honor. And if I may I would
3 be remiss if I didn't ask on behalf of my client to use
4 the restroom, and he did ask about 20 minutes ago, but I
5 thought we were going to break.

6 MS. JOSEPH: That's fine to take a brief break, Your
7 Honor.

8 MR. BROWN: That's fine. I know we just took a
9 break.

10 THE COURT: Let's take five.

11 MR. BROWN: Thank you, Your Honor.

12 (WHEREUPON, Court was in recess at 11:07 a.m. and
13 reconvenes at 11:14 a.m.)

14 MR. BROWN: I believe you asked about one more jury
15 instruction after the last witness' testimony. You may be
16 already charging it.

17 THE COURT: I'm not sure. I guess it really depends
18 on how long it's going to be before the jury would come
19 book in. So you think you would only address the jury for
20 20 minutes then?

21 MS. JOSEPH: Probably 24.

22 THE COURT: Twenty-four minutes. I know Mr. Brown
23 will take more than 30.

24 MR. BROWN: I don't take exception to that. Her 30
25 on the argument. Your Honor, I will just tell you this.

1 My topics on my outline are two and a half pages. That is
2 the way I did my argument.

3 THE COURT: Well, let's go ahead and hear motions.

4 MR. BROWN: Yes, sir. May it please the Court.

5 THE COURT: Sure.

6 MR. BROWN: The first motion I would make would be
7 what I would refer to as a general motion for directed
8 verdict in the sense that that State has failed to make
9 out a prima facia case.

10 THE COURT: Okay.

11 MR. BROWN: Then I will make some more specific ones.
12 The rule regarding directed verdict requires the Court to
13 direct a verdict if there is no competent evidence, and
14 the definition of competent evidence encompasses
15 admissible evidence. And subject to my prior motions
16 regarding the taint and my prior motions against the
17 admission of the video we believe we're entitled to a
18 directed verdict in whole because without that
19 inadmissible or non-competent evidence they have no case
20 to the jury.

21 And, certainly, I'm not arguing against Your Honor's
22 previous rulings. It's just should these be -- should
23 those rulings turn out to be on review to be reversed we
24 then would ask that a directed verdict be granted in light
25 of that. I understand Your Honor ruled against me, but I

1 do think you can revisit that.

2 Your Honor can always strike testimony that you later
3 find is not admissible. So that's a second more specific
4 argument; is that the taint and/or the video admissions,
5 which are not exactly the same, cause one of them is just
6 two statements came in on the video. And one of them is
7 with the child's testimony, too, I believe is tainted.
8 They're slightly different.

9 We believe as to the taint that there is no evidence
10 of sexual battery because all of that, the video and the
11 child, would be out cause the child would be tainted.

12 MS. JOSEPH: Your Honor, we're not even dealing with
13 this right now. Right now we're dealing with directed
14 verdict and your ruling from the stand that evidence would
15 come in, and therefore, we would have enough to survive
16 directed verdict.

17 THE COURT: All right. Court has considered the
18 Defendant's motion for general directed verdict and denies
19 that motion.

20 MR. BROWN: And as to the taint argument?

21 THE COURT: Okay. Then separately as to the taint
22 argument denies that.

23 MR. BROWN: Okay. And, Your Honor, I'm going to make
24 a slight variation as to the admissibility of the video
25 under the statute. And to the extent that that video

1 should not have been admitted, Your Honor, which was not
2 the taint. It was just the child's testimony there, but
3 not the videos. Should Your Honor not believe those are
4 admissible then they're left with the child's testimony,
5 and to that extent I move to strike a portion of the
6 indictment that alleges fellatio because the child does
7 not provide evidence beyond a suspicion that fellatio
8 should go to the jury.

9 THE COURT: All right. And, Solicitor.

10 MS. JOSEPH: All right. Your Honor, there are
11 allegations about fellatio made on the videos, and the
12 State intends to argue that. We survived directed verdict
13 on the fellatio element.

14 THE COURT: As to the video, Court, I guess,
15 reconfirms its prior ruling.

16 MR. BROWN: And again, I'm not trying to improperly
17 argue. I believe the competent evidence ruling Your Honor
18 does have the authority to strike testimony.

19 THE COURT: And the Court denies that motion.

20 MR. BROWN: Thank you, Your Honor. And we would
21 renew all our previous motions, and there are two in
22 particular that I'd like to specifically reference.

23 One is the denial of my ability to impeach Tabitha
24 Jones' testimony regarding her statement that she had not
25 socially, and that's my word, been around Justin Adams;

1 that only for diapers and things of that nature. And I
2 would create reference to the series of photos that we
3 entered. I don't have the exact exhibit numbers, but
4 they're in the record.

5 And, Your Honor, one photo in particular has Mr.
6 Adams and Ms. Jones together with their -- their child,
7 **Brother**. And that child from the photo is clearly not 12,
8 13 months old. The child is approximately three years
9 old. And I will say it was an objection to
10 authentication. And this is going to dovetail to another
11 issue we're going to have here.

12 My client can authenticate those photos should he
13 take the stand. Should we not be allowed to get into that
14 issue to impeach her he's probably not going to. And so
15 his decision to testify or not is influenced by that same
16 ruling. So we again to be allowed to correct false
17 testimony. I mean there is just -- I have text messages
18 about social non-dire issues from last week to my client's
19 phone to her phone.

20 She committed perjury before this Court, and I can't
21 correct it. And Your Honor, we would ask for permission
22 to do so. And we would ask to be allowed to do that in a
23 manner with Ms. Jones that doesn't require me to quote,
24 unquote, put on evidence because had I been allowed to do
25 that during my cross I would still have final close.

1 And so there is a way to put her back up to have
2 limited cross-examination. There is no reason that I
3 can't have it to go back and allow me to ask those
4 questions, very limited questions, about whether that
5 refreshes her recollection.

6 And, Your Honor, just again, I renew but I want to be
7 a little more specific about that because otherwise it
8 denies my client to present a defense and a right to
9 effective cross-examination under the State and Federal
10 constitutions, right to effective assistance of counsel
11 and due process.

12 THE COURT: All right. Thank you. Solicitor.

13 MS. JOSEPH: Your Honor, the State just renews its
14 earlier response objections namely that this is outside
15 the scope of today's hearing or today's trial whether or
16 not Tabitha Jones believes her son, which is what this
17 evidence goes to is collateral. And, therefore, we think
18 it was correctly admitted from the questioning of
19 Miss Jones and would be correctly admitted from any future
20 testimony.

21 THE COURT: All right. Court denies that motion.

22 MR. BROWN: Thank you, Your Honor. We would also
23 renew our request for the opportunity to present testimony
24 and/or records regarding counseling statements. We don't
25 know if all statements are written down. We know that the

1 counselor was Ms. Patel Laney from Hope Haven. This is a
2 dispute that they've concede. Those are records from her
3 counseling, and so we would ask that access to the records
4 to prepare for presentation of evidence to include
5 testimony from her if that is necessary to supplement the
6 information regarding the child's published statements.

7 THE COURT: Regarding what? I'm sorry. The last
8 three ---

9 MR. BROWN: Regarding the child's other statements.

10 THE COURT: Other statements?

11 MR. BROWN: Yes, sir.

12 THE COURT: And I would point out that the semen
13 disclosure was a disclosure made. Miss Jones testified to
14 that. That is in evidence that she was told by the
15 counselor that there was semen, and that breaks privilege.

16 MS. JOSEPH: Your Honor, the State just reminds the
17 Court and Mr. Brown that we actually had a full hearing on
18 this matter. At that meeting the counselor was present,
19 prepared to testify with the record.

20 At that time, Your Honor, the State presented
21 evidence that the Court could use to act as a gatekeeper
22 to those records, and you have reviewed those records.
23 And we just ask that you hold to your holding that these
24 records not come in. Thank you, Your Honor.

25 THE COURT: All right. The Court has considered this

1 request, and once again denies the request.

2 MR. BROWN: And, Your Honor, I do not have any other
3 motions at this time. We do intend to rest without
4 presenting a case. My client and I talked about
5 testifying. He would be prepared to testify, essentially,
6 to impeach the information already presented regarding the
7 contact, collateral or not, before the jury.

8 And he would offer that. I proffer his testimony
9 that those photos were taken after his release on bond,
10 and we can put him within a month or two of every single
11 photo, cause they're not at the same time. So we would
12 proffer that information that we would otherwise present
13 except we're being denied the opportunity to present that
14 defense despite that fact that information has come out in
15 the State's case.

16 So that ruling is the basis of my client's decision
17 not to testify, and that decision in part dictates whether
18 we present other information such as whatever I could get
19 in about the semen disclosure because that's already out
20 there. That's not from Ms. Patel Laney or whoever
21 presents from his mother also regarding various things
22 that she knows about this case.

23 But in light of the fact that we're not going to put
24 him up because, essentially, he has no evidence of
25 disproof as an alibi, which we don't even have a date.

1 There is no absolute defense, and that's part of his proof
2 something happened, and we could put him up. That would
3 be one of the things he would testify about, the general
4 denial without putting him up.

5 I don't think we've made a strategic plan, but based
6 on that to not put up any evidence because it would look
7 suspicious that we did not put up Mr. Adams and did put up
8 all this other evidence out there, Your Honor. So I point
9 that out so when we come back we can rest. There is a
10 jury instruction, and you may already have it on witness
11 credibility. There is a general one that talks about the
12 jury observing the witnesses' demeanor whether or not they
13 were forthcoming on the answers.

14 And I ask for that now, not earlier because I believe
15 that has been raised by the concern on my questioning
16 about the State funding. And it maybe an innocent
17 misunderstanding. They can argue that to the jury, but I
18 think that the jury needs to know that that's one of the
19 things in judging a witness' credibility, whether or not
20 they were forthcoming in the answer or in this case they
21 believe, and we had to clear up this information and bring
22 them back. And in her cases he gave a different answer,
23 and that charge I think is very pertinent and raised by
24 these facts.

25 And there is one other that I neglected from a charge

1 in my case from Jasper County regarding the presumption of
2 innocence being like a robe. I don't know if you are
3 charging that or not. I just forget to ask, but you did
4 last time we had a trial together in Jasper County.

5 THE COURT: I mean that's part of what I will do in a
6 standard case, and I can't think of any reason why not.

7 MR. BROWN: Yes, sir. On the presumption of
8 innocence. Yes, sir.

9 THE COURT: But I don't have the one, the request
10 that you're talking about now.

11 MR. BROWN: And I'll -- which one? Presumption of
12 innocence or the one on witness credibility.

13 THE COURT: The credibility charge. You said I
14 should have it, but I don't.

15 MS. JOSEPH: There is usually some language about
16 credibility.

17 THE COURT: I have a charge of my own.

18 MR. BROWN: Sure. That may cover it, Your Honor. I
19 never asked you that. I apologize I didn't -- I didn't
20 realize that we were going to have a little struggle over
21 her being forthcoming about State funding. But for what
22 it's worth I received a response from Ms. Dalton. Her
23 first line was, "I depend wholly on State funds." I mean
24 that was the exact answer. She also said that my
25 questions was pathetic.

1 MS. JOSEPH: Your Honor, would you mind reading to us
2 whatever you have on creditability?

3 THE COURT: On which charge?

4 MS. JOSEPH: Whatever you have on witness
5 credibility, Your Honor.

6 THE COURT: "Necessarily, ladies and gentlemen, you
7 must determine the credibility of the witnesses who have
8 testified in this case. This simply means the
9 believability. It becomes your duty as jurors to analyze
10 and to evaluate the evidence and determine which evidence
11 convinces you of its truth.

12 In determining the believability of witnesses who
13 have testified in this case you may believe one witness
14 over several witnesses or several witnesses over one
15 witness. You may believe part of the testimony of a
16 witness and reject the remaining part of the very same
17 witness.

18 You may believe the testimony of a witness in its
19 entirety or reject the testimony of a witness in its
20 entirety. And you may consider whether the witness has
21 exhibited to you any interest, any bias, any prejudice or
22 other motive in the case. And you may also consider the
23 appearance and manner of a witness while on the witness
24 stand."

25 MS. JOSEPH: No objection from the State.

1 MR. BROWN: That's fine. I don't have another charge
2 to offer. We're back to the verdict form issue, I think,
3 which does go back my challenge of the indictment, but
4 challenge to the submission to the jury regarding which
5 act that they're alleging and unanimity.

6 THE COURT: Send the jury in. We'll let you rest.

7 MR. BROWN: Yes, sir.

8 THE COURT: Send the jury to lunch for an hour.

9 MR. BROWN: Yes, sir.

10 THE COURT: Give y'all more time to think more about
11 the closings.

12 MR. BROWN: Yes, sir.

13 THE COURT: We'll come back at 2:30 and do it.

14 MR. BROWN: Yes, sir.

15 THE COURT: And by then I may have made a decision on
16 this.

17 MR. BROWN: Absolutely, Your Honor.

18 MS. JOSEPH: Thank you, Your Honor.

19 THE COURT: That way we don't have to interrupt the
20 jury with taking orders from them for lunch or for them
21 eating lunch during the middle of their discussions.

22 MR. BROWN: Yes, sir. Yes, sir.

23 MS. JOSEPH: Jurors frequently find a way to get fed,
24 so.

25 THE COURT: Well, the Clerk of this Court really does

1 not like to pay for the lunch for jurors.

2 (WHEREUPON, the jury panel enters the courtroom at
3 11:33 a.m.)

4 THE COURT: Welcome back, ladies and gentlemen. If
5 you recall the -- when we broke the State had rested which
6 means the State had presented to you all of their
7 evidence. The Defense now has the opportunity to present
8 evidence should the Defense choose to do so, although the
9 Defendant is not required to present any evidence. Mr.
10 Brown..

11 MR. BROWN: Your Honor, at this time the Defense
12 rests and relies upon the State first. Thank you.

13 THE COURT: Ladies and gentlemen, you have now heard
14 and received all of the evidence you're going to receive
15 in this case. There is nothing left to be done except for
16 the attorneys to make their closing arguments to you which
17 generally takes an hour or so and for me to tell you about
18 the law that applies in the case.

19 Generally takes 20 minute or so, 25, which is pushing
20 one o'clock. So what we're going to do, I guess, it's
21 whether or not you like it or not, what we're going to do
22 is let you go to lunch for an hour, come back and
23 everybody is going to be ready. They're going to walk
24 over and start the closing arguments.

25 During your lunch break don't let anybody talk to you

1 about this case. You don't talk to anybody about this
2 case. See you back at 12:35.

3 (WHEREUPON, the jury panel was excused from the
4 courtroom at 11:34 a.m.)

5 THE COURT: Court is in recess for an hour.

6 MS. JOSEPH: Thank you, Your Honor.

7 MR. BROWN: And, Your Honor, to just clarify, I have
8 final close?

9 THE COURT: Oh, do you? Yes. Yes.

10 MS. JOSEPH: My very first trial in South Carolina I
11 tried to close last because in Georgia we always close
12 last.

13 (WHEREUPON, Court was in recess 11:35 a.m. and
14 reconvenes at 12:32 p.m.)

15 MS. JOSEPH: Two things: one is the indictment going
16 to go back?

17 THE COURT: I'm not going to send the indictment
18 back. Never have. If there has ever been an objection to
19 it I never send it back.

20 MR. BROWN: I understand. Is it going to be read in
21 its entirety to the jury cause it was in the jury
22 selection, the actual allegations. The actual allegation.

23 THE COURT: I thought I did.

24 MR. BROWN: Well the jury selection as I recall you
25 read the caption of the case and the charge but not the

1 box.

2 THE COURT: I think I did.

3 MS. JOSEPH: Your Honor, my recall is that you read
4 the indictment. You just didn't read the to wit language.

5 MR. BROWN: That's correct. You stopped at sexual
6 battery. And to be honest cause I'm not trying to hide
7 it, I'll show -- I mean I want to talk about the
8 allegation of being two different acts one of which is
9 disallowed and that is fellatio.

10 MS. JOSEPH: It's the State's contention, Your Honor,
11 one of the indictment is not evidence therefore the fifth
12 point should not be read to the jury. And in addition,
13 Your Honor, the indictment, the purpose that it serves in
14 our criminal process is a notice document. The Defendant
15 was put on notice for what to do.

16 Frankly, that to wit language is a gift that the
17 prosecution gives the defense to let them know exactly
18 what type of acts that they are alleging in that
19 indictment. We could have merely written sexual battery
20 and that would have been fine.

21 MR. BROWN: We disagree with that.

22 THE COURT: I've never read an indictment to the jury
23 during a charge.

24 MR. BROWN: How do they no know what -- bear with me.
25 The indictment stated clearly in the language of the

1 statute without a factual adherence on its face under
2 U.S. Supreme Court law. You have to appear facts.
3 otherwise, it would be like pleading in a civil case where
4 you say negligence, failure to stop. They have to have
5 factual allegations. And it does. Mr. Adams' date of
6 birth, [REDACTED] Minor's date of birth, and that's the
7 allegations.

8 THE COURT: Here is my intent, and that is to tell
9 them -- remind them that the Defendant in this case was
10 charged by way of indictment with criminal sexual conduct
11 with a minor. Tell them he's pled not guilty to it and so
12 on and so on and so on.

13 And finally tell them what criminal sexual conduct
14 with a minor in the first degree is.

15 MR. BROWN: And yesterday you opined that you were
16 going to read all of the options. A laundry list of
17 sexual intercourse, cunnilingus.

18 THE COURT: Right.

19 MR. BROWN: I understand, but some of them clearly
20 don't apply. And that doesn't bother me so much reading
21 them if the jury knows that they're alleging those two.
22 There has been no proof of the other stuff.

23 THE COURT: That's true.

24 MR. BROWN: Cunnilingus.

25 THE COURT: That's true.

1 MS. JOSEPH: That's true, and Your Honor, we would
2 ask that you read the quote, laundry list, and that's what
3 we're asking.

4 MR. BROWN: See, now, doubly -- my client is called
5 to answer that averment alone. The averment is sexual
6 battery, to wit, that that is factual averment is what
7 they're claiming.

8 THE COURT: All right. And so the reason we are
9 having this discussion, I'm sorry, is what?

10 MR. BROWN: Cause I'm going to argue in closing that
11 they didn't prove fellatio. Flat out, they offered and
12 charged him with it, and they didn't prove it. There is a
13 discrepancy on the fellatio between the testimony and the
14 witness.

15 MS. JOSEPH: All I'm hearing is facts on facts, and
16 it is our job to argue the facts and for the jury to
17 remember the facts and interpret the facts. I don't feel
18 like this is an area for the Judge to comment on and for
19 you to read the indictment the State would be calling
20 undue attention to the indictment and a special document.

21 MR. BROWN: I don't mind if you didn't take out all
22 of the facts of the indictment, and I don't mind getting
23 up there and saying they didn't even charge which person
24 is involved. You know, put the actual charge that
25 Mr. Adams -- I'm sorry. Mr. Adams, Mr. **Minor**. I minor.

1 those are the allegations.

2 THE COURT: Let me start over again.

3 MR. BROWN: Yes, sir.

4 THE COURT: What are you objecting to?

5 MR. BROWN: Well, I'm objecting to the jury not
6 hearing the actual averment.

7 THE COURT: Right.

8 MR. BROWN: The factual averment that was found by
9 probable cause. That's the only one that was found by
10 probably cause by a grand jury. He has a right to have --
11 to face trial only on what was presented and passed upon
12 by the grand jury.

13 And it is doubly a concern when there is a charge
14 that wasn't presented to the grand jury is supercilious.
15 It bothers me, but that's not what we're charging him with
16 here. Although there is a laundry list of things he's
17 being charged with. It's necessary ---

18 THE COURT: No. The laundry list does not say that's
19 what he's charged with.

20 MR. BROWN: I know, and nothing else would. If you
21 didn't read the body nobody else would say what the
22 averment is. That's exactly my point. If you read the
23 body I don't care about the laundry list. That is fine.
24 I mean how -- you're going to present to the jury the
25 option of if you think he's guilty of cunnilingus or

1 sexual intercourse, if you read that statute and don't
2 tell them what they're actually claiming.

3 To the extent that it is supercilious and doesn't
4 involve me as long as they're, you know, that's not what
5 they're claiming. He had a no -- he has a right to know
6 what that claim is. He got it. And he has a right to
7 respond to it, but they don't have notice of it. They're
8 the ones determining if he did those two acts.

9 THE COURT: I would assume that you would tell the
10 jury.

11 MR. BROWN: That the indictment says fellatio, but
12 they don't know it.

13 THE COURT: No.

14 MR. BROWN: That he was charged with those two acts.
15 Not that the testimony says it; that he was charged with
16 it. How are they going to know that otherwise? They've
17 never been told that's what -- to date, and she stopped at
18 the to wit language.

19 THE COURT: All right. Let me back up.

20 MR. BROWN: Yes, sir.

21 THE COURT: In the -- as I said I'm not going to send
22 the indictment back.

23 MR. BROWN: Yes, I understand that. I just want to

24 ---

25 THE COURT: Stop there.

1 MR. BROWN: Yes, sir.

2 THE COURT: Now, you want me to a charge that a
3 sexual battery is what?

4 MR. BROWN: Well, I would prefer that they hear the
5 actual averment to the indictment.

6 THE COURT: Okay.

7 MR. BROWN: But if you're not going to do that I
8 don't think we need to then to offer the State the
9 opportunity to convict my client on different means that
10 haven't been presented at all. Because the D.V. strikes
11 fellatio out of it, and you nodded. I've seen that
12 because there is evidence of it from the videos.

13 And so I understand that, but I didn't make a D.V. to
14 strike sexual intercourse, cunnilingus because that's not
15 before us. But Your Honor's charge would put it before
16 us. It doesn't bother me, and I'm going to tell the jury
17 that the indictment doesn't talk about those things. But
18 they're not going to know whether I'm telling the truth if
19 they don't hear the indictment.

20 THE COURT: All right. What is it you want me to
21 charge?

22 MR. BROWN: To charge the indictment here alleges ---

23 THE COURT: No. What is it you want me to charge on
24 first degree criminal sexual conduct with a minor?

25 MR. BROWN: That only cunnilingus and I guess digital

1 penetration. I don't --

2 MS. JOSEPH: You mean fellatio.

3 MR. BROWN: I mean fellatio and digital penetration,
4 although I don't think that language is actually in there.
5 I think it's more like any intrusion to a body.

6 MS. JOSEPH: But we would not ask for anal
7 penetration. We would ask for, if he wants to change it,
8 to fellatio and then it's "Or any protrusion no matter how
9 slight." That language?

10 MR. BROWN: I will accept it, but I don't believe
11 that satisfies the requirement that the jury know what the
12 averment is.

13 THE COURT: All right. And I've already ruled on
14 that.

15 MR. BROWN: I'm trying ---

16 (WHEREUPON, both parties speaking at the same time.)

17 THE COURT: What I'm trying to do is find out if you
18 object to that charge.

19 MR. BROWN: I don't object to it being shortened, and
20 I'm not arguing with your ruling. I want to make it clear
21 for the record.

22 MS. JOSEPH: And, Your Honor, the State actually
23 would object to shortening it. It is just the definition.
24 Giving the jury a laundry list, that's just means that
25 this is the definition section. It's just the definition

1 section of sexual battery. He is charged with a sexual
2 battery.

3 MR. BROWN: They chose those sections to narrow. If
4 they would put in sexual intercourse I would be able to
5 say what that means.

6 MS. JOSEPH: Just to be clear, Your Honor, the State
7 feels that once again this is another back door attempt to
8 attack the indictment. There is -- this is, first of all,
9 Mr. Brown clearly is capable of, you know, making
10 objections and making very sound motions. He had his
11 opportunity to attack this indictment. He chose not to.

12 And now he has attacked it over and over and over
13 again. At this point the indictment, which was merely a
14 notice document and not in evidence, Your Honor, we are
15 far past that point. We are at the point of examining the
16 evidence that was presented at trial. And the evidence
17 that the Defendant committed a sexual battery, and we
18 would like the definition of sexual battery read in its
19 entirety to the jury.

20 I apologize for my tone, Your Honor. I'm getting a
21 little bit angry.

22 MR. BROWN: And, Your Honor, I would say that there
23 are trafficking cases for drugs that talk about jury
24 instructions where it offers them the opportunity, and
25 this is the exact case I had with Your Honor in the P.C.R,

1 where it offers the opportunity to convict under one type
2 of trafficking, such as a possession trafficking, versus
3 another type of trafficking which would be not based on
4 weight but some other activity.

5 We talk about that in South Carolina case all the
6 time, and I just point that out. Those are some of the
7 cases that I feel that multiplicity, the one that I'm
8 aware of they arrest a guy at one location, and then are
9 selling drugs in a trafficking weight and then they go
10 back to his house and he knew that was jeopardy, double
11 jeopardy, cause there were two offenses.

12 And then he goes into the analysis of separate
13 offences. Drug at one location in another county.

14 THE COURT: All right. I'm going to read the
15 definition of first degree criminal sexual conduct with a
16 minor as I told you I would read it yesterday with the
17 change that I told -- that everybody told me they agreed
18 to yesterday afternoon, and that is the portion that dealt
19 with the child being unable to consent to a sexual
20 battery.

21 MR. BROWN: Yes, sir.

22 MS. JOSEPH: Thank you, Your Honor.

23 THE COURT: Ready for the jury?

24 MS. JOSEPH: Yes, Your Honor.

25 MR. BROWN: Your Honor, I need to renew my motions

1 after we rested. I just failed to do that. I rested.
2 The jury went out. I never relieved -- I don't need to.
3 I just made them. I don't want to waive them. I think I
4 do have to renew them after the close of my case, too.

5 THE COURT: I think you do.

6 MR. BROWN: I'm doing that right now.

7 THE COURT: Thank you.

8 MR. BROWN: And I assuming that since nothing
9 happened that you're going to rule the same way?

10 THE COURT: That's true. I agree, and I understand
11 your motions and I do not have any reason to change my
12 prior ruling on those very same issues. I will say that
13 I've seen defense counsel not renew motions at the
14 conclusion of their case which is just awful.

15 Anyhow, I saw one in this courtroom, matter of fact a
16 few months ago in an awful case, but I mean with real jail
17 time. Not possible, but real jail time at all. Defense
18 counsel did not make a motion. Anyhow, you did.

19 MR. BROWN: Thank you, Your Honor.

20 MS. JOSEPH: Your Honor, one thing. Playing a short
21 video clip during opening. Is it possible to instruct the
22 jury to sit where they can view the videotape?

23 THE COURT: You mean as we've been doing?

24 MS. JOSEPH: Yes, Your Honor. But just to start
25 rather than moving it in the middle of my opening --

1 closing.

2 THE COURT: Say that again.

3 MS. JOSEPH: Rather than having them sit in their
4 assigned seats they kind of move towards the back. Maybe
5 instruct them to do that initially rather than move during
6 the middle of my closing.

7 THE COURT: Okay. All right. I'll do that. Wonder
8 why we can't get a better setup for our t.v.

9 MS. JOSEPH: It's terrible. The Solicitor, when he
10 tries cases, he brings in his own t.v. Like he rolls in a
11 t.v. and puts it right in front of the jury.

12 THE COURT: Yeah, I understand. I don't way to say,
13 'this is the way we do it back home', the way the
14 courtroom is set up where I came from had one like that
15 but it had an arm.

16 MS. JOSEPH: Right.

17 THE COURT: It would swing out so that you could --
18 in other words, the same one come out here this way and
19 tilt so they could look at it.

20 MR. BROWN: Clerk of Court, I'm sure, has their own
21 monitor.

22 THE COURT: They had both.

23 MR. BROWN: Yes, they did.

24 THE COURT: And they had both and a drop down.

25 MR. BROWN: I will say this. I'm proud of Beaufort

1 County not following Jasper County put a monitor in here.

2 THE COURT: All right, Mr. Brown. You have decided
3 to testify or not testify.

4 THE DEFENDANT: I have decided not to.

5 THE COURT: Not to testify?

6 THE DEFENDANT: Yes.

7 THE COURT: Thank you so much.

8 (WHEREUPON, the jury panel enters the courtroom at
9 12:47 p.m.)

10 THE COURT: Welcome back once again, ladies and
11 gentlemen. I believe we are ready to hear the closing
12 statements. Close arguments, excuse me. But I understand
13 that a portion of some videos may be shown to you. So you
14 may want to go ahead, those of you who have been
15 historically moving to get a better view of may want to go
16 ahead and move to get a better view of it.

17 If you can see it, that's fine. You don't have to
18 move at all. And with begin with the State.

19 CLOSING STATEMENT BY MS. JOSEPH

20 MS. JOSEPH: May it please the Court, Your Honor. If
21 you believe [Minor], the victim, the little boy
22 who came to testify, if you believe [Minor] and the
23 Defendant, Justin Adams, is the guilty of criminal sexual
24 conduct in the first degree with a minor. If you believe
25 [Minor], the Defendant, Justin Adams, is guilty.

1 After I've spoken with you I expect Defense Attorney,
2 Mr. Brown, will come and speak to you, too. And I expect
3 that he's going to try to confuse you. He's going to try
4 to talk to you about the victim's mom, Tabby. He's going
5 to try to talk to you about Grand Theft Auto, about police
6 coercion, about taints.

7 This case is not about feelings. This case is not
8 about the victim's mom. This case is not about the police
9 taint or corruption. This case is not even about D.N.A.
10 this case is about whether or not you believe that little
11 boy. So let's remember when you heard from [Minor]
12 during this trial.

13 First, the State played for you two videos. All of
14 us, let's remember those videos. The first video was made
15 with Lieutenant Babkiewicz who came and testified here
16 today. That video was made on December 7th, December 7th
17 of 2013. That's the same date that the victim, [Minor]
18 [redacted], told his grandma, his Nana, that he had a secret.
19 That's the same day that [Minor] was urged on by
20 grandmother to tell his mom, Tabby, that secret. And that
21 is the same date that Tabby picked up the phone and called
22 911.

23 So the day the disclosure is made, that day, that
24 little boy is put in an interview room and I played for
25 you that interview in it's entirety. So that is the first

1 video, the day the disclosure was made.

2 The second video, which was made at Hope Haven by a
3 woman named Mary Beth Hefner, who has an expertise as an
4 experienced interviewing children, was made on
5 December 11th. Four days after the first disclosure.

6 The first thing I want you to remember about the
7 videos is that they were made very close in time to the
8 first disclosure. In addition, I want you to remember how
9 consistent those videos are. In those videos the
10 interviewer, whether it's Lieutenant Babkiewicz or Mary
11 Beth Hefner, told [Minor] that all they want is for him
12 to tell the truth.

13 In those videos Lieutenant Babkiewicz and Mary Beth
14 Hefner asked open ended questions. They don't push him.
15 They don't prod him. And in fact I'm about to show you
16 two very brief video clips. One from Lieutenant
17 Babkiewicz's interview and one from Mary Beth Hefner's
18 interview. And both of those interviews, this is where
19 [Minor] first says, "Hey, this is why I'm here."

20 And I want you to watch what the interviewer says to
21 [Minor] because Lieutenant Babkiewicz says, "I want to
22 you tell me what you told your mom," and Mary Beth Hefner
23 says, "Why are we here today?" And with very little
24 prodding that little boy easily, quickly without
25 hesitation spills forth the details of the abuse. So I'm

1 going to ask you to turn to the monitor while we watch
2 these two brief clips.

3 (WHEREUPON, a video clip from State's Exhibit Number
4 One was played for the jury in open Court.)

5 MS. JOSEPH: I'm now going to play a clip from Mary
6 Beth's interview. This interview happened at Hope Haven.

7 (WHEREUPON, a video clip from State's Exhibit Number
8 Two was played for the jury in open Court.)

9 MS. JOSEPH: Beg the Court's indulgence, Your Honor.
10 In addition to the recordings that were made you also have
11 the testimony from the victim, [Minor]. He came here
12 yesterday. He walked up to the stand, and he sat here.

13 [Minor] is now eight years old. He was five years old
14 at the time of the abuse. Three years have passed. In
15 that time [Minor] has forgotten some of what occurred.
16 He's forgotten some of the abuse.

17 He no longer remembers that the Defendant, Justin
18 Adams, put his mouth on [Minor]. He no longer remembers
19 that [Minor] was forced to put his mouth on Justin
20 Adams' penis. He forgotten, but pay attention to what he
21 does remember, what he testified to, namely, first, that
22 Justin told him to say that what happened in the bathroom
23 was a secret. To keep it a secret.

24 Second, that Justin took his finger and put it inside
25 [Minor]'s anal cavity.

1 And, third, that the majority of the abuse happened
2 inside the bathroom. Please remember how consistent
3 [Minor]'s testimony has been.

4 So, now that we've talked about the two videos and
5 examined those and the circumstances that exist
6 surrounding the making of those two videos. And we
7 discussed [Minor]'s testimony yesterday here in Court.
8 Let's put the videos and the testimony together and
9 consider all of [Minor]'s statements.

10 The first thing I want to draw your attention to is
11 the victim in this case has no motive to lie. [Minor]
12 is very clear during his Babkiewicz Interview, the
13 interview with Lieutenant Babkiewicz. He likes Justin.
14 There are two things he didn't like about Justin. First,
15 the bad thing that Justin does to him. And, second,
16 Justin doesn't always give him a snack. He likes Justin.

17 Second, Tabby, [Minor]'s mom, who was in a
18 relationship with the Defendant, who had a child with the
19 Defendant, who lived with the Defendant, who was dependent
20 on the Defendant to pay her rent, has no motivation to
21 encourage her son, [Minor], to make up these allegations
22 of abuse. Use your common sense. That doesn't make
23 sense.

24 And, finally, the grandmother, [Minor]'s
25 grandmother who is called Nana, has no reason, no

1 motivation, to encourage her grandson to make up
2 allegations of abuse. First of all, the allegations are
3 horrific, but also grandma took the stand, and she said
4 that he loved Justin. She said that. This is not a
5 personal vendetta.

6 Finally, in his Hope Haven interviews he is asked, at
7 the end of that interview -- do you remember at the very,
8 very end, he was asked, "Did anyone tell you to lie?" And
9 the interviewer goes above and beyond and says, "Did your
10 grandma tell you to lie? Did you mom tell you to lie?"
11 She knows who to ask about. And [Minor] says, "No."

12 I also want you to remember when reviewing these
13 statements in your mind, and some of you have children,
14 are these details that an average five year old and
15 average eight year old would know. Are these words that
16 an average five year old or average eight year old would
17 know.

18 And in the Lieutenant Babkiewicz interview and in the
19 Hope Haven interview the victim, [Minor], talks about
20 the Defendant massaging his wacker. In both interviews he
21 also talks about the Defendant nibbling on his wacker. He
22 also talks about how it hurts. And the Defendant takes
23 his finger and puts it inside of his anal cavity. And ask
24 yourself if that is normal knowledge for a little boy.

25 And in the Hope Haven interview he was asked, "Have

1 you seen naked woman on t.v? Have you seen naked bodies
2 on a cell phone? Have you seen anything like this? I
3 mean anything that you should not have seen, and he says
4 "No." This is not stuff that he learned in video games.
5 This is not porn that he caught a glimpse of. This is
6 what he experienced.

7 I also want you, when you recall those statements,
8 both the videos and the testimony you heard in Court from
9 what [Minor] came in here and said on his interviews
10 that he was told to keep this a secret. This is the most
11 important detail of the entire case. Why would you have
12 to keep it a secret if it's a normal bath time event.

13 If Justin was just washing him, helping him clean up
14 after he wet himself, why was the little boy told to keep
15 it a secret.

16 Finally, I just want you to review all of the
17 statements in general for consistencies, okay? This
18 little boy is saying that the majority of the abuse
19 happened in the bathroom. He said that the abuse occurred
20 during the time period when he lived with the Defendant.

21 In the Hope Haven Interview, in the Babkiewicz
22 Interview he said that the Defendant massaged his wacker.
23 In the Hope Haven Interview and the Babkiewicz Interview
24 he stated that the Defendant nibbled on his wacker. And
25 in fact tried to get [Minor] to nibble on the

1 Defendant's wacker. Yesterday and the Hope Haven
2 Interview and in the Babkiewicz Interview he said the
3 Defendant took his finger and put it inside his butt. And
4 the Hope Haven Interview, the interviewer asked, "Do no
5 mean outside your butt?" And he said, "No. Inside."

6 I want you to remember all those things. Now as much
7 as this case is about what [Minor] said, and that's what
8 I want you to consider. Think about what [Minor] said.
9 It's not about what he didn't say. [Minor] never said
10 the Defendant ejaculated. He never said there was semen,
11 and that's important because the police in this case are
12 dependant, they're dependant on the words of this victim
13 to tell them what to search for.

14 Police actually don't go searching for evidence that
15 they don't have reason to believe is there. They were
16 told that there was no semen. They were also told that
17 the major of the abuse, if not all of it, happened in the
18 bathroom where it was washed away. So they didn't go look
19 for D.N.A, and they collected no D.N.A. in this case.

20 Also, Lieutenant Babkiewicz testified that even, and
21 this is important, even if they had found D.N.A. what
22 would that have meant? The Defendant lived in that house.
23 Members of the jury, where that abuse took place in that
24 bathroom that was the Defendant's bathroom. That's where
25 he took showers. That was his bathroom. I'm sure his

1 D.N.A. would be there, and I would stand here and say
2 that. [Minor] 's D.N.A. was there says nothing, proves
3 nothing.

4 Similarly, Kristin Dalton, our medical expert, got up
5 and said there were no physical findings in this case. No
6 medical findings. No bruising. No tearing. I want you
7 to use your common sense again. Think about what
8 [Minor] told you. Think about what [Minor] told her.
9 This is a case where a man's finger was put inside his
10 anal cavity. It is a case where maybe the victim's penis
11 was touched by the Defendant's mouth. This isn't a case
12 where there were physical findings.

13 Furthermore, physical findings are very rare overall
14 in these types of cases. Just because this case is about
15 what [Minor] said, and that's really what I think it's
16 about all, I don't want you to forget what the other
17 witnesses said.

18 Tabby Jones, the victim's mom, who by the way is not
19 winning any mom of the year awards. She ignored some
20 suspicious behavior over and over again, but it is her
21 that testified that the victim and the Defendant would
22 take showers together and sometimes the door was locked.
23 It was Tabby who testified that she once witness her son
24 exit the bathroom with what she called a boner with the
25 victim behind her -- behind him.

1 And it was Tabby that could probably confirm the most
2 important details of [Minor]'s story, namely that the
3 Defendant and the victim did take showers together cause
4 think about it. We have a little boy saying, "Hey, Justin
5 touched me in the shower," and low and behold, they're
6 taking showers together around that same time period.

7 I also want you to remember what the grandfather
8 said. Poppa as he's call, he got on the stand and said he
9 that he heard [Minor] tell his grandma that he had a
10 secret, and that is what sparked the entire investigation
11 in this case. And he can confirm that he heard that
12 secret. And, members of the jury, [Minor] did may have
13 a secret. He told his Nana that secret. He told his mom
14 that secret, and he told the police that secret.

15 And yesterday he came here and told you about that
16 secret. Three years after the abuse took place he got in
17 that chair and he told you that secret. And if you
18 believe his secret, if you believe [Minor], then the
19 Defendant is guilty of criminal sexual conduct with a
20 minor in the first degree.

21 That means, by the way, criminal sexual conduct with
22 a minor in the first degree that the Defendant is charged
23 with having committed a sexual battery with a minor under
24 the age of 11. [Minor] was five in 2013 at the time of
25 the abuse.

1 So let's talk about what sexual battery is. A sexual
2 battery, and there is a list, sexual battery can be sexual
3 intercourse. It could be cunnilingus which is oral
4 contact with the female genitalia or it could be fellatio
5 which is contact with the male genitalia or it can be anal
6 penetration or anal intercourse or it can be any
7 intrusion, any intrusion, however slight into any cavity
8 of another person.

9 So here in this case we have fellatio which is the
10 conduct where [Minor] states that the Defendant nibbled
11 on his wacker, so that's the Defendant, Justin Adams,
12 putting his mouth on [Minor]'s penis. [Minor] also
13 said that the Defendant put his penis in [Minor]'s
14 mouth. But we also have anal penetration or intrusion
15 into the anal cavity. That is what [Minor] said on the
16 stand and in the videos. The Defendant took his finger
17 and put it not on the outside of his butt, but all the way
18 on the inside.

19 Now, the statute is very clear, and at the end of the
20 trial the Judge is going to read it to you. This is
21 important as well. If you believe that there was oral
22 genital contact between either the Defendant and the
23 victim or with the victim touching the Defendant with his
24 mouth. So either way, if you believe that that's enough
25 for sexual battery.

1 Or if you believe that the Defendant simply took his
2 finger and put it inside [Minor]'s butt, inside, if you
3 believe just that, that is enough for sexual battery if
4 you believe of these things occurred. Or if you believe
5 both, but if you believe one that is enough for sexual
6 battery.

7 Now, the final thing I'm going to say to you is that
8 the State in this case has the burden. The burden is
9 right here. We have to prove our case beyond a reasonable
10 doubt. This is not no doubt, but merely the -- a
11 reasonable doubt is the doubt that a reasonable man or
12 woman -- would cause a reasonable man or woman to hesitate
13 before acting. The State in this case has met their
14 burden.

15 Now, we ask you to consider all the evidence, and if
16 you believe [Minor]'s secret, if you believe [Minor]
17 then we ask that you find the Defendant guilty of criminal
18 sexual conduct with a minor in the first degree. Thank
19 you.

20 THE COURT: Thank you Solicitor.

21 CLOSING STATEMENT BY MR. BROWN

22 MR. BROWN: May it please the Court. Out of the
23 mouths of babes. Wisdom, sometimes it becomes imperative
24 from someone else. Let's talk a little bit about youth.
25 There are reasons why we ask our President to be 35; that

1 we ask that the person drinking and buying alcohol be 21.
2 Got to be 18 to buy cigarettes, 15 to drive a car.
3 Physically speaking a 10 year old could drive a car.
4 There is a reason for that. We know he can't drive a car
5 at night. What is it about these? We know this, there
6 are source memory issues.

7 It's here where he just learned the word, 'massage'.
8 That's a source memory question, and that concept is not
9 even within this realm. And I'm going to come back to
10 that because we do have a good idea where the word,
11 'massage' came from in this case. We believe
12 suggestibility. Is that a concern? If it wasn't then
13 we've got doomed dog all over Columbia set up with our
14 taxpayer funds for the Children's Law Center.

15 Why do we set that up? Mary Beth Hefner, she stated
16 all to get training. We don't need any of that, do we, if
17 suggestible wasn't a concern. And we've got the guideline
18 that are set up and things that you're not suppose to do.
19 Those are there because we don't want someone parroting
20 the concerns of someone else.

21 What did you not hear her say here today; that
22 massaging his wacker means he's guilty of this crime.
23 We're not saying that he massaged his wacker. They're not
24 saying that that's criminal because that's not what he's
25 charged with at all. And understand that's the repeated

1 statement that we get is consistent through this. There
2 is no memory of the oral sex despite the fact that he has
3 discussed this case and his testimony in this case by
4 December of 2013 nine times.

5 Since then, three times with them, several times with
6 the other people there, and who knows how many times that
7 counselor that Tabby had said -- told her that there was
8 semen, and she talked to [Minor]. Now, what do we know
9 about [Minor], and I'm going to differ a little
10 bit from that tape. He says he likes Justin, but from
11 what I hear that he likes about Justin are I don't like
12 when he gives me a smack. I don't like him when I can't
13 play the video games. And I don't like him for the same
14 conduct here. We will come back to these statement.

15 I didn't hear one thing he liked about Justin, not
16 one. He likes him. Not suppose to hate people. You know
17 his friend, Austin, he likes Austin. Austin kicks him and
18 lies about it. Now, we know this. We know that he is
19 more excited about telling her that his dad has been
20 arrested way more times than anyone else. Like he's
21 bragging about it.

22 And that's Justin, my stepdad. You like him, but my
23 real dad is the one that got arrested for dealing in
24 medicine that he sells to people or something like that.
25 Clearly not Justin. What do you know about Justin. He

1 had 34 months of investigation by, let's see, the
2 Destacio, Duke, Danyov, Babkiewicz, Ms. Hefner, Dr. Baxley
3 from the E.R, Kristin Dalton, the counselor, the
4 prosecutor's office. However many people that's 34 months
5 of investigation over this.

6 So what we know about him now after his testimony.
7 He worked for principles so he could make sure his child
8 was born in a place he could live with his mother and
9 father. He attempted to go get those work records and see
10 if any of those things worked out. He was ever off work,
11 and she was coming home from work. Any testimony at all?
12 No badge here. No search warrant here. This is just an
13 individual represents that individual. No attempt to do
14 that.

15 There is a chart the Children's Law Center puts out
16 for these cases. So if somebody sits up here and says,
17 "Believe his word. This man may go to prison. He is
18 going to be subject to that hard life of prison there,"
19 there is a reason they do that. The word alone puts 50
20 percent of the people in Chicago on death row who are
21 innocent on word alone.

22 We all heard the stories of how many decades people
23 sit in prison based on whatever turns out not to be true.
24 and make sure you understand this: D.N.A. and physical
25 evidence is what changed that dynamics. You have to

1 assume that they're -- not only did decades of a
2 conviction based on words without physical evidence, but
3 centuries. The chart so we're not faced with this issue.
4 You're not faced with making a decision whether you
5 believe a five year old or an eight year old to send a man
6 to prison who you have heard nothing else bad about save
7 one gram of marijuana.

8 That's just -- that's proof beyond a reasonable
9 doubt? There is a chart that they put there, and they
10 went through and put the things that they, everybody, to
11 do. They believe this case?

12 What did you hear about **Brother** that I didn't bring
13 up? Was it fair and unbiased or just slighted from the
14 beginning? And not necessarily with any ill intention.
15 Because abuse of children is certainly a serious concern.
16 There is no question about it. Is that consistent with a
17 person who provides for his family?

18 Remember the other guy was so bad that the dad had to
19 take the gun to get his daughter back home for that.
20 Maybe D.S.S. didn't come out. Maybe nobody wanted D.S.S.
21 to see what was there in that house cause where would
22 those kids end up being then. How about that. Is there
23 pornography in that home cause remember there is no
24 pornography in Justin Adams that anybody saw.

25 They talked to Tabby. There was nobody with

1 pornography, so, hey, he couldn't have found that anywhere
2 else. So who searched the other house? Just like whoever
3 asked Mr. Adams how about your interaction with your
4 grandson? What did you see? What did you hear? That's
5 fair. That's a fair investigation. Make no bones about
6 it, the State employs police that work for the same state
7 that employs this side against my client. There is an end
8 quantity of resources. At times part of the interview on
9 December 11th where was the opportunity for Justin Adams
10 or me to go ask questions. Have Mary Beth Hefner ask
11 those questions.

12 Now, I'm going to now talk to you a little bit about
13 that interview, the source of the child's knowledge. The
14 word, 'massage', they talk about where did you learn that
15 word. That is important. If they would have said
16 something that only someone who was so victimized by
17 Justin would have had known. That's probative. I think
18 it's telling that they bring Mr. Bryant in, their witness,
19 in. I'm not asking the questions. They are. They're
20 asking him open ended question that didn't lead into this
21 answer, and his words that he massages the child.

22 Now, and I asked him about the use of that word. Who
23 asked for the massage. He said [Minor] asked him to
24 massage his legs. Now, I don't know whether [Minor]
25 said, 'massage my legs', but he asked the grandfather

1 that. The grandfather never stated any of that action,
2 any other term besides the word, 'massage'. There is no
3 other word there that's so used. Word source.

4 Let's talk about the issue contact between Tabitha
5 and Justin. That testimony came out. Tabitha said she
6 has had contact with him to get money for diapers. Two
7 hours later after the child good in the hall with Tabitha
8 he comes in. And I ask him about contact between his
9 mother and Justin. And remember he never went with them.
10 He never rode with his mom to see Justin, and he said,
11 "Only to go get diapers for Brother."

12 And I didn't even ask him that. How did you find
13 out. Cause my mom told me. Let's talk about what
14 Mr. Bryant said on December 7th. "My wife keep after him
15 until he said Justin did it." I wasn't there. Justin
16 wasn't there. Have no idea. At that time he's probably
17 at work. She keep after him.

18 Okay. And what do we know. They were obviously
19 close. They lived together. Miss Bryant and Tabitha
20 Jones, I'm going to suggest that besides a couple of weeks
21 or months with the elder [REDACTED] Minor or the time with
22 Mr. Adams she hadn't lived anywhere else. They're close
23 enough. Mom knows she gets Justin out the picture. A
24 person who is not there. She doesn't care for much,
25 necessarily. She didn't say she likes him. Won't even

1 let him have his own kid, see him at all on his four year
2 old birthday.

3 There is no restriction because this never even
4 showed up in this case. You think somebody would have
5 come in and filed a complaint in Family Court or anything
6 at all if they had concern. But it's not really about
7 Brother. It's about Minor coming home. Minor, the
8 child that Brother raises as their own. Y'all remember
9 that she was 19 when she had this child. They're the ones
10 that raised Minor.

11 Now, I want to talk a little bit about the recorded
12 interviews, and I would be remiss if I didn't come back to
13 the video game. We all heard of Grand Theft Auto. It's
14 certainly a game that we know that has shooting good guys
15 and profanity on it, whether it has anything else on it at
16 all. He talks about that. I mean I suggest that if the
17 police hadn't confiscated the game we would have it right
18 now. We know ten weeks in the jail, you're rental is
19 gone.

20 Let's talk a little bit about the recorded
21 interviews, all right. They're brought in here as an out
22 of Court statement. Why is it so special that they had to
23 bring those in here today? It's special for them because
24 it got put in a stage they wanted the questions asked by
25 people that all got together, gone through the police

1 reports, knew what they wanted to ask. Tell me about your
2 grandmother, Lisa Adams, or your step-grandmother. And
3 they may not technically be married. Where is that
4 question?

5 Where was the permission from [Minor] 's mother?
6 Permission for him to deny. Is that going to make
7 everyone happy? Somebody's been arrested. He denies it.
8 Justin will sue the police. He denies it. How is this
9 family going to get back together if it turns out to be
10 false? Tabitha and Justin get back together after that?
11 Let it go, baby. At that point it's hard to turn back.

12 And you were never given that opportunity, and we
13 never had the opportunity either. There is no question.
14 I can't be present my defense. I can't prep my
15 examination of him. I can't prove that any more than
16 talking to an eight year old child right now. And quite
17 frankly, the worse allegation made, the allegation that
18 that has no possible innocent explanation, touching the
19 genitalia with the mouth.

20 That's part his doesn't remember. And we're not
21 talking about some type of memory that's been blanked out
22 by trauma. He's been to a therapist. He's been to a
23 counselor. And note, they did not bring that counselor
24 here. The person who worked with him. A whole lot of
25 counseling is what they said. Where is that? Where is

1 that lady? She came. This isn't something that was done
2 in New York. This is right here. This is right here.

3 Let's talk about the interviewing process for a
4 second. The interviewing process began outside of any of
5 our observations. Mr. Bryant talked about his take on how
6 that interview happened. We didn't really hear too much
7 from Miss Bryant about the disclosure and questions asked
8 that led to this. They used her statement to correct the
9 date concern. It has its own recall issue. Obviously,
10 nobody thought it was 2005 the child was born.

11 People make mistakes. No question about it. We all
12 heard it's hard to remember five years ago. There is no
13 question. I mean I don't remember -- I could fill in the
14 details, but I would suggest this; they never asked her
15 about that. We do know this much. She then calls her mom
16 and tells her mom. And then the mom meets with the child
17 and nobody is there for that, not even the grandmother.

18 Clearly that tells how that happened, and that
19 disclosure, again, is the keeping at it until he said it
20 was Justin. Police talked to Justin -- Minor at the
21 house. We have no idea what was said. Remember that
22 officer isn't here to tell you. Why? Would have spent 15
23 minutes on the stand.

24 Lead Detective Daniel, where is he. The lead
25 detective on the case. I'm assuming that he didn't come

1 cause he didn't do any of that multi-disciplinary team,
2 any corroboration chart. That's why they didn't bring
3 him. They did bring him cause they didn't want me to be
4 able to prove that search under the bed to find 1 gram of
5 marijuana. But it was right there. Had to dig all up
6 underneath that bed or look in the dresser. That's what
7 they said, "Looked in the dresser and looked under the
8 bed."

9 They did take photos. They went there for
10 allegations of child misconduct, and they sent two
11 officers with a camera and found 1 gram of marijuana.
12 What difference would it have made? We can show you the
13 size of that bed. I don't understand the testimony.
14 Beyond the testimony that I could bring out we can find
15 out exactly how big the bedroom is since it touches the
16 kitchen.

17 And what the bomb was, sometimes the mom is inside
18 the bedroom while they were in the bathroom. That's what
19 the child said. And sometimes she's in the kitchen, and
20 sometimes they're in the bedroom she's in the kitchen.
21 This is a two bedroom, singlewide mobile home. And we're
22 talking about small enough to be put on the back of a
23 truck and drive it down the road. That kind of house.
24 This isn't even an apartment where you can hear the
25 neighbor next door to you brushing their teeth when you're

1 brushing your teeth.

2 This is a trailer, very small. Trailers aren't
3 modular homes. They're mobile homes, and they have
4 different requirements. They have much lower requirements
5 than a stick built house. These are tiny homes. We all
6 heard didn't like mobile homes. The truth is open the
7 window the wind blows them down. No gutters at all. None
8 of that. Justin lets them in the house. I tell you they
9 go in there and ask him -- he tells him that there is
10 marijuana in there and lets them in. That's what a person
11 that does all this stuff does.

12 And they interview Justin and Tabitha for that
13 matter. Where are those interviews? The police did that.
14 I wasn't there to tell you did the interview. Where are
15 those recordings? You think that they would help the
16 government. They didn't leave them back at the police
17 station? Or are you thinking that they left the stuff
18 they didn't want us to hear.

19 I mean it's -- what did Lieutenant Babkiewicz say?
20 "We talked to him. He asked for a lawyer." Both true
21 statements. They talked to him, and he asked for a
22 lawyer. And then when I asked him, somewhere in between.
23 They said, "Justin -- Minor, what did you say." They
24 say Minor -- or there is an allegation that you
25 touched Minor. I didn't do that. No confession.

1 And then they say, "Well, [Minor] said you did." I
2 want a lawyer which one of us wouldn't do that. My
3 goodness, you don't blame the man for getting smart. But
4 a guilty person sits there and talks to them? Let's them
5 in the house? And, look, [Minor] is sitting with the
6 police. [Brother] is with the same family. None of them are
7 there, and Justin is coming home from work and they go see
8 a magistrate. We know which one they did.

9 Now, what did that have to do with anything? Nothing
10 really. Said they got a warrant afterwards. But what
11 does that tell us? A little bit about the emotion that
12 was going on at that police department. And I will tell
13 you Lieutenant Babkiewicz, does an excellent job of
14 friending that child. No question about it. Great, great
15 mentor, coach, or teacher. Not appropriate distance for
16 an interview.

17 But I understand he's passionate about this, and he's
18 going to make sure that that child knows that he's going
19 to get him. Justin is going to be locked up. He made a
20 promise to him. He promises right there. We're going to
21 arrest him. You're not going to have to deal with Justin
22 any more.

23 Tabitha's interview, what happens on that? She
24 equivocates. When she did the interview she was asked
25 this question. She knows if Justin did it. She already

1 knows that answer about whether he's going to be arrested.
2 Is he going to be arrested or not. And I asked her, "When
3 you knew he was going to be arrested you knew you weren't
4 going to be able to stay in that mobile home." What she
5 to -- what is she going to do if Justin gets arrested.
6 What does she have to do? Where does she have to go live?
7 The Extended Stay for a week. Where else does she go?

8 Does she have a real job? I mean I'm not knocking
9 her. I mean it's hard for people with educations to get a
10 job. There is no question about it. But that's something
11 she can no longer control. Once she knows he's been
12 arrested and after that she doesn't have permission to say
13 it's not true because there is no clear couch that she can
14 go back in that house.

15 Now, a little bit about in this desperate concern we
16 have here, and I just want to kind of come back on it.
17 You've got a five year old that they say is unusual to
18 wash. We know. Grandfather said that the child didn't
19 like to wash. Just saying. I want you to understand.
20 We've got a four year old still in diapers, and that's
21 going to be unusual for him to wash a five year old. Who
22 is washing the four year old right? Cause I'm assuming
23 somebody washes the four year old and cleans diapers. So
24 let's don't talk about that being some kind of unusual
25 activity.

1 Now, I want to talk to you a little bit about the law
2 as I kind of wrap things up. I mentioned to you before
3 that there is not an equal competition. That is because
4 the law recognizes way before we were a country that the
5 power between the State and individual is not equal. That
6 we knew that, and I suggest that goes way back to the
7 Magna Carta. A little bit of power from the king. What
8 we learned was that it's unfair to ask one side to bring
9 in proof and the other side has the power and authority to
10 work towards that proof.

11 And so what we have to begin with is a presumption of
12 innocence. His Honor is going to tell you that Justin
13 Adams sits here innocent under the law. And he's going to
14 tell you that that innocence is cloaked around him like a
15 robe of righteousness. Not my words. You're going to
16 hear the Judge say it. And that it takes proof to take
17 that robe of righteousness off of his shoulders.

18 Those words don't sound like they were written last
19 year. They're not some Twitter soundbite. Those words
20 have been with us because those ancient words add wisdom
21 to it. And those are words that we still run our justice
22 system around. And I start with that because if this was
23 a popularity contest I'm running [REDACTED] Minor, the
24 cute eight year old for President over Justin Adams,
25 Donald Trump or Hillary Clinton any day.

1 Though we hope that these important decisions aren't
2 made just on popularity. Otherwise we would come a
3 country based on cult, personally, and that is not what we
4 want. If we want that you wouldn't need a lawyer or any
5 law because we operate on the rules of law.

6 Let's talk about that. If you cut down all the laws
7 to go after the devil who is going to protect you when he
8 turns around and looks at you. That was a measure for
9 measure, and that still means something because we have to
10 follow those dictated no whether our emotion wants us to
11 race over to Palmetto Bluff Road and cuff Justin Adams and
12 find that marijuana he's got there.

13 And tell Minor he can be zapped in the room or
14 that if he doesn't tell the police what Justin did he's
15 not going to go to jail. Now, the rest of the law I want
16 to talk to you about, unanimity. That's very important
17 here. Justin is accused of touching him in the shower.
18 Accused of touching him in the bed or in the bedroom.
19 He's accused of doing this when his momma came home from
20 work. He's accused of doing this when his mom was in the
21 kitchen. He's accused of doing this when his mom went to
22 bed.

23 Beside from the testimony, which by the way the court
24 reporter can replay for you, any bit of it that you ask
25 for. And you write them on a note and she's got a tape.

1 They will replay that as well as the video recordings. It
2 makes a difference. Those are statements that were
3 spontaneously uttered.

4 Now, the law requires that you be unanimous in your
5 verdict, but understand he tells you the law you determine
6 facts. It's not enough for some jury -- for some jurors
7 to say that we believe that his mother came home from work
8 and the door was locked; that that was the day that there
9 was a sexual battery. Remember, we're not admitting any
10 kind of improper massaging of the wacker. That is not --
11 they never said that. That is not the question before
12 you.

13 I'm not telling you that that's the conduct the child
14 said happened. That conduct, if proven, even if it
15 happened, we don't say, 'bring on the massaging of the
16 wacker' if that happened at all. That's not guilt. Let's
17 make sure you understand that. The Judge is going to tell
18 you what is guilty. It's not cunnilingus. It's not
19 intercourse. They're not even alleging that stuff any
20 more. Fellatio, intrusion of a body part. That's the
21 only part of it that is going to be pertinent.

22 So some jurors can't say, 'we think beyond a
23 reasonable doubt that happened' and then some jurors say,
24 'I think when they were on the bed there must have been
25 something there' because that's not unanimous. And this

1 isn't a scatter gun approach, and a little evidence here
2 and a little evidence here and we've got, you know -- hey,
3 mom. I got a 50 on one test and a 50 on another test.
4 Guess what? I got a hundred in math. No, you don't. You
5 failed twice, okay.

6 Now, do we accept the child to be able to lay out
7 dates and give all those details? Do we expect the proof
8 in this Court to demand that before there is a verdict?
9 Absolutely. And you swore that that's what you would do
10 cause I don't have to remind you that you took that oath
11 to follow that.

12 Now, remember, the verdict here concerns Justin
13 Adams. The verdict does not concern [Minor].

14 [Minor] is not captured on that case. The
15 incident come up in Family Court. Somebody thought that
16 that was an interest that needed to be redeemed. It
17 interestingly may come up in civil court. He has decided
18 he will file a lawsuit against Justin.

19 There is a question between Tabitha and Justin over
20 some visitation of [Brother]. Might have been gone to see
21 D.S.S. about that. The question is whether or not Justin
22 Adams is going to have his liberty taken from him. I
23 mentioned to you at the beginning he's standing right
24 now -- sitting right now in the shadow of the
25 penitentiary. This is not some kind of tenth degree

1 criminal sexual conduct. This is not criminal sexual
2 conduct with a 35 year old. Figure out for yourself, the
3 youngest alleged victims and the first degree, the most
4 intrusive action. This is as serious you get on a charge
5 of criminal sexual conduct.

6 We don't dummy down the evidence for the most serious
7 stuff cause that is exactly how you say, 'well, the State
8 Trooper was killed. Somebody needs to fry for it'. And
9 we put innocent people in prison, and that is not what we
10 do here. And that is my job to stop that from happening.
11 Let's talk about how you get in that chair and how do you
12 get out of that chair.

13 And so a couple of other things. Willfulness, okay.
14 She talked about it. Willfulness, what does that mean?
15 That somebody engaged in an act and they were willfully
16 trying to break the law. Okay. Accident we know is not a
17 crime or conduct that could be criminal without the
18 criminal intent cannot be a crime.

19 Classic law school story is the umbrella rack at the
20 restaurant door, and if I walk in and put my umbrella down
21 and go in, if I walk out and take somebody else's umbrella
22 I did not steal it. I took someone else's umbrella, but I
23 did not take that umbrella to steal it.

24 Conversely, if I walk out and intend to steal
25 somebody else's umbrella and I steal my own, I didn't

1 steal it either. But here we're dealing with a mistake.
2 And I say that because we know that there was contact in
3 the shower between them, and he's not the only one that
4 bathed that child. Tabitha told you that.

5 Mr. Bryant told you that and people said it's not
6 unusual for a parent to bathe the child. And my children,
7 a 20 year old off in college. All right. Okay. I don't
8 bathe them anymore, but between my 15 year old and my two
9 20 year olds there was a lot of bathing with boys that had
10 to be done. We just don't do it, okay.

11 And, again, we know the fellatio part, we got a video
12 recording from 30 years ago. I can't tell you that's
13 evidence. They didn't bring in the other video
14 recordings. They bring two video recordings, but not the
15 other two, Tabitha and Chris -- I mean Justin and all.
16 Any of that. We don't have any process on that.

17 Child comes in here and I question him on it, and he
18 doesn't recall any oral sex. So we're down to,
19 essentially, to one lie before you for you to judge that
20 credibility. One. One act, and that's the intrusion by
21 the finger.

22 And, again, remember we're not conceding that that
23 ever happened especially the way they talked about it.
24 But you understand that if there was an act that Minor
25 is telling you about that's true there also has to be a

1 criminal act. And it has to be a criminal act, and
2 remember 34 months of the investigation, got out on G.P.S.
3 monitor, the guy he searched the house for.

4 The witnesses that came up here and testified for the
5 State, Mary Beth Hefner, very well trained. Everything
6 she said is true according to what video showed you.
7 Everything she said contradicted all of the detectives of
8 who did the interview techniques. And a taint against a
9 suggestable or an impressionable child shapes it. How do
10 you shake that taint out cause at that point he was not
11 given permission to say ...

12 Now, I want to talk to you just briefly about
13 circumstantial evidence and again I bring up
14 circumstantial evidence because we talked about it. They
15 don't have an statement. You can't split somebody's mind
16 up and look at it. You can't do that and find out what
17 they think looking at the circumstances. And if you look
18 at actions the evidence in this case then they can prove
19 he did it with the proof that's going through the
20 investigation.

21 You have a man who works in a lot of trouble. Those
22 circumstances are not wholly consistent. You have a man
23 that talks to the police with -- regarding a complaint.
24 Let's talk about you molesting [redacted] Minor [redacted]. You
25 know, he let them search the house. He put out there that

1 cop went through it with camera. They talks to them about
2 it. He tells them it didn't happen. Circumstantial
3 evidence, the Judge is going to tell you to the extent
4 that the State relies on circumstantial evidence. It has
5 to be wholly consistent with each other, and wholly
6 consistent with Justin's guilt.

7 Now, jury verdict is like shooting a gun because you
8 have the regret if the trigger is pulled too late. No way
9 to pull a bullet back. And whatever reason you put on the
10 wound later doesn't stop it from bleeding. Shots fired.

11 Ask yourself would you make an important decision
12 affecting your family based on the word of a five year old
13 under these conditions with the interview process that is
14 started that we can't take back. And part of the process
15 that we saw wasn't done correctly all of which pre-dated
16 this and stuff that wasn't brought to you like the
17 counselors records and counselor's testimony or other
18 videos or any photos or even the ability to come in and
19 say, "Gosh, you know, we just didn't do a good job here"
20 or "Yes, I am paid by the State."

21 Is that credible? Credible witnesses trying to
22 manipulate it. And, you know, I concede it that no one
23 finds these things the same way. Those statements are --
24 those statements are the kind of things that you rely upon
25 to take serious action. Affects your interest, your money

1 to buy a car for [Minor]. He told you the car
2 was great. Never been arrested. Leave him, he's going to
3 ask for the car back. I don't believe the adult wanted.
4 He tells you that stuff. Out of the mouths of babes
5 doesn't always come wisdom.

6 Think about that and remember we're not talking about
7 whether Justin hit the refund on the car or not. We're
8 talking about his liberty for the most serious sexual
9 misconduct charge that this hard on crime state has on the
10 books, and that's the decision you're having to make.

11 And I ask that you make them prove. I ask that you
12 use the same discipline and patience of, look at that you
13 used on your own serious decisions. Who to marry, what
14 kind of house to buy, whether you're going to take that
15 job and move.

16 Think about how serious you take those decisions
17 cause, again, your verdict taking his liberties is like
18 that bullet coming out of that gun. And while there are
19 certain times emotionally that we want to pull the
20 trigger, use your hindsight. That's not the course of
21 action we want to take. Thank you.

22 THE COURT: Thank you, Mr. Brown.

23 MR. BROWN: Thank you, Your Honor.

24 CHARGE OF THE COURT

25 THE COURT: Ladies and gentlemen, I remind you that

1 the fact that the Defendant was arrested, charged and
2 indicted is not evidence in this case and cannot be
3 considered by you as evidence in this case. The Defendant
4 is charged by way of indictment with criminal sexual
5 conduct with a minor. This document as I told you earlier
6 is simply the formal written instrument contains the
7 charges made against the Defendant. It's the document
8 that brings this case into the Court.

9 The Defendant has pled not guilty to the indictment,
10 and this plea puts the burden on the State to prove the
11 Defendant guilty. I tell you that a person charged with a
12 criminal offense in South Carolina is never required to
13 prove himself innocent. And I charge you that it is an
14 important rule of law that the defendant in a criminal
15 trial will always be presumed to be innocent of the crime
16 which the indictment is issued unless guilt has been
17 proven by evidence that satisfies you of that guilt beyond
18 a reasonable doubt.

19 This presumption of innocence does not end when you
20 begin your deliberations, but it accompanies the Defendant
21 throughout the trial until you reach a verdict of guilt
22 based on the evidence which satisfies you of that guilt
23 beyond a reasonable doubt. The presumption of innocence
24 is like a robe of righteousness placed about the shoulders
25 of the Defendant which remains with the Defendant until it

1 has been stripped from the Defendant by evidence that
2 satisfies you of that guilt beyond a reasonable doubt.

3 The presumption of innocence is not a mere legal
4 theory, and it is not just a legal phrase. It is a
5 substantial right to which every defendant is entitled
6 until you the jury are satisfied from the evidence of the
7 defendant's guilt beyond a reasonable doubt.

8 A reasonable doubt is the kind of doubt that would
9 cause a reasonable person to hesitate to act. Some of you
10 may have served on juries in civil cases where you were
11 told that it is only necessary to prove a fact is more
12 likely true than not true such as by the greater weight or
13 the preponderance of the evidence. But in criminal cases
14 the State's proof must be more powerful, and then it must
15 be beyond a reasonable doubt.

16 Proof beyond a reasonable doubt is proof that leaves
17 you firmly convinced of a defendant's guilt. Of course,
18 there are very few things in this world that we know of
19 with absolute certainty. And in criminal cases the law
20 does not require proof that overcomes every possible
21 doubt. If based on your consideration of the evidence you
22 are firmly convinced that the Defendant is guilty of the
23 crime charged you must find the defendant guilty. If on
24 the other hand you think there is a real possibility that
25 the Defendant is not guilty you must give the Defendant

1 the benefit of the doubt and find him not guilty.

2 I remind you during this trial you and I have had
3 different responsibility. I've been required to rule on
4 the admissibility of the evidence during this trial. And
5 I say you are only to consider the testimony presented
6 from this witness stand and any exhibits which have been
7 made a part of the record in this case. But I also have
8 the additional duty to tell you about the law that applies
9 in this case.

10 As the presiding judge I'm an the sole judge of the
11 law of the case, and it's your duty, ladies and gentlemen,
12 to accept the law and apply the law as I now state it to
13 you. If you already have an idea what the law is or what
14 the law ought to be and it does not agree with what I tell
15 you, you must abandon that idea because under your oath
16 you're obligated to accept the law as I state it to you.

17 As I told you earlier, ladies and gentlemen, you are
18 the sole judges and exclusive judges of the facts of this
19 case. The trial judge such as myself cannot intimate,
20 state, comment on or make any statement to a trial jury
21 about the facts of the case cause you are the sole judges
22 of the facts of this case. And since you are you are not
23 to infer from anything that I have said during the
24 progress of this trial in ruling upon the admissibility of
25 evidence or otherwise that I have an opinion about the

1 facts in the case.

2 You decide the facts in the case. The law does not
3 permit me to have an opinion about the facts in this case.
4 It is a matter solely for you. It is your duty, ladies
5 and gentlemen, to determine the affect, the value, the
6 weight and the truth of the evidence presented during this
7 trial. Generally speaking, there are two types of
8 evidence presented during a trial, direct evidence and
9 circumstantial evidence.

10 Direct evidence directly proves the existence of a
11 fact and does not require deduction. Circumstantial
12 evidence is proof of a chain of facts and circumstances
13 indicating the existence of a fact. Crimes may be proved
14 by circumstantial evidence. The law makes no distinction
15 between the weight or value to be given either direct or
16 circumstantial evidence.

17 However, to the extent that the State relies upon
18 circumstantial evidence all of the evidence must be
19 consistent with each other and when taken together point
20 conclusively to the guilt of the accused beyond a
21 reasonable doubt.

22 The circumstances merely portray the defendant's
23 behavior as suspicious the proof is failed. The State has
24 the burden of proving the Defendant's guilt beyond a
25 reasonable doubt. And this burden rests with the State

1 regardless whether the State relies on direct evidence or
2 circumstantial evidence or on some combination of the two.

3 Necessarily, ladies and gentlemen, you must determine
4 the credibility of the witnesses who have testified in
5 this case, and it simply means the believability of the
6 witnesses. It becomes your duty and obligation as jurors
7 to analyze and to evaluate the evidence and determine
8 which evidence convinces you of its truth.

9 And in determining the believability of witnesses who
10 have testified you may believe one witness over several
11 witnesses or several witnesses over one witness. You may
12 believe part of the testimony of a witness and reject the
13 remaining part of testimony of that very same witness.
14 You may believe the testimony of a witness in its entirety
15 or reject the testimony of a witness in its entirety.

16 You may consider whether any witness has exhibited to
17 you any interest, any bias, prejudice or other motive in
18 the case. And you may also consider the appearance and
19 the manner of a witness while on the witness stand.

20 During this trial you have heard testimony from a
21 child. Where a witnesses is a child you must determine as
22 with any witness whether this testimony believable. In
23 deciding believability you may consider not only the
24 matters that I have already discussed with you, but you
25 may also consider the age of a child, the child's ability

1 to observe and remember facts, and the child's ability to
2 understand and answer questions. Cause young children may
3 not fully understand what is happening here it is up to
4 you to decide whether the child understood the seriousness
5 of appearing as a witness in this criminal trial. And
6 whether the child understood the questions. And whether
7 the child has a good memory or whether the child
8 understands the difference between lying and telling the
9 truth.

10 In addition, young children may be influenced by the
11 way the questions are asked. It's up to you to decide
12 whether the child has understood the questions that were
13 asked of the child. I tell you, ladies and gentlemen, and
14 emphasize to you that the fact that the defendant in this
15 case did not testify is not a factor to be considered by
16 you in any way in your deliberations and your
17 consideration on the question of the guilt or innocence of
18 the Defendant. It must not be considered by you in any
19 manner whatsoever.

20 A Defendant has a constitutional right to remain
21 silent, and the assertion of this right must not be
22 considered by you in your deliberations. I repeat, under
23 your oath you are to draw no conclusions whatsoever from
24 the fact that the Defendant in this case did not testify.
25 The fact that the Defendant does not testify should not

1 even be discussed in the jury room. As I told you before
2 the burden of proof is on the State. The Defendant is not
3 required to prove his innocence. The burden of proof
4 remains on the State to prove guilt beyond a reasonable
5 doubt.

6 As you heard the Defendant is charged with first
7 degree criminal sexual conduct with a minor. The State
8 must prove beyond a reasonable doubt that the Defendant
9 engaged in a sexual battery with the victim. A sexual
10 battery is sexual intercourse, fellatio, anal intercourse
11 or any intrusion however slight of any part of a person's
12 body or of any object into the genital or anal openings of
13 another person's body except when the intrusion is
14 accompanied for medically recognized treatment or
15 diagnostic purposes.

16 The State must then prove beyond a reasonable doubt
17 that the victim was less than 11 years old at the time of
18 the sexual battery. And I tell you that consent,
19 willingness, indifference or ignorance on the part of the
20 minor if any as to what was taking place does not affect
21 the charge of criminal sexual conduct with a minor because
22 the child under the age of 14 cannot legally consent to a
23 sexual battery.

24 In a few minutes, ladies and gentlemen, you will
25 retire to your jury room and begin your deliberations.

1 And, of course, there are only two possible verdicts in
2 this case, either guilty or not guilty. For there to be a
3 verdict all 12 of you must agree. I'm going to ask you to
4 retire to the jury room, but do not begin deliberations
5 yet until I send to the jury room the verdict form.

6 Once the jury has reached a verdict I'm going to ask
7 our foreperson if he would complete the verdict form by
8 indicating the verdict of the jury, guilty or not guilty,
9 and sign his name as foreperson. Knock on the door, let
10 the bailiffs know you have reached a verdict, and we will
11 receive you back in the courtroom.

12 But, again, don't begin deliberations until I send
13 this to the jury room and when that occurs I'm going to
14 ask our alternate juror if she will step back out and come
15 into the courtroom. So, ladies and gentlemen of the jury,
16 I need to speak with the attorneys for a few minutes. I
17 ask you to please retire.

18 (WHEREUPON, the jury panel was excused from the
19 courtroom at 1:02 p.m.)

20 COLLOQUY

21 THE COURT: Are there any new objections or
22 objections from the State?

23 MS. JOSEPH: No objections from the State, Your
24 Honor.

25 THE COURT: All right. Any new ones from the

1 Defense?

2 MR. BROWN: No, but I believe I have to by law
3 reobject. I have to -- I would again ask the Court to
4 provide a specific unanimity instruction and a mens rea
5 instruction, Your Honor.

6 THE COURT: Okay. I understand. Anything else?

7 MR. BROWN: No, sir.

8 THE COURT: Court understands those and has
9 previously indicated it going to deny that request.

10 MR. BROWN: Yes, sir. And if I may. I talked to the
11 lawyer -- this is something I just try to do for
12 posterity. Your Honor indicated earlier regarding the
13 specific unanimity request, Defendant's Two. The State
14 made an argument is that you said you agreed with the
15 State to the extent that that requires the Court to put
16 the basis of the ruling on the record. I just want to
17 make sure I'm satisfied.

18 I'm assuming that you made that statement because you
19 agree with their reasoning also.

20 THE COURT: I didn't say that? That's what I ---

21 MR. BROWN: You said you agreed with the State.

22 THE COURT: I meant to say with the reasoning and
23 argument set forth by the State.

24 MR. BROWN: I'm just trying to make clear that I'm
25 not arguing your ruling.

1 THE COURT: I understand.

2 MR. BROWN: Thank you.

3 THE COURT: Do we have any exhibits we want to send
4 back? Won't y'all check and make sure we've got them all.
5 As Mr. Brown as told the jury already if they wish to have
6 anything played back or seen they can come right back in
7 here.

8 MS. JOSEPH: That's evidently not our expertise, Your
9 Honor. So I apologize for the technical difficulties of
10 my co-counsel.

11 THE COURT: Your co-counsel's lack of expertise in
12 this matter is not unique. There are others who have
13 problems in the State.

14 MR. BROWN: Last time we had that immunity hearing
15 ---

16 THE COURT: Send the verdict form back. Same
17 objections previously made concerning the verdict form?

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

19 MS. JOSEPH: Thank you so much, Your Honor.

20 (WHEREUPON, the jury panel was excused from the
21 courtroom to begin deliberations at 2:05 p.m.)

22 THE COURT: I want to thank you for your service.

23 JUROR: It was a pleasure to be here.

24 (WHEREUPON, the alternate juror was released at
25 2:06 p.m.)

1 (WHEREUPON, Court is in recess at 2:06 p.m.)

2 THE COURT: We're at ease until the jury -- or from
3 the Solicitor's Office whether or not they are going to
4 want to try to put up any pleas.

5 MS. JOSEPH: We will get that information for you and
6 let you know.

7 (WHEREUPON, a short break was taken.)

8 QUESTION FROM THE JURY

9 (WHEREUPON, Court's Exhibit No. 7 was marked for
10 identification and received into evidence.)

11 THE COURT: I have a note from the jury. "May we,
12 the jury, review a copy of the written statement from the
13 grandmother given to the police on December the 7th 2013."

14 I have never given this kind of request unless -- I
15 mean never granted this kind of request unless both sides
16 said, "Please do it, Judge. Please do it."

17 MR. BROWN: I don't think it's proper to give them
18 evidence that hasn't been argued.

19 THE COURT: It's not in evidence, is it?

20 MR. BROWN: That's correct.

21 MS. JOSEPH: Right. It's not in evidence. The State
22 agrees Defense in this case.

23 MR. BROWN: Does Your Honor intend to give some
24 instruction with it, or just no?

25 THE COURT: Well, normally, I just tell them -- you

1 know, bring them in. Apologize to them. Tell them, "I'm
2 sorry. I thought I'd made it clear. You have to make a
3 decision based on what you've already heard and seen and
4 received and additional evidence can't be admitted. Don't
5 get mad at the lawyers. Get mad at me."

6 MR. BROWN: The burden of proof instruction? Cause
7 it's not an equal question of who gave them evidence.
8 It's a question for extra evidence.

9 THE COURT: I'm not sure ---

10 MR. BROWN: --- deciding evidence that then equally,
11 we didn't give it in evidence cause it's not equally our
12 burden. Neither party entered it in evidence, but that
13 implies that I have an obligation to do so. That's why I
14 asked about the instruction part.

15 MS. JOSEPH: Your Honor, the State feels that its
16 already been given. It would be improper to give it at
17 this time.

18 MR. BROWN: A partial charge request on the question.
19 That is different. That's just a ...

20 THE COURT: All right. Before we bring them in let
21 me tell y'all a quick story, and it's not going to change
22 anything. I was in McCormick County.

23 (WHEREAS, conversation continued off the record.)

24 THE COURT: Okay. Let's bring in the jury.

25 (WHEREUPON, the jury panel enters the courtroom at

1 3:08 p.m.)

2 THE COURT: Welcome back, ladies and gentlemen. I
3 have a note indicating that the jury would like a copy of
4 the written statement by the grandmother given to the
5 police on December 7th 2013. It's my fault. I thought
6 that I had made it clear that you've already received all
7 of the evidence that you're going to be able to receive.
8 And you're going to have to make your decision based on
9 what you heard and seen.

10 Procedures don't permit me to reopen the case and
11 bring things back before the jury and go back and bring
12 people on the stand and start all over again. Don't hold
13 that against the lawyers or the State or the Defense. If
14 you want to hold that against anybody hold it against me,
15 but I'm sorry. I can't let you have that.

16 Would you please retire to your jury room and resume
17 your deliberations.

18 (WHEREUPON, the jury panel was excused from the
19 courtroom to continue deliberations at 3:11 p.m.)

20 THE COURT: Mark that note as Court Number Seven, I
21 believe it is.

22 MS. JOSEPH: Yes, Your Honor.

23 MR. BROWN: Your Honor, my request for burden of
24 proof instruction with it.

25 THE COURT: Court notes.

1 MR. BROWN: Thank you. I guess overruled?

2 THE COURT: Overruled, yes. Since it wasn't guilty.

3 MR. BROWN: Yes, sir. I'm sorry.

4 THE COURT: We're at ease.

5 Court in recess at 3:12 p.m. and reconvenes at

6 3:33 p.m.)

7 VERDICT OF THE JURY

8 THE COURT: The bailiff indicates that the jury
9 believe they have reached a verdict. State ready for the
10 jury?

11 MS. JOSEPH: Yes, Your Honor.

12 THE COURT: Defense ready?

13 MR. BROWN: Yes, Your Honor.

14 THE COURT: Let's bring the jury in.

15 (WHEREUPON, the jury panel enters the courtroom at

16 3:34 p.m.)

17 THE COURT: Welcome back. Mr. Foreman and ladies and
18 gentlemen of the jury, let me ask you a question. Has the
19 jury in fact reached a verdict?

20 JURY FOREPERSON: Yes, Your Honor.

21 THE COURT: Was it a unanimous verdict?

22 JURY FOREPERSON: Yes, sir, Your Honor.

23 THE COURT: And did you complete the verdict form on
24 behalf of the jury?

25 JURY FOREPERSON: I did, Your Honor.

1 THE COURT: Will you please pass it to the bailiff.

2 JURY FOREPERSON: Yes, Your Honor.

3 THE COURT: And, Madam Clerk, would you please
4 publish the verdict.

5 CLERK OF COURT: The State of South Carolina, County
6 of Beaufort versus Justin Adams in the Court of General
7 Sessions. Indictment Number 2014-GS-07-0021. We the jury
8 find the Defendant guilty. Would you like to poll the
9 jury?

10 POLLING OF THE JURY

11 MR. BROWN: I would ask that the jury be poled.

12 THE COURT: Please. Just for the -- let me make
13 sure. Just for the record is the verdict form signed?

14 CLERK OF COURT: Yes, sir, it is signed and dated.

15 THE COURT: Okay. Thank you.

16 CLERK OF COURT: Juror 107, Lucille Gallaher.

17 JUROR: Yes.

18 CLERK OF COURT: Is that your verdict?

19 JUROR: Yes, ma'am.

20 CLERK OF COURT: Is that still your verdict?

21 JUROR: Yes, ma'am.

22 CLERK OF COURT: Juror Number 213, Phyllis Mike.

23 JUROR: Yes.

24 CLERK OF COURT: Is that your verdict?

25 JUROR: Yes.

1 CLERK OF COURT: Is that still your verdict?

2 JUROR: Yes.

3 CLERK OF COURT: Juror Number 112, Timothy Garvin,
4 Sr.

5 JUROR: Yes.

6 CLERK OF COURT: Is that your verdict?

7 JUROR: It is.

8 THE COURT: Is that still your verdict?

9 JUROR: Yes.

10 CLERK OF COURT: Juror Number 325, Eric Vaughns.

11 JUROR: Yes.

12 CLERK OF COURT: Is that your verdict?

13 JUROR: Yes, it is.

14 CLERK OF COURT: Is that still your verdict?

15 JUROR: Yes.

16 CLERK OF COURT: Juror Number 50, James Clegg.

17 JUROR: Yes.

18 CLERK OF COURT: Is that your verdict?

19 JUROR: Yes, ma'am.

20 CLERK OF COURT: Is that still your verdict?

21 JUROR: Yes, ma'am.

22 THE COURT: Juror Number 115, Melanie Gentile.

23 JUROR: Yes.

24 CLERK OF COURT: Is that your verdict?

25 JUROR: Yes, ma'am.

1 CLERK OF COURT: Is that still your verdict?
2 JUROR: Yes, ma'am.
3 CLERK OF COURT: Juror Number 105, Brook Gadson.
4 JUROR: Yes.
5 CLERK OF COURT: Is that your verdict?
6 JUROR: Yes.
7 CLERK OF COURT: Is that still your verdict?
8 JUROR: Yes.
9 CLERK OF COURT: Juror Number 233, Patricia
10 Olshefski.
11 JUROR: Yes.
12 CLERK OF COURT: If that your verdict?
13 JUROR: Yes.
14 THE COURT: Is that still your verdict?
15 JUROR: Yes.
16 CLERK OF COURT: Juror Number 57, David Cove.
17 JUROR: Yes.
18 CLERK OF COURT: Is that your verdict?
19 JUROR: Yes.
20 THE COURT: It that still your verdict?
21 JUROR: Yes.
22 CLERK OF COURT: Juror Number 282, Zachary Schrantz.
23 JUROR: Yes.
24 CLERK OF COURT: Is that your verdict?
25 JUROR: Yes.

1 CLERK OF COURT: Is that still your verdict?

2 JUROR: Yes, ma'am.

3 CLERK OF COURT: Juror Number 98, George Forsythe.

4 JUROR: Yes.

5 CLERK OF COURT: Is that your verdict?

6 JUROR: Yes.

7 CLERK OF COURT: Is that still your verdict?

8 JUROR: Yes, ma'am.

9 THE COURT: Jury Number 181, Dawn Kiritsy.

10 JUROR: Yes.

11 CLERK OF COURT: Is that your verdict.

12 JUROR: Yes.

13 CLERK OF COURT: Is that still your verdict.

14 JUROR: Yes

15 CLERK OF COURT: That is everyone, Your Honor. Thank
16 you.

17 THE COURT: Thank you, Madam Clerk. Anything before
18 the jury is discharged from the State?

19 MS. JOSEPH: Nothing from the State, Your Honor.

20 THE COURT: Anything from the Defense?

21 MR. BROWN: Nothing before the jury is released.

22 COLLOQUY

23 THE COURT: Thank you. Ladies and gentlemen, I want
24 to thank you for your service, and tell you a couple of
25 things before you go. This ends your jury duty

1 obligation. You don't have to come back or call or do
2 anything. You leave here and you're free to go for the
3 rest of the week.

4 Secondly, I previously told you you couldn't talk
5 about this case. Couldn't talk to anybody about it.
6 You're now free to talk about the case including what went
7 on in the jury room if you want to. You have the same
8 right not to, and I don't have any reason to believe
9 anybody is going to bother you or bug you about your
10 verdict.

11 But if anybody asks to talk to you about it, and you
12 don't want to tell them you don't want to. If they
13 persist tell them I told you you don't have to. And if
14 they really bother you please report them to the Clerk of
15 Court. But one more time, and I don't have any reason to
16 think that is going to happen. I just want to make sure
17 you know you have that right to talk or not to talk.

18 I also say there is no one in a position to argue
19 with you about your verdict because no one except the 12
20 of you sat there, saw everything that went on in the
21 courtroom, listened to the evidence, listened to the
22 attorneys, listened to me and then sat around the table
23 and listen to your fellow jurors give their thoughts.

24 I'm getting ready to let you go, and it's likely that
25 the next thing that will happen in this case, we haven't

1 discussed it, cause it's likely the Court will be required
2 to impose sentencing in this case which will probably
3 occur in the next 15 to 30 minutes. You're welcomed to
4 join us if you wish to do that. The bailiff is going let
5 you go out this door, and if you want to you can keep
6 going. But if you come around back and come in the back
7 of the courtroom and observe the proceedings that's
8 totally up to you.

9 Madam Clerk, any message for the jury? Do you need
10 to tell the jury anything?

11 CLERK OF COURT: No, Your Honor.

12 THE COURT: Checks in the mail. Thank you so much
13 for your service, ladies and gentlemen.

14 (WHEREUPON, the jury panel was excused from the
15 courtroom at 3:40 p.m.)

16 MS. JOSEPH: And, Your Honor, I'm just letting you
17 know that we do not currently have that paperwork.

18 THE COURT: Okay. Mr. Brown.

19 MR. BROWN: May it please the Court. We would ask
20 for a new trial. We would ask for more all Your Honor can
21 give at this point in time. We would renew all of our
22 previous motions. We would point you that I guess the
23 segway to the rest of it is there is some stuff that we
24 don't know that we weren't able to present or even review.
25 And, of course, there are circumstances that Mr. Adams

1 plans on presenting at the correct time in allocution.

2 Essentially, Your Honor, we renew all our previous
3 objections and move for a new trial on the very same basis
4 that we moved for a directed verdict. In part, the
5 indictment charge was not told to the jury. So they
6 didn't know which theory that he was being prosecuted
7 under from the Court or from the charging documents.

8 And in fact that the instructions had went back
9 allowing them to convict on means that there was no
10 evidence presented, and we believe that's improper
11 although they can charge alternative means they can't
12 charge means. There was no factual basis for it.

13 The other motions as to taint, we believe the
14 evidence frankly would provide a directed verdict on its
15 own.

16 The motion to strike the two other videos out which
17 we believe would strike out half of the charge language in
18 the indictment.

19 The other motions we renew, and again, access to the
20 statements that the child made, I don't know how else to
21 say it. I don't know what's in there. Couldn't tell Your
22 Honor one way or the other how I would have dealt with the
23 defense should we have had those.

24 THE COURT: Okay. And anything else?

25 MR. BROWN: Just the same objection to the jury

1 instructions, the unanimity, the verdict where we don't
2 know what factual allegation they said happened when the
3 charge -- when they prove more than one event on one
4 count.

5 THE COURT: Well, I understand you're reviewing all
6 of your previous objections?

7 MR. BROWN: Yes, sir.

8 THE COURT: And motions?

9 MR. BROWN: Yes, sir. I think the new trial motion
10 I've got is the J.N.O.V. There was some ambiguity. I
11 think about five or ten years ago they did away with the
12 J.N.O.V.

13 THE COURT: And, Solicitor?

14 MS. JOSEPH: Your Honor, The State just relies on the
15 arguments that we made earlier on these same motions and
16 leaves it in the Court's discretion.

17 THE COURT: The Court understands the motions; the
18 previous motion as well as the motion for a new trial, and
19 for the reasons previously stated deny the motion. State
20 wishes to proceed with sentencing?

21 SENTENCE OF THE COURT

22 MS. JOSEPH: Yes, the State does, Your Honor. And if
23 the State could have a motion to ascertain whether the
24 victim's mom or grandmother would like to make a statement
25 to the Court.

1 THE COURT: Sure. Is the Defense ready to proceed?

2 MR. BROWN: Yes, sir, Your Honor.

3 MS. JOSEPH: The victim's mother or grandmother would
4 like to make a statement in this case.

5 THE COURT: Sure.

6 MS. JOSEPH: Thank you, Your Honor. I'm handing up
7 the sentencing sheet.

8 THE COURT: I'll be glad to hear from the State on
9 the matter of sentencing.

10 MS. JOSEPH: Thank you, Your Honor. May it please
11 the Court. The Defendant in this case is very young. The
12 State fully recognizes that he has no criminal history.
13 This is a very serious charge in which he was convicted.
14 It carries 25 years to life.

15 The State would only draw attention to the fact that
16 he was in a position of power and authority over this
17 little boy, and he was acting in as a de facto father.
18 And the allegations at trial which he has been convicted
19 on alleged a series of abuse. Basically, this little boy
20 was accused for a significant period of time. Not just
21 once, but over and over again.

22 So we would ask for something over the minimum which
23 is 25 years but leave the rest to the Court's discretion.
24 Thank you, Your Honor.

25 THE COURT: And, Mr. Brown.

1 MS. JOSEPH: Well, I would first just note that what
2 they said about their factual proof that was offered is
3 exactly my argument that there should have been a specific
4 unanimity charge. I point that out because I believe we
5 don't know what level of proof there is for what event
6 that they intend to find. And part of the risk of that is
7 double punishment.

8 So we don't know what -- what number of acts or
9 anything else. But, Your Honor, we would point out that
10 my client has no record. He's been on GPS monitoring
11 without a violation for 31 months and sat in jail for
12 approximately 10 weeks before having bond set by Judge
13 Cooper in February of 2014.

14 He is a lifelong resident of this area. Grew up in
15 Jasper County, however, he lived here in Beaufort as an
16 adult. In Pritcherville, which is right on the line. He
17 lived with a nuclear family. He's got a sister who is
18 autistic. His mother is here. His father works. His
19 father works and couldn't take off work to be here for his
20 son's trial. His aunt is here.

21 He graduated from high school. He's always worked.
22 Always worked. Grew up the in Red Dam Church in Jasper
23 County where Municipal Judge Carol was his Sunday school
24 teacher. He was a Boy Scout until the 10th grade, I
25 believe, or in the Scouts. I don't know that there is

1 anything else that the State could say he's done wrong
2 besides the allegations of a five/eight year old.

3 Should we prevail an appeal would be years in prison
4 anyway. There is nothing that is going to be easy on
5 this, and I would suggest to you and I don't mean this to
6 be flippant, but I'm sure Your Honor knows that the
7 average life expectancy within the South Carolina
8 Department of Corrections for a white male is 51. He will
9 be 51 years old in 25 years. That is a death sentence
10 right there.

11 And there is no other way to say it. If he was
12 African American it would be 49 years old is the average
13 life expectancy for a person in prison in South Carolina.
14 To ask for more than that is just being -- it's a matter
15 of academics. I think he would like to speak to you.

16 THE COURT: Sure. Be glad to hear from you, Mr.
17 Adams.

18 MR. BROWN: And I'm sure his mother would as well.

19 MR. ADAMS: Your Honor, there is nothing other for me
20 to say other than I didn't do it. And I just throw myself
21 on the mercy of the Court. I don't know if probation
22 would be an option or anything of that nature.

23 However, I ask not to go to prison cause I know with
24 this type of charge, with everything I've heard, I'm sure
25 you've heard. Everybody in here heard, there won't be

1 much to expect other than I believe the term is, 'SOS',
2 Snatched on Sight. So, again, I throw myself on the mercy
3 of the Court.

4 THE COURT: All right. Thank you, Mr. Adams. And
5 you had indicated.

6 DEFENDANT'S MOTHER: I believe my son was wrongly
7 convicted.

8 THE COURT: Could you speak up just a little bit
9 louder or you can come a little bit closer if you wish,
10 ma'am.

11 DEFENDANT'S MOTHER: I believe my sone was wrongly
12 convicted. He was a normal person. He does not the kind
13 of person that would do that. Something has gone awfully
14 wrong with this whole process and please have mercy on my
15 son.

16 THE COURT: Okay. Thank you, ma'am. Anything else?

17 MR. BROWN: Briefly in conclusion, Your Honor.

18 THE COURT: Okay.

19 MR. BROWN: If it turned out the child did tell the
20 truth there is not much more injustice to subjecting
21 somebody to 25 years to life in prison, and as much the
22 alternate juror said afterwards that she wished that we
23 had offered some proof that he didn't do it. She sat
24 through your jury selection and your jury instructions for
25 that.

1 It is just shocking that within five minutes after
2 Your Honor instructing them that there is no burden of
3 proof on the Defendant that that is exactly what one of
4 the jurors said was it needed to be proved that he didn't
5 do it. I ask you consider that because we all read about
6 the wrongful convictions. I ask that you also consider
7 that, again, under the motion for new trial and I know
8 Your Honor denied it.

9 THE COURT: All right. Thank you, Mr. Brown.

10 MR. BROWN: Thank you, Your Honor.

11 THE COURT: Solicitor, anything else?

12 MS. JOSEPH: Nothing further the State, Your Honor.

13 THE COURT: All right. Mr. Adams, I understand your
14 statement to the Court about you didn't do it, but the
15 jury, of course, has ruled that they believe you did.

16 And, therefore, I sentence you to the Department of
17 Corrections for a period of 25 years. Credit for time
18 served of how much?

19 MR. BROWN: He was arrested December 7th and bond
20 was -- hearing was held on December -- I mean on February
21 the 21st, is what my records say. To the exact date it's
22 posted, I don't know, Your Honor. It was posted the same
23 day. There was also an ankle monitoring requirement on
24 that. Even posted the money that day. They would have
25 put that on the fine going to trial always the same day.

1 So he informs me it was the follow Monday.

2 December 21st 2014 I guess would be the Monday after.

3 THE COURT: Well, let me ask a question. Is he
4 eligible to receive credit for the ankle monitor? I don't
5 know.

6 MS. JOSEPH: Your Honor, we're looking at that one
7 second, please.

8 MR. BROWN: He was restricted to living with his
9 parents.

10 THE COURT: I understand that.

11 MR. BROWN: Whether technically house arrest in the
12 sense that it says he was order to. That was part of the
13 thing. He moved from Jasper County. They lived in
14 Beaufort County. He lived with his parents at their
15 house.

16 THE COURT: Solicitor is looking at the statute.

17 MS. JOSEPH: I'm sorry. Beg the Court's indulgence.
18 Your Honor, look at Section 24-13-40, it states that the
19 Court may consider ankle monitoring, and the State did not
20 have a position on that. We leave that fully in the
21 Court's discretion. And, again, that section was
22 24-13-40.

23 MR. BROWN: Is this house arrest monitor or house
24 arrest I think the phrase says.

25 MS. JOSEPH: It says, "May be given for any time

1 spent under monitor and house arrest provided, however,
2 that credit for time served prior to trial and sentencing
3 shall not be given."

4 MR. BROWN: Yeah, that's if he's serving another ---

5 MS. JOSEPH: Oh, you're right.

6 MR. BROWN: --- another charge.

7 MS. JOSEPH: He's correct, Your Honor.

8 THE COURT: Oh, yeah. Yeah. All right. You're
9 seeking then the 31 months, Mr. Brown?

10 MR. BROWN: Yes, sir. And for that effect, it's all
11 the time since December 7th. He has never been out of
12 jail since the date of his arrest without being monitored.
13 So he -- 730 days plus another 396 minus the difference of
14 December 7th until now.

15 THE COURT: You lost me on that math. Say that
16 again.

17 MR. BROWN: Well, the first two years would be 730
18 days. 365 times two. And then we have another 365.
19 Minus the difference between today's date and December 7th
20 of this year.

21 THE COURT: Which is how much?

22 MR. BROWN: Well, it would be 30 days back to
23 November -- off of it. That's would be 335. 31 back to
24 October which would 304. And then back from October 7th
25 to today would be nine and seven, 16 off of it. So that

1 would be three -- 288 more. And off the top of my head is
2 eight, one. So I've got ---

3 THE COURT: You follow this, Solicitor?

4 MR. BROWN: Okay. I have 1,018 days off the top of
5 my head.

6 THE COURT: So there is 1,095 less, so you're backed
7 out of that.

8 MR. BROWN: That is correct. December to
9 November 7th would be 30 days. November the October 7th
10 would be 31. So that's 61 off of any other -- 16.

11 THE COURT: Credit for 1,018 days. Anything else
12 from the State?

13 MS. JOSEPH: Nothing from the State, Your Honor.

14 THE COURT: From the Defense?

15 MR. BROWN: I would ask allow that they allow, and I
16 know that some of it is out of your hands, but there are
17 other procedures that don't make it as easy for a lawyer
18 in Beaufort if your client gets transported to Columbia
19 before things that are required by me as my duty as a
20 lawyer to do post trial.

21 I have a duty post trial regarding his notice of
22 appeal.

23 THE COURT: Yes.

24 MR. BROWN: Whether he qualifies for an appellate
25 defender.

1 THE COURT: All right.

2 MR. BROWN: And if he's taken to Columbia it requires
3 him to fill out sworn affidavits, etc. to satisfy that.
4 So I would that they hold him here at least long enough
5 for me to go to the jail and visit with him.

6 Certainly, the jail visitation is closed. It closes
7 at 3:30, and plus, I have to get the paperwork. So I
8 would ask for a day or so here for me to go see him.

9 THE COURT: 24 hours.

10 MR. BROWN: Thank you.

11 THE COURT: They say it will be done. All right.
12 Court's adjourned until tomorrow morning at 9:30.

13 MS. JOSEPH: Thank you, Your Honor.

14 END OF TRANSCRIPT OF RECORD
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

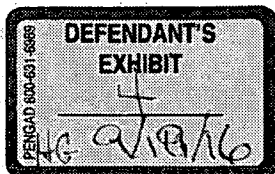
I, HATTIE O. GORDON, Official Court Reporter for the 4th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Beaufort County, South Carolina, on the 21st day of September, 2016.

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

November 5, 2017

[illegible]

HATTIE O. V GORDON, Court Reporter



Case # 2013ccm 2867

BLUFFTON POLICE DEPARTMENT

Date Dec 12/7-14 Page 1 of 2

STATEMENT OF: My Grandson, Christine
was where in living Room talking
and I ask him did he shower last
night he said he was tired, my daughter
call and said she was on the
way to pick up Christine to go
to Prade, Christine was tell me
he had a secret and I asked
him what the secret was, he said
I cant tell you now I said was
secret and Christine he said stay
I said tell me now what the secret
is, my daughter told me,
I said when Christine said at
his Prade Place, some time they
take a shower together but my daughter
is thing like that was happening,

I have read each page of this statement consisting of 2 page(s), each of which bears my signature, and corrections if any bear my initials, and I certify that the facts contained herein are true and correct.

Dated this 7 day of Dec, 2013 at 11:45 am pm

WITNESS: _____

WITNESS: _____

Signature of person giving statement: Patricia Bayant



BLUFFTON POLICE DEPARTMENT

Case # 2013-0002867

Date: Apr 17-14 Page 2 of 2

STATEMENT OF: When my daughter came
over and talking to Christian
by his side. And came back
in the house and said that
Christian said to her to put
in to him and make him sorry
it, and make Christian put in
March around his finger. Christian
and said that Justice put his finger
in his put.

Patricia Byant

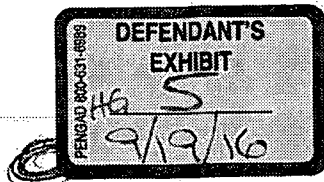
I have read each page of this statement consisting of _____ page(s), each of which bears my signature, and corrections if any bear my initials, and I certify that the facts contained herein are true and correct.

Dated this 7 day of Dec, 20 13 at 11:45 and pm

WITNESS: _____

WITNESS: _____

Signature of person giving statement: Patricia Byant



Case # 20B00002867

BLUFFTON POLICE DEPARTMENT

Date: 12-7-13 Page 1 of 2

STATEMENT OF: Tabitha Jones

First off my mom called me after my son stayed the night at her house said that my son had something to tell me he got on the phone starting telling me that my boyfriend had been touching him on his waker in the shower that my boyfriend had been sticking his finger in my sons butt. I left home came to my moms and question him about it then he started to telling me the same things that my boyfriend had been touching him in the shower was putting his finger in my sons butt and was making him lick and suck

I have read each page of this statement consisting of 2 page(s), each of which bears my signature, and corrections if any bear my initials, and I certify that the facts contained herein are true and correct.

Dated this 12/7/13 day of 12, 20 13 at 11:30 am pm

WITNESS: _____

WITNESS: _____

Signature of person giving statement: _____

Tabitha Jones

Case # 201300002867



BLUFFTON POLICE DEPARTMENT

Date: 12/17/13 Page 2 of 2

STATEMENT OF: on him waker and that he
 has made him get in the bed
 with him on several occasions
 when I wasn't home and was rubbing
 on his waker and that my boyfriend
 was making my son rub on his
 waker. ~~I, the~~

I have read each page of this statement consisting of 2 page(s), each of which bears my
 signature, and corrections if any bear my initials, and I certify that the facts contained herein are
 true and correct.

Dated this 12/17/13 day of 12, 2013 at 11:30 am pm

WITNESS:

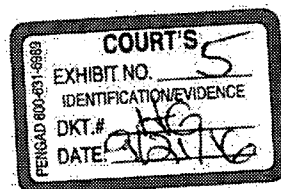
WITNESS:

Signature of person giving statement:

Defendant's Jury Instruction 2

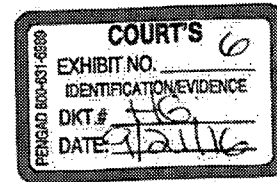
**SPECIFIC UNANIMITY REQUIREMENT
AS TO THE DEFENDANT'S COURSE OF ACTION**

In this case, you have heard testimony of different acts or conduct taken by the Defendant at different times or on different days. I charge you the jury that you must unanimously agree as to the exact act committed by the Defendant in violation of the statute before you can return a guilty verdict. If you can not agree unanimously as to the prohibited acts or conduct taken by the Defendant then you must return a verdict of not guilty.



See State v Samuels, 403 SE2d 551 (SC 2013); US v Holley, 942 F2d 916 (5th Cir. 1991); Bins v US, 331 F2d 390 (5th Cir. 1964); US v Gipson, 553 F2d 453 (5th Cir. 1977).

Defendant's Jury Instruction 3



WILLFUL

An act is done "willfully" if done voluntarily, intentionally, and with the specific intent to do something the law forbids. In other words, a criminal act is willful if the actor knows the conduct is unlawful and acts with bad purpose either to disobey or to disregard the law.

See, e.g., State v. Bryant, 316 S.C. 216, 219, 447 S.E.2d 852, 854 (1994) ("Willful and intentional are synonymous."); *State v. Bevilacqua*, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (1994); *Bryan v. United States*, 524 U.S. 184 (1998); *United States v. Bishop*, 412 U.S. 346, 360 (1973) ("Willfully" "generally connotes a voluntary, *intentional* violation of a *known* legal duty.") (emphasis added); *United States v. McCorckle*, 511 F.2d 482, 485 (7th Cir. 1975) (Willfulness "requires an *intentional* violation of a *known* legal duty.") (emphasis added); *United States v. Hart*, 417 F. Supp. 1314, 1322 (S.D. Iowa 1976) ("The offense also requires 'willfulness' — an act committed voluntarily, with *knowledge* that it is prohibited by law, and with bad purpose to disobey or disregard the law. In that regard, mistake, accident, and good faith are defenses."); *People v. Armentrout*, 1 P.2d 556, 561 (Cal. App. 1931) (Where conduct must be "wilful," State must show "wrongful intent or guilty knowledge . . . [or] design to disobey the law."); 94 C.J.S. *Willful; Willfully* at 620-637 (1956).

STATE OF SOUTH CAROLINA

) IN THE COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT

) Indictment Number: 2014-GS-07-00021

STATE OF SOUTH CAROLINA

Plaintiff.

VS.

JUSTIN ADAMS

Defendant.

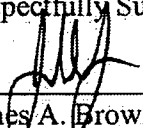
**NOTICE OF MOTION AND
MOTION TO PRECLUDE
TAINTED WITNESS TESTIMONY**

2016 SEP 16 PM 2:01
JAMES A. BROWN, JR.
BEAUFORT COUNTY, S.C.
CLERK OF COURT

THIS MOTION IS BROUGHT BEFORE THE COURT, by the Defendant through his undersigned counsel, seeking an order precluding testimony from a minor child due to a taint produced by improper interview techniques. See NJ v Michaels, 642 A2d 1372 (NJ 1994) .

Undersigned counsel intends to provide evidentiary support for this Motion on or about September 19, 2016.

Respectfully Submitted,


James A. Brown, Jr.
Attorney for the Defendant

September 15, 2016
Beaufort, SC

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served upon all counsel of record in this proceeding on September 15, 2016.



STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)

IN THE COURT OF GENERAL SESSIONS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT

Indictment No.: 2014-GS-07-00021

THE STATE OF SOUTH CAROLINA)
)
)
 VS.)
)
 JUSTIN ADAMS,)
 Defendant)
)
)
)
)

MOTION FOR A NEW TRIAL
 BASED UPON NEWLY DISCOVERED
 EVIDENCE OF MISCONDUCT BY
 A PROSECUTION WITNESS

To: Ms. Alex Joseph, Assistant Solicitor for the Fourteenth Judicial Circuit

THIS MATTER IS BROUGHT BEFORE THE COURT by the Defendant seeking an order granting a new trial in this matter based upon the newly discovered misconduct of a prosecution witness.

PROCEDURAL BACKGROUND

On December 7, 2013, the Defendant was arrested at his home in Beaufort County and charged with one count of Criminal Sexual Conduct with a minor, First Degree. He was released on bond following a bond setting held on February 27, 2014. The conditions of this bond required GPS monitoring and the Defendant's restriction to his parents home in Jasper County.

On January 23, 2014, the Defendant was indicted for one count of Criminal Sexual Conduct with a minor, First Degree. The body of this single county indictment alleged "a sexual battery" occurring during the calendar year 2013. The indictment alleged this sexual battery was accomplished by two means: fellatio and digital penetration of the minor's anal cavity.

This matter was tried before a judge and jury between September 19 and September 21, 2016. The jury returned a verdict of guilty as charged. The court denied a Motion for a New

Trial on September 21, 2016.

Despite the lack of any prior record, the Defendant received a mandatory minimum sentence of 25 years with credit for 1018 days spent either in actual incarceration or on monitored house arrest.

BLATANT AND REPEATED VIOLATIONS OF SEQUESTRATION ORDER

The Court should grant a new trial in this case because of the blatant misconduct committed by prosecution witness Tabitha Jones, the mother of the minor child at issue in this trial.

At the beginning of the trial on September 21, 2016, the Court ordered that all of the witnesses be sequestered. Tabitha Jones was designated as a state's witness. She was subject to the sequestration order.

Ms. Jones was also the custodial parent for the minor child. As evidenced by the security camera footage attached via thumbdrive to this Motion, she maintained physical custody of the minor child either by herself or with the help of her mother, Patricia Bryant. Ms. Jones also violated the sequestration order.

She repeatedly violated this order by listening to the testimony through the courtroom door. She did so through the trial beginning after her testimony. She was caught in violation of this order several times by both solicitor office employees and a sheriff's deputy involved with security.

The approximate times of these violations on the security footage include: A) September 20, 2016 at 1101-1106; B) September 20, 2016 at 1211-1224; C) September 20, 2016 at 1433-1438; and D) September 20, 2016 at 1443-1447. Also, a violation occurred on September 21, 2016 at approximately 1128-1144; however this footage is still being sought by undersigned

counsel.¹ Four photos taken as screen shots from the security video are also attached to this exhibit.

This footage shows Tabitha Jones laying or sitting on the floor with her ear at the door listening to the testimony. As evidenced by the footage corresponding to these pictures, Ms. Jones was able to discern when the testimony ended as she arose from the floor to avoid detection. Also in these selected photos are two other witnesses for the State.

Further, the issue of suggestibility and manipulation of the child witness was at the heart of the defense. In fact, during the trial, the child parroted testimony from the mother regarding the relationship between the Defendant and Ms. Jones after the Defendant's arrest². The child admitted his mother had told him this information.

Had counsel known about these violations during trial, he would have requested appropriate relief. According to the stage of the case, this might have included a request to strike her testimony; bar the minor child or other witness testimony; or move for dismissal for misconduct. At the very least, counsel would have presented the jury with this conduct as evidence of Ms Jones' manipulation in this case.

CONCLUSION

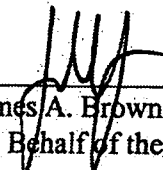
Thus, this Court should review the evidence presented in this Motion, convene a hearing to take testimony, and grant a new trial. This ruling should take into account the perjury

¹An employee of the Beaufort County Sheriff's Department is prepared to testify that he caught Tabitha Jones in violation of the order on this date and warned her of this violation. Also, undersigned has a witness that saw Tabitha Jones put her finger to her lips to ask this employee to keep this a secret. Ironically, this same finger to the lips motion is the same conduct which Ms. Jones testified she witnessed the Defendant engage in as corroborative evidence of the alleged misconduct.

² The false nature of this testimony is an issue raised in the companion Motion for Reconsideration of Denial of Motion for a New Trial.

committed Ms. Jones as well.

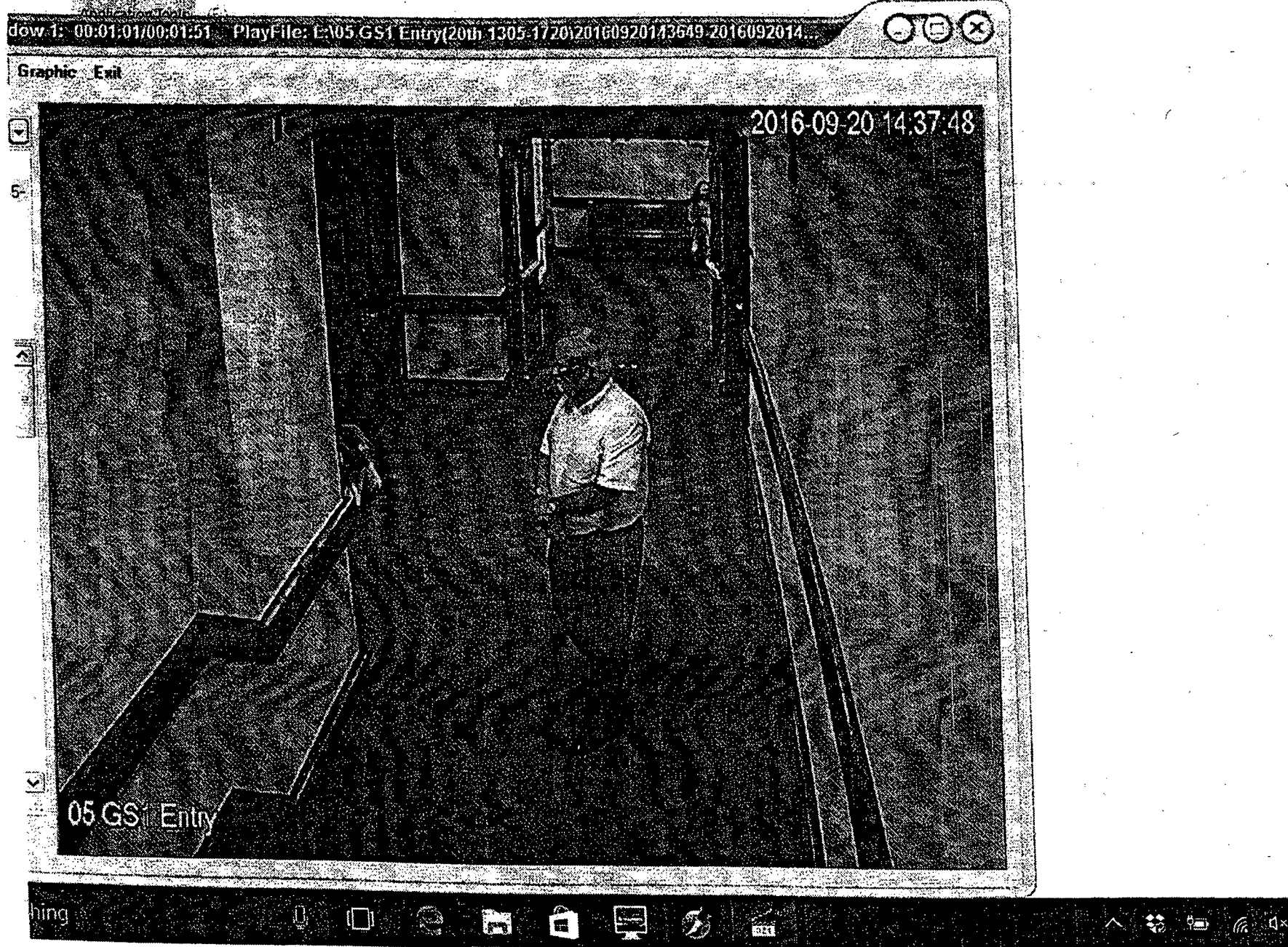
RESPECTFULLY SUBMITTED BY;



James A. Brown, Jr.
On Behalf of the Defendant

September 26, 2016
Beaufort, South Carolina

Law Offices of Jim Brown, P.A.
1600 Burnside Street, Suite 100
Post Office Box 592
Beaufort, SC 29901-0592
(843) 470-0003-Phone
(843) 470-0004-Fax

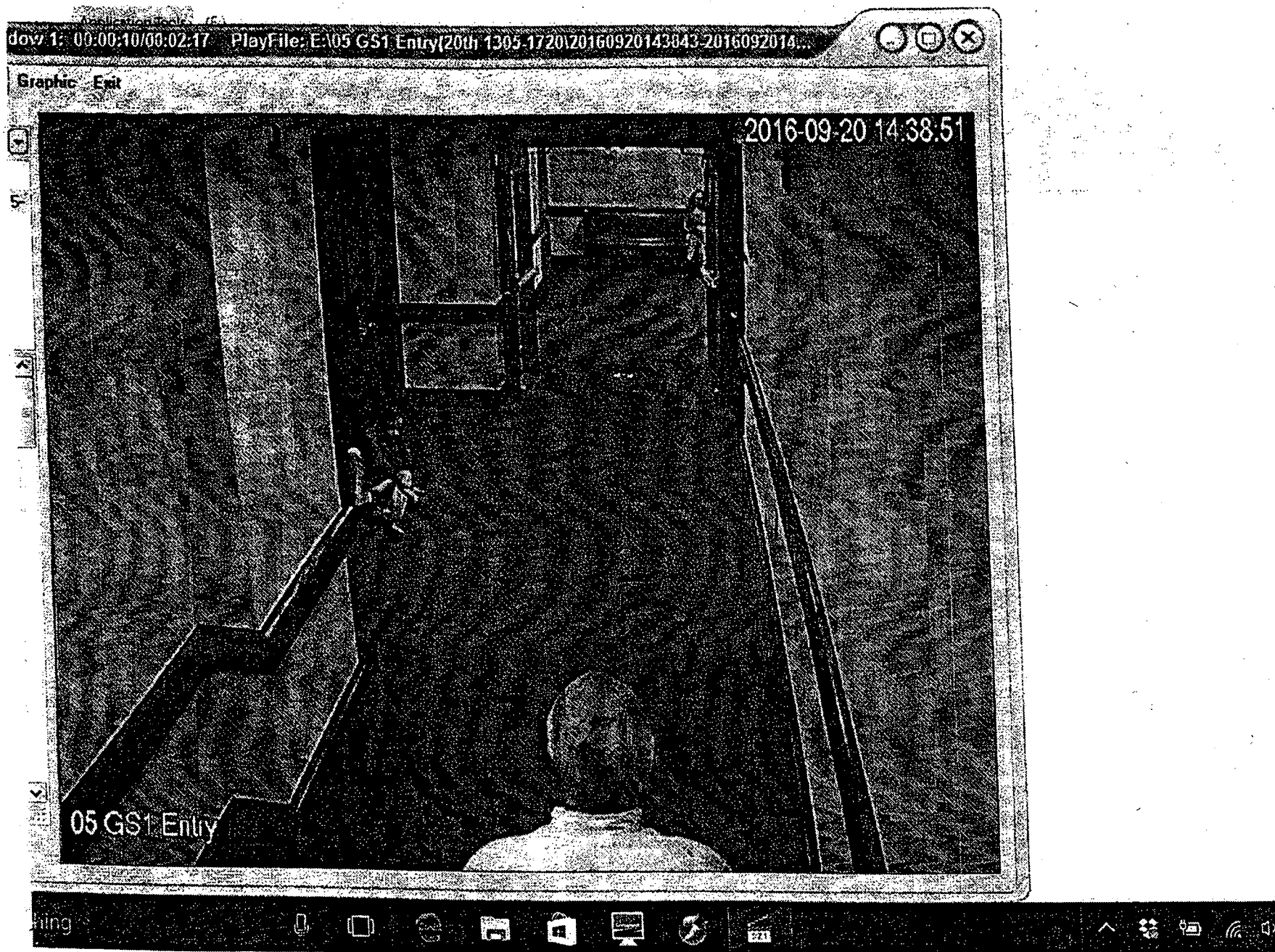


down 1: 00:00:23/00:01:37 PlayFile: E:\05 GS1 Entry\20th 1305-1720\20160920\43257-2016092014...

Graphic Exit

2016-09-20 14:33:19

05 GS1 Entry



PlayFile: E:\05 GS1 Entry(20th 1305-1720\20160920144421-2016092014...

Graphic Exit

2016-09-20 14:44:25



05 GS1 Entry

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT	)	
	)	
STATE OF SOUTH CAROLINA	)	Indictment No. 2014-GS-07-0021
	)	
vs.	)	STATE'S RESPONSE TO DEFENSE'S
	)	MOTION FOR A NEW TRIAL BASED
Justin Adams,	)	UPON NEWLY DISCOVERED
Defendant.	)	EVIDENCE OF MISCONDUCT BY
	)	A PROSECUTION WITNESS

COMES NOW Assistant Solicitor Alex Joseph in response to the Defendant's Motion for a New Trial Based upon Newly Discovered Evidence of Misconduct by a Prosecution Witness in the above-captioned case. In response to the Defendant's Motion, the State submits the following to the Court.

PROCEDURAL BACKGROUND

On December 7, 2013, the Defendant was arrested at his home in Beaufort County and charged with one count of Criminal Sexual Conduct with a Minor, First Degree. On January 23, 2014, the State indicted the Defendant for one count of Criminal Sexual Conduct with a Minor, First Degree.

This matter was tried before a judge and jury between September 19, 2016 and September 21, 2016. The jury returned a verdict of guilty. The Court denied a Motion for New Trial on September 21, 2016. The Court sentenced the Defendant to twenty-five years of imprisonment, with credit for 1018 days spent either in actual incarceration or on monitored home arrest.

LAW AND ANALYSIS

The requirements for obtaining a new trial based on after-discovered evidence were set out by the South Carolina Supreme Court in *State v. Spann*, 334 S.C. 618, 513 S.E.2d 98 (1999).

The Court held that, in order to obtain a new trial on the basis of after-discovered evidence, the moving party must show that the evidence:

1. Would probably change the result if a new trial were granted,
2. Has been discovered since the trial,
3. Could not have been discovered before the trial by the exercise of due diligence,
4. Is material to the issue of guilt or innocence, and
5. Is not merely cumulative or impeaching.

State v. Spann, 334 S.C. 618, 619, 6513 S.E.2d 98, 99 (1999). "A motion for a new trial based on after-discovered evidence is addressed to the sound discretion of the trial judge." *State v. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011); citing *State v. Irvin*, 270 S.C. 539, 545, 243 S.E.2d 195, 197 (1978). "The granting of a new trial because of after-discovered evidence is not favored and this Court will sustain the lower court's denial of such a motion unless there appears an abuse of discretion." *State v. Irvin*, 270 S.C. at 545, 243 S.E.2d at 198. Furthermore, in *State v. Harris*, the South Carolina Court of Appeals held that "[t]he credibility of newly-discovered evidence is for the trial court to determine." *Harris*, 391 S.C. at 545.

The Court should deny Defense's Motion for a New Trial because the evidence submitted with Defense's Motion was both discovered by Defense Counsel at trial and addressed by the Court. During trial, Defense Counsel made the Court and the State aware that Tabitha Jones was attempting to listen to trial testimony despite the order of sequestration. The Court, after hearing Defense Counsel's concerns, decided to address Defense Counsel's concerns by instructing each witness as they exited the witness stand to not discuss their testimony with any other potential witnesses. This matter was raised and ruled on during the trial. It is true that Defense Counsel only received videos that corroborated his belief that Ms. Jones was listening to testimony through the courtroom door after trial. However, he was aware of the underlying conduct and

could have easily obtained the video footage during trial. Therefore, the evidence at the root of this Motion does not qualify as after-discovered evidence.

If, however, the Court is persuaded by Defense Counsel's argument, the evidence presented in the Defense's Motion does not justify the granting of a Motion for New Trial because this evidence would not have changed the result of the case. As he acknowledges in his Motion, the issue of suggestibility and manipulation of the child victim was at the heart of the defense. Defense Counsel is now arguing that if he had known about Tabitha Jones' actions during the trial, he would have used footage of her listening to testimony during the trial as evidence of her manipulations in this case.

This evidence would not have changed the result of the case because her actions during the trial—specifically listening to testimony while under the order of sequestration—is not substantially similar to the behavior she is accused of having committed by the defense. Having an interest in the outcome of a case that directly affects your child is not the same at all as actively encouraging your child to lie.

Furthermore, defense raised the possibility that the child victim was coached by his mother at trial. The jury rejected this argument. The child victim's testimony at trial was consistent with two other sworn statements. There is neither evidence nor even an allegation that the child was coached the very same day he testified.

The second element required to obtain a new trial on the basis of after-discovered evidence is that the evidence was discovered after the trial. As has already been addressed in this brief, Defense Counsel made both the State and the Court aware of the possibility Tabitha Jones was listening during the trial. Therefore, this element is not satisfied as this evidence was discovered during the trial.

The third element required to obtain a new trial on the basis of after-discovered evidence is that the evidence could not have been discovered before the trial by the exercise of due diligence. The State contends Defense Counsel was aware Ms. Jones was listening to trial testimony. However, even if Defense Counsel was not aware of her behavior, Defense Counsel could have discovered Ms. Jones' behavior. All Defense Counsel had to do was ask a bailiff if Ms. Jones was listening or attempting to listen to trial testimony through the courtroom door. Defense Counsel also could have easily asked for and obtained footage of the area outside of the courtroom. Defense Counsel did not exercise due diligence in obtaining this evidence.

The fourth element required to obtain a new trial on the basis of after-discovered evidence is that the evidence is material to the issue of guilt or innocence. Whether Ms. Jones, the child victim's mother, was listening to trial testimony is not material to the issue of guilt or innocence. The focal point of the trial was the child victim's credibility. At trial, Ms. Jones testified immediately before her son. There was no break in time between Ms. Jones testifying and the child victim testifying. Ms. Jones would not have been able to influence or coach the child victim prior to his testifying. Therefore, Ms. Jones' actions did not affect the credibility of the child victim's testimony—the issue which was at the heart of the trial.

Finally, the after-discovered evidence cannot merely be cumulative or impeaching. The footage of Ms. Jones' listening through the courtroom door is cumulative because Defense Counsel was already aware that Ms. Jones was attempting to listen to trial testimony during the trial. In addition, Ms. Jones was not asked about attempting to listen to trial testimony during her examination, and therefore this evidence is not impeachment evidence.

Defense Counsel has not met any of the elements required to obtain a new trial on the basis of after-discovered evidence let alone satisfied all of required elements. Therefore, the