

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Roger E. Henderson, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

GUADALUPE GUZMAN MORALES,

APPELLANT

APPELLATE CASE NO 2017-001796

RECORD ON APPEAL

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INDEX

INDEX	i
PRE-TRIAL TRANSCRIPT DATED MAY 26, 2017	1
TESTIMONY	
DOUG BARFIELD	
Direct examination by Ms. Collins.....	33
Cross-examination by Mr. Gregory.....	43
JEFF HAMMOND	
Direct examination by Ms. Collins.....	45
Cross-examination by Mr. Gregory.....	49
Redirect examination by Ms. Collins.....	51
JULIE SMALL	
Direct examination by Ms. Collins.....	52
Cross-examination by Mr. Gregory.....	56
PRE-TRIAL TRANSCRIPT DATED JULY 26, 2017	76
TESTIMONY	
WITNESS B	
Direct examination by Ms. Burchstead.....	82
Cross-examination by Mr. Gregory	91
Direct examination by Ms. Burchstead.....	100
TRIAL TRANSCRIPT DATED AUGUST 21, 2017.....	119
OPENING STATEMENT BY MR. KOZAK	131
OPENING STATEMENT BY MR. GREGORY	133
TRIAL TESTIMONY	
WITNESS A	
Direct examination by Ms. Burchstead.....	136
Cross-examination by Mr. Gregory	158
Redirect examination by Ms. Burchstead	171

KRISTEN GRANT

Direct examination by Mr. Kozak	174
Cross-examination by Mr. Gregory	178
Redirect examination by Mr. Kozak	184
Recross examination by Mr. Gregory	185

LOIS CAMPOS

Direct examination by Ms. Burchstead	188
Cross-examination by Mr. Gregory	193
Redirect examination by Ms. Burchstead	208

DAVID KELLIN (IN-CAMERA)

Direct examination by Mr. Kozak	217
Cross-examination by Mr. Gregory	232

DAVID KELLIN

Direct examination by Mr. Kozak	237
Cross-examination by Mr. Gregory	253
Redirect examination by Mr. Kozak	255

MARGO DIXON

Direct examination by Mr. Kozak	256
Cross-examination by Mr. Gregory	259

APRIL ROLLINS

Direct examination by Mr. Kozak	260
Cross-examination by Mr. Gregory	263
Redirect examination by Mr. Kozak	265
Recross examination by Mr. Gregory	266

WITNESS B

Direct examination by Ms. Burchstead	267
Cross-examination by Mr. Gregory	274
Redirect examination by Ms. Burchstead	285

GUADALUPE MORALES

Direct examination by Mr. Gregory	291
Cross-examination by Ms. Burchstead	306
Redirect examination by Mr. Gregory	314

L.M.

Direct examination by Mr. Gregory	315
Cross-examination by Ms. Burchstead	328
Redirect examination by Mr. Gregory	333
Recross examination by Ms. Burchstead	333

CLOSING ARGUMENT BY MS. BURCHSTEAD.....	347
CLOSING ARGUMENT BY MR. GREGORY	360
VERDICT	387
SENTENCING	396
ARREST WARRANTS.....	399
INDICTMENTS AND SENTENCING SHEETS.....	402
CERTIFICATE OF COUNSEL	411

1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE,

4 Plaintiff,

5 Case No.

6 -against-

2016-GS-29-00559

7 00564, 00565

8 GUADALUPE GUZMAN MORALES,

9 Defendant.

10 -----x

11 May 26, 2017

12 Lancaster, S.C.

13

14 B E F O R E:

15 HONORABLE BRIAN GIBBONS

16

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18 MEGAN BURCHSTEAD, Esquire

19 Attorney for the Plaintiff

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21 NED GREGORY, Esquire

22 Attorney for the Defendant

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24 Aileen Butler

25 Official Court Reporter

	<u>I N D E X</u>			
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
1				
2				
3	DOUG BARFIELD			
4	Ms. Collins	33		
5	Mr. Gregory		43	
6	JEFF HAMMOND			
7	Ms. Collins	45		51
8	Mr. Gregory		49	
9	JULIE SMALL			
10	Ms. Collins	52		
11	Mr. Gregory		56	
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
States 1	Email		41
Court's 1	Document		31
Court's 2	Letter		43

1 THE COURT: What is the first matter before the
2 Court this morning.

3 MS. BURCHSTEAD: Good morning, Your Honor. Magan
4 Burchstead with the Attorney General's Office. Nice
5 to see you.

6 THE COURT: Good morning.

7 MS. BURCHSTEAD: We have Guadalupe Morales,
8 indictment 2016-GS-29-559, 64, 65. The defendant has
9 a motion to quash the indictment which is essentially
10 at this point we understand is more of speedy trial
11 type motion and Mr. Gregory represents him.

12 THE COURT: Okay. Good morning Mr. Gregory.

13 MR. GREGORY: My client is sitting here.

14 (Indicating) I don't know that he needs to be sitting
15 up here with me.

16 THE COURT: Okay, that's fine. However you want
17 to do it is fine with me.

18 All right. Do the lawyers have anything to hand
19 up to the Court for me to follow along as I hear
20 arguments?

21 MS. BURCHSTEAD: Your Honor, we have not prepared
22 a brief. We are intending to just respond orally and
23 if Your Honor would like additional briefing we are
24 happy to do it.

25 THE COURT: How about a copy of the indictment.

1 MS. BURCHSTEAD: Absolutely.

2 THE COURT: I got it..

3 MS. BURCHSTEAD: You got it. I got plenty of
4 copies of those.

5 THE COURT: All right. Let me have the State then
6 before I hear from you, Mr. Gregory, I'm just going to
7 have the State introduce the case to me and give me
8 the alleged facts and then I will hear your argument
9 and we'll kind of go back and forth. Okay.

10 Yes, ma'am.

11 MS. BURCHSTEAD: Thank you, Your Honor. So, as I
12 said we have three indictments. These are all
13 criminal sexual conduct with a minor charges. One
14 count is 1st degree, one count is 2nd degree and one
15 count is I believe assault with intent to commit, 2nd
16 degree. These stem from actions really ranging in the
17 nineties, primarily Your Honor. The timeframe for the
18 indictments is indictment number ending in 559 is
19 December '99 through April 2000. That's the CSC with
20 a minor first degree. The CSC with a minor 2nd degree
21 ranges from April 1st to September 1st of 2001. And
22 then our last Indictment has a date range of April 23,
23 2000 through September 2000, and that's the assault
24 with intent to commit.

25 Mr. Morales was arrested in 2002 on these

1 indictments so we are not dealing with a lengthy delay
2 of disclosure type case. The conduct had been
3 ongoing. That's what the statement alleged. We do
4 have the victim present in the courtroom. She was a
5 child at the time.

6 The State is ready to move forward with a trial
7 Your Honor, however the reason we are here is the
8 delay in getting the case to court now. And I'm happy
9 to elaborate further. We have the solicitor's office
10 here in the courtroom that can also speak to the delay
11 but the short version as I understand it is, Mr.
12 Morales was indicted in 2002 -- excuse me, he was
13 arrested in 2002. Indicted in 2003. Solicitor Justice
14 would have had that done. Of course we had a change
15 in solicitor. The courthouse burned in 2008. We had
16 another change in solicitor 2014.

17 The case came to the Attorney's General's Office as
18 I understand it just seeking some help with the over
19 crowded docket situation and more manpower getting
20 these cases moved. And so it did come to our office
21 and our office indicted not realizing at the time that
22 it had been indicted previously so we had new
23 indictments obtained in May of 2016. A change of
24 prosecutor in our office where it came to me at the
25 end of last year and we began talking to Mr. Gregory

1 and Miss Collins in terms of getting it scheduled. We
2 were prepared to go in May and Mr. Gregory filed this
3 motion. We all realized in conjunction with the
4 solicitor's office that it had been indicted
5 previously so while the original motion Mr. Gregory
6 filed was a motion I believe based on a pre-indictment
7 delay it appears it's more of a straight-up speedy
8 trial motion at this point as this case was indicted
9 and we did appear in front of Judge Hayes. In
10 preparation for trial the State did learn new
11 material. We got a stack about 80 pages of material
12 from North Carolina equivalent of DSS which did list
13 additional folks that may have information to the case
14 and so based on that and the motion needed to be heard
15 we ask we go just go ahead and bump it out a little
16 for Your Honor to hear the motion.

17 Again, we're prepared to schedule a trial date. We
18 had talked about April. We would be happy with July
19 or September that will be fine too. But I'm happy to
20 respond to anything directly Your Honor would like to
21 know. Of course we have our own take on the speedy
22 trial analysis. We don't believe there has been any
23 prejudice ultimately, but I would let Mr. Gregory
24 place his argument and then respond, if that suits
25 Your Honor.

1 THE COURT: Thank you. Mr. Gregory.

2 MR. GREGORY: If it please the Court.

3 THE COURT: Yes, sir.

4 MR. GREGORY: Your Honor, before I start as
5 personal -- as a personal note, I would like to say
6 that I have upmost respect for the Sixth Judicial
7 Solicitor. I've known the solicitors. I have been
8 practicing in Lancaster since 1971. I've known a
9 number of solicitors in that period of time and I've
10 always had the most respect for them, including the
11 present solicitor and former solicitor and the
12 solicitor before that who were all solicitors at the
13 time this case was pending.

14 This case started with the arrest of my client,
15 October the 29th, 2002. John Justice was the
16 solicitor at that time. He passed away and he was
17 succeeded in office by the assistant by the name of
18 Doug Barfield who was the solicitor until the present
19 solicitor, Randy Newman became solicitor. And the
20 reason I mention this is because my wife and I both
21 were victims of a violent crime within the last
22 year -- two years ago. And I appreciate the respect
23 and the diligence that the solicitor's office offered
24 during that period of time. However, I have to say we
25 are all human beings and I think some times things

1 fall between the cracks.

2 In regards to the indictment the solicitors --
3 well, the Attorney General's Office is prosecuting
4 this case. It was brought to my attention I think it
5 was in March -- I'm not sure. We had a conference
6 call with Attorney General's office and Judge Hayes, I
7 believe. Maybe it was just a meeting or conference.
8 And at that time I think it was Miss Collins mentioned
9 that she thought perhaps the case had been -- an
10 indictment had been issued in the case. This was the
11 first time I had heard this.

12 My client was arrested October the 29th, 2002. He
13 was released on bail, November the 3rd, 2002. The
14 first notice I had of an indictment was when my client
15 was indicted May the 19th, 2016 and he was arraigned
16 on that indictment August the 1st, 2016.

17 THE COURT: When did you begin representing your
18 client?

19 MR. GREGORY: I was retained to represent Mr.
20 Gonzales -- I mean Mr. Morales, I sorry, sometime in
21 October or maybe November of 2002.

22 THE COURT: All right, go ahead.

23 MR. GREGORY: At the time he was arrested in other
24 words, and I represented him since that time. At that
25 meeting that I referred to was the first I had heard

1 of the possibility of a previous indictment.

2 However, I would like to state that even though there
3 is a possibility that he was indicted my case file
4 never showed an indictment number. When I get
5 retained on a criminal case I entitle it 2002-GS-29-
6 blank. And whenever the case is indicted I fix the
7 indictment number. To date that still is not on
8 there. I haven't put the new indictment number on
9 there. He was in fact indicted last year.

10 If Mr. Morales had been indicted in 2003, I think
11 that's what the Attorney General is saying the
12 solicitor's records reveal. But of course I think
13 they were all burned in the courthouse in 2008. That
14 could be part of the problem. Then there would be no
15 need to have re-indicted him last year which they did.
16 But if he had been indicted in 2003 my question is
17 why was he not arraigned after the indictment in 2003.
18 We don't know who was on the Grand Jury in 2003. We
19 don't know when the Grand Jury was commenced. We
20 don't know whether it was commenced more than 15 days
21 before the first term of Court in the year 2003. All
22 those records were burned in the courthouse. We
23 haven't been able to find out who was the foreman of
24 the Grand Jury at that time. Who was on the Grand
25 Jury and do they remember hearing this case and voting

1 12 out of 18.

2 THE COURT: Well, let me cut to the chase. Don't
3 the re-indictment then cure any procedural defect that
4 the State may have had with the initial Grand Jury
5 action?

6 MR. GREGORY: Well, in so far as is he indicted or
7 not, yes. That would solve that problem. And he was
8 arraigned after that.

9 THE COURT: Okay.

10 MR. GREGORY: So if that's the case then that
11 would establish a lengthy delay and that's the basis
12 of my motion to quash the Indictment and dismiss the
13 case based on a violation of my client's constitution
14 rights as guaranteed by the Fifth Amendment of the
15 United States and the Fourteenth Amendment of the
16 South Carolina Constitution.

17 THE COURT: Have you ever filed a motion for a
18 speedy trial? You were retained in October of 2002.
19 From October of 2002 to May 19, 2016, did you ever
20 file a motion for a speedy trial or request a
21 disposition of your client's case.

22 MR. GREGORY: No, sir.

23 THE COURT: Okay. Go ahead, I'm listening.

24 MR. GREGORY: And this motion that I filed was
25 based on the my client's violation of constitution and

1 due process rights. That's the basis of the motion.
2 So the lengthy delay between 2002 and the arraignment
3 in 2016 is almost 15 years.

4 Now, I would like to hand up to the Court a letter.
5 I will provide the Attorney General with a copy. If
6 it please the Court.

7 (WHEREUPON, a document was handed to the Court.)

8 THE COURT: All right.

9 MR. GREGORY: The pertinent part of this letter of
10 course is dated February 27, 2007 in regards to my
11 client, Guadalupe Morales. It is to the United States
12 Citizenship Immigration Service in regards to his
13 request for a permanent residence card. In paragraph
14 two of that letter I state that the charges against my
15 client have not been presented to the Grand Jury,
16 therefore he's not been indicted. A copy of that
17 letter went to Jeff Hammond, the Clerk of Court and
18 Jeff Hammond was the Clerk the Court in Lancaster
19 County in 2002 and he still is.

20 THE COURT: 2007. Was he the clerk in 2002?

21 MR. GREGORY: He was.

22 THE COURT: Have you been a clerk that long?

23 MR. HAMMOND: Yes.

24 THE COURT: Fifteen years?

25 MR. HAMMOND: Seventeen.

1 MR. GREGORY: I didn't think he was that old, Your
2 Honor. Mr. Hammond was the Clerk of Court when my
3 client was arrested in 2002. He was the Clerk of
4 Court in 2007 when this letter was written and I
5 directed a copy of that letter to him. I never got a
6 response from that Your Honor. I didn't request a
7 respond but if my client had been indicted I would
8 assume that the Clerk of Court would have let me know
9 if that were not true.

10 Also I would like to hand up another letter with an
11 attachment basically to the same addressee;
12 immigration services. This is dated March the 10th,
13 2008. About a year later. Also in this letter I
14 state that the charges against my client have not been
15 presented to the Grand Jury therefore he has not been
16 indicted. I also sent a copy of that letter to Jeff
17 Hammond, Lancaster County Clerk of Court and I got no
18 response from that letter, Your Honor, either. Which
19 brings me to the conclusion that my client had not
20 been in indicted at that time. I would also like to
21 hand up Your Honor orders from the South Carolina
22 Supreme Court in regards to pretrial delay. They were
23 both signed by Chief Justice Woodrow Lewis dated 1983
24 and 1984 and they are concerning the length of time --
25 or they're concerning the delay in a trial of criminal

1 cases.

2 THE COURT: All right. Hasn't this order been
3 superceded by the Lanford Order.

4 MR. GREGORY: It may have been. I didn't check.
5 I don't know Your Honor.

6 THE COURT: Okay.

7 MR. GREGORY: But the reason I brought these
8 things to the Court's attention is I'm not taking the
9 position that my client was arrested October 29, 2002
10 and he was not arraigned until August 1, 2016. Almost
11 15 years. And this is very factually similar to the
12 State versus Lee case which I stated in my motion to
13 quash.

14 THE COURT: Let me see your motion to quash. I
15 don't have that in front of me.

16 (WHEREUPON, documents were handed up to the Court.)

17 THE COURT: All right. Go ahead.

18 MR. GREGORY: Your Honor, this case is factually
19 similar to the case State versus Lee, 653 S.E.2d 259,
20 a 2007 case. It was tried I think in 2003. It went
21 to Court of Appeals 2004. He was convicted of child
22 molestation; stepchildren -- stepdaughters of his
23 wife. He was convicted. It was a 12-year delay in
24 that case although this was a pre-indictment of 12
25 years and he was convicted and the Court of Appeals

1 reversed the trial Court. The trial Court had denied
2 his motion. He had made a motion to quash the
3 indictment for pre-indictment delay. That was denied.
4 He was convicted. He appealed. South Carolina Court
5 of Appeals reversed it and the South Carolina Supreme
6 Court upheld the Court of Appeals on Cert.

7 The case -- in that case the Court adopted
8 basically a two-prong pre-indictment test delay. When
9 the delay is alleged to have violated the defendant's
10 due process rights, which we believe was done in this
11 case.

12 The first prong of the -- the first prong is the
13 delay caused substantial actual prejudice to the
14 defendant's right to a fair trial. And we urge the
15 Court that has happened in this case. And the second
16 prong is that the Court has to balance the
17 justification of the delay, if there is any, against
18 the prejudice suffered by the defendant. And I
19 understand we had a change in solicitors and we had a
20 courthouse fire, but the courthouse fire didn't happen
21 until 2008.

22 THE COURT: That's nine years ago.

23 MR. GREGORY: That's a six-year delay. There's
24 also a nine-year delay from the fire until now. The
25 delay -- the case says the delay caused the defendant

1 to be meaningfully impaired in his ability to defend
2 against the charges. And so I would like to identify
3 the evidence, Your Honor, in this particular case
4 where we he have been unable to defend against the
5 charge because of the delay. The witnesses; James
6 Wilson, he's deceased; Ortero Morales, deceased; Chi
7 Lee, deceased, now a resident of Mexico. Isabelle
8 Palacios and Ricardo Guzman also out of the country
9 and unavailable. The case also said -- the Lee case
10 also said that Mr. Lee to be successful would have to
11 reveal the expected content of the evidence with
12 specificity. Well, the evidence that we are trying to
13 get that we can not get is evidence of criminal
14 conspiracy we believe exists, witness tampering,
15 threatening witnesses with retaliation and criminal
16 records, arrest records in state of Texas regarding
17 Lois Campos. Who by the way is the victim's
18 grandmother with whom she lives.

19 The State versus Lee case also said that it's
20 required that you must show what serious efforts were
21 used to obtain the evidence that are unavailable from
22 other sources. Well, it's kind of hard to un-ring a
23 bell, Your Honor. It's hard to find something when
24 you don't know where it is. So we made numerous phone
25 calls, personnel interviews and the apartments where

1 Miss Campos resided with the victim, Westgate
2 Apartment's neighbors are not telling where. There has
3 been a number of hours spent on trying to locate these
4 folks to no avail.

5 Your Honor, in further support of those items
6 required by the State versus Lee to prevail in a
7 successful quash of an indictment motion, there are no
8 results of medical examination available. The
9 examining physician of the victim is unknown. We have
10 HIPPI privacy policies to prevent disclosure of the
11 examination results which have been attempted to be
12 obtained. The DNA results are not available. We have
13 not been able to see the love letters referred to by
14 Detective Parsons. We have not been able to have the
15 missing evidence examined by forensic expert to
16 testify on my client's behalf at trial. The
17 witness -- the victim's boyfriend is unavailable and
18 has moved and left no forwarding address. This would
19 be the boyfriend at the time of the alleged
20 occurrences. There is also the inability to cross
21 examine the victim in regard to the alleged events and
22 other family members regarding the alleged incident.

23 My client has suffered the inability to refute the
24 delayed disclosure evidence presented by the State's
25 expert witness and the absence of any contemporaneous

1 evidence prejudices the defendant's ability to defend
2 himself and he has no ability to obtain items of
3 exculpatory evidence that may be in existence. And I
4 will conclude, Your Honor, with the realization that
5 because of the major advancements in developments of
6 social media have allow the alleged victim to become
7 educated in her description in more graphic detail
8 then previously expressed. We feel that my client has
9 been prejudiced by that delay of almost 15 years.

10 Thank you, Your Honor.

11 THE COURT: Thank you. Counsel, I know I'm
12 sitting here looking forward and listening to you.
13 There is a case that came out within the last year.
14 Case out of McCormick County. Are you familiar with
15 it?

16 MS. BURCHSTEAD: McCormick County?

17 THE COURT: I think it was McCormick County, and
18 it was a delayed prosecution, State versus Witherspoon

19 MS. BURCHSTEAD: Sounds familiar, judge.

20 THE COURT: No, that's out of Charleston County.

21 MS. BURCHSTEAD: It is not ringing any real bells
22 to me off the bat.

23 THE COURT: All right. Go ahead. I'm looking for
24 it.

25 What that case basically stood for was the very

1 similar argument to what Mr. Gregory is making. I
2 don't know if they cited the Lee case that he is
3 relying upon, but I know it was a recent case and it
4 had some Lanford issues, and speedy trial issues, a
5 delay in prosecution. That may have been murder case.

6 MS. BURCHSTEAD: Hunsberger is the most recent
7 case I am familiar with regarding the prosecution
8 delay issue, Your Honor, and that came out within the
9 last couple of months.

10 THE COURT: What's the name?

11 MS. BURCHSTEAD: Hunsberger, H-U-N-S-B-E-R-G-E-R.

12 THE COURT: Is is that applicable here.

13 MS. BURCHSTEAD: I'm sorry Your Honor.

14 THE COURT: Is any language in that case
15 applicable here which supports your contention.

16 MS. BURCHSTEAD: Yes, sir. Well, it doesn't
17 support us, but we can differentiate from it, Your
18 Honor.

19 In this particular case there was found to be such
20 delay that it was a problem in that case, however the
21 significance of that case is the Court found that the
22 prosecution was using the delay tactically and we feel
23 that is very different from what is going on here.

24 THE COURT: What is the name of that case again?

25 MS. BURCHSTEAD: Hunsberger, H-U-N-S-B-E-R-G-E-R,

1 Your Honor. It's a 2016 case; 418 S.C. 335. That's
2 the most recent case that talks about delay, Your
3 Honor, that I am aware of.

4 THE COURT: Edgefield, McCormick, I was close. Go
5 ahead. I'm listening.

6 MS. BURCHSTEAD: Thank you. Thank you, judge.

7 First, let me address the angle of Lee and the
8 pre-indictment delay. And before I actually get to
9 the substance of how I would like to respond, if you
10 don't mind, I believe Mr. Gregory has seen this
11 before. Miss Collins has provided to us what is a --
12 if I just pass it up to you -- the Lancaster General
13 Sessions docket August 2008 which does list Mr.
14 Morales on there with an indictment number of 2003.
15 So we would reiterate to the Court the State's
16 position is that this case was in fact indicted in
17 2003. Obviously with the Attorney General's office
18 seeking indictments in 2016 we were not aware of that
19 and we did just learn of that a couple of weeks ago.
20 Which would suggest to the Court that does present a
21 little bit of a different angle here, however, I would
22 say regardless of we're looking at pre-indictment
23 delay or just a speedy trial analysis, Your Honor, the
24 analysis is very similar regardless in that under Lee
25 -- especially looking at that second prong, you are

1 looking at the reason for the delay and whether
2 there's prejudice and you are still looking at a
3 balancing test. Ultimately you're still looking at
4 prejudice and whether that exists. And while we
5 recognize the length of delay of 15 years is pretty
6 significant, the State's position is that in looking
7 at Barker and the speedy trial case law including
8 Hunsberger and the progeny of Barker you are looking
9 at the totality of the circumstances, the balancing
10 test and the length of delay and the fact that there
11 was delay is just a triggering factor in beginning
12 that analysis Your Honor.

13 What we would say is that -- or what we are saying
14 is that, yes, the delay was significant. However, the
15 reason for the delay is not tactical as it was in
16 Hunsberger. There was no malicious or calculating
17 intent on behalf of the State, but merely an over
18 crowded docket and at worse negligence, which is not
19 good but according to Hunsberger which cites Lanford,
20 negligence or overcrowding weighs less heavily on the
21 State. So in your balancing test that's not as
22 significant as in Hunsberger where they found it to be
23 more of tactical situation where they state was
24 causing the delay.

25 THE COURT: But it's still something for the Court

1 to consider.

2 MS. BURCHSTEAD: Absolutely. All of these things
3 are to be considered. The State's overall position
4 here is when considering all of these things, weighing
5 the totality; the delay, how long it was triggers and
6 you have some presumptive prejudice when you are
7 initially doing your review. But ultimately you still
8 have to balance all of the factors and we ultimately
9 say there is not sufficient prejudice that there is
10 such delay that due process has been violated. Again,
11 the reason for the delay was not tactical and of
12 significance is that the defendant never asserted his
13 speedy trial. According to Barker versus Wingo it's
14 difficult to claim you are violated when you have not
15 asserted your speedy trial rights.

16 THE COURT: But didn't the Hunsberger wasn't that
17 same argument made in that one and didn't the Court --

18 MS. BURCHSTEAD: I'm sorry, I hope I am not
19 misstating and that Hunsberger did actually file
20 speedy trial.

21 THE COURT: Late.

22 MS. BURCHSTEAD: Filed at least two motions for
23 speedy trial and again when you actually look at the
24 prejudice, we got three prongs. You got the length of
25 delay, reason for the delay, whether the assertion for

1 the speedy trial happened and whether the delay caused
2 prejudice. And you look at Barker versus Wingo and
3 again the progeny of these cases look back at Barker
4 for what those prejudicial factors are. One of which
5 is whether the defendant was incarcerated and Mr.
6 Gregory told you he was not. He got out almost
7 immediately. So during this entire time he has not
8 been incarcerated. He has not had the anxiety of
9 incarceration and that's the second factor in the
10 actual prejudice factors as being weighed, Your Honor,
11 is whether there was anxiety concerning the accused.
12 I would reiterate if there was anxiety file a speedy
13 motion. It just appears to the State when you sent
14 letters, you had discussions with the solicitor's
15 office, but we never said I want my case heard. And
16 now to come and say I am prejudiced flies in the face
17 of that. And lastly under the specific prejudicial
18 factors, and again, that is fourth prong of your
19 speedy trial analysis of whether you have limited the
20 possibility of a defense. And I heard what Mr.
21 Gregory said and obviously Mr. Gregory is not going to
22 tell me the defense to his case and we wouldn't expect
23 that but I was little bit surprised as to some of
24 things he said. I would point the Court's attention
25 to the case of Evans, Your Honor. State v Evans, 386

1 S.C. 418. We believe we are in a situation more, akin
2 to that case where Judge Lockemy, who was the trial
3 judge at the time, found a 12-year delay was not
4 prejudicial to the defendant in any significant
5 degree. To any degree other than in and of itself
6 having been 12 years. The Court of Appeals affirmed
7 that and they did drop a footnote saying the timeline
8 had been troubling but it was of significance, that
9 Judge Lockemy noted at the trial level that basically
10 it's been 12 years. So there's nothing that could
11 really be pointed to. I understand Mr. Gregory gave
12 you a list of names. I haven't seen those names in
13 the file. I don't know whether they would be
14 character witnesses. I don't know what his defense
15 would be, but the State's position is this is the case
16 that would have been years ago except our victim is
17 older now and he's free to cross examine her. She's
18 going to say what happened. She's going to testify.

19 This is not a forensic type case. This is a
20 witness testimony case and the form of the State's
21 case is primary our victim. There maybe some Lyle
22 testimony. There was other girls in the home and we
23 would address that at trial whether they would testify
24 as well. But the core of the State's case is our
25 victim's testimony and I don't see how that changes

1 even though it's 15 years later. It is not a forensic
2 type case, Your Honor.

3 So the State's position is that pre-indictment or
4 not, you are essentially looking at a balancing test
5 under Lee or Barker or any of them. You're still
6 looking at that due process balancing test and
7 ultimately you have to look at the prejudice weighing
8 against the delay and the delay here was --

9 THE COURT: So, according to your argument --

10 MS. BURCHSTEAD: Yes, sir.

11 THE COURT: -- when would there ever been an
12 unreasonable delay of prejudice to the defense.

13 MS. BURCHSTEAD: I would say when you're in a
14 situation where you do have forensic evidence and you
15 actually do need testing of something and that
16 material has disappeared, or you have someone that
17 actually witnessed it; an eye-witness for example that
18 is gone. Something like that where it actually goes
19 to the core of how the State is going to prove its
20 case, Your Honor, and the inability to cross examine.
21 We have the ability to cross examine.

22 THE COURT: Isn't that what Mr. Gregory is
23 alleging by listing out those particular witnesses?
24 Mr. Gregory, the names you mentioned, these witnesses
25 for your client, are they alibi witnesses or -- I

1 don't know what your defense is. What are they?

2 MR. GREGORY: I understand Your Honor. They are
3 not alibi witnesses. They're witnesses that would
4 testify in regards to the conspiracy of the victim
5 with her grandmother to -- against my client.

6 THE COURT: Okay. Got you. I understand. All
7 right, that's what you are alleging.

8 All right. I'm coming back to you.

9 MS. BURCHSTEAD: In response to that the victim and
10 the grandmother are available to testify as are law
11 enforcement folks that worked the case and I would
12 assume other members of the community.

13 THE COURT: Well, I'm with you. I understand
14 where your argument is.

15 MS. BURCHSTEAD: Yes, sir.

16 THE COURT: But if the defense is putting up -- if
17 the defense's defense is that, look, this is just a
18 conspiracy to get this guy out of the house. This is
19 all made up. He said, she said. There is no forensic
20 evidence. She's just saying this. I'm just
21 portraying this.

22 MS. BURCHSTEAD: I understand.

23 THE COURT: I'm just thinking out loud.

24 MS. BURCHSTEAD: Absolutely.

25 THE COURT: Doesn't that seriously hamper the

1 defense's right to a fair trial based upon this delay
2 even though it's not your particular fault.

3 MS. BURCHSTEAD: Right.

4 THE COURT: It may not be anybody's fault. Okay.

5 MS. BURCHSTEAD: I understand. I believe we're
6 still looking at a balancing test and while, yes,
7 there's potential impact, I don't believe it's serious
8 impact. And frankly, the case that we're putting up I
9 believe he would still be able to adequately defend
10 the case, Your Honor, in a confrontation type manner
11 with cross examination of the witnesses that we put up
12 and the two individuals he's discussing that would be
13 in a conspiracy are going to be testify. And there
14 are other members of the family that resided in the
15 home.

16 There's a number of homes involved and the members
17 that reside in the home are available, and of
18 significance the defense's wife, the victim's mother,
19 is still around somebody can put her up and ask her.

20 THE COURT: Okay. Thank you ma'am.

21 Anything further Mr. Gregory?

22 MR. GREGORY: If it please the Court, Your Honor,
23 the State versus Evans' case that the Attorney General
24 cited I think this is what she said it was a 12-year
25 delay and that was found not to be sufficient delay.

1 But the Court, Judge Lockemy, called it troubling.
2 This case is almost 15 years old, so I would say this
3 case is more than troubling and not only that, Your
4 Honor, there has been no evidence shown that my client
5 had ever been indicted. Never been arraigned until
6 last year, August the 1st, 2016.

7 THE COURT: Do you acknowledge that there's a
8 Lancaster County General Sessions docket from August
9 of 2008 with indictment numbers 03-GS-29-78, 79, 80
10 and 81.

11 MR. GREGORY: Your Honor, I do acknowledge having
12 received that and it appears to be either somebody's
13 notebook notes or something in a file. Now what that
14 is it's a list of people's name and either case
15 numbers or warrant numbers and/or indictment numbers.
16 That does not -- that does not prove that an actual
17 grand jury convened that was -- well, back in 2003 I'm
18 talking about. It doesn't prove that a grand jury
19 convened and they were impaneled more than 15 days in
20 the year 2003 and they listened to testimony and they
21 returned a true bill. We don't have it. We don't
22 know if it was burned in the courthouse perhaps so.
23 But we don't have that. So what I'm saying is, what
24 that is is circumstantial evidence that yes, there was
25 case number assigned. But does that mean that they

1 were indicted, no, and does that mean he was
2 arraigned, no.

3 THE COURT: That's why I asked you if the new
4 indictment from May first of 2016 cured that. I
5 understand that supports your argument.

6 MR. GREGORY: It does, Your Honor.

7 THE COURT: It does cure that. But so the
8 timeframe between then 2000 -- okay. Your argument
9 that would not be excusable delay?

10 MR. GREGORY: Correct.

11 THE COURT: Okay.

12 MS. COLLINS: May it please the Court.

13 THE COURT: Yes.

14 MS. COLLINS: Your Honor, I recognize I'm not
15 counsel for the State in this proceeding. It has been
16 taken over by the Attorney General.

17 THE COURT: Introduce yourself for the record.

18 MS. COLLINS: Lisa G. Collins. I'm Deputy
19 Solicitor for Lancaster County, Sixth Judicial
20 Circuit.

21 To the extent that there is any question in terms
22 of pre-indictment delay I would like to be heard, if I
23 may.

24 THE COURT: All right. Sure.

25 In the interest of justice all around I will be

1 glad to hear whatever anybody wishes to say. Yes,
2 ma'am.

3 MS. COLLINS: Your Honor, I prepared a brief and
4 didn't realize that I am no longer counsel for the
5 State. I am going to hand that up to extent it sets
6 forth a chronology. I participated in a conference
7 call as my role of deputy solicitor that took place
8 with Judge Mark Hayes when this case was schedule for
9 trial before him on May 8th, and I sent an e-mail
10 after the conference because it was during the
11 conference call that I first became aware that Mr.
12 Gregory was asserting pre-indictment delay rather than
13 speedy trial issues. And right before the conference
14 call I was really amazed that was the assertion
15 because for all that can be said in terms of the Sixth
16 Judicial Circuit especially with my background in
17 other areas in the state, both statewide, PCR's and
18 also the 16th, the one thing that I can say about the
19 this Judicial Circuit is that they are extremely
20 timely in indicting the defendants. Almost without
21 exception the defendants are indicted within three to
22 four months of the arrest. But I was not here when
23 Mr. Morales was arrested in 2002. But after that I
24 did do some digging. I spoke with Solicitor Randy
25 Newman. I spoke to Julie Small, who is one of our

1 paralegals in the office, and there is a notebook and
2 I have testimony available from Julie Smalls that
3 Ginger Sowell, a paralegal in the office at that time
4 of the fire in August of 2008 happened to take home
5 one of the notebooks that had that pre-fire indictment
6 and it is the page that's handed up and I would ask
7 that be made for a record an exhibit; either Court's
8 exhibit or State's Exhibit, showing that the
9 indictment numbers as referenced.

10 THE COURT: That's this. (Indicating)

11 MS. COLLINS: Yes.

12 THE COURT: All right. That will be Court's
13 Exhibit Number One. Madame court reporter I'll hand
14 this to you. You can go ahead and mark that.

15 (Court's Exhibit One, document, received in
16 evidence as of this date.)

17 THE COURT: Okay.

18 MS. COLLINS: So Your Honor, we have available Miss
19 Small to testify as well as Solicitor Newman and
20 former Solicitor Barfield regarding that that at that
21 time there had been an indictment number assigned. At
22 that time to my knowledge the public index as we know
23 it today that reflects indictment numbers didn't
24 exist.

25 THE COURT: All right, call your witness.

1 MS. COLLINS: But Your Honor, if I may -- if I may
2 just briefly. There is no statutory nor procedural
3 requirement that anybody be arraigned on an indictment
4 other than for a direct indictment.

5 THE COURT: I understand. I was fixing to get to
6 that.

7 MS. COLLINS: And also the reason that the State
8 then did prepare an indictment that the Attorney
9 General did, is at that point since the indictments
10 were destroyed by the fire there is nothing to show to
11 the jury. So of course if something is going to trial
12 we would have to have something and that's why the
13 Attorney General Office did a further indictment but
14 there was no requirement that be done.

15 Your Honor, at this time I would call Solicitor
16 Randy Newman.

17 THE COURT: Before we do that. Mr. Gregory, after
18 having heard Miss Collin's legal arguments and of
19 course the only evidence in the record -- albeit
20 circumstantial -- is that Lancaster County General
21 docket August 2008 do you stipulate that your client
22 was indicted in 2003?

23 MR. GREGORY: No, Your Honor I don't stipulate to
24 that.

25 THE COURT: Okay. I need to make a finding of

1 fact.

2 MR. GREGORY: I do acknowledge that there was
3 evidence showing a case number had been affixed at
4 that time.

5 THE COURT: Okay, I need to make a finding then
6 for the court's record so go ahead and call your
7 witness.

8 MS. COLLINS: Your Honor, actually I will call Mr.
9 Barfield first.

10 THE COURT: All right solicitor.

11 DOUG BARFIELD, called as a witness, having been
12 duly sworn by the clerk, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MS. COLLINS:

16 Q Please state your name?

17 A Doug Barfield.

18 Q What is your occupation?

19 A I'm an attorney.

20 Q And where do you currently work?

21 A I'm I guess a private practitioner and my sole client
22 is the Lancaster County Sheriff's Office.

23 Q Did you previously represent the State of South
24 Carolina as the Circuit solicitor for the 6th Judicial Circuit?

25 A I did.

1 Q Prior to that time you served as an Assistant
2 Solicitor, Deputy Solicitor under Solicitor John Justice is that
3 right?

4 A I did.

5 Q When were you elected solicitor?

6 A I was elected in November of 2006. I took full term in
7 January of 2007. I was appointed in October of 2006 after the
8 death of John Justice in September of 2006.

9 Q When you were working for Solicitor Justice were you
10 assigned specifically to Lancaster County South Carolina?

11 A Yes, ma'am.

12 Q Did you work exclusively on those cases?

13 A Every now and then I would go to one of the other
14 counties to do something but primary Lancaster County.

15 Q Did any other solicitors work those cases at that time?

16 A I started in '84 and I was a part time prosecutor in
17 '84 until not too long before Mr. Morales was arrested. From
18 '84 until that time there was one part time administrative
19 assistant. I think in 2002 we got another. I had become full
20 time by then and I think in 2002 we got another full time lawyer
21 and full time paralegal. Nobody else worked in Lancaster County
22 other than me as part time employee until some time in 2000 or
23 later.

24 Q Where was your office located at the time of the fire
25 in August of '08?

1 A 105 West Dunlop directly across the street.

2 Q Where were the indictments housed at that time?

3 A In 101 North Main Street, which is the start of the
4 Lancaster County Courthouse.

5 Q And that is the courthouse that was set fire to on
6 August 4, 2008 resulting in great damage?

7 A That's correct. Can I expound on that?

8 Q Yes, please do.

9 A The clerk will correct me if he needs to later, but the
10 indictments, the arrest warrants, the bond papers, bench warrant
11 information, the bench warrant logs, all of that material was
12 kept in the upstairs courtroom, the old Lancaster county
13 courthouse. Literally the fire was started with those materials
14 piled on the floor in front of the bench and lighter fluid
15 poured on them. They were destroyed. Those original documents
16 were all destroyed.

17 Q And that included the indictments?

18 A Yes, ma'am.

19 Q So it didn't just start in that room. Those materials
20 were used as fuel for the accelerant; is that correct?

21 A Exactly.

22 Q Was it the day within 48 hours would you say of the
23 courthouse fire in August 4, 2008 that your office also was it
24 set fir two?

25 A It was 72 hours. Three days later. Monday morning to

1 Thursday morning.

2 Q And as a result therefore did you file on the various
3 cases were they destroyed?

4 A They were. We had -- at the time of the courthouse
5 fire we had one lawyer, I think, and a paralegal housed in the
6 courthouse. They had materials, papers, files. They were not
7 burned up but damaged by water and smoke from whatever was over
8 here. We salvaged a little bit of stuff on Monday night and
9 actually carried it across the street to my office which was
10 combine with the stuff I had in my office which all was burned
11 up, smoked up, wet down, five o'clock Thursday morning when my
12 office was set on fire.

13 Q Let me back you October 2002 when the defendant Mr.
14 Morales was arrested. Were you the sole solicitor working in
15 Lancaster County at that time under John Justice?

16 A In Lancaster.

17 Q Okay.

18 A Are you asking in Lancaster?

19 Q Yes, in Lancaster?

20 A I think Mr. Holland might have been there then but I am
21 not absolutely certain.

22 A Okay.

23 Q He came in 2002?

24 Q Do you recall Mr. Morales's case from onset after his
25 arrest?

1 A I don't have a specific recollection of it, other than
2 reading some material that people had provided me pursuant to
3 this motion.

4 Q In October 2002 then let's talk about the procedure.
5 If a defendant was arrested in October of 2002 as Mr. Morales
6 was, when would normally their indictment be prepared and
7 presented to the Grand Jury?

8 A Within a month or two. And I can tell -- I don't want
9 to get way off course here, but at the time these events
10 occurred we had no computerized case management system. We had
11 word documents and we prepared a word document docket of
12 indicted cases. The page that has been introduced as a Court's
13 exhibit is a page of that docket of indicted cases. After my
14 fire in my office I actually found my docket in my office and
15 it's somewhere in the solicitor's office now which is the same
16 document that you handed a page up from. Those -- that docket
17 reflects cases that had been presented to the Lancaster county
18 Grand Jury and had been indicted and thereafter had indictment
19 numbers.

20 The indictment numbers assigned to this case tell me it that
21 was indicted the first term of Court which I would presume would
22 have been January 2003. I can say with all confidence, Mr.
23 Morales got indicted. There's no doubt in mind he got indicted.

24 Q Had an indictment number been assigned but in fact the
25 Grand Jury had no billed the indictment, would there have been a

1 mark on the docket sheet marking through those lists or would
2 they never have made it to that list?

3 A It would have come off the public index. Let me go
4 back and talk about that.

5 We had records on public index back then. The Clerk of
6 Court did not put the indictment numbers on those records until
7 probably some time after I became solicitor. The indictment
8 numbers use to never go on the public index until a case was
9 disposed of. In 2002 indictment numbers were never put in the
10 public index until the case was disposed. And I forgot your
11 question. Tell me your question again.

12 Q I was asking if it would even been on the list or would
13 have been on the list and marked through if it had been no
14 billed?

15 A Miss Small might be able to answer this better. I
16 don't think it would have ever been on the list but it will
17 certainly have come off the public index if it had been no
18 billed because I would have gone to the clerk's office with no
19 bill indictment and it would have come off.

20 Q Did Miss Small -- was she in charge of preparing the
21 indictments for you at that time?

22 A She prepared the indictments. I approved them and I
23 think she typed the docket. Some time earlier then that all
24 that was done in the Chester office but I think by 2002 we did
25 it here in Lancaster.

1 Q Ginger Sowell (sic) was another paralegal in your office
2 at the time of the fire; is that correct?

3 A Yes.

4 Q She had actually taken one of the docket lists home in
5 a notebook the night of the fire, is that right, before the
6 fire?

7 A That's my understanding.

8 Q Let's talk about procedure back in '02 or '03 when the
9 fire happened. Let's talk about actually in '03 when Mr.
10 Morales is reflected by the indictment was indicted. Would you
11 arraign someone that had been indicted on something that was not
12 a direct indictment at that time?

13 A Somebody who got arrested on an arrest warrant did not
14 get arraignment. If we changed the charge, added indictments,
15 we would bring somebody in and arraign them. We also did not
16 call lawyers after the grand jury met and say your guy has been
17 indicted. This is his indictment number. That was a matter of
18 public record. The indictments existed in the clerk's office
19 and we didn't call people and say you can put the indictment
20 number on your file now because he has been in indicted.

21 Q And that's something that you would expect the defense
22 attorney to have done by contacting the clerk's office for the
23 public record?

24 A I can't recall lawyers calling me saying did my guy get
25 indicted. It just wasn't an issue.

1 Q Okay. You were elected in '06 -- well, you took
2 office, am I right -- took office in '07 and '11 is that right?

3 A That's correct.

4 Q So, you decided not to run for re-election November '14
5 that's when Solicitor Newman ran for election and got elected,
6 correct?

7 A Correct.

8 Q Prior to your leaving the office when Solicitor Newman
9 was sworn in January of 2015, did you have some e-mail
10 correspondence with Mr. Gregory?

11 A I apparently did. You showed me an e-mail which I
12 recall now and quite literally this e-mail was sent to me by Mr.
13 Gregory the day before my last day in office.

14 Q And in that e-mail does he -- does Mr. Gregory say, by
15 the way my guy has never been indicted?

16 A No, ma'am.

17 Q He's asking you is there some way to dispose of the
18 case prior to the changing of the guard as Solicitor Newman
19 being sworn in, is that right.

20 A Right. And obviously between that day and the next day
21 when I was going to leave the office there wasn't any way for
22 me to deal with it. And I will say this to, Mr. Gregory
23 apparently sent this letter that he showed the judge dated March
24 10th of 2008 that he had written to Customs and Citizenship and
25 Immigration Services. That's the first I had seen of this

1 letter. He didn't copy me on this letter in 2008 or the one
2 that he referred to he sent to the clerk in 2007. And as far as
3 I recall also this is the only communication I remember having
4 with Mr. Gregory about this case at all; this e-mail the day
5 before I left office.

6 Q Thank you. I would ask this be marked as State's
7 Exhibit One. And I have shown Mr. Gregory. I move that in.

8 THE COURT: Any objection to that document coming
9 in?

10 MR. GREGORY: No, Your Honor.

11 THE COURT: All right.

12 (State's Exhibit One, e-mail letter received in
13 evidence as of this date.)

14 THE COURT: Any further questions.

15 Q Mr. Gregory -- Mr. Barfield, you heard Mr. Gregory talk
16 today in his presentation to the Court about the numerous
17 witnesses that had either died or were no longer available and
18 that they relocated to Mexico or out of the country, is that
19 right?

20 A I heard him make those arguments, yes, ma'am.

21 Q Were any of those witnesses familiar to you?

22 A No, ma'am.

23 Q At any time had Mr. Gregory contacted you and say I had
24 a witness that died, I'm very concern about the effect of that
25 on the case?

1 A I have no recollection of that. Again, I have no
2 recollection of any discussions with Mr. Gregory about this case
3 until the day before I left office.

4 Q So to the best of your knowledge as reflected by the
5 indictments in Court's Exhibit One, indictment numbers 0378, 79,
6 80 and 81, Mr. Morales's case was indicted and that would
7 have been certainly in the year 2003 and by the low number of
8 the indictment number should have been in the January month you
9 believe?

10 A I believe, and I have no doubt he was indicted.

11 MS. COLLINS: Your Honor, that would be my only
12 questions for Mr. Barfield in terms of the
13 pre-indictment delay. To the extent Your Honor is
14 going to consider Hunsberger I might have some
15 further for him, but I think this is the critical
16 issue at this point in terms of establishing about the
17 charges being indicted.

18 THE COURT: Any questions for this witness.

19 MR. GREGORY: Yes, Your Honor.

20 THE COURT: Before we do that for purposes of
21 the record, Mr. Gregory, the letters you handed up
22 during your presentation to the Court, I have stapled
23 them together and I have them marked as Courts Exhibit
24 Number Two. Okay. All right, so we'll have a clean
25 record.

1 (Court's Exhibit Two, letter, received in evidence
2 as of this date.)

3 THE COURT: The former Chief Justice orders be
4 placed and filed. These are orders of the Court.
5 They don't need to be formerly introduced. Thank you.

6 All right. Go ahead.

7 CROSS EXAMINATION

8 BY MR. GREGORY:

9 Q Mr. Barfield, John Reid Justice would appreciate this.
10 I've been waiting 33 years to get you on the stand under oath so
11 I can cross examine.

12 A It's not the first time I have been on the witness
13 stand under oath. I've done it in a murder case before.

14 Q All kidding aside. You recall -- okay, the exhibit
15 went in. It was an e-mail communication between you and me.

16 A Yes.

17 Q I recall specifically personally, face to face asking
18 you right before you left office would you dismiss the case.
19 And you may or may not remember that, and I may have followed up
20 with e-mail.

21 A And I have no doubt. I certainly can not dispute that
22 you might have seen me somewhere and asked me that.

23 Q All right. And obviously you didn't dismiss the case.
24 Do you recall from your own personnel knowledge -- of course you
25 would not be in the grand jury room in 2003 if this case had

1 been submitted?

2 A No, sir.

3 Q So do you recall from your recollection specifically
4 from your memory the case actually being sent to the Grand Jury?
5 Your testimony was, yeah, I probably do this. This is our
6 procedure. Yeah, I think I did this. But can you recall the
7 case actually going to the Grand Jury?

8 A No, sir.

9 Q All right.

10 A And I can explain it this way. Miss Small prepared the
11 indictments. I literally myself proofread them. I handled them
12 through the Grand Jury. I have done it for thousands and
13 thousands and thousands of indictments. I can not recall Mr.
14 Morales's indictment being in my hands at any point, no, sir.

15 Q All right. That's all the questions.

16 MR. GREGORY: Thank you, Your Honor.

17 MS. COLLINS: No further questions for this
18 witness.

19 THE COURT: All right, thank you sir. You may
20 step down.

21 MS. COLLINS: I would like to call Jeff Hammond,
22 the Clerk of Court please.

23 JEFF HAMMOND, called as a witness, having been duly
24 sworn by the Judge, was examined and testified as
25 follows:

1 DIRECT EXAMINATION

2 BY MS. COLLINS:

3 Q Good morning.

4 A Good morning.

5 Q Please state your name and occupation?

6 A Jeff Hammond, clerk of Court, Lancaster County.

7 Q You served at Clerk of Court in Lancaster since the
8 year engineer 2000?

9 A 2001.

10 Q 2001? You were elected in 2000?

11 A Yes.

12 Q When you took office in 2001 at that time the
13 courthouse was in the historic courthouse because that was prior
14 to the fire in '08; is that correct?

15 A That's correct.

16 Q In 2002 when Mr. Morales was arrested and in 2003 when
17 we believe he was indicted where were the indictments housed?

18 A They were in the courthouse upstairs.

19 Q When the Grand Jury would meet in the year 2003, would
20 you be present?

21 A Yes.

22 Q And do you recall the actual date in January of 2003
23 that the Grand Jury met?

24 A I do not.

25 Q If a case had been assigned an indictment number in

1 January of 2003 and the Grand Jury return a a no bill, what
2 would your office do?

3 A That case would be disposed of.

4 Q All right, and would that somehow be reflected in your
5 system?

6 A Yes.

7 Q Did you have a computerized system of management at
8 that time?

9 A Yes, but as far as the actual record entries I didn't
10 perform those. I had staff that did that. The actual case
11 management system that we're presently on I think we started
12 that in -- this is rough guess -- '05, '06. Somewhere in that
13 range.

14 Q You heard Mr. Barfield testify that he believed it
15 wasn't approximately until '06 that indictment numbers started
16 being entered on the public index, is that right?

17 A Yes.

18 Q Did you all at that point go back and enter the older
19 ones or you all just started at that point in '06 and started
20 entering indictment numbers?

21 A I don't recall. I don't recall.

22 Q Okay. You heard Mr. Gregory make presentation to the
23 court regarding the chronology of events from his perceptive and
24 he stated that he contacted the clerk's office from time to time
25 to see if a case was still pending. Do you recall him saying

1 that?

2 A Yes.

3 Q Had the case been no billed by the Grand Jury after
4 being assigned a 2003 indictment number, had the case been no
5 billed and a defense attorney contacted you and said is the the
6 case still pending what would your response have been?

7 A It's pending.

8 Q If it had been no billed what would your response have
9 been?

10 A The case doesn't exist.

11 Q It was closed as you say?

12 A Yes, closed.

13 Q Do you recall Mr. Gregory ever contacting you or -- of
14 course I can't speak in terms of members of your office, but
15 ever contacting you about whether or not this case was pending?

16 A I can not recall.

17 Q You saw -- did you see the letter attached that was
18 presented by Mr. Gregory in terms of his letter to the
19 immigration management or custom services about his client
20 wanting a permanent residency card?

21 A I did not see that.

22 Q Okay, let's show you that. I believe it's attached to
23 State's Exhibit One. If I can have that. (Handed.)

24 I show you was has been marked as State's Exhibit One that
25 is in evidence without objection. Attached to it is the letter

1 dated March 10, '08 from Mr. Gregory. Do you recall -- it shows
2 that you were personally copied that at the bottom; cc. Do you
3 recall having received that courtesy copy?

4 A No.

5 Q Okay.

6 A Any correspondence through that comes through our
7 office would have been put in a file.

8 Q Okay. And if the letter, as this letter does not
9 request action on your part it simply would have been filed?

10 A Yes.

11 Q When the courthouse fire happened on August 4, 2008 it
12 happened during the evening hours, is that correct?

13 A Actually early morning.

14 Q Early morning. You weren't here in the building,
15 correct?

16 A I was not. I was actually at the beach at the time of
17 the fire. I was headed back.

18 Q And you heard Mr. Barfield testify today that actually
19 the records used as part to fuel the accelerant were in part the
20 indictments; is that correct?

21 A That is correct. I visually got to see that after the
22 the remnants of what was left. The fireman walked me up there
23 and showed me.

24 Q And the indictments were housed there in the Clerk of
25 Court's Office or in the courthouse?

1 A In the courthouse upstairs in the courtroom.

2 Q And indictments were destroyed from the fire, is that
3 correct?

4 A That's correct.

5 Q Did your office keep any other log of indictment
6 numbers as you see here in Courts Exhibit's One from the
7 solicitor's office? Did your office keep a log of indictment
8 numbers?

9 A I would have to probably refer to the deputy clerk.

10 Q Miss Carol Williams?

11 A She's not here.

12 MS. COLLINS: No further questions.

13 THE COURT: All right. Yes, sir.

14 MR. GREGORY: If it please the Court.

15 CROSS EXAMINATION.

16 BY MR. GREGORY:

17 Q Mr. Hammond, you have been a Clerk of Court since 2001?

18 A Yes.

19 Q John Justice would probably appreciate it, I have been
20 waiting to get you on stand under oath for 16 years?

21 THE COURT: I think everybody in this courtroom
22 has.

23 Q But I won't ask you any questions about anything but
24 this.

25 You testified about not having recalled seeing a letter. I

1 think it's called Exhibit Number Two that I had written? You
2 say you don't recall seeing. You say you thought it would have
3 been perhaps put in the file?

4 A Yes.

5 Q And those letters were both dated before the date of
6 the fire, correct? So if there were in the file -- fire -- they
7 would have been burned in the fire as well as everything else?

8 A That's correct.

9 Q Now you don't recall this particular case having been
10 submitted to the Grand Jury in 2003?

11 A Just like Mr. Barfield for 17 years there's thousands
12 of cases that have come through. I do not recall.

13 Q Exactly. Just like probably the people who were on the
14 Grand Jury at that time, whoever they were, probably could not
15 remember the cases that were submitted to them?

16 A Right.

17 Q Do you have a record of who were the members of the
18 Grand Jury in 2003?

19 A If we did, they are probably ashes.

20 Q Ashes.

21 MR. GREGORY: All right. That's all the
22 questions. Thank you.

23 THE COURT: Thank you.

24 REDIRECT EXAMINATION

25 BY MS. COLLINS:

1 Q You stated that you had thousands of cases that came
2 before you in your tenure as clerk of court, correct?

3 A Yes.

4 Q You said you took office in 2001, correct?

5 A Correct.

6 Q And Mr. Morales per the number was indicted sometime
7 early in 2003, correct?

8 A Yes.

9 Q So this was pretty new to you back then, right?

10 A Yes.

11 Q Pretty exciting back then I imagine?

12 A Yes, head spinning.

13 Q Do you recall any no bill coming out of the Grand Jury
14 during those early years?

15 A No.

16 Q That's a rare thing isn't it?

17 A Yes.

18 Q So you don't recall any case being no billed by the
19 Grand Jury during those early years?

20 A If there were one or two maybe, but rare. Very rare.

21 Q Would you recall, do you think a no bill in your early
22 tenure involving sexual allegations with a child victim?

23 A No.

24 Q No, you would not recall that?

25 A What are you talking about?

1 Q I'm just saying due to the nature of the allegations,
2 sexual allegations with a child victim, early in your career, do
3 you think you would recall a no bill?

4 A That would probably stick out, yes.

5 Q And you don't recall a no bill at that time, correct?

6 A No.

7 MS. COLLINGS: Thank you.

8 THE COURT: All right, thank you sir. You may
9 step down.

10 MS. COLLINS: Your Honor, the State calls Julie
11 Smalls.

12 JULIE SMALLS, called as a witness, having been
13 duly sworn by the judge, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MS. COLLINS:

17 Q State your name?

18 A Julie Smalls.

19 Q What's your occupation?

20 A I work with the solicitor's office.

21 Q What is your responsibility?

22 A I'm over the diversion programs, I do expungements, I
23 do indictments. Anything else that needs to be done.

24 Q When you say you do indictments, do you prepare them
25 for review by an attorney in the office?

1 A I do.

2 Q Do you number them? Assign numbers to them?

3 A Yes, I do.

4 Q And you give them to the solicitor for the clerk of
5 Court and then they'll be presented to the Grand Jury, is that
6 right?

7 A Yes, ma'am.

8 Q How long have you worked for solicitor office?

9 A Thirty-one years.

10 Q So you were employed then in 2002, 2003, correct?

11 A Yes, ma'am.

12 Q Worked under Solicitor Barfield?

13 A Yes, ma'am.

14 Q Solicitor Justice before that?

15 A Yes, ma'am.

16 Q Now Solicitor Newman, correct?

17 A Yes, ma'am.

18 Q In 2003 were you responsible for preparing indictments
19 and numbering the indictments to the best of your memory?

20 A Yes.

21 Q Here in Lancaster County?

22 A Yes, ma'am.

23 Q Do you recall the courthouse fire in August of 2008?

24 A I do.

25 Q Do you recall the fire of the solicitor's office within

1 72 hours of that fire?

2 A I do.

3 Q Was there another paralegal in the office at that time
4 for the solicitor's office Ginger Sowell?

5 A She was. Her office was in the old historic
6 courthouse.

7 Q After the fire in the solicitor's office did Ginger
8 Sowell give you a notebook that she had taken home with you?

9 A She did.

10 Q And what did that notebook contain?

11 A It contained the current docket of pending cases that
12 had been indicted.

13 Q That had been indicted as of August of 2008?

14 A Yes, ma'am.

15 Q I will show you Court's Exhibit One and ask you do you
16 recognize that document?

17 A Yes, that's from my docket.

18 Q So is that a xerox copy of one of the pages from the
19 August '08 docket that were contained in the notebook that
20 Ginger Sowell took home prior to the fire in the solicitor's
21 office?

22 A Yes, ma'am.

23 Q And looking -- and you actually have the notebook here
24 with you, correct?

25 A Yes.

1 Q Can you turn to that page and just confirm that Court's
2 Exhibit One is an accurate and true copy of that same page
3 showing that Mr. Morales was indicted in 2003 on his four
4 warrants at the time?

5 A Yes, it is. It's the same.

6 Q Okay. Now, in your notebook there are some lines that
7 are marked through like with a black sharpie or magic marker,
8 correct?

9 A Correct.

10 Q If a case was disposed of was it your practice at the
11 time to mark through those cases by hand showing that they were
12 no longer pending?

13 A It was and that was because my computer -- how would I
14 do it before it was destroyed in the fire. So that's is the
15 only way I had to keep up with what was being disposed of.

16 Q Okay. When would an indictment number be assigned to
17 indictment by you?

18 A Once it's been prepared. Before the Grand Jury.

19 Q Within a week of the Grand Jury or within a few days
20 before the the Grand Jury met?

21 A Yes. Usually.

22 Q If a number is assigned to an indictment and it's
23 presented to the Grand Jury and the Grand Jury no bills it would
24 you have marked through that on the page?

25 A I would have taken it off, yes. Somebody would have

1 notified me that that charge was no billed and that would tell
2 me to take it off the docket.

3 Q But you have the original notebook there and it was not
4 taken off the docket, correct?

5 A It has not been taken off the docket.

6 Q And Court's Exhibit One you've already said is a true
7 and accurate complete copy of what you have there in the
8 original notebook, correct?

9 A Yes, ma'am.

10 Q So, would that reflect to you that since it wasn't
11 marked through that it was true billed?

12 A That would reflect that to me.

13 Q All right.

14 MS. COLLINS: No further questions.

15 THE COURT: Mr. Gregory.

16 CROSS EXAMINATION

17 BY MR. GREGORY:

18 Q Is it your procedure would have been that cases were
19 assigned indictment numbers only after they had been submitted
20 to the Grand Jury and a true bill returned then the only cases
21 that have indictment numbers would have been ones that were
22 returned by the Grand Jury as true billed?

23 A No, they were assigned indictment numbers before the
24 Grand Jury.

25 Q That's right. That's what you said. But my question

1 is, if they weren't assigned numbers until after they were
2 indicted then you wouldn't have any cases that weren't indicted.
3 I mean, if they had numbers on them they wouldn't have been
4 indicted. Would you agree with that?

5 A I'm not sure what you are asking me.

6 Q You're saying that you put the numbers on them before
7 they were submitted to the Grand Jury?

8 A Right.

9 Q The indictment numbers?

10 A Right.

11 Q The case numbers. 2000 -- whatever the year it is,
12 dash GS, dash 29, dash whatever.

13 A Right.

14 Q And you only you assign those before they are submit to
15 the Grand Jury?

16 A Right.

17 Q So therefore, let's just say in the situation where
18 there is no bill, well, then that case number has to come off,
19 right?

20 A Right.

21 Q Right. Now, this is my hypothetical question. Suppose
22 you don't put any numbers on it at all until after it had been
23 submitted to the Grand Jury and only would you put a number on
24 it if it were a true billed indictment --

25 A Yes.

1 Q -- then in that case all the cases that have numbers
2 would have been indicted?

3 A Yes.

4 Q Okay. But that didn't happen in this case? The
5 numbers were assigned ahead of time?

6 A Right.

7 MR. GREGORY: Okay. Thank you.

8 MS. COLLINS: No further questions.

9 THE COURT: All right, thank you ma'am. You may
10 step down.

11 All right, I will go ahead and rule on the issue
12 of the factual finding as to whether or not Mr.
13 Morales was indicted. Based upon the testimony and
14 evidence submitted into the record I find clear and
15 convincing evidence has been presented by the State
16 that Mr. Morales was in fact indicted by the Lancaster
17 County Grand Jury back in 2003.

18 Now that I made that specific finding, the issue
19 becomes the reason for the delay. I will tell you the
20 Court is extremely concerned with this 15-year delay.
21 Just as Judge Lockemy struggled with a 12-year delay,
22 I'm really struggling with a 15-year delay.

23 Now, having said that let's move to the next phrase
24 of the argument. What's the reason for -- I
25 understand the reason for the Attorney General's

1 delay. I'm not worried about you all.

2 MS. BURCHSTEAD: Thank you.

3 THE COURT: Let's talk about Mr. Barfield's
4 delay. I'm not worried about John Justice's delay
5 because John Justice died in 2006 and he was in
6 indicted in 2003. As a practicing lawyer back then I
7 knew as a criminal defense lawyer I knew how, you
8 know, how crowded the docket was. Obviously as a
9 Chief Administrator Judge since I've become -- for
10 every year since I've become the resident circuit
11 judge here I'm aware of the issue. I'm aware of the
12 problems. I've communicated with the Supreme Court
13 numerous times about our backlog here. Tried to
14 fashion administrative orders to resolve things. So I
15 don't need to go into all that. I need to know why
16 the case hasn't been called or done something with in
17 the 15 years primarily from Barfield solicitor to the
18 Newman Solicitor.

19 You all want to address that by way of argument. I
20 don't think I need facts so to speak. I just need to
21 know why it hasn't been pursued. Go ahead.

22 MS. BURCHSTEAD: Judge, I would say having
23 conversations with Miss Collins and our general
24 understanding is the same as Your Honor said is just
25 general docket crowded issues and we had talked with

1 Miss Collins --

2 THE COURT: Is that enough.

3 MS. BURCHSTEAD: Yes, is the State's position
4 because when you look at cases like Hunsberger and
5 Lanford says negligence or overcrowding weighs less
6 heavily then another reason for delay such as in
7 Hunsberger where you had a tactical situation.

8 THE COURT: Less heavily against the State.

9 MS. BURCHSTEAD: Correct. And all of it is a
10 balancing test to include whether the defendant
11 asserted speedy trial which he did not ever. And that
12 is all to be weighed together along with the
13 prejudice.

14 THE COURT: Is there any other issue other than
15 crowded docket? Because I know we only have 14 weeks
16 a year of Court, Jeff, is that right?

17 THE CLERK: Something like that; 14, 16.

18 THE COURT: Madame solicitor, what's the --
19 solicitor how many weeks of Court have we had in the
20 past couple of years, just for Lancaster.

21 SOLICITOR NEWMAN: We are up to 18 or 19 now.

22 THE COURT: Up to 18, but we were about around --

23 SOLICITOR NEWMAN: When I started here in 2011 we
24 were at 12.

25 THE COURT: Around 12.

1 SOLICITOR: My understanding we had been at 12 for
2 quite some time.

3 THE COURT: So about one week a month.

4 SOLICITOR NEWMAN: Other than the horrendous volume
5 on the docket was also what Doug dealt with as
6 solicitor was having two attorneys in Lancaster. We
7 now have nine and a half attorneys, not including
8 myself. So ten and a half including myself, and we
9 are barely treading water now. So you can imagine
10 what solicitor Barfield was doing with two attorneys
11 and the case load that he had and the amount of court
12 time.

13 THE COURT: Yes, sir.

14 MS. BURCHSTEAD: And Your Honor, I was just going
15 to add I would defer the solicitor's office to address
16 that in more detail because obviously I do not have
17 all the details of what happened in that timeframe,
18 judge.

19 THE COURT: Okay.

20 MS. BURCHSTEAD: But I would just reiterate the
21 Attorney General's position and the State's position
22 now is that is a factor and and we have not heard any
23 other reason that would not be an overcrowded, just
24 struggling with the docket --

25 THE COURT: Not a tactical reason.

1 MS. BURCHSTEAD: That's it. You got it. You
2 understand my position.

3 THE COURT: I got ya. Mr. Gregory, anything else
4 before I rule?

5 MR. GREGORY: Your Honor, if I understand the
6 math. I went to Carolina so give me a moment hear.

7 THE COURT: I will give you two moments.

8 MR. GREGORY: Fourteen terms of court a year, is
9 that the number that was given.

10 SOLICITOR NEWMAN: No, sir.

11 THE COURT: Twelve. It averaged about --

12 SOLICITOR NEWMAN: About one a month.

13 THE COURT: Yes, sir, about one week a month back
14 when I was practicing which would have been the from
15 1992 to 2005.

16 MR. GREGORY: You are talking 12 terms a year?

17 THE COURT: Yes.

18 MR. GREGORY: In Lancaster, general sessions.

19 THE COURT: Just Lancaster. That's not counting
20 the Chester ten and the Fairfield eight.

21 MR. GREGORY: Well, that would be --

22 THE COURT: That would have been 144 weeks. I know
23 where you are going with that. They had 144 terms of
24 court they would have the possibility to do something,
25 prior to them increasing there cases from 14 to 18

1 now.

2 MR. GREGORY: Yeah, I understand you got to add
3 more attorneys. You got more terms. You got to
4 balance that between 2002 and 2010. But roughly on
5 average you are probably talking about whatever you
6 said -- 144 terms.

7 The Attorney General made the comment that I had
8 never filed a motion for a speedy trial and that's
9 true. Like Judge Hayes said when we had our
10 conference, be careful what you ask for, you might get
11 it. I don't think there is any doubt I didn't want a
12 speedy trial. I don't think there's any doubt I don't
13 want a trial at all. My client is innocent. He is
14 presumed to be innocent. He doesn't want to be in
15 this courtroom right now, but that's that is not
16 reality. Reality is what it is.

17 I did ask John Justice if he would dismiss the case
18 before, while he was still solicitor. He didn't do it
19 and he you probably know John Justice as well as I
20 did, he had a habit of putting things off to the side.
21 I asked Mr. Barfield the same question and obviously
22 it was not dismissed and I believe if I'm not mistaken
23 I asked Mr. Newman the same question and the response
24 I got, he didn't dismiss it but he got rid of it from
25 his office and he sent it to the Attorney General

1 Office. So there you go. We call that passing the
2 buck, Your Honor.

3 Well, my client even though he is presumed to be
4 innocent he's suffered over the years. He has been
5 ridiculed. He has been accused of being a child
6 molester without being convicted. He has problems at
7 work. They tried to get him fired because he had a
8 criminal case pending. You saw the letters from the
9 immigration. He has not been able to become a United
10 States citizen because of the fact this case is
11 pending. I don't know what other justification the
12 State has for not trying the case at this time but
13 other than asking for a speedy trial I did endeavor to
14 get the case dismissed and not being -- as a defense
15 attorney not in control of the docket, I really can't
16 do anything else except make a motion for a speedy
17 trial or make a motion to quash the indictment when it
18 does eventually come to trial.

19 Thank you, Your Honor.

20 SOLICITOR NEWMAN: If it please the Court, I would
21 like to speak on "The passing the buck" comment.

22 THE COURT: Yes, sir.

23 SOLICITOR NEWMAN: Your Honor, currently three
24 elected solicitors have looked at this case. Three
25 elected solicitors have denied his request to dismiss

1 the case. So obviously there's something to this case
2 if three folks did not want to just dismiss it.

3 Now, I'm not aware of -- we don't have any notes
4 from Solicitor Justice as to when he contacted
5 Solicitor Justice, but we know he didn't contact
6 Solicitor Barfield until the day he left the office
7 asking him to dismiss the case. He didn't contact me
8 by e-mail. We saw each other at a bar function where
9 he jokingly said, "I'm only in this position because
10 you wouldn't dismiss the case". And I didn't say I
11 got rid of it. We took -- when I took over his office
12 we had as you know a terrible backlog. I was
13 approached by the Attorney General's Office who
14 offered to take some of our older cases and help with
15 with our docket management. They did that. We
16 assigned not only this case but I believe 20 total
17 defendants in the initial meeting and we have done
18 several since then. That meeting was in June of 2015,
19 which was about six months after I took office.

20 THE COURT: Thank you.

21 MS. BURCHSTEAD: And Your Honor, if I may just say
22 a couple things in summation.

23 THE COURT: Okay.

24 MS. BURCHSTEAD: I would reiterate that speedy
25 trial was not filed and quoting the Barker case, the

1 Court states, both sides failure to assert that right
2 will make it difficult for a defendant to prove he was
3 denied a speedy trial. And I would just note as an
4 aside, the Evan's case which we've referenced, several
5 witnesses that were unavailable or deceased, gone.
6 That nobody could find. I can't remember which
7 exactly, I think deceased -- which Mr. Gregory is
8 alleging here. However, with all due respect to
9 opposing counsel it's pretty easy to come in and give
10 me a list of people that you can't get to court now
11 and I would suggest respectfully again, if there were
12 a defense that was riding on that, or there was some
13 concern about that, a speedy trial motion would have
14 been filed and just to sum up the State's position
15 again, we have a balancing test not just the reason
16 for the delay but prejudice and we have this
17 prejudicial factor where he was not in jail. He could
18 have had a trial if he had asserted that right and
19 made known that it needed to be a priority it could
20 have been prioritized. And in terms of the
21 presentation of case we believe there is no actual
22 prejudice. We're saying there's minimum prejudice
23 given the type of case that it is and we would just in
24 summation say in totality of the balancing test while
25 there maybe some prejudice the State should be able to

1 call the case at this point Your Honor.

2 THE COURT: All right. Just give me a moment.

3 All right. First of all I want to thank you all
4 the lawyers for making an excellent record for
5 whatever appellant review is going to come as a result
6 of this decision. And I don't know if there will be
7 or not, but better safe than sorry. I think you made
8 a really good record with this unique situation. I
9 think everybody in this courtroom agrees that 15 years
10 is way too long. I mean, you know, it hurts the State
11 quite frankly to try a case that's old. Because you
12 know the jury is sitting there saying, wow, what kind
13 of case is this if it takes the State 15 years to
14 bring it in front of a jury and of course that hurts
15 the victim as well. I understand that. And
16 certainly, you know, there could be some prejudice to
17 the defendant which I will get to. But, you know, the
18 wheels of justice do move slow, but as often been
19 stated, justice delayed can be justice denied. And I
20 make these remarks prior to my ruling on this in hopes
21 and I feel extremely confident with the current staff;
22 the solicitor's office and the Sixth Circuit staff has
23 now, this will never happen again. Okay. And I don't
24 anticipate it will. Under my watch as long as I'm the
25 Chief Administrative Judge at least for the next month

1 and a half. I'll probably be there after that --
2 after the next six-month break -- it won't happen
3 again.

4 All right. Let me -- first of all, I have made a
5 finding that Mr. Morales was indicted. So, although
6 this was filed as a motion to quash the indictment, it
7 really is in effect a motion to dismiss. So I agree
8 with the the State's presentation that it really is a
9 motion to dismiss for lack of a timely prosecution.
10 So that I reviewed the case law asserted by both the
11 defense and the State and I find that this case --
12 this situation is very akin to both the Evans's case,
13 as well as Hunsberger case, and so in ruling on this
14 issue I have to address the four factors laid out by
15 the Supreme Court in the Hunsberger case which are
16 setforth by the U.S. Supreme Court's decision of
17 Barker versus Wingo.

18 The first factor being the length of the delay.
19 Well, I mean, you can't get much longer then 15 years.
20 I guess you could, but this is longest I've ever seen.
21 The Hunsberger delay -- the Evans' delay was 12 years.
22 The Hunsberger delay was -- I forget how much it was.
23 I think it was nine years. So that's longer then
24 that. This factor certainly ways in favor of the
25 defense. So, there you go. Of course you have to

1 consider the totality of the circumstances and, you
2 know, our circuit is unique in that at was pointed out
3 we are the smallest circuit in the State in term of
4 population and because of that we're are hampered with
5 staff's ability to, you know, have all the bells and
6 whistles that other prosecuting agencies have. Our
7 neighbors to the west and north you know they have
8 everything they need and of course that's why they're
9 number one in the State in moving cases. But I like
10 it the way we do things here. And I will continue to
11 do the way we do things here. So I don't think it's
12 fair to compare ourselves, our unique situation; the
13 Sixth Circuit with everybody else. Plus we have the
14 unique situation of our courthouse being burned down
15 following and then a couple of days later the
16 solicitor's office being burned down, and indictments
17 lost, papers lost and having to reconstruct that.
18 Having to practice law and administer justice out of
19 temporary courthouse for three or four years before
20 this new courthouse was built. So all that kind of
21 weighs in favor of the state on that issue.

22 The second analysis is the reason. You know, the
23 reason for the delay. I find that there was no
24 tactical reason for the delay. It appears the defense
25 wasn't pushing it and the State really wasn't pushing

1 it. So, that's kind of balanced on either side.

2 The third fact, the defendant never raised
3 assertion of his right to a speedy trial. Hunsberger,
4 that defendant filed two motions for a speedy trial.
5 You know, yes, 15 years is a long time but there is no
6 motion for a speedy trial. And of course there's a
7 difference between talking to the solicitor about
8 working something out versus actually filing a motion
9 where you go in front of a judge, your Chief
10 Administrative Judge and get something scheduled. And
11 I'm going to take care of that here shortly.

12 Lastly, prejudice to the defendant. There maybe
13 some prejudice to the defendant in this case based
14 upon the defendant's theory or his defense. But the
15 the main portion of his defense which is I guess I
16 didn't do it is still preserved because he can
17 certainly testify to if he wishes to. He has
18 absolutely right not to. He doesn't have to. And the
19 fact this this is a 15-year old prosecution already,
20 you know, kind of weighs in favor of him as well in
21 the Court's view and the strategy of trying cases that
22 the Court has tried before. So, having said that and
23 considering all the factors I respectfully deny the
24 defendant's motion to dismiss or the style of the
25 motion to quash the indictments, that's denied. The

1 defendant's motion to dismiss for lack of a speedy
2 trial or for unreasonable delay is also denied as
3 well. I believe my reasons are set forth in
4 particular detail in the record.

5 Having said that, we do have a current motion for a
6 speedy trial. I will treat this motion and the reason
7 we are here by Mr. Gregory as a speedy trial motion.
8 So here's what we are going to do. I am the Chief
9 Administrative Judge. I know you all got stuff
10 scheduled but you know what, we will change -- this
11 will change this morning. Okay.. It's still morning.
12 I'm the Chief Administrative Judge for another five
13 weeks. Okay. So my job right now is to get this case
14 resolved for his benefit. And of course let me go
15 back and say, all the stuff Mr. Gregory talked about
16 with him not being able to become a resident and
17 getting ridiculed at work that's all the more reason
18 you should have filed a motion for speedy trial. Not
19 just sit back and not doing anything. So I made that
20 finding as well.

21 I am looking through the summer. Okay. Here's
22 what we got. We got the week of July 17th. We got
23 week of August 21st and we have the week of September
24 the 11th.

25 MS. BURCHSTEAD: Your Honor, we are happy with

1 July 17th or any of those.

2 THE COURT: Any of those. Okay. So Mr. Gregory,
3 I am going to let you pick the week. Okay. You get
4 to choose which week you want to try this case. I
5 will go ahead and tell you who the judges are. The
6 week of September the 11th is Judge Cooper from
7 Kershaw. The week of August 21st is Judge Henderson
8 from Chesterfield, or Judge Hall from York because
9 there are two judges here that term. And lastly, in
10 July I believe is Judge Hall. Judge Dan Hall is the
11 the administrative judge for the six months from July
12 one to December 31st for general sessions as well
13 here.

14 Mr. Gregory you don't have to choose right now
15 unless you are ready to. I was going to let you talk
16 to your client and his family first and then let the
17 the solicitor know and that will take priority over
18 anything you got.

19 MR. GREGORY: Your Honor, I had for some reason I
20 guess it was before Judge Hayes preliminary that's
21 scheduled for the 21st of August, but I think July the
22 17th may be --

23 THE COURT: Pushing it. Which month and week do
24 you want.

25 MR. GREGORY: I would say the 17th is a little bit

1 early. The 21st -- and I hate to say this, might be
2 an omen, but there is going to be solar eclipse --

3 THE COURT: Yes, there is.

4 MR. GREGORY: And it's important on that day and I
5 don't really want to be trying a case when that
6 happens.

7 THE COURT: Well, schools are closed. I think the
8 government offices probably.

9 MR. GREGORY: That leaves September 11th.

10 THE COURT: How long is it going to take to try?

11 MS. BURCHSTEAD: For the State probably two days
12 judge.

13 THE COURT: And how much do you think about a day
14 for you.

15 MR. GREGORY: I would imagine probably take a
16 couple of days.

17 THE COURT: Okay. So it's a full week trial.
18 Well you got two different courtrooms going. We will
19 go ahead and schedule it August 21st.

20 MR. GREGORY: The 21st first will be fine. The
21 other thing that bothers me, September 11 is 911.

22 THE COURT: Right.

23 MR. GREGORY: Between a rock and hard place.

24 I think I will stick with the 21st, with the solar
25 eclipse.

1 THE COURT: All right, August 21st is the trial
2 date. You all got that. That will take priority over
3 anything you all have right now. Okay.

4 MR. GREGORY: Thank you, Your Honor.

5 THE COURT: That's the ruling of the Court. You
6 all have a good rest of the day.

7 MS. BURCHSTEAD: Thank you, Your Honor.

8 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Lancaster County, South Carolina, on the 26th day of May, 2017.

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

December 5, 2017

Aileen Butler

State of South Carolina	)	In the Court of General Sessions
	)	Sixth Judicial Circuit
County of Lancaster	)	2016-GS-29-00559; 00564;
		00565

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Transcript of Record
	)	
GUADALUPE GUZMAN MORALES,	)	
	)	
Defendant.	)	
	)	
	)	

Chesterfield, South Carolina
July 26, 2017

B E F O R E:

The Honorable Roger E. Henderson

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

Mr. Megan B. Burchstead, Esquire
Attorney for Plaintiff

Mr. Ned Gregory, Esquire
Attorney for Defendant

LISA S. CARTER
CIRCUIT COURT REPORTER

I N D E X

WITNESSESPAGE

Witness B :

Direct Examination by Ms. Burchstead 7

Cross Examination by Mr. Gregory 16

Direct Examination by Ms. Burchstead 25

EXHIBITSNO.DESCRIPTIONEV.

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1 THE COURT: All right. Ms. Burchstead, if you would
2 identify this matter please?

3 MS. BURCHSTEAD: Yes, Your Honor. Thank you. We are
4 before you today on the State versus Guadalupe Morales.
5 Indictment numbers 2016-GS-29-559, 564, and 565. Mr. Morales
6 is represented by Ned Gregory of the private bar. This case
7 is actually venue in Lancaster as we all know but for purpose
8 of pretrial today, we've agreed to be here and we appreciate
9 that. The case is scheduled for trial August 21st. The
10 defendant is charged with criminal sexual conduct with the
11 minor first-degree, second-degree, and assault with intent to
12 commit criminal sexual conduct with a minor.

13 Today, we're specifically hoping to address whether Your
14 Honor is inclined to allow the State to introduce testimonial
15 bad act evidence in the form of the testimony of the victim
16 sister and the victim in this case is present at the time and
17 her sister, Witness B is also present and prepared to testify
18 today. This case is fifteen years old. That has previously
19 been addressed by Judge Gibbons and, of course, we were
20 scheduled after that for August 21st.

21 To that end, what we would like to do today and what
22 we're asking of the court is a conditional ruling as to
23 whether Your Honor is inclined to allow the bad act evidence
24 in. That way we can plan accordingly, all parties for trial
25 purposes and what I would like to do is just explained to the

1 court the State's legal argument, of course, and call ^{Witness B}

2 to the stand and what I was suggesting to the court
3 is that I explained what we believe our victim will testify
4 to. We're asking for bad act evidence to be admitted
5 preliminarily under the common scheme or plan exception. And
6 I will allow or I will offer to the court our explanation of
7 why we believe it fits that, obviously, after ^{Witness B}
8 testifies and, of course, ask of the court pending how the
9 victim testifies at trial if she testifies as we believe and
10 we see at court at trial time that there is that similarly
11 that we're suggesting today that it be allowed at trial.

12 In addition to that, after or in whichever order Your
13 Honor wants to address it, we also want to bring to the
14 court's attention and have explained to Mr. Gregory the State
15 does intend to use a blind expert at trial concerning
16 disclosure and trauma of criminal sexual conduct cases. This
17 is not an expert that has anything to do with this case
18 factually, Your Honor and I'm going to have Mr. Kozak address
19 that at the appropriate time as Your Honor deems appropriate.
20 So that's what we're asking of the court today.

21 THE COURT: Okay.. Anything from you Mr. Gregory
22 before ---

23 MR. GREGORY: No, sir, Your Honor.

24 THE COURT: Okay. Let's deal with the bad act first
25 and ---

Witness B - Direct Examination by Ms. Burchstead

6

1 MS. BURCHSTEAD: Yes, sir.

2 THE COURT: --- then we'll deal with Mr. Kozak's
3 explanation of the blind witness secondly, okay?

4 MS. BURCHSTEAD: Yes, sir. So in chambers I handed
5 to Your Honor a copy of the State's motion, the clocked copy
6 ---

7 THE COURT: I've got it.

8 MS. BURCHSTEAD: --- as well as the legal memorandum.
9 That's just there if it helps the court. I believe today my
10 arguments will put forth the State's position and the
11 testimony will, obviously, be what Your Honor's needing to
12 consider. The short version as we understand generally bad
13 act evidence is not admissible, however, it's commonly
14 admitted under common scheme or plan. The exception under
15 Lyle 404 (b) and we do believe in this particular case we're
16 going to have Witness B testify we believe we have spot on
17 common scheme or plan evidence and I would at this time would
18 ask that Witness B take the stand if that suits, Your
19 Honor.

20 THE COURT: All right.

21 MS. BURCHSTEAD: The State calls Witness B to the
22 stand.

23 THE COURT: If you back up and place your left hand on
24 the Bible and raise your right.

25 THE CLERK: Do you solemnly swear to tell the truth,

Witness B - Direct Examination by Ms. Burchstead

7

1 the whole truth, and nothing but the truth so help you God?

2 Witness B : Yes.

3 THE COURT: All right. I'm going to ask you speak
4 loudly and clearly.

5 Witness B , first being
6 duly sworn, testified as follows:

7 **Direct Examination by Ms. Burchstead:**

8 Q. Good morning.

9 A. Good morning.

10 Q. Thank you for being here. If you will just state your
11 name for us?

12 A. Witness B .

13 Q. And can you spell that for us?

14 A. Witness B .

15 Q. Okay. Just make sure you speak up loud enough so, the
16 court reporter is right front of you so she should be able to
17 hear but just so the folks in the courtroom can hear and Mr.
18 Gregory, at the defense counsel table, should be able to hear
19 you as well.

20 THE COURT: That's fine.

21 Q. Witness B , when is your birthday?

22 A. [REDACTED] 1992.

23 Q. So how old does that make you?

24 A. Twenty-five.

25 Q. And where do you live?

Witness B - Direct Examination by Ms. Burchstead

8

1 A. Lancaster, South Carolina.

2 Q. Do you work?

3 A. Yes, ma'am

4 Q. Where do you work?

5 A. Los Mariachis Mexican Restaurant.

6 Q. How long have you been there?

7 A. About four years.

8 Q. Do you have children?

9 A. Yes, ma'am.

10 Q. How many children?

11 A. Three.

12 Q. And how old are they?

13 A. Four, one, and five months.

14 Q. All right. And how far did you go in school?

15 A. I graduated high school.

16 Q. What high school did you go to?

17 A. Buford High School.

18 Q. What year did you graduate?

19 A. 2011.

20 Q. And you live in Lancaster, who lives with you?

21 A. My fiancé, Cody Dease and my three children.

22 Q. So when you were growing up, were you always in
23 Lancaster?

24 A. Yes, ma'am

25 Q. And who lived with you when you were growing up?

1 A. My mom, my dad, and my two sisters.

2 Q. Okay. Was your mom's name?

3 A. L.M. .

4 Q. L.M. . Was your dad's name?

5 A. Guadalupe Morales.

6 COURT REPORTER: I'm sorry?

7 A. Guadalupe Morales.

8 Q. And what your sisters names?

9 A. Witness A and Christina Morales.

10 Q. Christina Morales, okay. And are they older or younger?

11 A. Witness A is older and Christina is younger.

12 Q. Okay. How much older is Witness A ?

13 A. Two years -- three years.

14 Q. All right. So y'all grew up together?

15 A. Somewhat. She moved out of the house about I think
16 eleven years old.

17 Q. Who is she, who is that?

18 A. Witness A .

19 Q. You think she was eleven?

20 A. Yes, ma'am

21 Q. So you would have been about how old at that time?

22 A. Nine.

23 Q. Nine. Do you remember much about that?

24 A. About her moving out?

25 Q. Yeah.

Witness B - Direct Examination by Ms. Burchstead

10

1 A. I just remember being at my grandmother's house one
2 night and my mom came to speak to her and they were outside
3 and she came back in and the next morning she just stated
4 that Witness A would be moving in with her.

5 Q. Okay. And what's your grandmother's name?

6 A. Lois Comos.

7 Q. Lois?

8 A. Yes, ma'am

9 Q. All right. So you said you live with your mom, L.M.
10 and your dad, Guadalupe, is he your biological dad?

11 A. I've been told that he's not. As far as I know, I mean,
12 I grew up with him, he raised me.

13 Q. So growing up you called him dad?

14 A. Yes, ma'am

15 Q. And are you aware if whether he is Witness A 's biological
16 dad ---

17 A. He's not.

18 Q. --- do you have any knowledge of that -- what makes you
19 say that, did someone tell you?

20 A. Yes, ma'am

21 Q. Do you know what she called him growing up?

22 A. She -- I don't remember before she moved out but after
23 that she never called him dad.

24 Q. So after that didn't call him dad?

25 A. No, ma'am

1 Q. All right. So do you see Guadalupe in the courtroom
2 today?

3 A. Yes, ma'am

4 Q. Okay. Can you just point him out and tell us what he's
5 wearing?

6 A. He's wearing a blue striped shirt.

7 Q. So was there ever a time that Guadalupe touched you in
8 what you believed to be in a sexual way?

9 A. Yes, ma'am

10 Q. Can you tell us about that?

11 A. I was in the third grade and one night I couldn't sleep,
12 me and my sisters had a bed time, and it was about 8 o'clock
13 and we had to go to bed and they were asleep, I just couldn't
14 sleep. And he, I guess, when he was going to sleep he walked
15 by our room and I told him I couldn't sleep. So then he told
16 me to come in the room with him. And we laid down to watch
17 TV and after that I felt him pulling my pants and underwear
18 down.

19 Q. Was that the first time?

20 A. I remember him doing -- just touching me a few times
21 before but it wasn't nothing, like, he never inserted
22 anything.

23 Q. So this time when you were in third grade what exactly
24 did you feel?

25 A. It just felt like his penis was touching my, my but ---

1 Q. Okay.

2 A. --- like he was trying to have intercourse but I told
3 him I was ready to go to sleep.

4 Q. So you told him you ready to go to sleep?

5 A. Yes, ma'am

6 Q. When you say he was trying to have intercourse, is that
7 something that you know now as an adult ---

8 A. Yes, ma'am

9 Q. --- or did you know at the time as a child?

10 A. Now as an adult.

11 Q. Do you feel like it was an erect penis?

12 A. Yes, ma'am.

13 Q. And you felt that touch your bottom?

14 A. Yes, ma'am

15 Q. And you said there were times before where he would
16 touch you, can you explain that to us?

17 A. Yes, it was just like times I would sit on his lap he
18 would just put his hands down my pants.

19 Q. When you say, hands down your pants, was it ever panties,
20 are under panties?

21 A. Under panties.

22 Q. Under panties, okay. Was he touching your vaginal
23 parts?

24 A. Yes, ma'am

25 Q. So under panties, vaginal area, no digital penetration?

1 A. No, ma'am

2 Q. Do you remember when that started?

3 A. From the time I can remember it was around maybe three
4 years old.

5 Q. So at three years old he started touching under panties
6 and third grade you felt an erect penis on your ---

7 A. Yes, ma'am

8 Q. So in between when it started and the third grade since,
9 about how many times did he touch you in a sexual way?

10 A. I'm going to say about maybe three times.

11 Q. And when he was doing the touching, where were y'all
12 physically located?

13 A. We were located in Lancaster in the trailer park is [REDACTED]

14 [REDACTED].

15 Q. So was it always at home?

16 A. Yes, ma'am

17 Q. And were you laying down or sitting up, how did he
18 actually do the touching?

19 A. Mostly like I said I was on his lap but the night that
20 I was in third grade we were in the bed laying down.

21 Q. Were your sister's home at the time?

22 A. Yes, ma'am. They were asleep.

23 Q. This was the incident in third grade, they were asleep?

24 A. Mmm, hmm.

25 Q. Okay. How about the other times he would touch you,

1 would they be home?

2 A. They would but they wouldn't be in the room.

3 Q. Where was your mom in the third grade?

4 A. At work. She worked night shift.

5 Q. Where did she work?

6 A. A plant called Springs.

7 Q. Springs?

8 A. Yes, ma'am

9 Q. So that night you couldn't sleep and mom was working?

10 A. Yes, ma'am

11 Q. What about the other times where he was touch you
12 through your panties?

13 A. I can't really remember it.

14 Q. Was she home, do you know?

15 A. No, ma'am

16 Q. So is it fair to say that the touching would occur when
17 mom was not at home?

18 A. Yes, ma'am

19 Q. So when did the touching stop?

20 A. The last time was that incident when I was in third
21 grade.

22 Q. Third grade is when it stopped?

23 A. Yes, ma'am

24 Q. Did you tell anybody about what was happening?

25 A. No, ma'am.

1 Q. Why not?

2 A. I was -- I was scared. Didn't know exactly what to say
3 or how to say it.

4 Q. Did he make a difference to you that he was your dad?

5 A. Yes, ma'am.

6 Q. How so?

7 A. Because I'd look at it like a father shouldn't do that
8 to their child.

9 Q. Did there come a time when you did say what happened?

10 A. Yes, ma'am. When I was in the fifth grade is when I
11 told my grandmother.

12 MS. BURCHSTEAD: I beg the Court's indulgence.

13 THE COURT: Yes, ma'am.

14 Q. Let me ask you just one other brief thing, I had a note
15 here and Mr. Kozak was reminding me. Was there every a time
16 that your dad accused you of being with boys when you
17 weren't?

18 A. Yes, ma'am.

19 Q. Tell us about it?

20 A. I believe it was in the ninth or tenth grade. I was
21 just outside playing basketball and he called my mom and told
22 her that I was outside with two guys at the top of the road
23 and I was just outside playing.

24 Q. So let's just back track for a second, when you told
25 what had happened to you in fifth grade, you said you told

Witness B - Cross Examination by Mr. Gregory

16

1 your grandmother?

2 A. Yes, ma'am

3 Q. Do you remember if anything prompted that?

4 A. I believe Witness A had spoken to her or Michelle or
5 someone in the family and told them and that's what made my
6 grandmother come up there to the school and ask me and my
7 younger sister if anything was going on with us.

8 Q. So your grandmother came to the school?

9 A. Yes, ma'am

10 Q. Do you know what school?

11 A. North Elementary.

12 Q. Do you know if the school notify anybody?

13 A. Yes, ma'am, the principal, Linda Blackwell.

14 Q. Is that when DSS got involved?

15 A. Yes, ma'am

16 MS. BURCHSTEAD: Your Honor, that's all the State's
17 questions at this time...

18 THE COURT: Anything, Mr. Gregory?

19 **Cross Examination by Mr. Gregory:**

20 Q. You speak so softly it's hard for me to hear exactly
21 what you were saying that's why -- I'm not sure if I got
22 everything so I may have to repeat a couple of things. It's
23 my understanding that your testimony is that Mr. Morales, who
24 you believe is your father at the time, molested you on three
25 different occasions?

1 A. Yes, sir

2 Q. Once when you were three years old and the last time was
3 when you were in the ---

4 A. Third grade.

5 Q. Third grade. Which would put you at what age?

6 A. I believe about seven or eight.

7 Q. Seven or eight. All right. And what was the other
8 time? There was one time when you were three and one time
9 when you were in the third grade, when you were seven or
10 eight, what was the other time?

11 A. I don't really remember. It was just like spurts of the
12 moment, I guess, whenever he had a chance.

13 Q. But all of these alleged occurrence take place in the
14 same place?

15 A. Yes, sir, at home.

16 Q. And where was that?

17 A. At [REDACTED].

18 Q. Where?

19 A. [REDACTED].

20 Q. Oh that's the address?

21 A. Yes, sir

22 Q. That was the trailer park?

23 A. Yes, sir

24 Q. Off West Meeting Street in Lancaster?

25 A. Mmm, hmm.

Witness B - Cross Examination by Mr. Gregory

18

1 Q. And where inside the trailer did it happen, in the
2 bedroom?

3 A. I remember a couple of times -- the few times it was in
4 the living room and the last time was in the bedroom, in his
5 bedroom.

6 Q. All right. Now, the first that you mention this outside
7 of the family was when you told your grandmother?

8 A. Yes, sir.

9 Q. Her name is Lois ---

10 A. Yes, sir.

11 Q. --- Comos? That's your mother's mother?

12 A. Yes, sir.

13 Q. So that would be your maternal grandmother?

14 A. Yes, sir.

15 Q. And was she living -- was she living in the house with
16 y'all at that time?

17 A. No, sir.

18 Q. Did she ever live in the house with y'all?

19 A. That I remember, no.

20 Q. Never lived in there?

21 A. Not that I remember.

22 Q. Did she ever stay there on occasion?

23 A. I remember her coming over a lot but I don't think she
24 ever lived there with us.

25 Q. All right. Was she -- was she working at, do you know

1 whether or not she was working?

2 A. I believe she was working at Tyson.

3 Q. Where?

4 A. Tyson.

5 Q. I'm sorry I still didn't hear you?

6 THE COURT: Tyson.

7 A. Tyson.

8 Q. Spell it?

9 A. T-y-s-o-n.

10 Q. Oh, Tyson.

11 A. Yeah.

12 Q. Did she ever work at the Chinese restaurant as far as
13 you know?

14 A. I don't remember.

15 Q. How did she get along with your father?

16 A. They didn't have a relationship. They didn't get along.

17 Q. They didn't get along?

18 A. No.

19 Q. So when she -- when you left the house you left and
20 moved in with her?

21 A. No, sir. I never lived with her.

22 Q. You never lived with your grandmother?

23 A. No, sir.

24 Q. Your sister left the house ---

25 A. Yes, sir.

Witness B - Cross Examination by Mr. Gregory

20

1 Q. --- and moved in with her?

2 A. Yes, sir.

3 Q. When did you -- when did you leave there, the house,
4 residence?

5 A. I was sixteen years old. I moved in with my uncle
6 Jimmy.

7 Q. You were sixteen?

8 A. Yes, sir.

9 Q. So you stayed at that house after all this occurred you
10 said, until you were sixteen?

11 A. Yes, sir.

12 Q. And where did you move when you moved out?

13 A. I went to live with my uncle Jimmy.

14 Q. Where?

15 A. With my uncle Jimmy in Monroe, North Carolina.

16 Q. Okay. Who was living -- where do you live now?

17 A. I live with my fiancé in Lancaster.

18 Q. Right. Is he in the courtroom with you today?

19 A. He is.

20 Q. Okay. So the man in the blue shirt?

21 A. Yes, sir.

22 Q. What's his name?

23 A. Cody Dease.

24 Q. Cody?

25 A. Cody. Cody Dease.

1 Q. Cody, C-o-d-y?

2 A. Yes, sir.

3 Q. Last name, Lee?

4 A. Middle name is, Lee Dease.

5 Q. Okay. Cody Lee Dease. Is he working?

6 A. He does.

7 Q. Where does he work?

8 A. Davis Neon in Heath Springs.

9 Q. Where do you work now?

10 A. La Mariachis Mexican restaurant in Lancaster.

11 Q. You've been there for four years?

12 A. Yes, sir.

13 Q. How far, from where you live now, is it from the time --
14 from the place you live now to where you were living with
15 your, with the family, how far in distance of those two
16 locations?

17 A. Mile wise, I'm not sure, but it takes about maybe
18 fifteen minutes.

19 Q. Okay. So it's not like next door, it's the other side
20 of town?

21 A. Yeah.

22 Q. Did you ever have an occasion to speak with Ray Rainey?

23 A. No.

24 Q. Do you know who Ray Rainey is?

25 A. I don't know.

1 Q. You don't recall?

2 A. I don't recall.

3 Q. He's with the Department of Social Services, Lancaster
4 County, the Department of Social Services, you don't remember
5 talking to somebody in the DSS?

6 A. I don't remember.

7 Q. You did talk to some people in the DSS, didn't you?

8 A. Maybe when I was younger but, like I said, I don't
9 remember.

10 Q. I'm talking about, yes, you would have been younger but
11 I'm talking about roughly around 2002, 2003 -- 2002?

12 A. I don't remember.

13 Q. How old would you have been in about October of 2002?

14 A. Maybe, what, ten, eleven.

15 Q. What's your date of birth?

16 A. [REDACTED]/92.

17 Q. [REDACTED] what?

18 A. [REDACTED]/92.

19 Q. [REDACTED]/92. You did talk to, I guess, when you were about
20 four years old you, did talk to some people in the DSS, do
21 you remember that?

22 A. I don't remember.

23 Q. You don't?

24 A. No, sir.

25 Q. You don't remember telling them what you just told the

1 court today?

2 A. Like I said I remember talking to the principal and they
3 made me go to a place in Lancaster where I had to show them
4 what happened with dolls and that's pretty much really all I
5 remember.

6 Q. Okay.

7 A. I remember going to Columbia to get testing done to see
8 if I was touched. I remember talking to a cop but other than
9 that I don't remember really speaking to nobody.

10 Q. Did you -- did you speak with a -- were you examined by
11 a doctor?

12 A. Yes, sir.

13 Q. Where?

14 A. In, I want to say, it was Columbia.

15 Q. All right. What were the results of that?

16 A. They didn't find anything.

17 Q. Didn't find anything?

18 A. No, sir.

19 Q. So you don't recall speaking to a Ray Rainey with
20 Lancaster County DSS in about October of 2002. Do you recall
21 going to the police department and telling them that none of
22 this happened, it's not true?

23 A. I remember telling my mom that because I seen how hurt
24 she was and I just was trying to protect her.

25 Q. And did she take you somewhere and tell them that's what

1 you had just said?

2 A. Like I said I remember -- like, I remember talking to a
3 cop. I forgot his name, but I remember talking to him. We
4 went to the police department..

5 Q. To the Lancaster Police Department?

6 A. Yes, sir.

7 Q. Detective Parson? (sic)

8 A. I'm not sure his name.

9 Q. Detective Parson? (sic)

10 A. I just remember the cop and my mom was kinda of getting,
11 arguing and we were sitting outside and I just seen them
12 arguing and I remember telling him. But at the time I was
13 just trying to protect her.

14 Q. And what she was telling them either policeman or
15 whoever she was speaking with, was that you were saying this
16 didn't happen, this wasn't true? Is that what she was
17 saying?

18 A. Yes, sir.

19 Q. And the reason she said that is because your
20 grandmother, she said your grandmother told you to say it, is
21 what you just testified to?

22 A. She didn't. She didn't have ---

23 Q. And if you didn't do that then she would take, she
24 feared you would be taken away from her, isn't that true?

25 A. No, sir.

1 MR. GREGORY: That's all the questions I have.

2 MS. BURCHSTEAD: Brief redirect?

3 THE COURT: Yes, ma'am

4 **Redirect Examination by Ms. Burchstead:**

5 Q. So I think I remember your testimony correctly a moment
6 ago you said they told her grandmother and she came down to
7 the school, right?

8 A. Yes, ma'am.

9 Q. So what happened right after that?

10 A. Well, the school contacted my mom and my mom came to the
11 school and picked us up and we went home and she made us say
12 everything that was said or what happened to us in front of
13 him. We had to sit at the kitchen table and state to him and
14 her what was going on.

15 Q. So she had you to confront him at the dinner table?

16 A. Yes, ma'am.

17 Q. What happened after that?

18 A. I remember him and my grandmother and my mom they all
19 kind of got into a big altercation and she, my grandmother
20 left and it was kind of bad after that.

21 Q. Did you lie about anything during that confrontation?

22 A. No, ma'am.

23 Q. You told them what happened?

24 A. Yes, ma'am.

25 Q. So a few minutes ago Mr. Gregory was asking questions he

1 asked about three times, did this exactly three times?

2 A. I don't remember exactly how many times, I just remember
3 a few times it happened.

4 Q. And when you say a few times, can you explain what that
5 means to you?

6 A. I remember like I said maybe three times.

7 Q. Always in the home?

8 A. Yes, ma'am.

9 MS. BURCHSTEAD: Nothing further, judge.

10 THE COURT: Anything else, Mr. Gregory.

11 MR. GREGORY: No. That's all, Your Honor.

12 THE COURT: You can step down, ma'am.

13 MS. BURCHSTEAD: Thank you, Your Honor. May it
14 please, the Court?

15 So you heard the testimony of Witness B. What we would state
16 to the court, now, is we expect Witness A is going to testify
17 to similar acts at trial. That the defendant came at the
18 time she believed to be her father would begin touching her
19 around the age of three or four and that the touching began
20 in a similar manner and that it was over the pennies, then
21 under the panties and then escalated and Witness A's did
22 increase to intercourse and the conduct was occurred more
23 often. She'll tell you and the jury that it occurred in the
24 home when the mother was not present. Siblings may or may
25 not have been there but would not be aware. There may be

1 some situations where they were in the room but the mother
2 was not home at the time consistent with the fact that she
3 would be working. And, again, it happened beginning at a
4 young age through the time Witness A moved out at eleven and
5 again it started at the beginning with the touching. So
6 that's what we expect Witness A to testify to on the stand.

7 Obviously, during her testimony at trial which we will
8 get into more detail but based on that we believe this is
9 appropriate for a pretrial ruling that we would be allowed to
10 have Witness B testify at trial under the common scheme or plan
11 exception under 404 (b). Your Honor, knows the test, of
12 course, we need to find relevance first and that it meets
13 that exception and shown by clear and convincing evidence and
14 then do that balancing test of whether it's unduly prejudiced
15 or not. And when determining common scheme or plan I did
16 pass up to Your Honor a stack of cases and I'm sure you're
17 familiar with many of these.

18 Just direct the court's attention to State v Atieh, I'm
19 not sure from pronouncing it correctly but A-t-i-e-h which
20 cites, we term, the Wallace factors. In determining common
21 scheme or plan, we should consider five primary factors. Age
22 of the victim when the abuse occurred, the relationship
23 between the victim and the defendant, the location where the
24 abuse occurred, the use of coercion or threats, and the
25 manner of the occurrence and, you know, the type of battery.

1 So we're looking at common scheme or plan and part you say,
2 you look at one because it necessarily approves the other,
3 assist in approving other. Of course, we're arguing that
4 it's relevant and meets that exception and we believe it
5 meets that common scheme exception because here it started
6 when they were three or four for age among the relationship
7 with the defendant is it the same, it actually happened
8 during the same time frame as well. Both believe to be a
9 biological father at the time, they're sisters. He's the
10 father. It's consistent relationship and I would argue
11 coercive, inherit coercive because of the relationship and
12 that he is taking advantage of his relationship with them for
13 sexual gratification. He has that relationship of being the
14 father figure whether biological or not, they believed him to
15 be their father. The location of the abuse was always in
16 the home when the mother was not present be at living room,
17 bedroom, or what have you, it was always in the family
18 residence and again during the same time. And the touching
19 was similar in itself and that I would suggest it started as
20 grooming with your typical touching, testing the waters,
21 teaching them to get used to the type of touching when
22 touching over the panties. The main difference is, is that
23 it happened more often with Witness A and, Your Honor, will see
24 too much greater level.

25 Point two of the Atieh case in the coercion aspect of

1 it, that case we had a, someone entered, who is as I recall
2 basically groping an employees it was deemed in that case it
3 was coercive because you had a subordinate type of
4 relationship. So I believe that is what we have here and, in
5 fact, our similarities are certainly outweighing any
6 dissimilarities. The dissimilarity being, again, with
7 Witness A the conduct increased and right now I'm thinking of
8 the State v. Hallman, where I believe that case is similar to
9 the case here and that you had a defendant molesting a foster
10 child aged seven to nine and there were similarities two
11 other foster children and the difference in that case was the
12 trial on that appeal, the victim had been molested to a more
13 egregious nature but the court deem it appropriate to admit
14 the bad act evidence of the other two even though it did not
15 reach that same level because you have that similarities of
16 using that relationship. And that reminds me which I point,
17 Your Honor, to a number of cases that I believe that are spot
18 on to this in using that relationship for sexual
19 gratification. You also, in addition, State v. Hallman, we
20 have State v. McClellan, 283 S.C. 389 (1984) case. You have
21 two older daughters -- there was three daughters molested,
22 total, two of them testifying. Just similar to here we have
23 a daughter/sister type situation that was a Supreme Court
24 case. Another we have is State v. Blanton. The
25 granddaughter eight years old at the time and two others were

1 testifying. State v. Henry, you had a sister testifying.
2 And State v. Wallace, 384 S.C. 428 which again we're talking
3 about those factors the Atieh cites that come out of Wallace
4 and the testimony of a older sister was allowed and there
5 were similarities. The stepfather had began touching her
6 under her shirt and then escalated to private area at the
7 home when the mother was not there which is exactly what we
8 have in this case, Your Honor. And I did pass that to the
9 court, a memo and supplemented by some case laws. Those are
10 just a few come into my mind right here. I would also point
11 to the court's attention to Adams which cites McClellan,
12 Hallman, Blanton and again use of the relationship as a
13 stepfather to control the girls and the girls were at the
14 same age.

15 Again, assuming our victim testifies as we expect we
16 believe there is strong similarity, so similar that it is
17 necessary to assist the trier of fact and that we have this
18 common scheme or plan and while we recognize bad act evidence
19 as inherently prejudicial it is way more probative than
20 prejudicial and we would say that it substantially outweighs
21 rather it's so highly probative that impressions can not
22 substantially outweigh the probativeness. It's such a close
23 similarity to the offense charge that it clearly outweighs
24 the prejudicial effect as the court stated in State v.
25 Hallman and some of those other cases I have pointed to the

1 court. And I'm happy to answer any questions of Your Honor.

2 THE COURT: Thank you.

3 MS. BURCHSTEAD: Thank you.

4 THE COURT: Mr. Gregory?

5 MR. GREGORY: May it please, the Court, Your Honor?
6 Your Honor, basically, the Attorney General stated the Rule
7 correctly it's, it's prohibition the rule itself is
8 prohibition against allowing such evidence. This is sought
9 under an exception and there been a number of opportunities
10 where the State is trying to chip away at the rule and get
11 cases, get evidence heard that would fall in the exception
12 category. A lot of them have been unsuccessful. Some of
13 them have. But the Rule itself points to the Lyle's case
14 which is an older case and I thought was in this stack but I
15 don't see it, it's a 1923 case.

16 MS. BURCHSTEAD: I don't believe I actually printed
17 Lyle. We've all heard Lyle so much and to be candid I
18 haven't read it in awhile.

19 MR. GREGORY: It's a long case and I'm sure everybody
20 is familiar with Lyle ---

21 MS. BURCHSTEAD: Yes.

22 MR. GREGORY: --- and that involved a fraudulent
23 check. And then you can distinguish that case with this case
24 because this case has nothing to do with fraudulent checks.
25 But the point is in that particular case which is a access

1 test for determining whether or not it would be admissible
2 under the Lyle case there were three points to be considered.
3 One, was identity and I don't think we really need to get
4 into that because there's no doubt that she knew who her
5 father is or who she thought who was her father. The second
6 one, is the intent or guilt or knowledge. And the third one,
7 and the third one is, the plan is consist with common scheme.
8 And I think the State is reliant on the common scheme part
9 from with that particular case. I guess you observe the
10 testimony when the witness was pretty specific about certain
11 things but when I ask her about recanting the statement which
12 we intend to prove at trial, she doesn't remember that. She
13 doesn't remember a lot of other things exactly but she just
14 happens to remember those three points that she testified to.
15 As it to say that someone had given her that information and
16 said this is what happened. How can you remember details
17 from when you were three years old and then believe or to
18 remain in the household until you were sixteen it's sort of
19 inconceivable that, that would take place. It's almost like
20 well that didn't happened. And, of course, it's up to the
21 jury to determine the truthfulness of the witness but it
22 would be up to the court to determine whether or not that
23 evidence would be admissible.

24 We take the position that it should not be admissible
25 because it would be, it doesn't meet the test of Lyle's

1 number one. And, number two, it is highly prejudicial. If
2 my client were to -- if my client had been convicted in this
3 particular case and the State decided to try, charge him and
4 try him with what evidence we just heard in regards to the
5 daughter, Witness B then you would have a conviction. And how
6 would the State be able to present to the jury the conviction
7 of a sister. I think the only way you could do that would be
8 at the sentencing or if my client had taken the stand and
9 says, I'm a good person, put his character on the issue and
10 then the State cross-examining. Well, that's not the case
11 here. These are not convictions. These are only statements
12 made by alleged incidents made by witnesses. I don't think
13 it meets the rule and then addition to that I take the
14 opposite position from the State, I say that it's highly
15 prejudicial. That if you had a witness, one witness against
16 the other it's going to be he said, she said and who knows
17 what the jury may decide. But when you got more than one
18 witness that's saying the same thing it intends to give the
19 State's witness more credibility and I think that's what the
20 State is trying to do here. I would say that it would be an
21 improper bolstering of the victim's testimony and I think it
22 would be highly prejudicial and I think the court should find
23 its admissible, inadmissible.

24 Thank you, Your Honor.

25 THE COURT: Yes, ma'am.

1 MS. BURCHSTEAD: Brief response, Your Honor. Just to
2 follow up on what Mr. Gregory is saying if, for instance, the
3 State had gotten a conviction with the acts on Witness B we
4 wouldn't be able to get that in, I just adamantly disagree
5 with that, in fact, I think it would be easier. The current
6 standard that we suggest to the court is that we prove by
7 clear and convincing evidence that this happened when we
8 don't actually have a crime. We suggest to the court that
9 Witness B's testimony does that. She knows that it's her father
10 or father at the time. And she was clear in her testimony,
11 of course, she's not going to remember some details. The
12 case is fifteen years old, unfortunately. It's nobody's
13 fault in this courtroom.

14 To that end, we have a blind expert coming to testify.
15 We can put the blind expert before she testifies as well if
16 we need to do that but they are explanations for staying in
17 the home and that sort of thing. But I was suggest she says
18 to the court today this is what happened. She did not lie
19 about it. Of course, the family situation it can get tricky
20 but this is the whole point of this common scheme evidence.
21 You have two girls who are going to say this happened to me
22 and it's for the jury to determine what was really going on
23 and that goes to Mr. Gregory's ability to cross-examine her
24 but not the admissibility. We believe it falls in line with
25 all of these cases submitted to the court where it was deem

1 appropriate in a common scheme or plan with the type of
2 testimony that Your Honor has heard today. And again we do
3 not believe it's unduly prejudicial.

4 Thank you, judge.

5 THE COURT: Anything else, Mr. Gregory?

6 MR. GREGORY: No, Your Honor, that's it.

7 THE COURT: Okay. Mr. Kozak, do you want to address
8 the blind witness issue?

9 MR. KOZAK: Yes, Your Honor. I don't want to do an
10 actual formal motion argument, I just want to put on notice
11 to the court as well as opposing counsel that we will intend
12 to call a blind expert in this case. In these cases it's
13 very common nowadays to call a blind expert and we'd probably
14 be calling, barring a scheduling conflict, David Kellan.
15 He'd probably be called, child while treatment and child
16 abuse dynamics. I'm going to hand up the case law on this.
17 (Whereupon, the lawyer handed up the case law)

18 MR. KOZAK: The newest case is State v. Roy Lee Jones
19 which said there is no reversible error in using it. Using
20 an expert in child -- child abuse dynamics. They're very
21 common. Brown and Anderson are the seminal cases in this.
22 Roy Lee Jones just builds off of it and confirms. The higher
23 courts upheld the use of these experts in these situations
24 numerous times. They have found that the unique and alter
25 perplex behavior exhibited by child sex of these victims does

1 not fall within the ordinary knowledge of a juror with no
2 prior experience even directly or indirectly with sexual
3 abuse. And the general behavioral characteristics of a child
4 sex abuse victims are, therefore, more appropriate for an
5 expert qualified under the appeals to explain to the jury so
6 long the expert does not improperly bolster the victim's
7 testimony.

8 Nowadays it is common to call a blind expert who has no
9 connection to the case. Never did a forensic interview and
10 has never had contact with anyone involved in the case. The
11 only problem that Anderson which is one of the cases that I
12 handed up had, is when the person the forensic interview on
13 the victim also was used as a blind expert. That's the only
14 time the higher courts had a problem. In this situation our
15 expert that we intend to call have never met anyone involved
16 in this case, has never read a case file on it. So,
17 therefore, we think he would be fine as a blind expert to
18 come into this case. Just wanted you to have the case law to
19 read up on what we're arguing. Thank you.

20 THE COURT: Okay. Thank you, Mr. Kozak. And you
21 provided Mr. Gregory ---

22 MR. KOZAK: Yes, sir.

23 MR. GREGORY: Yes, Your Honor.

24 THE COURT: Any comments from you?

25 MR. GREGORY: Your Honor, I have been advised

1 previously that the State intend to call Dr. Kellan as a
2 witness and my position generally speaking in regards to
3 these types of witnesses in these type of cases that they're
4 all attempts to improper bolster the victim, the victim's
5 alleged testimony. The witness, the proposed witness, is
6 never seen the victim. So, therefore, he's only testimony
7 would be the time and place. He could not testify as to what
8 the victim told him because she's never been examined. He
9 has no opinion as to regards to the victims veracity. So,
10 therefore, in a general, generally speaking we think that
11 this type of testimony would be inappropriate and it should
12 not be admitted.

13 Thank you, Your Honor.

14 THE COURT: All right. Anything else from the State?

15 MS. BURCHSTEAD: Not on this issue, Your Honor,
16 however, at the appropriate time I would just like to put on
17 the record status of offers just for the court and I can do
18 it now if you want?

19 THE COURT: Go ahead. That would be fine.

20 MS. BURCHSTEAD: Okay. I actually inherited -- our
21 office inherited this case from the solicitor's office trying
22 to assist in the backlog, as you understand, and then Marie
23 Sazah (sic) in our office had the case prior to me. She had
24 previously descended an offer by letter to Mr. Gregory and as
25 I recall the offer was fifteen (15) years, CSC second degree,

1 fifteen(15) years. My understanding is that offer has been
2 rejected. I never gave another offer and don't intend to.

3 THE COURT: But that offer is still on the table now?

4 MS. BURCHSTEAD: My understanding is yeah, the
5 deadline to accept it from Ms. Sazah (sic), he did not accept
6 it. I checked in with Mr. Gregory when I got the case and my
7 understanding is that offer was rejected. So it is not on
8 the table.

9 THE COURT: Okay.

10 MS. BURCHSTEAD: Thank you.

11 THE COURT: Do you agree with that Mr. Gregory? Mr.
12 Gregory, do you agree with that?

13 MR. GREGORY: Yes, sir. That's correct, Your Honor, a
14 correct statement.

15 THE COURT: All right. Counsel, I'm prepared to
16 issue a conditional ruling on the admissibility of the
17 sister, ^{Witness B's} testimony. Again it is a conditional ruling
18 but at this point in time I find that it would follow the
19 guidelines set forth in Lyle's and the other cases that have
20 come since then. So, therefore, at least at this point, I
21 would find it to could be admissible as common scheme or plan
22 ---

23 MS. BURCHSTEAD: Thank you, judge.

24 THE COURT: --- and it fits that exception. With
25 regards to the blind expert witness I guess, technically,

1 we'll wait until the trial when you've actually tried to
2 introduce the witness. But I'm inclined, basically, without
3 knowing anything exactly, not seeing how the trial proceeds
4 that, that would be admissible testimony as well based on the
5 recent case law. So that seems to be the trend right now,
6 anyway. So -- that's not a ruling that's just, you know, and
7 inclination ---

8 MS. BURCHSTEAD: I understand, judge.

9 THE COURT: --- an inclination on my part at this
10 point in time so -- but I am conditionally ruling with
11 regards to the testimony of ^{Witness B}, though.

12 MS. BURCHSTEAD: Thank you, Your Honor. We
13 understand again that this is conditional that give everyone
14 some guidance....

15 THE COURT: You know, if I look at it and get
16 heartburn between now and the trial or something I can change
17 my mind ---

18 MS. BURCHSTEAD: I understand, Your Honor.

19 THE COURT: --- but right now I don't think so but
20 anyway

21 MS. BURCHSTEAD: We'll proceed accordingly. Thank
22 you, judge.

23 THE COURT: Okay. So the 21st, August 21st, right?

24 MS. BURCHSTEAD: Yes, sir, the 21st. We need to
25 coordinate with the solicitor and maybe Mr. Gregory knows

1 more about how they select juries there. I don't know their
2 exact schedule.

3 THE COURT: I don't know -- I think I am the only one
4 that's doing trials that week, right? This will be the only
5 trial, I think.

6 MS. BURCHSTEAD: I think Judge Hall has a murder
7 trial.

8 MR. GREGORY: Yes.

9 THE COURT: Well, I thought he told me he had guilty
10 pleas that week because he was saying something to me about
11 he thought I would rather do a trial than the guilty pleas
12 because of my eyes.

13 MS. BURCHSTEAD: Maybe it's pleading out.

14 MR. GREGORY: I think Judge Hall is expecting to be
15 presiding over a murder case but I don't know.

16 THE COURT: It's a murder trial

17 MS. BURCHSTEAD: We will look into it.

18 THE COURT: I guess he will qualify the whole panel.

19 MS. BURCHSTEAD: That's what I'm understand. I guess
20 they come in, in the morning.

21 MR. GREGORY: Yes.

22 MS. BURCHSTEAD: I'm going to suggest we get rolling
23 as quick as we can.

24 THE COURT: Oh, yeah.

25 MR. GREGORY: They would be coming in that morning.

1 THE COURT: Mr. Gregory, what time do they usually
2 have the jury report, do you know?

3 MR. GREGORY: Usually about 9:00.

4 THE COURT: Nine o'clock, that's good.

5 MS. BURCHSTEAD: Very good.

6 MR. GREGORY: Our new thirty million courthouse is able
7 to accommodate two trials at one time so that should not ---

8 THE COURT: Yeah, that shouldn't ---

9 MR. GREGORY: --- be a problem.

10 MS. BURCHSTEAD: We don't expect any crazy voir dire
11 or anything like that. It should be an easy jury selection.

12 THE COURT: But if there is going to be two going,
13 we've got to make sure they draw plenty of jurors.

14 MS. BURCHSTEAD: Right.

15 THE COURT: And I'll talk to Judge Hall.

16 MS. BURCHSTEAD: Okay.

17 THE COURT: I was going to talk to him after today
18 anyway so....

19 MS. BURCHSTEAD: Okay.

20 THE COURT: We'll make sure things, you know, are
21 lined up, coordinate it.

22 MS. BURCHSTEAD: Okay.

23 THE COURT: Okay.

24 MR. GREGORY: Thank you, Your Honor.

25 MS. BURCHSTEAD: Thank you.

1 THE COURT: Thank y'all. Good to see, y'all.

2 (CONCLUSION OF THE HEARING ON JULY 26, 2017)

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CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Chesterfield County, South Carolina, on the 26th day of July, 2017.

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

Lisa S. Carter

Lisa Carter

Circuit Court Reporter

August 13, 2018

1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE,

4 Plaintiff,

5 Case No.

6 -against- 2016-GS-29-00559,

7 GUADALUPE GUZMAN MORALES, 00564, 00565

8 Defendant.

9 -----x

10 August 21-23, 2017

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE ROGER E. HENDERSON

15

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

17 MEGAN BURCHSTEAD, Esquire

18 JOEL KOZAK, Esquire

19 Attorney for the State

20

21 NEG GREGORY, Esquire

22 Attorney for the Defendant

23

24 Aileen Butler

25 Official Court Reporter

1					
2		<u>I N D E X</u>			
3	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
4	Witness A				
5	Ms. Burchstead	42		77	
6	Mr. Gregory		64		
7	Kristen Grant				
8	Mr. Kozak	80		90	
9	Mr. Gregory		84		91
10	Lois Campos				
11	Ms. Burchstead	94		114	
12	Mr. Gregory		99		
13	David Kellin				
14	Mr. Kozak	123,144		161	
15	Mr. Gregory		138,159		
16	Margo Dixon				
17	Mr. Kozak	162			
18	Mr. Gregory		165		
19	April Rollins				
20	Mr. Kozak	166		177	
21	Mr. Gregory		169		172
22	Witness B				
23	Ms. Burchstead	173		191	
24	Mr. Gregory		180		
25					

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS / REDIRECT</u>	<u>RECROSS</u>

Guadalupe Morales			

Mr. Gregory	197	220	

Ms. Burchstead		212	

L.M.			

Mr. Gregory	221	239	

Ms. Burchstead		234	239

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
State's 1	Photo	26	64
State's 2	Photo	26	64
State's 3	Photo	26	64
State's 4	Statement	218	

1 room. Juror 43, Jonathan Fowler. What say the State?

2 MS. BURCHSTEAD: Please present the juror.

3 THE CLERK: Defendant?

4 MR. GREGORY: Swear the juror.

5 THE CLERK: Please follow the bailiff to the jury
6 room.

7 THE COURT: All right. Ladies and gentlemen, the
8 clerk has advised me that you need to call in after
9 six o'clock tonight to find out whether or not you
10 need to be back here tomorrow or some time later in
11 the week. So any time after six o'clock tonight. I'm
12 sure you've already been given the number.

13 Any remaining jurors have any questions? Okay.
14 You may be excused for the day.

15 (WHEREUPON, the jurors exit the courtroom)

16 THE COURT: All right counsel, you want to renew
17 any motions at this time? Get those matters out of
18 the way.

19 MR. GREGORY: If it please the Court.

20 THE COURT: Yes, sir.

21 MR. GREGORY: Your Honor, prior to the commencement
22 of this case the jury has been selected but not sworn
23 and not in the courtroom. I would like to renew the
24 motions that we made previously before Your Honor.

25 In Chesterfield at a hearing to determine whether

1 or not the witness proposed by the State to be called,
2 **Witness B** , would be improper. And I think the
3 Court has ruled that she would be a proper witness to
4 bolster the testimony of the plaintiff as to prior bad
5 acts witness. And that being the case, I would like
6 to renew that motion but I don't want to reargue it.
7 I would like to use what was on the record at that
8 time. For the record to reveal -- to reflect the fact
9 that the Court ruled in favor of the State.

10 The other motion that was made in this case, Your
11 Honor, I would like to renew was made before Judge
12 Gibbons. At that time we thought Judge Gibbons was
13 going to be the trial judge. I think the case was
14 going to come up for trial earlier in the year. I
15 don't recall. But the defense made a motion to quash
16 the indictment. Quash the indictments in this case
17 based on the violation, constitution violation, due
18 process.

19 Judge Gibbons after a lengthy hearing heard
20 testimony, denied the motion and decided that he would
21 schedule the case for trial this week and that's why
22 we are here today this week to try the case. We would
23 like to renew that motion and have that put on the
24 record as well without having to go through and
25 reargue the motion.

1 There's a motion, I believe, pretrial motion made
2 today by the State. I don't know if we want to put
3 that on the record at this time but we can and I think
4 the State has some proposed photographs of the alleged
5 victim. They wanted to know if we consent to have
6 those placed into evidence and premarked. I think we
7 may have an objection about that so I would allow the
8 State to present that.

9 THE COURT: Okay. Miss Burchstead.

10 MS. BURCHSTEAD: Thank you, Your Honor. As for the
11 pictures I just wanted Mr. Gregory to see them before
12 we got rolling. My intention is to have them
13 pre-marked as an exhibit and have Witness A
14 identify and authenticate them prior to actually
15 seeking their admission into evidence but I didn't
16 want anybody to be surprised. I believe that's the
17 only exhibit or potential evidence other than
18 testimony that we are going to present in this trial
19 pending if we need to pull out some statements for
20 rehabilitative purposes. So we covered that.

21 In terms of motions, of course the Lyle hearing we
22 had concerning testimony of Witness B we understood
23 that to be a conditional ruling by Your Honor that the
24 evidence by testimony would be admissible under the
25 the common scheme or plan exception, 404 (B). We'll

1 ask to address that further once we hear from our
2 victim which we do intend to call as our first
3 witness, Your Honor. So at the appropriate time
4 following Witness A's testimony we would ask for a
5 final ruling as to the common scheme or plan exception
6 and the admission of Miss Morale's testimony.

7 Concerning the motion before Judge Gibbons on the
8 scheduling of this case as Mr. Gregory pointed out we
9 had already argued and litigated that. I understand
10 the purpose to properly form a record and preserve any
11 objections made. Of course the State believes the
12 proper ruling was made and we're ready to proceed
13 forward here today.

14 Additionally, I did ask in chambers that we
15 consider -- that Your Honor consider charging the jury
16 before the trial begins as to not considering the
17 length of delay in this case while they listen to
18 evidence. My understanding is Your Honor may be more
19 inclined to do that at the close of the case. I
20 understand Your Honor's thought process on that and
21 the State's request is just at some point before the
22 jury begins deliberations and if we need to discuss it
23 further closer to the time during the jury charge
24 conference that seems appropriate that we want to just
25 flag that to the court and address on some level.

1 Check check.

2 The other motion we had made was just an in limine
3 motion to make sure we abide by the rape shield law
4 and not get afield of what is appropriate in terms of
5 -- and I don't think their would be anything but just
6 want to go ahead put that out there that we do
7 understand the rape shield law and respectfully we
8 will remain within those parameters.

9 That's all the pretrial, judge. I guess as matters
10 come up we will address them and again we do intend to
11 to put an expert witness. That's tomorrow. And will
12 proffer that testimony before we do so. We are
13 prepared to do that. Oh, and I do have the
14 indictments. At the appropriate time we can present
15 those to Your Honor and call the case.

16 THE COURT: Okay. Anything else from you Mr.
17 Gregory?

18 MR. GREGORY: No, Your Honor.

19 THE COURT: All right. As you mentioned, Miss
20 Burchstead, we can address the concern of Witness B
21 at the time that you call her. As I have already
22 indicated it's my inclination to allow that under the
23 the common scheme or plan not to bolster anybody's
24 testimony but under the common scheme or plan.

25 The motion that was before Judge Gibbons, I'm not

1 going to go behind him. He has already ruled on that.
2 So his ruling will stand with regards to the quashing
3 of the indictment.

4 Have you had the photographs marked already?

5 MS. BURCHSTEAD: I have provided a list of them to
6 the court reporter but I've not actually marked the
7 exhibits yet. There is three of them.

8 THE COURT: We can certainly go ahead and mark
9 them. They're obviously not admitted into evidence
10 until we address them one at a time, but go ahead and
11 mark them.

12 MS. BURCHSTEAD: Yes, sir.

13 THE COURT: And with regards to the rape shield
14 obviously I expect everybody to actually stay or
15 remain within the parameters of rape shield law.

16 (State's Exhibit 1-3, Photographs, marked for
17 identification as of this date.)

18 THE COURT: We will take up anything in regards to
19 the expert at the proper time tomorrow before that
20 witness is called.

21 MR. KOZAK: Yes, Your Honor.

22 MS. BURCHSTEAD: Your Honor, would you like me to
23 provide you with the indictments now?

24 THE COURT: Yes, please.

25 MS. BURCHSTEAD: As Your Honor is reviewing those

1 indictments one other matter that just occurred to me
2 so we are all on the same page. My understanding this
3 is under the old law as he was arrested in 2002. He
4 was indicted under the old law. I found a 2006 bench
5 book to assist in jury instructions. So I do have
6 those ready at the appropriate time. One of the
7 charges is assault with intent to commit which is not
8 the current law and so we are all on the same page as
9 that.

10 THE COURT: If you have something that you want to
11 share with my clerk you can do that during the course
12 of the trial.

13 MS. BURCHSTEAD: Absolutely. Yes, sir. Just
14 trying to assist in that regards since it's old.

15 THE COURT: Okay. Counsel, are you ready for the
16 jury to be brought in.

17 MS. BURCHSTEAD: The state is ready, Your Honor.

18 MR. GREGORY: Defendant is ready, Your Honor.

19 (WHEREUPON, the jury enters the courtroom.).

20 THE COURT: All right. Would you swear the jury
21 please.

22 THE CLERK: Please rise and give the appropriate
23 response when I'm through. Do each of you promise to
24 swear that you should well and truly try in true
25 deliverance make according the issues now joined

1 MS. BURCHSTEAD: No, Your Honor.

2 THE COURT: Okay. Thank you, very much. All
3 right, and while we are here let me go ahead before we
4 start with the opening statements I realize that the
5 eclipse that I mentioned earlier is a big deal for a
6 lot of people and it takes place I understand the tee
7 time is 2:41, I think. What we plan to do is provide
8 lunch for you, so you don't have to worry about going
9 out and getting lunch. My plan is to break about two
10 o'clock for an hour. That will give you a chance to
11 eat the food that will be brought in. Once you have
12 eaten you can go outside and I hope you got your
13 glasses if you are going to look at it. You can stay
14 inside. You can do anything else you want to do. It
15 is your hour to do what you want to. But then my plan
16 is to reconvene back here at three o'clock and start
17 back at the trial. I wanted to give everybody an
18 opportunity to see the eclipse if they so desire.
19 Sometimes people wonder who this person is that is
20 sitting beside me. That is my law clerk, Paul Burch.
21 I know sometimes people are curious so you can quit
22 thinking about that. He helps me with my legal
23 research and things of that nature. And you met the
24 various players I think already this morning. If you
25 need anything these gentlemen -- does everyone have on

1 a gray jacket?

2 THE BAILIFF: Yes.

3 THE COURT: You stop one of these gentleman, tell
4 them what your situation is, if you got a question or
5 something you need to present to the Court you have
6 them let me know what your problem is or situation is.
7 Once you get a foreperson that person can communicate
8 with the bailiff as well.

9 All right, all that being said, counsel are you
10 ready to make your opening statement?

11 MR. KOZAK: Yes, Your Honor.

12 Good afternoon. My name is Joel Kozak and I along
13 with Megan Burchstead represent South Carolina in this
14 trial against Guadalupe Morales. Now Guadalupe
15 Morales as you've heard from the judge is on trial for
16 CSC, 1st with a minor, which is the common name for
17 it. It is also known as criminal sexual conduct in
18 the 1st degree with a minor. He is also on trial for
19 criminal sexual conduct with a minor in the 2nd
20 degree, as well as the assault with intent to
21 committed criminal sexual conduct in the 2nd degree
22 with a minor.

23 Now at the end of the trial the judge is going to
24 instruct you on the law. But right now I would like
25 to touch on it a little so you know what to look for

1 during the trial. There are two main things to look
2 for in a criminal sexual conduct in the 1st degree.
3 The first thing is that the sexual battery takes place
4 when the victim is under the age of 11. Now sexual
5 battery mainly means penetration however slight. Now
6 criminal sexual conduct in the 2nd degree with a minor
7 what you are looking for is the same thing as
8 criminal sexual conduct in the 1st degree but the
9 victim is now 11 to 14 years old.

10 Now basically assault with intent to commit CSC 2nd
11 with a minor is going to be the same elements as CSC
12 2nd but it's just an attempt. So the battery didn't
13 actually take place.

14 Now, today you are going to hear from quite a few
15 -- or throughout this trial you will hear from quite a
16 few witnesses. But the main person you are going to
17 hear from and meet is Witness A. Witness A is now 28
18 years old. She has a daughter who is eight years old
19 and she's a nursing assistant. Witness A is going to
20 get on the stand and tell you her story. She is going
21 to tell you in her words how the defendant battered
22 her when she was a little girl. She is going to get
23 up there in her own words and she is going to explain
24 to you what happened. Now, at this time she thought
25 the defendant was her father. Now Witness A's testimony

1 isn't going to stand on its own. Other witnesses will
2 be called. You are going to from members of her
3 family. You will hear from law enforcement. Now the
4 State bears the burden in this case and that burden is
5 beyond a reasonable doubt. Now this is a highest
6 burden in South Carolina and we take it very
7 seriously. But reasonable doubt does not mean it's a
8 perfect case. It doesn't mean beyond all certainty.
9 It doesn't mean an absolute certainty. It means
10 exactly what it sounds like beyond a reasonable doubt.
11 Now after you have heard all the evidence we trust
12 that you will retire to the deliberation room and you
13 will you find the defendant guilty of all three
14 offenses.

15 Thank you.

16 MR. GREGORY: If please the Court.

17 THE COURT: Yes, sir.

18 MR. GREGORY: Ladies and gentlemen of the jury, I
19 want to thank you for your participation here today.
20 I realize it may be somewhat of an inconvenience to be
21 called to jury duty. I don't know if you ever served
22 on a jury in the past or not. But I think it's
23 probably the height of civic responsibility to have
24 served on a jury and I want to thank you for that and
25 ask you to do a good job and keep your mind open. To

1 listen to all the facts both from the State and from
2 the defense.

3 At this time I would like to introduce my client.
4 Mr. Morales will you step up here please. Ladies and
5 gentleman, this is Guadalupe Morales. He is 46 years
6 old. He works for Lance -- Snyder Lance in Charlotte.
7 Been working there for eight years. His wife is with
8 him today, L.M. . They have been married
9 together for 25 years. They have five children. Two
10 of the children are still at home right now, their
11 ages are 10 and 11. All right. You can go back and
12 have a seat. Thank you.

13 Ladies and gentlemen, this case is 15 years old.
14 Why did it take so long? Fifteen years is a long time
15 ladies and gentlemen. A lot can happen in 15 years.
16 People can die. People can move. Family dynamics can
17 change. Couples divorce and life goes on. But some
18 things don't change. Mr. Morales has been living with
19 this cloud over his head for 15 years. His wife has
20 stayed with him. She believes in him. She has been
21 at his side. His father died in Mexico and Mr.
22 Morales was prohibited to leave?

23 MS. BURCHSTEAD: Your Honor, I object. This is
24 inappropriate for opening statement.

25 THE COURT: I agree. I will sustain the objection

1 with regard to that, with regards to the opening
2 statement.

3 MR. GREGORY: Could Mr. Morales have left the
4 country and fled to Mexico. Sure he could have. But
5 he didn't do it. You know why he didn't do it because
6 he wanted adamantly to clear his name. He's been
7 waiting 15 years to do this and this is his
8 opportunity. He is not about to leave. He is not
9 that kind of man. He's an honest man. Now the
10 testimony in this case, the allegations, the
11 statements that will be made probably be somewhat
12 difficult to hear. But you have to understand and
13 please realize that in a dysfunctional families
14 sometimes witnesses will lie for vindictive reasons.
15 I just ask you to keep an open mind.

16 When you hear the State's testimony don't close
17 your mind. Leave it open until you hear all of the
18 evidence in the case. When you leave to go to the
19 jury room to reach your verdict, the verdict is a
20 Latin term. It comes from two words; veritas dictum,
21 that means to speak the true. So let your verdict
22 speak the truth based on what you have observed as
23 jurors. Thank you very much.

24 MS. BURCHSTEAD: The State calls Witness A

25 Witness A . Called as a witness, having

1 been duly sworn by The Clerk, was examined and
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MS. BURCHSTEAD:

5 Q Good morning Witness A. I guess actually afternoon now.

6 Witness A could you just tell the jury your full name please?

7 A Witness A .

8 Q And was it formerly Witness A ?

9 A Yes. Before that it was Witness A. .

10 Q How old are you Witness A.?

11 A I am 28 years old.

12 Q Okay. What is your birth date? When were you born?

13 A [REDACTED] -- 1989, sorry.

14 Q Are you working anywhere?

15 A Yes. I work for -- I'm a C and A for Hospice and
16 Palmetto Charlotte region.

17 Q How long have you been doing that?

18 A Been C and A for about five or six years and I worked
19 for Hospice of Charlotte region for a little over three years.

20 Q So where are you currently living?

21 A I live Monroe North Carolina.

22 Q Who do you live with in Monroe?

23 A My husband and I rent a home and my daughter lives with
24 us and my grandmother lives with us.

25 Q What is your daughter name?

1 A Juliana G.

2 Q How old is she?

3 A She is eight.

4 Q And what is your grandmother's name?

5 A Lois Campos.

6 Q Did you grow up in Monroe?

7 A I lived there since 2002.

8 Q Where did you live before that?

9 A My mom kicked me out so before that I was living with

10 my uncle and his girlfriend and his two daughters in a house

11 that my grandmother rented in Lancaster, South Carolina.

12 Q All right. What is your mom's name?

13 A L.M.

14 Q What is your uncle's name?

15 A Jimmy. Jimmy Joe Perez.

16 Q Did you say you were living at some point with Jimmy

17 Joe and his girlfriend?

18 A Yes.

19 Q What is his girlfriend's name?

20 A I think her whole name is April Michele Rollins but we

21 always call her Michele.

22 Q So you know her as Michele?

23 A Uh-huh.

24 Q So, you said your mom kicked you out. Before your mom

25 kicked you out where were you living?

1 A I was living with her and her husband and my two little
2 sisters.

3 Q What are your sister's names?

4 A I'm the oldest. Witness B is next and then Kristina
5 Morales is the youngest.

6 Q How far apart are you guys in ages? Close?

7 A Witness B is three years younger. About two years younger.
8 Kristina is about five years younger.

9 Q Now you say you lived with your mother's husband. Who
10 is that?

11 A Guadalupe Morales.

12 Q Do you see him in the courtroom right now?

13 A I don't see him. Oh, yes.

14 Q Do you need to stand up.

15 A He is right there behind Mr. ---

16 Q Can you tell us what he is wearing?

17 A The navy blue shirt with lighter blue strips.

18 Q Okay. So you lived with him along with your mom and
19 two sister's?

20 A Yes.

21 Q Was that in Lancaster?

22 A Yes.

23 Q Where in Lancaster did you live with him?

24 A We lived in a trailer park at the address is [REDACTED]

25 [REDACTED].

1 Q When did you -- how old were you when you were living
2 at [REDACTED]?

3 A I don't really remember how old I was when we moved
4 there, but it was a few years. She kicked me out from that
5 place and I was 13 when he she kicked me out.

6 Q We'll get to that in just a minute. So when you were
7 living there what did you call Guadalupe Morales -- and for the
8 record Witness A has identified the defendant.

9 What did you call him when you were a little girl.

10 A I called him daddy.

11 Q You thought he was your biological dad?

12 A Yes.

13 Q Is he your biological dad?

14 A No.

15 Q What makes you say he is not your biological dad?

16 A A while after I told my grandmother, came out and told
17 me what all, told me everything about my mom and she -- I guess
18 she thought it would make me feel better knowing that he wasn't
19 and she told me.

20 Q Okay. So, your mom kicked you out. We will get to
21 that in a minute. But where did you go live after that?

22 A I was just going to live on the streets. I didn't want
23 to go back. I didn't want to be part of that family any more.
24 But I somehow ended up with my uncle.

25 Q Okay. Uncle Jimmy?

- 1 A Yes.
- 2 Q And his girlfriend Michele?
- 3 A Yes.
- 4 Q How long did you live with Uncle Jimmy and Michele?
- 5 A I want to say a couple of months maybe. I'm not sure.
- 6 Q Then where did you go live?
- 7 A My grandmother took me -- took me to Monroe.
- 8 Q So were Jimmy and Michele in Lancaster?
- 9 A Yes.
- 10 Q And then you went to live with your grandmother Lois in
11 Monroe?
- 12 A Yes.
- 13 Q Do you have any idea why your mom kicked you out?
- 14 A I don't know. I didn't care. I was just -- you know,
15 she always kicked us out, me and my sister's. Always kicked us
16 out.
- 17 Q Witness A can you tell the jury about your 11th birthday?
18 Were you living at [REDACTED] on your 11th birthday?
- 19 A Yes.
- 20 Q You were living with your mom and your sisters and the
21 defendant, is that right?
- 22 A Yes.
- 23 Q What did you want to do on your 11th birthday?
- 24 A I wanted --
- 25 Q If you need a minute? We can take a minute. Beg the

1 Court's indulgence?

2 A I wanted to go to Carowinds. I wanted to go to
3 Carowinds.

4 Q Just take a minute.

5 Q Was your whole family going to go to Carowinds?

6 A My sisters.

7 THE COURT: You need to speak up. You got to
8 speak loud enough for everybody in the jury box to be
9 able to hear you.

10 THE WITNESS: I'm trying.

11 THE COURT: You need to compose yourself. Go
12 ahead and do that before you start back.

13 THE WITNESS: Yes.

14 A My sisters, my mom her husband and myself.

15 Q So what happened when were you getting ready to go to
16 Carowinds?

17 A My sisters and I shared a room so we were getting ready
18 in our room. My mom was in the shower and her husband was in
19 their bedroom laying in the bed.

20 Q At this time did you think he was your dad?

21 A Yes.

22 Q And he is laying in the bed?

23 A And he called me and he asked me to get in the bed and
24 I said no and he said, well then, if you don't get in the bed
25 we're not going to Carowinds. I said well, that's fine. I

1 don't want to go any more. And then he just said get in the bed
2 now and so I had to get in the bed and ---

3 Q What happened in the bed?

4 A He put his penis inside of me.

5 Q So is this like in the morning or the afternoon? Do
6 you remember what time?

7 A It's in the in the morning.

8 Q So as you get in bed and puts your penis inside you did
9 you still have your clothes on?

10 A He had taken my bottoms off.

11 Q Where were your sister's when this happened?

12 A In the room getting ready. In our room getting ready.

13 Q And your mom was in the shower?

14 A Uh-huh.

15 Q So, was this -- this was your eleventh birthday, right?

16 A Yes, ma'am.

17 Q Did he continue to have intercourse with you after your
18 11th birthday?

19 A Yes, ma'am.

20 Q Do you recall having your first period?

21 A Yes, ma'am.

22 Q Was that significant to you?

23 A I thought I was dying.

24 Q Why?

25 A Because you know how they say three times is the charm.

1 It already happened three times.

2 Q So you were 11 when you got your first period and he
3 had intercourse with you three times?

4 A My birthday is [REDACTED] and I got my first period in
5 May after I turned 11.

6 Q So do you recall the first time was your birthday or
7 was it before?

8 A It was before.

9 Q And you know that because the third time is the charm?

10 A (Nod).

11 (Reporter asks for a verbal response.)

12 A Yes.

13 Q And I know it's hard. She is going to need to take
14 down verbal responses.

15 A Okay.

16 THE COURT: Please answer questions with a yes or
17 no response. If you need to explain it you can do so
18 but don't say uh-huh or nod your head. You got to
19 answer verbally.

20 THE WITNESS: Okay.

21 THE COURT: Thank you.

22 Q All right. So, sexual intercourse started around your
23 birthday. Had there been sexual touching before that?

24 A Yes, that started when I was about four.

25 Q What do you remember about that?

1 A When I was about four we lived in the same trailer park
2 but a different trailer.

3 Q Is that still in Lancaster County?

4 A Yes, ma'am. And my sister ^{Witness B} and I we were jumping
5 on my mom's bed and her husband went in the bedroom and grabbed
6 me by my ankles and kind of flipped me to where I was laying on
7 my back and at first I thought he was playing, but then he
8 pulled me to the edge of the bed and he had my legs opened when
9 he pulled me and he got between my legs and started rubbing his
10 groin area against my groin area.

11 Q This is when you were about four?

12 A I was about four.

13 Q So that was outside your clothing?

14 A Yes, ma'am.

15 Q Was there a time he touched inside your clothing in a
16 sexual way?

17 A Yes, ma'am, there were several times.

18 Q Before the intercourse?

19 A Yes, ma'am.

20 Q Can you tell us when that started and what type of
21 touching it was?

22 A I'm not sure how old I was when it started but I know
23 it was when I moved back in with my mom. I was about seven. I
24 was in first grade and he started putting his hands -- he would
25 go up under our shorts or our skirts or whatever we had.

1 Q I need you to limit what happened to you. Let me just
2 back up.

3 Did you have to do the first grade more than once?

4 A Yes, I did.

5 Q Tell me about your grades in first grade?

6 A I was doing good when I was living with my uncle and my
7 grandmother, but then I moved in with them and what he was doing
8 to me and and my mom she would get really mad because my grades
9 weren't good. And she was yelling and telling me that I'm
10 making D's and F's weren't acceptable in her house. So I just
11 started doing better in school. So that she would be happy.

12 Q Okay. So is that the time that he started digital
13 penetration?

14 A Yes.

15 Q So is it actual penetration?

16 A Yes ma'am.

17 Q How often was that happening? Before the intercourse
18 how often was he sticking his hands in your vaginal area?

19 A It would happen almost daily.

20 Q Where would you be when this would happen? Was it
21 always at home?

22 A It would be in the car or at the river. But most of
23 the time it happened at home.

24 Q So most of the time it was at home on a weekly basis,
25 more than once a week?

1 A Yes, ma'am.

2 Q Where were your sisters or your mom when this behavior
3 was going on?

4 A My mom was usually not home but if she was home she was
5 in the shower or she just wasn't home.

6 Q Okay. How about your sisters?

7 A He would make them go in the living room and watch TV
8 or he would do it under the covers discretely. He would -- some
9 times my sisters weren't home.

10 Q Okay. So this digital penetration continued until
11 intercourse started; is that correct?

12 A Yes, ma'am.

13 Q So, at the river how would that happen?

14 A He would pull me like he was going to hold me and he
15 would put his fingers down there in my vaginal area.

16 Q Now you're an adult now. We are using adult terms,
17 right?

18 A Yes.

19 Q As a child did you necessarily know --

20 A No.

21 Q Proper terms?

22 A No, I didn't.

23 Q But did you understand what was happening at the time?

24 A Understand that it was wrong. And I felt just
25 disgusting.

1 Q So when we was having intercourse -- well, let me back
2 up. Did you say he also touched you sexually in the car?

3 A Yes.

4 Q How did that happen?

5 A My mom use to work at cocoa -- cocoa factory in Indian
6 Land and one night he said I am going to go pick your mom up.
7 My two sister's were like I want to go, I want to go. And it
8 was about 10:30, 11 at night and he said, okay, come on and then
9 he changed his mind and said no, only Witness A can go. And I
10 didn't want to go because my sister's weren't going because I
11 knew what would happen, but he made my go and on the way there
12 he started going up my shorts and putting his fingers -- playing
13 with me. And he asked me if I I wanted him to pull over and I
14 said no because we got to pick my mom up. I don't want my mom
15 to be mad.

16 Q Okay. So, did most of the touching happen at home?

17 A Most of the time it did.

18 Q When he was having intercourse with you was that always
19 at home?

20 A Yes.

21 Q And this is at [REDACTED]?

22 A Yes.

23 Q So the time on your birthday was in that your parents'
24 bed?

25 A Yes.

1 Q Again at the time you thought he was your dad, right?

2 A Yes.

3 Q Was it in the bed every time, that same bed every time?

4 A No.

5 Q Okay. How many times did this happen? Do you
6 remember?

7 A I don't remember but it was a few times.

8 Q Was it the same every time? Did he do it the same way
9 every time?

10 A Yes.

11 Q So was your mom taking a shower or where was your mom
12 the other times other than your birthday?

13 A Usually she wouldn't be home.

14 Q Usually not home.

15 A There was one time she went to Walmart and she took my
16 sisters. It was summer and our room was off the hallway and
17 across from our room there's a window and that window was open,
18 because it was summertime, so she left the windows open. And I
19 was confined to my room. I don't remember what I was in trouble
20 for, but usually if she takes my sisters somewhere she would
21 take me, but that day she didn't take me. And he went in there
22 and he raped me and I saw the window open so I tried to scream
23 but he put his hand over my mouth.

24 Q So that was summer. Was that the summer when you were
25 11?

1 A I was -- that was probably after I turned 11. And when
2 my mom got home I told her why didn't you take me and you took
3 my sisters. She's like I don't know.

4 Q Was there a time when you were home sick and he tried
5 to touch you?

6 A Yes. I was home sick one winter and we had gone to
7 Rock Hill.

8 Q Who is "we" the family?

9 A My sister's were in school. I stayed home from school
10 because I was so sick. I think I had strep or pneumonia. I
11 don't remember what I had, but my mom kept me home and my mom
12 and me and her husband we all went to Rock Hill and I remember
13 we stopped to eat. She asked me what I wanted and I told her I
14 didn't want anything because I felt like I was going to vomit.
15 I was going to throw up. And when we got home she left to go
16 somewhere and he was lying on the couch watching TV and told me
17 to lay down with him and I told him please not today. I really
18 don't feel good.

19 Q So he asked you to lie down on on the couch with him?

20 A Yes.

21 Q And then what happened?

22 A He made me lie down with him and he started putting his
23 hands down my pants.

24 Q Did anything else happened? What happened after that?

25 A I don't remember.

1 Q Did you have intercourse?

2 A No.

3 Q Did he leave you alone?

4 A Eventually he did.

5 Q Okay. So this time when you were home sick do you

6 remember kind of a timeframe of when that was?

7 A I think I was about ten, ten years old.

8 Q So, when he was touching you putting his fingers inside

9 you did you ever tell anybody?

10 A No, I didn't.

11 Q And after it escalated to intercourse did you tell

12 anybody then when it was going on?

13 A No, I remember a time my mom sat down beside me and
14 told me that if I needed to tell her anything that I could tell
15 her but she was so mean all the time that I didn't feel like I
16 could trust her and he always told me that if I told her that he
17 was going to -- that my mom was going to kill me, and I didn't
18 care about that, but I didn't want it -- I didn't want it to be
19 by my mom's hands.

20 Q So were you afraid?

21 A Yes, I was.

22 Q Did you think people were going to believe you?

23 A No. I don't want to be called a liar and I didn't want
24 to be judged.

25 Q How did you feel about the fact that it was your dad

1 touching you or who you thought was your dad?

2 A I didn't know if it was the same everywhere. It was
3 just normal. It felt disgusting.

4 Q Did there come a time that you -- let me ask you this.
5 When you you moved out to live with Uncle Jimmy and Michelle,
6 did you tell anybody then what had been going on?

7 A I told Michelle.

8 Q Where were you when you told Michelle?

9 A She took me to the bus stop because it was a bad
10 neighborhood. So they would walk me to the bus stop her or my
11 uncle, and Michelle took me one morning and she just looked at
12 me. I was just quiet and just thinking in my head, you know. I
13 was wonder how my sisters are doing.

14 Q So your sisters were still in the house at that time?

15 A Yeah.

16 Q With your mom and the defendant?

17 A Yes, ma'am. And Michelle asked me she is like I
18 just -- -I just was wondering something and it's okay if you get
19 mad at me, but has he ever touched you all? And at first I
20 didn't say anything. I just stayed quiet and it was like but if
21 -- in my head I, am a thinking if I don't say anything I've seen
22 seen him touch ^{Witness B}.

23 Q So you told Michelle that he had been touching you?

24 A Yes.

25 Q How long had you been living with Jimmy and Michelle

1 when you told her?

2 A Probably a month or two. I can't remember.

3 Q Right after you told her what happened?

4 A She took me to this abandoned trailer in the
5 neighborhood and talked to me and she told me that she knew when
6 she had lost my virginity because she could see the changes in
7 me and that she was also raped when she was a little girl and
8 she just knew what was going on.

9 Q Okay.

10 A And she just kind of just calmed me down.

11 Q Okay. So did you continue living with Jimmy and
12 Michelle for a while?

13 A For a couple weeks I think and then my grandma took me
14 with her in Monroe.

15 Q Tell us about your relationship with your grandmother,
16 Lois, right?

17 A Yes.

18 Q What did you call her grandma?

19 A Well, when I was younger I called -- when I was way
20 younger maybe like four and under I called her mom.

21 Q Why is that?

22 A Because she raised me. My mom was never around.

23 Q Okay. You say your mom was never around. What do you
24 mean?

25 A My grandmother said she didn't want me. She said she

1 took me to a shed when I was a baby and left me in there and
2 that she would -- my grandma paid somebody to baby sit me when I
3 was baby, and she told my mom when she gets off of school go
4 pick me up. She never picked me up. My grandma always had to
5 pick me up when he she got out of work.

6 Q Okay. So were you and your grandmother close then?

7 A We were.

8 Q Okay.

9 A We were.

10 Q Are you not now?

11 A Not so much.

12 Q Did your grandmother take you to therapy after this all
13 came out?

14 A She did, but she was dealing with her own problems and
15 she would drink a lot and she just got tired of taking me and
16 stopped taking me.

17 Q And that was when you lived with her in Monroe after
18 Jimmy and Michelle?

19 A Yes.

20 Q Do you remember after all this came out if you ever
21 talked to law enforcement or anybody kind of with the
22 government?

23 A I did.

24 Q So when you were living with your grandma going to the
25 therapist were you -- or just after this happened, how did you

1 feel?

2 A I felt like -- you know, when you have something like
3 this built up in you and you go talk to a therapist you would
4 think that it would help you but it didn't help me. I think it
5 made my more suicidal then I already was.

6 Q You felt suicidal this is when were you 13?

7 A Thirteen, 14.

8 Q Did it affect the way you dressed?

9 A I think it did when I was younger.

10 Q Okay. Do you remember any other ways it may have
11 changed you?

12 A I became more rebellious and more just confined to
13 myself. I didn't want anyone knowing my personal business. I
14 didn't want anyone knowing anything about me. I didn't want
15 people to be close to me and I didn't want -- I just wanted to
16 stay to myself. Be left alone.

17 Q Does all this effect your family now?

18 A Yes. My family is attorney apart.

19 Q Is that part of why you're not as close to your
20 grandmother?

21 A They don't think I'm lying is what they tell me but
22 they don't want to be part of this thing.

23 Q Okay. Does it affect how you raise your little girl?

24 A Yes, it does. I'm extremely protective of her.

25 Q Can you describe that for us?

1 A Like for example my daughter -- I have full custody of
2 my daughter, but her dad has joint visitation -- joint custody I
3 guess,, or visitation rights for every weekend but he only wants
4 to get her every other weekend and I'm fine with that because I
5 can have her more to make sure she's safe. And he's not steady
6 or mature yet.

7 Q Okay.

8 A And he kept bringing these girls, different girlfriends
9 to my house and cussed him out one day and told him not to be
10 bringing these girls to my house because one day he's going to
11 make them mad and they will come looking for my daughter.

12 Q So going back to the way the defendant was touching
13 you, when did the sexual touching stop?

14 A When my mom kicked me out. Like sometimes he would
15 stop because he would think that I had a boyfriend or people
16 would say that I had a boyfriend and he would get mad and he
17 would stop for a while.

18 Q Did he ever accuse you of being with a boy when you
19 weren't?

20 A Yes, he did.

21 Q Tell us about that?

22 A The first time he raped me he said it went in too easy
23 and who was I having sex with.

24 Q And prior to that he had been sticking his fingers
25 inside you?

1 A Yes.

2 MS. BURCHSTEAD: I beg the Court's indulgence. If
3 I just may approach Your Honor?

4 THE COURT: Yes, ma'am.

5 Q Witness A I am showing you what has been marked as
6 States One for identification. Do you recognize that?

7 A Yes, that's me in fourth this grade.

8 Q So, it's a picture of you in the fourth grade. How old
9 were you in that picture?

10 A I was 11.

11 Q Okay.

12 A Ten or 11.

13 Q Okay. Let me now show you State's Exhibit Number Two.
14 Do you recognize what that is?

15 A It's another year book picture.

16 Q Okay. And how long are you in that picture?

17 A About nine.

18 Q Okay. And let me show you State's Number Three. Do
19 you recognize this?

20 A Yes, I do.

21 Q What is it?

22 A It's a little card that they give you in school. Like
23 if you get lost your parents will have them to find you.

24 Q Does it have a picture of you?

25 A Yes.

1 Q So that's your picture?

2 A Yes.

3 Q And how old are you in that picture?

4 A I was five.

5 Q So these are all pictures of you? State's Exhibit One
6 you are eleven, State's Two you are nine and State's Three you
7 are five; is that right?

8 A Yes, ma'am.

9 MS. BURCHSTEAD: Your Honor, at this time the
10 State would move Exhibits One, Two and Three into
11 evidence.

12 MR. GREGORY: Your Honor, I don't think there has
13 been a proper foundation laid for this. We don't know
14 who took the pictures and if it's a collage who
15 prepare the collage. We object on that grounds Your
16 Honor.

17 THE COURT: When you say a collage I haven't seen
18 them. May I see them.

19 MS. BURCHSTEAD: To that extent I believe she's
20 described that they are her. I don't think we need to
21 have the photographer.

22 THE COURT: If that's the only basis of you're
23 objection I am going to overrule the objection. She's
24 testified that it came from yearbooks or school.

25 MS. BURCHSTEAD: Yes, sir.

1 THE COURT: All right.

2 MR. GREGORY: Thank you, Your Honor.

3 THE COURT: I will allow those and admit them into
4 evidence as Plaintiff's One, Two and Three.

5 (State's Exhibit One, Two and Three, photographs,
6 were received in evidence as of this date.)

7 MS. BURCHSTEAD: Thank you, Your Honor, and
8 permission to publish. If I may just pass them to the jury.

9 THE COURT: Yes.

10 Q So Witness A those are pictures of you at five, nine and
11 11. At five he is been touching you outside your clothes, is
12 that right?

13 A Yes.

14 Q And at nine he had been sticking his fingers inside
15 you?

16 A Yes.

17 Q And at 11 intercourse?

18 A Yes.

19 MS. BURCHSTEAD: Beg the Court's indulgence.

20 Your Honor, that all the State's questions at this
21 time.

22 THE COURT: All right, Mr. Gregory.

23 CROSS EXAMINATION

24 BY MR. GREGORY:

25 Q Witness A, how old are you?

1 A I am a 28 years old.

2 Q How old?

3 A Twenty-eight.

4 Q How long have you been living with your grandmother?

5 A For about -- we all lived together when I was four. We

6 all lived together; my uncle, my grandma, my mom, her husband,

7 me my sister's lived together at four on [REDACTED].

8 Q All right.

9 A But I lived with her a few months after I told since

10 2002 until now.

11 Q So you lived with your grandma when you were age four

12 for a period?

13 A We all lived together.

14 Q You said you lived with Jimmy Joe Perez??

15 A Yes.

16 Q And his wife?

17 A His ex.

18 Q When was that?

19 A After my mom kicked me out when I was 13.

20 Q When you were 13. So, that would have been about 2002?

21 A Yes.

22 Q How long did you live with Jimmy Joe?

23 A May be a month or two.

24 Q A couple of months. Then you went back home to live

25 with your mother?

1 A No.

2 Q And father?

3 A No.

4 Q Who is your father?

5 A I don't know. I've asked my mom but she doesn't know.

6 Q Have you seen your birth certificate?

7 A Yes, I have.

8 Q What does it say on that about who your father is?

9 A Her husband adopted me.

10 Q Guadalupe Morales adopted you?

11 A Yes.

12 Q Okay. Was that done in Court?

13 A I'm not sure. I wasn't there.

14 Q All right. Why did you -- you say your mother kicked
15 you out. Why did she kick you out?

16 A I don't know why she kicked me out.

17 Q Did she kick you out because you were saying things
18 about your dad that weren't true?

19 A No.

20 Q Did she kick you out because you were running around
21 with boys in the neighborhood that she didn't approve of?

22 A No, I never ran around with any boys in the
23 neighborhood.

24 Q How did she kick you out?

25 A She just told me she regretted having me and she wanted

1 me to leave and get my things and leave.

2 Q And how old were you then?

3 A I was 13 the last time it happened.

4 Q And is that when you went to live with Jimmy Joe and
5 Michelle?

6 A Yes.

7 Q And you stayed with them a couple months and then you
8 came back home?

9 A No, I went to live with my grandmother.

10 Q Okay. So when you left -- after living with Jimmy Joe
11 and Michelle for a while you went to live with your grandmother?

12 A Yes.

13 Q And that is Lois Campos?

14 A Yes.

15 Q Whenever your mother would leave the house she took you
16 and your two sisters with you didn't she every time she left the
17 the house?

18 A No, she wouldn't, no. She would not take all three of
19 us every time.

20 Q When you said your mother was never around. I think
21 you said a while ago your mother was never around. Was she
22 working?

23 A Some times she would be working or some times she would
24 go to the grocery store.

25 Q Where was she working?

1 A She worked at a few places; Springs, a cocoa plant in
2 Indian Land and another plant out in Edgemore.

3 Q What was -- what were the hours when she worked?

4 A Mostly third shift, second shift.

5 Q Third shift what would that be? Would that be like
6 night shift?

7 A Night shift, evening shift, depending on the job she
8 got. She would work all shifts.

9 Q So she would be gone from the house from when, midnight
10 until eight in the morning or something like that?

11 A It depends on what job. Which job are you referring
12 to.

13 Q I think I heard you say earlier that your mother was
14 always kicking you and your sister's out?

15 A Yes.

16 Q So you weren't the only one that got kicked out of the
17 house?

18 A No, I wasn't.

19 Q All right, what were the other sisters, what were they
20 kicked out of the house for?

21 A I have no idea. I remember when she kicked my sister
22 ^{Witness B} out. Told her to put her things in the trash bag and my
23 sister ^{Witness B} I saw her walking down the road with her things in
24 the trash bag and she was going to go to a friend's house that
25 lived down the road in the same trailer park but down the road

1 and my mom went and got her before she could reach the door and
2 she was laughing about it. Like it was funny.

3 Q Would you consider your mother a strict disciplinarian?

4 A I would consider her strict in a way that is not sane.

5 Q She didn't let you do everything you wanted to do did
6 she?

7 A There wasn't much I wanted to do except play outside
8 and ride my bike.

9 Q I mean, she didn't let you get away with everything you
10 wanted to do, did she?

11 A Like what?

12 Q Did she rule with an iron hand when you did something
13 wrong you got punished for it?

14 A She grounded me. Made me stay in my room.

15 Q All right. Now after you lived with Jimmy and
16 Michelle, Jimmy Joe Perez and Michelle, now Jimmy Joe Perez is
17 your mother's brother?

18 A Yes.

19 Q So that's your uncle?

20 A Yes.

21 Q You moved in with your grandmother Lois?

22 A After I moved in with my uncle after I told Michelle my
23 grandmother took me to Monroe to live with her.

24 Q All right. And when did your grandmother Lois tell you
25 to report what you are saying to the Department of Social

1 Services?

2 A My grandmother wasn't even around. She was in Monroe
3 so she couldn't have told me to report anything.

4 Q I thought you lived with her? Was that in Monroe when
5 you lived with her?

6 A I lived in Monroe with her after I told Michelle.

7 Q After you told Michelle. How long was it between the
8 time you told Michelle and the time you told Lois?

9 A I didn't tell her, Michelle and my uncle told her,
10 after Michelle talked to me she took me to an abandoned trailer
11 in the neighborhood and we sat on the porch and we talked until
12 I calmed down and she took me back to the house where we were
13 living and she took my uncle into the next room and my uncle --
14 because my uncle was like, why isn't she going to school? Why
15 did you bring her back?

16 So she took my uncle into the next room and I guess she told
17 him and he got really upset and he went to a pantry that was in
18 the house and got a grilling fork and said he was going to kill
19 him. And I don't know when my grandmother arrived but it was
20 pretty quick. And they all sat in the living room and they
21 asked me if it was true and I told them yes, it was true. And
22 my uncle asked me was it rape and at the time I didn't know -- I
23 didn't know what that word met. And he said did he put his
24 penis inside of you and I just shook my head yes because its
25 uncomfortable. I felt uncomfortable. And I guess that's how

1 the authorities got involved and that's how my grandmother found
2 out. My grandmother didn't know prior.

3 Q What did your grandmother say?

4 A She was in shock. She was crying.

5 Q Did she tell you not to tell anybody?

6 A She didn't really talk to me. She -- her and my uncle
7 took me to my mom's job to tell my mom and when I did we kind of
8 lashed out at each other.

9 Q You kind of what?

10 A Lashed out at each other.

11 Q Did your grandmother encourage you to say that
12 Guadeloupe did what you said he did?

13 A No. No, she didn't.

14 Q Did someone take you to the doctor to be examined?

15 A Yes, someone did.

16 Q Who took you to the doctor?

17 A It was I think she was a police officer at the time.

18 Q A police officer?

19 A Well, she didn't dress like a police officer. She
20 dressed very casual but she was driving a government car.

21 Q Did your mother go with you?

22 A My grandmother went with me.

23 Q Your grandmother went with you. And where did you go
24 see the doctor?

25 A When?

1 Q Where?

2 A In Columbia, South Carolina.

3 Q You went to see the doctor in Columbia. Was it a
4 medical doctor?

5 A I believe so.

6 Q Did he examine you?

7 A Yes.

8 Q When did you tell your mother about it for the first
9 time?

10 A My grandmother took me to her job to tell her.

11 Q That's when you went to the doctor in Columbia?

12 A No, that's prior.

13 Q When?

14 A That was prior.

15 Q Okay. So you had already gone to the doctor in
16 Columbia?

17 A No, I told my mother prior.

18 Q Before you went to doctor in Columbia. Okay. Did she
19 take you to the doctor?

20 A No, my grandmother and another lady took me.

21 Q Was it Michelle?

22 A No, it was the government lady.

23 Q Okay. All right. So you're saying your mother never
24 took you to the doctor?

25 A No.

1 Q That's not what you are saying?

2 A No, she never took me to see the doctor.

3 Q Your mother never took you to the doctor to be examined
4 is that what you are saying?

5 A That's what I am saying.

6 Q Okay. How close are you and your sister ^{Witness B}?

7 A We're not -- I'm not too close to anyone, either one of
8 my sisters.

9 Q Are you closer to ^{Witness B} than you are your other sister,
10 Christina?

11 A I am because I love my nieces, my nephew.

12 Q You all talk to each other?

13 A We talk but not -- not like I guess a normal sister
14 would talk.

15 Q She is about three years younger than you are?

16 A Yes.

17 MR. GREGORY: Beg the Court's indulgence please.

18 THE COURT: Yes, sir.

19 Q When you were living which Jimmy Joe Perez and Michelle
20 where was that? What was the address?

21 A On [REDACTED].

22 Q On [REDACTED]. Isn't that where your grandmother
23 lived?

24 A She rented that house but my uncle, Michelle and her
25 two daughters lived there. The house was under my grandmother's

1 name. She lived there at one time but she moved to Monroe and
2 kept renting it under her name.

3 Q So when you moved in with Jimmy Joe and Michelle that's
4 when Lois moved out is that what you are saying?

5 A I don't know when she moved out.

6 Q Was she in the house when you were living with Jimmy
7 Joe and Michelle or not?

8 A She wasn't.

9 Q She was not?

10 A I never said she was.

11 Q Did you ever go to Texas with her?

12 A Yes, she took me to Texas.

13 Q With Lois, your grandmother?

14 A I don't remember because I was a baby but I know she
15 took me to Texas.

16 Q You know you went to Texas with her but you don't
17 remember --

18 A Because I was a baby.

19 Q -- because you were a baby?

20 A Uh-huh.

21 Q Well then, how could you know something that you don't
22 remember? Did somebody obviously told you?

23 A My mom told me, my grandmother told me, my uncle told
24 me.

25 Q Okay. Are there other things that you testified to

1 that people have told you to say today?

2 A No.

3 Q About^{Witness B}? Did she tell you to say something today
4 like you said?

5 A No.

6 Q How about Lois, your grandmother Lois?

7 A No.

8 Q Did Lois and Guadeloupe get along?

9 A I don't know if they get along. Right now?

10 Q I am talking about -- well, did they ever get along?

11 A I think they got along from time to time, but there
12 were times where they didn't get along.

13 Q There were times when they didn't get along, weren't
14 there? Do you recall the time when Guadalupe called her and
15 asked her to help out with the bills when she was living with
16 your mother and Guadalupe and she refused to help pay for the
17 bills and he came to the house and they got into an argument?

18 A I don't know anything about. I know when I was about
19 almost five we got kicked out; my grandmother, my uncle and
20 myself. We got kicked out. And I just remember him throwing
21 one of my grandmother's plates out the door and breaking a pot
22 and destroying it and I remember thinking I am going to be
23 homeless but at least I don't have to worry about him touching
24 me anymore.

25 Q You remember your grandmother being at the house, this

1 is when at the trailer park in Lancaster? Do you remember
2 living there?

3 A Yes.

4 Q What was the name of the trailer park?

5 A I don't remember the name of the trailer park but the
6 name of the road was [REDACTED].

7 Q [REDACTED]. Isn't that Restgate Trailer Park or [REDACTED]
8 [REDACTED], something like that? Isn't that the name of it?

9 A I'm not sure.

10 Q All right, do you recall Lois living there with you and
11 your mother and Guadalupe?

12 A And my uncle.

13 Q And your Uncle Joe, Jimmy Joe?

14 A Yes.

15 Q Do you remember the fight that Guadalupe had with Lois
16 about bringing men to the house and drinking?

17 A I don't know what the fight was for, but I know he got
18 pretty violent and my grandmother just grabbed me and said, come
19 on Witness A, let's go. Tell my uncle let's go.

20 Q And that was before you moved in with Jimmy Joe and
21 Michelle wasn't it?

22 A Yes, that was when I was about four, under five.

23 Q Did you -- have you ever had a paternity test conducted
24 with Guadalupe?

25 A No, but I don't need one.

1 Q Have you ever asked him to do that?

2 A No, but I believe my sister ^{Witness B} did.

3 MR. GREGORY: That's all the questions I have.

4 THE COURT: Miss Burchstead.

5 MS. BURCHSTEAD: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. BURCHSTEAD:

8 Q Witness A, are you making this up?

9 A No, I am a not making this up.

10 Q Did your grandmother tell you to make this story up?

11 A No, my grandmother wasn't nowhere around when I told
12 Michelle.

13 Q Michelle tell you what to say?

14 A No.

15 Q Are you making it up because you are mad at your mom?

16 A I wasn't mad at my mom. I was happy. I didn't want to
17 go back to that house, trailer, whatever you want to call it.

18 Q So, your grandmother hadn't told you what to say?

19 A No.

20 Q Do you want a relationship with your family?

21 A I don't care about my mom anymore. She's -- she's
22 ruined that chance but I want the rest of my family to come
23 together. I can see how it has affected some.

24 Q Back in 2002 you told Michelle what happened. That is
25 the first person you told, is that right?

1 A Yes.

2 Q Did you have to tell other people after that your
3 story?

4 A Yes, I had to.

5 Q It is a little bit -- that was back in 2002, right?

6 A Yes.

7 Q It's a little bit harder to remember all the details of
8 what happened after you told Michelle?

9 A It was. Some things I didn't really say because they
10 were just -- it was too much. But some things that were hard
11 because I really wasn't thinking about it and I didn't want -- I
12 just didn't want to be judged.

13 Q Okay.⁶ Do you remember everybody you had to talk to
14 involved with the investigation of the case after it came out?

15 A I don't remember everyone. I don't remember their
16 names but I remember what they looked like at the time.

17 Q And you remember what the defendant did to you when you
18 were a little girl?

19 A I do. I remember.

20 Q Okay.

21 MS. BURCHSTEAD: Nothing further Your Honor.

22 THE COURT: Mr. Gregory.

23 MR. GREGORY: No further questions.

24 THE COURT: All right. You may step down.

25 THE WITNESS: Thank you.

1 (WHEREUPON, the witness was excused.)

2 MS. BURCHSTEAD: Beg the Court's indulgence one
3 moment. I just want to make sure our next witness is
4 still out there.

5 THE COURT: Ladies and gentlemen, while she does
6 that anyone need a comfort break at this point.

7 JUROR: Yes.

8 THE COURT: You do, okay. Why don't we take a
9 quick just a five, ten minute break. Go to the
10 restroom and come back in. Keep in mind we are going
11 to break at two o'clock. So again, as I told you I
12 would I caution you don't talk about the case yet.
13 You you only heard from one witness. A lot more
14 witnesses to be heard from so please don't discuss the
15 case at all while you are in the break. Everyone
16 remain seated while the jury goes out.

17 (WHEREUPON, the jury leaves the courtroom.)

18 THE COURT: Are you ready to proceed.

19 MS. BURCHSTEAD: Yes, Your Honor.

20 THE COURT: Bring the jury in.

21 (WHEREUPON, the jury enters the courtroom.)

22 THE COURT: We took a little longer break than I
23 intended but we had to locate a witness and we have
24 the witness located now so we are ready to resume.

25 MR. KOZAK: The State calls Kristen Grant.

1 KRISTEN GRANT, called as a witness, having been
2 duly sworn by the clerk, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. KOZAK:

6 Q Please state your name for the record.

7 A Kristen Grant.

8 Q Ms. Grant, what is your current position?

9 A I am a special agent with the South Carolina Law
10 Enforcement Division commonly referred to as SLED.

11 Q And how long have you been with SLED?

12 A I have been at SLED for five years.

13 Q And what are some of your duties and responsibilities
14 at SLED?

15 A I'm a regional investigator. We investigate anything
16 from officer involved shootings to other agencies dealing with a
17 conflict within a case. We may assist with murders. Anything
18 -- corruption cases, misconduct cases. Anything like that.

19 Q And where did you work prior to SLED?

20 A Lancaster Police Department.

21 Q And were you working with Lancaster Police Department
22 at the time of this incident?

23 A I was.

24 Q All right. And when did you begin working for
25 Lancaster PD?

1 A I started working or Lancaster PD in '96.

2 Q And how long were you employed with Lancaster PD?

3 A Sixteen years.

4 Q So you went straight to Lancaster PD to SLED?

5 A Correct.

6 Q Okay. What were some of your duties and
7 responsibilities when you were serving with Lancaster PD?

8 A I started out as patrol officer on the road and I later
9 went to be an investigator.

10 Q How did you become involved in this case?

11 A Oh, at the time I was a corporal on patrol.

12 Q Okay, and so how did you become involved?

13 A We got a call from DSS. They were at the hospital with
14 an individual that had been sexually assaulted.

15 Q Okay. And what county was this?

16 A Lancaster County.

17 Q And once your agency began its investigation what was
18 its first step?

19 A The first step was we went to the emergency room and
20 spoke with DSS, the hospital staff and the victim and took an
21 incident report?

22 Q Did you speak with Witness A?

23 A I know we spoke with ^{Witness B} that night but I don't think
24 we spoke to Witness A that night?

25 Q Did you eventually speak with Witness A?

1 A We did.

2 Q Did she disclose to you that she had been sexually
3 assaulted?

4 A She did.

5 Q Did she tell you where those assaults took place?

6 A She did.

7 Q Where?

8 A [REDACTED]

9 Q Okay. So what is that location?

10 A It's a mobile home park in the City of Lancaster.

11 Q But according to her what was --

12 A That was her home. That was her residence.

13 Q Did she tell you when the assaults would took place?

14 A She did.

15 Q When did the assaults take place?

16 A She stated they started from the time she was three
17 years old until current. At that time she was 13 and she stated
18 they would take place when her mother was out of the residence.

19 Q Okay. Did you happen to notice her demeanor when she
20 disclosed this to you?

21 A I don't recall that at this time.

22 Q About how long ago was it?

23 A Its been almost 15 years.

24 Q Throughout your agency's investigation who else did you
25 speak with concerning these allegations?

1 A Sergeant Pat Parsons.

2 Q Who else did you speak concerning these allegations not
3 in your office?

4 A Within the family?

5 Q What other individuals just did you speak with
6 concerning these allegations?

7 A We talked to the other -- all the other children in the
8 home and then we talked to PCASA, which is our Palmetto Citizens
9 Against Sexual Assault as well as investigators in the
10 department.

11 Q After the agency spoke with the those individuals what
12 did you then do?

13 A We did some more interviews. We did forensic
14 interviews and then we followed up with an interview of the
15 subject in this case.

16 Q You said you involved DSS and PCASA. So, what is
17 PCASA?

18 A Well, DSS contacted us initially. That's how we got
19 contacted to the ER. Then we contact PCASA which is Palmetto
20 Citizens Against Sexual Assault. Any time we have a sexual
21 assault victim we contact them and they do our forensic
22 interview so it is a child friendly interview.

23 Q Okay, and is that common procedure in these cases?

24 A It is.

25 Q Do you know who at DSS or PCASA Witness A spoke with?

1 A I know initially it was Harry Broadwell and I believe
2 Ray Raney from DSS and then once PCASA got involved it was Margo
3 Dixon.

4 Q After all the investigation was done did you guys
5 arrest the defendant?

6 A We did.

7 Q What was the date of his arrest?

8 A I believe it was October the 29th, 2002.

9 Q So overall how long did the investigation take place?

10 A The initial -- when we responded -- we got the initial
11 call to go ER on October the 10th, 2002 at 12:50 p.m. and the
12 arrest was on 10-29-2002 at 5:17 p.m.

13 Q And once the defendant is arrested how is your agency
14 involved from that point on?

15 A Unless the solicitor's office requested anything
16 further our case is closed.

17 Q Once he is arrested you were done?

18 A Correct.

19 MR. KOZAK: No further questions, Your Honor.

20 THE COURT: Mr. Gregory.

21 MR. GREGORY: If it please the Court.

22 CROSS EXAMINATION

23 BY MR. GREGORY:

24 Q Officer Grant, is that how you're addressed now?

25 A Agent Grant.

1 Q Agent. All right. And you are with SLED.

2 A I am.

3 Q I understand your testimony was that you were on
4 patrol. You were a corporal on patrol at the time the call came
5 in?

6 A That's correct.

7 Q And that would have been October the 10th, 2002?

8 A Correct.

9 Q And 12:50 would have been, what, shortly after noon?

10 A Yes, sir.

11 Q And you received a call from DSS. I guess you got
12 dispatched?

13 A We were, yes.

14 Q The call came to Lancaster Police Department dispatcher
15 and they notified you and you went to ER?

16 A Correct.

17 Q That's the way it went. And you spoke with ^{Witness B}
18 ^{Witness B}?

19 A Yes, sir.

20 Q And you say you did not speak with ^{Witness A} ?

21 A Excuse my one moment please. According to my report we
22 did not that day.

23 Q All right. And so you only spoke with ^{Witness A} -- I
24 mean, I'm sorry. You only spoke with ^{Witness B} on the 10th of
25 October 2002?

1 A Yes, sir. According go to this report, yes, sir.

2 Q Did you talk to ^{Witness B} again after that?

3 A I did not.

4 Q Did anyone with the Lancaster Police Department talk to
5 ^{Witness B} after that?

6 A I believe Sergeant Parsons did.

7 Q All right. Do you recall ^{Witness B} coming to the police
8 department within three weeks of that date, October the 10th,
9 2002? It would have been probably the end of October stating
10 that what she had told you on October 10th was not true and it
11 didn't happen and that her grandmother told her to say that?

12 A She did not provide that information to me, no, sir.

13 Q She didn't provide that information to you?

14 A No, sir.

15 Q Was it provided to Sergeant Pat Parsons?

16 A I do not see that in this file book.

17 Q You don't know?

18 A I don't see it in this file book.

19 Q So that may have occurred. You just don't have a
20 record of it, would that be a fair statement?

21 A Not in the case file I have, no, sir.

22 Q But in any case you are not aware of her recanting her
23 testimony?

24 A No, sir, I am not.

25 Q So based on what ^{Witness B} said that she had been -- let's

1 see, what did you say abused, between the age three to the age
2 13?

3 A Witness A. Yes, sir.

4 Q Witness B ?

5 A Witness A.

6 Q That's what Witness B said?

7 A The information I have from the interview I did was
8 Witness A. Is the one that gave me that statement stating from
9 the time she was three.

10 Q All right. Was that on October the 10th, 2002?

11 A October 15th.

12 Q Okay. All right. I'm sorry. Let's back up to October
13 the 10th at the ER?

14 A Okay.

15 Q You talked to Witness B I think we established but you did
16 not talk too Witness A that day?

17 A Correct.

18 Q All right. On that day October the 10th, 2002 at the
19 ER, Witness B was the one that said that she had been assaulted from
20 age three to age 13, correct?

21 A I'm a not sure on the age of her.

22 Q I would think not because she wasn't but ten years old
23 at the time.

24 A Correct.

25 A Witness A was 13. Witness A is who I'm making the

1 statement about.

2 Q Is it possible you are confusing Witness A and ^{Witness B}?

3 A No, sir. I am reading based off of the three to 13
4 year old -- three to 13 years old is Witness A.

5 Q All right. But you didn't speak to Witness A on October
6 the 10th. It was five days later when you spoke to Witness A?

7 A Correct. She was interviewed October 15th.

8 Q All right. Now, in the house that this occurred it was
9 on [REDACTED] in Lancaster?

10 A Correct.

11 Q Are you familiar with that location?

12 A I am.

13 Q It's a trailer park in Lancaster?

14 A That's correct.

15 Q Off of West Meeting Street?

16 A That's correct.

17 Q Did it have a name? Did that trailer park have a name?

18 A We just always refer to it as [REDACTED]. It runs off
19 of Plantation to Meeting Street.

20 Q For some reason I thought it was Westgate?

21 A That's another one across the road.

22 Q Oh, there is one called Westgate but it's not that one?

23 A Correct.

24 Q Is there a [REDACTED], or was there a [REDACTED]
25 [REDACTED]?

1 A I think at one point in time some people may have
2 referred to [REDACTED] as [REDACTED]. But at the police
3 department we was always just referred to it as [REDACTED].

4 Q All right, we will call it [REDACTED] then. That was
5 the residence where these two girls were living?

6 A That's correct.

7 Q With their mother?

8 A Correct.

9 Q L.M. and their father, Guadeloupe Morales?

10 A Yes, sir.

11 Q As far as you understand?

12 A Yes, sir.

13 Q And you said you did some interviews after October the
14 10.th, who did you interview other than Witness A?

15 A On October -- that's it. October 15th I interviewed
16 Witness A.

17 Q All right. Did you interview anybody else?

18 A No, sir.

19 Q So you basically just interviewed two people?

20 A Yes.

21 Q Witness B and Witness A. What about the forensic witnesses?
22 Who were they?

23 A According to Sergeant Parsons' report it was Margo
24 Dixon, the report and DSS Agent Ray Raney and at the time
25 Solicitor Doug Barfield was there for the interview as well as

1 Sergeant Parsons.

2 Q All right. Now, was there an exam? Did an examination
3 of ^{Witness B} and/or Witness A take place at the emergency room?

4 A No, sir, they did not.

5 Q Why not?

6 A According to what the medical staff told Sergeant
7 Parsons was that too much time had passed.

8 Q All right. Too much time had passed. So there
9 evidently was no need to do an examination to see whether or not
10 any abuse had taken place at all?

11 A Based on what they told us that a year had passed since
12 the last incident. So they stated that they wouldn't do a
13 physical exam.

14 Q All right.

15 MR. GREGORY: That's all the questions.

16 THE COURT: Mr. Kozak.

17 MR. KOZAK: Thank you, Your Honor. Just briefly.

18 REDIRECT EXAMINATION

19 BY MR. KOZAK:

20 Q When you responded to the hospital what family members
21 were at the hospital?

22 A Witness B was there with the mother, L.M.
23 and the grandmother, Lois Campos.

24 Q So, was Witness A at the hospital when you responded to
25 the hospital?

1 A No, sir.

2 Q And what was the residence you said you responded to on
3 the call?

4 A [REDACTED].

5 Q And was Witness A living at that residence at the time?

6 A She was.

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

8 Q As far as you are aware is that the family home you
9 responded to?

10 A Yes.

11 MR. KOZAK: No further questions. Thank you.

12 THE COURT: Mr. Gregory, anything else?

13 MR. GREGORY: Yes, I do have one other question.

14 RECROSS EXAMINATION

15 BY MR. GREGORY:

16 Q You mentioned Sergeant Parsons?

17 A Yes, sir.

18 Q He assisted in the investigation along with you?

19 A He initially took the investigation, yes, sir.

20 Q All right. Is he here? Is he available? Does he
21 still work for Lancaster?

22 A No, sir, he is retired.

23 Q Okay. Would there be anyway to find out whether or not
24 he recalls --

25 MS. BURCHSTEAD: Objection. Calls for

1 speculation.

2 THE COURT: I agree. I will sustain the
3 objection. She couldn't know what -- well, you didn't
4 finish the question. Speculation.

5 Q Would there be any records that Officer Parsons would
6 have left to indicate a conversation with ^{Witness B} about some time
7 October -- toward the end of October 2002?

8 A I can't really answer that because I don't work at the
9 police department any more.

10 Q Okay.

11 MR. GREGORY: That's all the questions I have.

12 THE COURT: All right. You may step down. Thank
13 you.

14 MR. KOZAK: Your Honor, is it all right if we
15 have her excused?

16 THE COURT: Any objection to her being excused?

17 MR. GREGORY: No, sir, Your Honor.

18 THE COURT: Okay. You may be excused.

19 THE WITNESS: Thank you judge.

20 MS. BURCHSTEAD: Your Honor, may we approach for
21 one minute?

22 THE COURT: Yes.

23 (WHEREUPON, there was an off the record
24 discussion.)

25 THE COURT: All right, ladies and gentlemen, I

1 told you that we would break at two, but we just
2 concluded a witness so rather than start the
3 testimony of another witness and break that testimony
4 up we will go ahead and break for lunch. As I told
5 you earlier there will be food for you in the jury
6 room. Once you've eaten you are free to take the
7 remainder of your lunch break like you want to. Just
8 be back ready to start back at three o'clock. If you
9 don't want to eat I don't have a problem with you
10 leaving and going out now. But anyway there will be
11 food provided for you.

12 Mr. Sims.

13 JUROR: Yes.

14 THE COURT: I am going to appoint you as the
15 foreman of the jury. So from hereafter when you come
16 back out if you will take the first seat where the
17 lady in blue is. Always sit on that seat. As I
18 explained earlier you will be the spokesperson for the
19 jury. You will interact with the bailiff if necessary
20 and you will submit any questions to the Court in
21 writing. But I will explain that to you later as
22 well.

23 Everybody remain seated while the jury goes out
24 for lunch break.

25 (WHEREUPON, the jury leaves the courtroom.)

1 THE COURT: Anything, counsel, before we break
2 for lunch?

3 MR. GREGORY: No, Your Honor?

4 MS. BURCHSTEAD: Not from the State?

5 THE COURT: Be back at three o'clock.

6 (WHEREUPON, court was in recess.)

7 THE COURT: Counsel, are you ready for the jury?

8 MR. GREGORY: Yes, Your Honor.

9 THE COURT: Bring them in.

10 (WHEREUPON, the jury enters the courtroom.)

11 THE COURT: Who went outside to see the eclipse?

12 (Jurors raise their hands.)

13 THE COURT: Good. Okay. All right. Everybody
14 got lunch then so we are ready to proceed.

15 Miss Burchstead.

16 MS. BURCHSTEAD: Thank you, Your Honor. The State
17 calls Lois Campos

18 LOIS CAMPOS, called as a witness, having been duly
19 sworn by the clerk, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY BURCHSTEAD:

23 Q Good afternoon Miss Campos. Could you just tell the
24 jury your full name please.

25 A Lois Campos.

1 Q Where do you live Miss Campos? Where do you live?

2 A Monroe, North Carolina.

3 Q And how long have you lived in Monroe?

4 A About ten years. Ten. Maybe a little bit more. I'm
5 not sure.

6 Q I would ask if you could move the microphone down.
7 Make sure you project enough.

8 So, who do you currently live with?

9 A Excuse me.

10 Q Who are you living with right now?

11 A My granddaughter and her husband.

12 Q Okay. Who is your granddaughter?

13 A Witness A.

14 Q How do you feel about testifying today?

15 A I don't know.

16 Q Has it created a challenge for you with your family?

17 A Yes, ma'am.

18 Q Okay. Who's your daughter? Is L.M. your
19 daughter?

20 A Yes.

21 Q And she is married to Guadalupe Morales?

22 A Yes.

23 Q And they have children together?

24 A Yes.

25 Q Do you know whether Guadalupe is Witness A's dad?

- 1 A No, he is not.
- 2 Q And did you tell Witness A that?
- 3 A Yes, she knows.
- 4 Q Tell us about your relationship with Witness A?
- 5 A Her dad?
- 6 Q Your relationship with Witness A. Are you close to her?
- 7 A Just Witness A.
- 8 Q Did you -- did she ever come live with you? When she
- 9 was a little girl did Witness A come to live with you?
- 10 A Yes. Yes.
- 11 Q When did she come live with you?
- 12 A When she was born I had her up until she was I think
- 13 may be about four, four or three, and then she went back and
- 14 lived with with her momma.
- 15 Q Her mom L.M.?
- 16 A Uh-huh.
- 17 Q You have to answer yes or no.
- 18 A Sorry.
- 19 Q That's okay. You're not use to it. We understand.
- 20 Q So when Witness A went back to live with her mom L.M.
- 21 who else lived in the house when she moved back? Do you know?
- 22 A Her other two daughters.
- 23 Q Is that Witness B and Kristina?
- 24 A Witness B and Kristina, yes.
- 25 Q And what about the defendant, was he living there too,

1 with L.M. and the girls and Witness A moved back in?

2 A Yes.

3 Q Was there another time when Witness A came to live with
4 you when she was older?

5 A Yes, when she about 13.

6 Q Okay. And how did that come to be?

7 A That's when they were having problems and that's when I
8 was called and told that she had been messed with by her step
9 dad.

10 Q Who called you?

11 A My son, Jimmy.

12 Q Who is your son?

13 A Jimmy Perez.

14 Q So after Jimmy called you did you come get Witness A?

15 A Yes.

16 Q So was she living with Jimmy at the time? Was Witness A
17 living with Jimmy when he called you?

18 A Yeah, she was staying at the house where I would stay
19 here in Lancaster with my son.

20 Q Okay.

21 A And then after this happened I came down to talk to her
22 to see what was going on and she didn't want to stay down here
23 no more so I moved her with me to Monroe.

24 Q Okay. So were you coming to Lancaster like on a
25 weekends, is that right?

1 A Yes, on weekend.

2 Q Where were you working at the time? Were you working
3 somewhere.

4 A Yeah, I was working at Tyson in Monroe.

5 Q All right, so you were living in Monroe working at
6 Tyson when Witness A came to live with you?

7 A Yes.

8 Q And she had been at Jimmy's house when Jimmy called
9 you?

10 A Yes.

11 Q Did Witness A ever disclose that she was the victim of a
12 sexual assault to you?

13 A Yes, she told me.

14 Q Did she tell you where it was happening to her?

15 A Yes, she told me he had been touching her.

16 Q Was it when she was living at [REDACTED]?

17 A Excuse me.

18 Q Was it when she was living in the trailer at [REDACTED]

19 [REDACTED]?

20 A Yes.

21 Q Do you recall taking Witness A -- did you ever take
22 Witness A to talk to law enforcement or DSS?

23 A Yes, after talked to DSS.

24 Q Was that after Jimmy called you?

25 A Yes.

1 Q Did you ever take Witness A to see a therapist in Monroe?

2 A Yes, she went to therapist in Monroe.

3 Q Can you describe Witness A's behavior when she was living
4 with you, anything that you would consider outside the norm?

5 A She just act like she had this anger in her.

6 Q How is this affecting your family now?

7 A I don't know.

8 Q Is it hard for you?

9 A Yes.

10 Q Thank you.

11 MS. BURCHSTEAD: Your Honor, that is all the
12 State's questions right now.

13 THE COURT: Mr. Gregory.

14 MR. GREGORY: If it please the Court.

15 CROSS EXAMINATION

16 BY MR. GREGORY:

17 Q Miss Campos, have you ever gone by any other name
18 besides Campos?

19 A Yes, when I was married a long time ago.

20 Q Was it Martinez?

21 A Martinez, yes.

22 Q Did you ever go Lois Vasquez?

23 A No.

24 Q Did you ever go by Lois Perez?

25 A No.

1 Q You use to live in Texas?

2 A Yes.

3 Q Use to live on [REDACTED] in Lancaster?

4 A No, I live in Monroe.

5 Q Did you ever live on [REDACTED] in Lancaster?

6 A Oh, yes. Yes.

7 Q When?

8 A I can't remember how long it's been.

9 Q Did you ever live on [REDACTED]?

10 A Yes, that's where I stayed with my daughter back then.

11 Q Where did you live before you lived with your daughter
12 on [REDACTED]?

13 A I was in Texas at that time.

14 Q Would that have been in the 1990's?

15 A It might have been. I don't remember.

16 Q Do you recall being arrested in Lancaster -- -

17 MS. BURCHSTEAD: Objection.

18 Q -- in the 1990's?

19 THE COURT: Okay, and your basis?

20 MS. BURCHSTEAD: I will need to look back at my
21 impeachment rules, judge, but unless it's for -- I
22 need to know what it is.

23 THE COURT: All right. Let's send the jury out for
24 a moment. I'm sorry ladies and gentleman, send you
25 back to the jury room.

1 (WHEREUPON, the jury leaves the courtroom.)

2 THE COURT: All right. Mr. Gregory, what are you
3 pursuing.

4 MR. GREGORY: Your Honor, I was asking the witness
5 about being arrested in Lancaster in the mid 1990's
6 after she had moved back to Lancaster from Texas or
7 moved to Lancaster from Texas.

8 THE COURT: How long has that been?

9 MR. GREGORY: And the State objected. I'm not sure
10 exactly what the date was. It would be from '94 to
11 '97. Somewhere in that range.

12 THE COURT: You are talking well over ten years
13 ago then.

14 MR. GREGORY: It would have been.

15 MS. BURCHSTEAD: Your Honor, I would say I don't
16 know even know what it is, first of all. Right, it is
17 over ten years. So unless it was a crime of
18 dishonesty it's only an arrest not a conviction. It's
19 improper and it's prejudicial.

20 THE COURT: Is this the first you heard of this
21 Miss Burchstead.

22 MS. BURCHSTEAD: Yes, Your Honor.

23 THE COURT: So you were given no prior notice?

24 MS. BURCHSTEAD: Correct.

25 THE COURT: Okay. What about that Mr. Gregory?

1 MR. GREGORY: I am sorry.

2 THE COURT: What about the fact that you didn't
3 put her on notice that you were going to raise this
4 issue? This is something that is more than ten years
5 old.

6 MR. GREGORY: Yes, I did not do that. I did not
7 become aware of this incident until just recently so I
8 didn't put her on notice.

9 THE COURT: How recently though, before today.

10 MR. GREGORY: Yes, sir. It was last Friday, this
11 passed week.

12 THE COURT: Okay. I don't even know what your
13 asking she is arrested about.

14 MR. GREGORY: I don't either. That's why I asked
15 the question. I guess I can cross examine her out of
16 the presence of the jury to see if I can find out more
17 information, but I don't know anything more than what
18 I just provided the Court.

19 THE COURT: If it's something that is more than
20 ten years ago, unless you can show some way that, you
21 know, its not so prejudicial might could consider it.
22 But being over ten years ago I think it would be more
23 prejudice.

24 MR. GREGORY: I agree. It would have had to been
25 over ten years ago.

1 THE COURT: I am not going to let you proceed.

2 MR. GREGORY: All right. I will move on to
3 something else Your Honor.

4 THE COURT: Okay. All right, let's bring them
5 back in.

6 (WHEREUPON, the jury enters the courtroom.)

7 THE COURT: All right. Ladies and gentlemen, that
8 was one of those instances where we had to discuss a
9 matter of law that I explained to you earlier where
10 you might be asked to go back to the jury room. I
11 hate to have to do that but it was necessary. We are
12 ready to proceed at this point in time.

13 Mr. Gregory.

14 MR. GREGORY: Thank you, Your Honor.

15 RE CROSS CONT'D:

16 Q Miss Campos, have you ever been involved in any civil
17 litigation?

18 A Have I ever what?

19 Q Have you ever brought a lawsuit against someone?

20 MS. BURCHSTEAD: Objection. Relevance?

21 A No. No.

22 THE COURT: What would be the relevance of that
23 question?

24 MR. GREGORY: Well --

25 MS. BURCHSTEAD: May we approach Your Honor?

1 THE COURT: Yes, ma'am. I will not send you out
2 at this time.

3 (WHEREUPON, there was an off the record
4 discussion.)

5 THE COURT: All right. With regards to your
6 objection Miss Burchstead, I'm sustaining your
7 objection. That's not a relevant question.

8 MS. BURCHSTEAD: Thank you, Your Honor.

9 MR. GREGORY: Thank you.

10 Q All right. Miss Campos, you lived in Texas and then
11 you moved to Lancaster. Where did you live when you moved from
12 Texas to Lancaster?

13 A I lived in Corsicana County Texas.

14 Q In Texas. After you left Texas did you move to
15 Lancaster?

16 A Yes.

17 Q All right. Where did you live when you moved to
18 Lancaster?

19 A When I came back from Texas I lived on [REDACTED] with
20 my daughter when I came back.

21 Q [REDACTED]?

22 A On [REDACTED], yes.

23 Q [REDACTED]?

24 A In a trailer park, yes.

25 Q When did you live on [REDACTED]?

1 A That was after I moved out from the house.

2 Q That was a house.

3 A After I moved that's where I moved to.

4 Q So you moved in with your daughter and her husband on

5 [REDACTED] when you came from Texas. Then after a period of

6 time you moved into a house on [REDACTED]?

7 A Yes.

8 Q Was was the number of that house?

9 A I don't remember.

10 Q All right. When was that? How long did you live on

11 [REDACTED] before you moved to the house on [REDACTED]?

12 A I don't remember.

13 Q All right. How long did you stay at the house on [REDACTED]

14 [REDACTED]?

15 A About about a year maybe.

16 Q About a year maybe. All right. And then after that

17 you moved to Monroe?

18 A Yes.

19 Q All right. So you didn't live anywhere in Lancaster

20 between the time you lived in the house on [REDACTED] until

21 you moved to Monroe?

22 A No.

23 Q Is that right?

24 A I didn't live no where else just there in Monroe.

25 Q All right. When did Witness A move in with you?

1 A I don't remember the year exactly.

2 Q All right. Do you remember taking Witness A to Texas
3 with you?

4 A Yes.

5 Q Was that after you had moved from Texas to Lancaster?

6 A Yes. /

7 Q All right. When you went to Texas what part of Texas
8 did you go to? What town did you go to?

9 A That was in Corsicana Texas.

10 Q Cristiana?

11 A Corsicana. I don't know how to spell it.

12 Q All right.

13 A Sorry.

14 Q Is that the same place that you were living before you
15 moved to Lancaster, the same town?

16 A Let's see -- no.

17 Q All right. All right, where did you live in Texas
18 before you moved to Lancaster for the first time?

19 A I lived Ennis Texas.

20 Q Where?

21 A Ennis Texas.

22 Q All right. Why did you take Witness A to Texas with you?

23 A Because at the time that's when she was staying with
24 me.

25 Q The time she was what?

1 A She was staying with me. At the time she was living
2 with me.

3 Q Now, how long did you live on [REDACTED] -- at [REDACTED]
4 with with your daughter and her husband?

5 A I can't remember how long it was.

6 Q Would it be a year or more?

7 A It couldn't be more than a year.

8 Q It was less than a year. All right. During that
9 period of time did Guadalupe -- how do you call him? Do you
10 call him Guadalupe?

11 A I call Melqueades. I mean that's his middle name or
12 something.

13 Q All right. Did he ever ask you to help pay for the
14 household expenses?

15 A I can't remember.

16 Q Did you ever work at the China Inn?

17 A China Inn. Yeah, I worked at the China Inn.

18 Q Do you remember getting a call from Guadalupe while you
19 were at the China Inn and ask you if you would help him pay for
20 the household expenses?

21 A No. I mean why would he call me if I lived there. He
22 should have told me when I got home. I don't remember him
23 calling me.

24 Q Do you ever remember him asking you to pay for the
25 expenses?

1 A No. No, I don't remember.

2 Q Did you ever assist financially? Did you ever help pay
3 for the expenses?

4 A No, but I did by groceries.

5 Q You bought groceries?

6 A I bought groceries, yes.

7 Q Did you and Guadeloupe get into an argument about
8 paying for the expenses?

9 A I remember we got into an argument but I don't remember
10 if that was the case though. I don't remember if that was the
11 the case.

12 Q Do you remember calling 911?

13 A Yes.

14 Q All right. Did the police come?

15 A Yes, they did.

16 Q At [REDACTED]? This was on a Friday, right?

17 A Excuse me.

18 Q This was on a Friday, the day of the week?

19 A I don't remember what day it was.

20 Q All right. If it was on a Friday then you move out of
21 the house on Monday?

22 A Yes.

23 Q Does all that sound right?

24 A I don't remember. I don't think -- I don't remember.

25 Q Why don't you tell me what happened then?

1 A All I know we got into an argument. So the police was
2 called because he was throwing my stuff out.

3 Q He was throwing what?

4 A Throwing my things out from the trailer.

5 Q He was throwing your things out of the house?

6 A Yes.

7 Q And that's why I call the police so he stop would
8 throwing my stuff out. So then they told him that he couldn't
9 do that because since I was staying there he couldn't just throw
10 me out like that.

11 Q So --

12 A Then I did eventually move out as soon as possible.

13 Q So you moved out on your own then?

14 A Yes.

15 Q And you weren't thrown out?

16 A No, I moved out on my own.

17 Q Did you and Guadeloupe ever get into a discussion about
18 you bringing men to the house, boyfriends?

19 A Yes.

20 Q All right. Did he -- did you all disagree on that?

21 A Yes, we did.

22 Q All right. He didn't like it? He didn't -- Guadalupe
23 did not like you bringing men friends to the house?

24 A No.

25 Q Did he ask you to stop doing that?

1 A He might have. I don't remember.

2 Q Did you stop doing it when he may have asked you to
3 stop?

4 A Yes, I did.

5 Q But not immediately. You continued to do it after he
6 asked you to quick didn't you?

7 A No.

8 Q Were you drinking at the house with these guys?

9 A Yes, I drink. He drink too.

10 Q Did he ask you not to bring guys over the house and be
11 drinking in the house?

12 A Excuse me.

13 Q Did Guadalupe ask you not to bring guys into the house
14 and be drinking with the the guys in the house?

15 A Yes, I was.

16 Q Did he ask you to quick doing that?

17 A He asked me not -- I think he asked me not to bring the
18 guys back. He didn't say anything about the drinking.

19 Q All right. What did your daughter have to say about
20 this? Was she on your side or was on Guadalupe's side?

21 A She stayed mostly out of it.

22 Q She what?

23 A She stayed mostly out of it.

24 Q She stayed out of it. All right, well, when you moved
25 out of the house did she try to get you to come back?

1 A No.

2 Q And Witness A went with you when you left the house,
3 right?

4 A Yes.

5 Q And that's when you moved to [REDACTED]?

6 A No, I didn't move to [REDACTED] at that time.

7 Q Where did you go between [REDACTED] and [REDACTED]?

8 A I can't remember the name of the street but it was
9 apartments where I moved to. I can't remember the name of the
10 apartments.

11 Q You went to an apartment. You don't remember the name
12 of it?

13 A I don't remember the name of it.

14 Q Do you remember where the apartment was located?

15 A I remember where the apartments are located.

16 Q All right, where was it located?

17 A It was -- it was -- I can't -- I can't remember.

18 Q Was it in Lancaster?

19 A It's in Lancaster, yes.

20 Q All right. Did you tell Witness A to say that Guadalupe
21 had done things to her that he hadn't done?

22 A No. I will not tell none of my kids to say anything
23 like that.

24 Q You didn't tell her to say that?

25 A No.

1 Q Did you tell ^{Witness B} to say that?

2 A No.

3 Q Did you know that ^{Witness B} has said that Guadalupe did
4 things to her that he hadn't done?

5 A Excuse me.

6 Q Did you know that ^{Witness B} has said the same thing ^{Witness A}
7 is saying?

8 A Yes.

9 Q You do? Did you tell her to say those things?

10 A No.

11 Q Do you know who ^{Witness A's} father is?

12 A No.

13 Q Do you know who is ^{Witness B's} father is?

14 A Yes.

15 Q Who?

16 A That's -- I just know his first name. I don't know his
17 last name. His name is Billy.

18 Q What's his first name?

19 A Billy.

20 Q Willy?

21 A Billy.

22 Q Billy, B-i-l-l-y?

23 A Yes.

24 Q When is the last time you've seen Billy?

25 A Its been a long time. We moved.

1 Q When you moved where to Monroe?

2 A That's at the time when we lived in Edgemore.

3 Q When you lived in Edgemore?

4 A Yes.

5 A That's where she met that boy and that's how she --

6 Q Okay, so, you must have moved somewhere between the
7 time you left Texas and the time you moved to Lancaster?

8 A Yes, because when we came -- when we came from Texas --
9 when I came from Texas down here I moved. I was staying -- I
10 worked in Richburg.

11 Q You worked in Richburg?

12 A In Richburg, yes. So I was staying in Fort Lawn and
13 then from Fort Lawn we moved to Edgemore and then from Edgemore
14 that's when we came to Lancaster.

15 Q All right. Okay. Did you discuss the situation
16 involving Witness A and ^{Witness B} with your daughter?

17 A No, we never talked about it.

18 Q You don't get along with your daughter?

19 A I mean we talk, but we don't discuss -- talk about the
20 situation. We never did. We just ---

21 Q How do you get along with with Guadaloup?

22 A Well I mean, some times we speak but we don't have like

23 ---

24 Q You don't talk on a regular basis?

25 A No.

1 Q When is the last time you spoke with Guadaloup?

2 A The last time I spoke to him. Let me see. It was one
3 day when I went to go see my daughter. Probably about two
4 months ago. Probably about two months ago.

5 Q Was that on the phone or you saw personally?

6 A In person.

7 Q What did you talk about?

8 A We didn't talk. Just said like hello.

9 MR. GREGORY: That's all the questions I have.

10 Thank you, Your Honor.

11 THE COURT: Miss Burchstead.

12 MS. BURCHSTEAD: Thank you, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. BURCHSTEAD:

15 Q Miss Campos, your daughter is L.M. , right?

16 A Excuse me.

17 Q Your daughter is L.M. , Witness A's mom?

18 A Yes.

19 Q Do you want to have have a relationship with her?

20 A Yes, I want to have a relationship with all my kids.

21 Q But you all don't talk about this situation?

22 A No.

23 Q Has that been hard on the family?

24 A Excuse me.

25 Q Has this situation been hard on the family?

1 A Yes.

2 Q Did you tell Witness A or anybody to make up sexual
3 assault?

4 A About what?

5 Q Did you tell Witness A to make up that she had had been
6 sexually assaulted? Did you tell her to lie about Guadalupe?

7 A No. No.

8 MS. BURCHSTEAD: Nothing further Your Honor.

9 THE COURT: Mr. Gregory.

10 MR. GREGORY: No further questions.

11 THE COURT: You may step down Miss Campos.

12 MS. BURCHSTEAD: May she be excused Your Honor?

13 MR. GREGORY: We have no objection.

14 THE COURT: Okay. You may be excused Miss Campos.
15 You can leave.

16 MS. BURCHSTEAD: May we approach Your Honor.

17 THE COURT: Yes.

18 (WHEREUPON, there was an off the record
19 discussion.)

20 THE COURT: All right, ladies and gentlemen, the
21 the attornies have discussed with me the scheduling of
22 the rest of the witnesses that need to testify. The
23 case has moved a little bit faster then they had
24 anticipated. The remaining witnesses for the State
25 were put on notice to be here tomorrow so we will take

1 a break for the afternoon until tomorrow with regards
2 to this case. Come back tomorrow morning and conclude
3 the testimony tomorrow. We will see how far we can
4 get. The case may very well go into Wednesday
5 depending on how long the witnesses take to testify
6 tomorrow just for your scheduling purposes.

7 As I cautioned you earlier please do not discuss
8 the case with anybody when you get home tonight or on
9 your way in and out. Please don't discuss the case.
10 As I said the State is still putting up there evidence
11 at this point in time. We have yet to hear from the
12 defendant at all in this matter so I don't need
13 anybody to start forming any opinions or make any
14 decisions at this juncture.

15 We have some legal matters that we need to take up
16 after you leave so we are going to be here for a
17 little while getting those out of the way so it won't
18 delay things tomorrow morning. Why don't you be here
19 ready to start at 9:30 tomorrow morning. Everybody
20 remain seated while the jury is excused.

21 (WHEREUPON, the jury leaves the courtroom.)

22 THE COURT: All right, counsel.

23 MR. GREGORY: Your Honor, we haven't discussed
24 this until now but my client has been on recognizance
25 bond, surety bond for 15 years and he hasn't gone

1 anywhere so I would appreciate if the Court would
2 consider letting him stay at home so we will prepare
3 for our defense tomorrow and Tuesday night if it goes
4 on to Wednesday.

5 THE COURT: I don't know. Does the State take any
6 position. I normally detain them.

7 MS. BURCHSTEAD: We object, Your Honor. Based on
8 the seriousness of the charges and the amount of time;
9 CSC, first degree he faces 25 to life. Given that I
10 just can't consent and in fact I oppose.

11 THE COURT: Yes, and then obviously if we do that,
12 I know he has been here 15 years, but I mean he
13 obviously has ties to Mexico and he could, you know,
14 very well get cold feet over night and hopefully you
15 prepared before now anyway for his defense. You are
16 not going to prepare it tonight. I am inclined to
17 require him to be detained at this point in time. We
18 are in the mist of the trial. So conditions of his
19 bond have been met.

20 MR. GREGORY: I understand.

21 MS. BURCHSTEAD: That's the State's position. And
22 just before we get rolling tomorrow I wanted to get a
23 final ruling from the Court on the bad act testimony
24 we intend to elicit from **Witness B**. You heard from
25 the victim today and of course we argued the matter

1 before Your Honor a few weeks back in Chesterfield and
2 did pass up a memo on that primarily on the case law
3 but just to remind Your Honor the similarities of what
4 we heard from ^{Witness B} pretrial and what we now heard from

5 Witness A . The defendant's conduct started around
6 three or four for each of the girls. Each of them
7 believed them to be their father. That's the main
8 consistency here where we believe it is a common
9 scheme or plan where he was taking advantage of his
10 familial relationship with these girls to -- in
11 furtherance of his sexual gratification. The location
12 he used was primarily the home when the mother was
13 away most of the time. And it occurred in a similar
14 manner in the sense that it began with grooming,
15 touching outside the clothes and then under the
16 clothes and went father with Witness A but of a similar
17 nature. And we do believe the similarities outweigh
18 the dissimilarities again focusing on the familial
19 relationship and remind the Court of all the case law
20 that supports allowing it in in those circumstances
21 with that familial relationship in particular.

22 I will be happy to articulate further if you like
23 but we have heard from Witness A now and she has
24 stated that it began when she was four, touching
25 outside then inside, then intercourse, and of course

1 the familial relationship and you heard her testimony,
2 judge, and I will elaborate further if you like.

3 THE COURT: Okay, Mr. Gregory.

4 MR. GREGORY: Your Honor, since the ruling that
5 you made in Chesterfield on a temporary basis. We
6 heard some testimony. We haven't heard ^{Witness B's}
7 testimony but we did hear it there that day. It
8 appears to me that it is becoming a little bit more
9 clear as to where the conspiracy is, if that's what
10 you want to call it; the pattern. And I think that
11 now I'm seeing a pattern of -- I'm seeing a pattern of
12 conspiracy. And I don't really want to call it that
13 because it's not really legal criminal conspiracy.
14 But the consortium of witnesses that are saying the
15 same thing for the same reason. We believe it's
16 vindication. We believe it came from -- it's stemming
17 from the grandmother. But now after hearing ^{Witness A's}
18 testimony it appears to be clear that's what it is.
19 So we think that the testimony of ^{Witness B} is -- will be
20 improper bolstering of ^{Witness A's} testimony. We think
21 it is improper and should not be allowed.

22 THE COURT: Okay. Well, I heard the testimony. I
23 heard the testimony from ^{Witness B} at the hearing in
24 Chesterfield and now that I've heard ^{Witness A's}
25 testimony it's clear that their testimony, everything

1 else aside their testimony does have a number of
2 similarities and I do find that the similarities
3 outweigh the dissimilarities and taking their
4 testimony would tend to show a common scheme or plan
5 by Mr. Morales.

6 The fact that the grandmother and you contend that
7 the grandmother may have something to do this. That
8 is something you can certainly argue to the jury if
9 you want to when the time comes. But with regards to
10 the actual offering of ^{Witness B} as a witness, I'm going to
11 find her testimony will be admissible and I will allow
12 her to testify tomorrow.

13 MR. GREGORY: All right. Thank you, Your Honor.
14 And there's one other thing that we covered at the
15 bench and the jury was in the room, now that the jury
16 is out of the courtroom I would like to get a ruling
17 on the issue that came up in with regards to my
18 questions of Lois Campos has she ever been involved in
19 a civil litigation. Has she ever brought suit against
20 anyone. She said no. And it's public record of an I
21 suit in 2004, where she brought and action against
22 Shannon Rivers, [REDACTED] Flintridge Road, Heath Springs.
23 She denied that and I realize that it may not have
24 been pertinent at that time. May not have been
25 relevant. But since she denied it and it's a matter

1 of public record that raises an issue of her
2 credibility. And the Court ruled that I could not
3 pursue that. I just wanted to get that ruling on the
4 record.

5 THE COURT: When the question was asked counsel
6 immediately objected to the question. The fact that
7 she responded before counsel could argue her objection
8 doesn't make it an irrelevant question relevant all of
9 sudden and I understand your position that well, maybe
10 she is -- we can can impeach her, but the fact that it
11 was irrelevant can't make it relevant at some point in
12 time. So I find the question itself was irrelevant
13 and therefore is not admissible, and I am not going to
14 allow to you pursue that.

15 MR. GREGORY: I understand.

16 THE COURT: The record will be clear for you in
17 regards to appeal.

18 MR. GREGORY: Thank you Your Honor.

19 THE COURT: Anything else?

20 MS. BURCHSTEAD: That's all we have, Your Honor.
21 We will be ready to go to proffer that testimony.

22 THE COURT: Is he going to be first?

23 MS. BURCHSTEAD: I think he will be first. If you
24 like us to try and get here earlier that way the jury
25 is not waiting too long.

1 THE COURT: If that is going to be the situation..

2 MS. BURCHSTEAD: We can arrange it however you
3 want, but he does need to testify in the morning.

4 THE COURT: I scheduled a conference call at 9:15
5 thinking I would get that out of the way so that we
6 can start at 9:30.

7 MS. BURCHSTEAD: We could put up some other
8 witnesses and may be on a break proffer his testimony.
9 But we would like to get him done in the morning. We
10 do have a couple other witnesses. We don't think his
11 testimony is going to be that long.

12 MR. KOZAK: If he bring him in and immediately
13 proffer him 9:30 and make sure there is no hi-cups in
14 the testimony we are fine doing that. I don't think
15 it will take long to proffer him.

16 THE COURT: I wouldn't think so.

17 MR. KOZAK: Right.

18 THE COURT: But we -- if we get the jury here at
19 9:30 we can let them know that we are taking up some
20 legal matters. If you have no objection I will have
21 the bailiff let them know we are taking up some legal
22 matters and we will get started with the trial after
23 and hopefully it wouldn't take thirty minutes anyway.

24 MS. BURCHSTEAD: Right. We'll be ready to roll
25 and as we discussed at the bench we don't think we

1 will go pass early afternoon with the State's case.

2 THE COURT: Okay. That way I could get my
3 conference call out of the way and be ready to start
4 9:30. So we will do that.

5 MS. BURCHSTEAD: Thank you judge.

6 MR. GREGORY: Thank you.

7 THE COURT: Have a good evening.

8 (WHEREUPON, court was in recess.)

9 (WHEREUPON, the trial continued on August 22, 2017)

10 (WHEREUPON, the jury was not present for the
11 following examination.)

12 MR. KOZAK: The State calls David Kellin.

13 DAVID KELLIN, called as a witness, having been
14 duly sworn by The Clerk, was examined and testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. KOZAK:

18 Q Please state your name for the record.

19 A Mahlon David Kellin.

20 Q And Mr. Kellin where are you employed?

21 A I work as a counselor at the Palmetto Citizens Against
22 Sexual Assault and I also have a private practice.

23 Q And what are your duties there?

24 A I counsel children who have been sexually or physically
25 abused and trauma services.

1 Q And what is your title?

2 A Basically a counselor.

3 Q Okay. What is your educational background?

4 A I have masters degree in social work, I have an
5 undergraduate BS degree in psychology.

6 Q And where did you go to school?

7 A I went to for my BS in psychiatry I went to Lander
8 University and I finished my master in social work at UNC.

9 Q And what did you get your undergraduate -- I probably
10 covered this, but where did you get your undergraduate and
11 graduate degrees in?

12 A Undergraduate degree is in psychology and then masters
13 degree was in social work.

14 Q All right. Do you have any specialized training?

15 A I do. I have been trained in finding words as well as
16 extended forensic interviewing through the NCAC in Huntsville
17 Alabama. I've taken advanced forensic interviewing as well as I
18 have been trained in trauma-focused cognitive behavior therapist
19 and a number of other trainings I have attended over time.

20 Q And what training do you have in counseling sexually
21 abused individuals?

22 A That the trauma-focused cognitive behavioral therapy.

23 Q Would you explain what that is a little bit?

24 A Basically when there's a trauma we look at trying to
25 help the child cope with the thoughts that come from what

1 happened. It's not necessarily what happened that's the problem
2 it's their reaction to them. And so in my work with kids it's
3 to get the children to be able to come to terms with what
4 happened and also what do they want to go forward with that. So
5 a lot of its questions. A lot of 'it's why did it happen to me.
6 Why did they choose me.

7 Q Okay. Do you hold any professional licenses?

8 A I'm a licensed professional social worker, licensed
9 social work for the State of South Carolina.

10 Q All right. How many years have you counseled children
11 and adults involved in sexual abuse?

12 A From a formal focus on them about nine years, eight to
13 nine years. I have been counseling children for going on 26.

14 Q And do you counsel anything other than children? What
15 types of people do you counsel?

16 A I have a general practice with my private practice
17 where I will counsel anybody, but at PCASA I focus on children
18 or adults who have been sexually or physically abused.

19 Q Okay. Do you provide any professional training or
20 teach others in your field?

21 A Yes, I have taught several classes. There are many of
22 them.

23 Q Right. Okay. Have you testified in court before?

24 A I have.

25 Q About how many times have you been qualified as expert?

1 A It has been over ten. I don't keep a count of the
2 individual appearances.

3 Q How many times in General Sessions?

4 A Probably about ten. For Family Court probably closer
5 to fifty.

6 MR. COSSAK: At this time I would like to enter
7 David Kellin as an expert in child maltreatment and
8 child abuse dynamics.

9 THE COURT: What is the first one?

10 MR. KOZAK: Child maltreatment and child abuse
11 dynamics.

12 THE COURT: Okay.

13 Q Mr. Kellin, have you had any contact with the victim in
14 this case?

15 A No.

16 Q Have you ever spoken with the victim in this case?

17 A No.

18 Q Have you viewed any of her statements?

19 A No.

20 Q Have you seen any evidence in this case?

21 A No.

22 Q Other than the conversations you had with me have you
23 done any investigatory work or interviewed anyone involved in
24 this case?

25 A No.

1 Q Okay. Will you just describe for the Court what a
2 purposeful disclosure is?

3 A A purposeful disclosure is when someone makes a chose
4 to disclose something. So in the case of child abuse it's the
5 child that comes in and purposely chooses to tell mother or
6 father or somebody they trust that somebody is hurting them.
7 Some times that may be verbally, some times that's with a letter
8 left for a parent or given to a parent for the parent to read.
9 It can also be to law enforcement officer, teacher, anybody the
10 child trusts.

11 Q What is accidental disclosure?

12 A Is when the child does not intend to release
13 information but releases information that causes a disclosure to
14 continue. So typically in fifth grade in South Carolina there
15 is education about anatomy and so we have a lot of children
16 around that time who make disclosures. Not because they intend
17 to make disclosures but it's something along the lines that's
18 happening to me. With the new laws in South Carolina about
19 education, about sexual abuse, they are educating in schools now
20 about sexual abuse and we're getting more of those accidental
21 disclosures when the discussions come up at school and then the
22 child says well, that's happening to me. I didn't know what
23 that was. Or they are out on playground and a fellow child says
24 something and they say oh, me too and then it starts that ball
25 of disclosure rolling.

1 Q What is a reason why a child may not purposely
2 disclose?

3 A Fear. Fear of upsetting the family. Fear of shame.
4 Fear of basically getting in trouble. Depending on the age of
5 the child. The younger the child it also can be confusion about
6 what's happening or not understanding the significance of what's
7 happening. Also if the child has been groomed or been told not
8 to tell their loyalty to the person may prevent them from saying
9 anything.

10 Q All right. Will you explain the difference between a
11 propertied and unprompted disclosure?

12 A Okay. Unprompted would be either the accidental or the
13 purposeful. That's when somebody comes and makes the
14 disclosure. A prompted disclosure is when somebody makes a
15 request of the child to ask them that question; has anybody hurt
16 you, or has anything happened to you. This might come with a
17 parent who notices a bruise or notice something wrong with the
18 child may say did something happen to you. That would be a
19 prompted disclosure if the child said something along those
20 lines.

21 Q What do the terms delayed disclosure or delayed
22 reporting mean?

23 A Okay, delayed disclosure is when a child withholds any
24 disclosure at all for a period of time. And that typically is
25 the norm for disclosures related to sexual abuse. So it may be

1 six months, it may decades before that disclosure comes out.
2 Delayed reporting might be where somebody knows that something
3 has happened but delays reporting to law enforcement, delays
4 reporting to DSS, would be my guess. We don't have a term
5 specifically for delayed reporting. In our field delayed
6 disclosure where I deal with most. In my practice almost nobody
7 comes in the day after something happens and says this happened
8 to me.

9 Q Okay.

10 A It's almost all delayed.

11 Q And in that same vein, in your experience as an expert
12 in the field of child maltreatment how common is delayed among
13 victims of child and sexual abuse?

14 A Both the research and my experience is that less than
15 25 percent of children will report an abuse. About 75 percent
16 according to the adverse childhood advanced study say that 75
17 percent will never report. In that study they found about 75
18 percent had not reported until the study came and asked them
19 directly. And they said they would not have reported at any
20 point in their life. So we have seen that statistic throughout
21 our field consistently about 25 percent of reporting over a
22 lifetime time.

23 Now my experience is that really -- and I have no numbers to
24 say that this percentage -- it's just a percentage for me. It's
25 about ten percent of children would ever report because most of

1 our delayed disclosures come two or three or four years after
2 something happened and usually for my age group I work with
3 typically from about five through about 14. The 14 years old
4 the abuse happened earlier in their life and they delayed that
5 disclosure until something came out later. So I don't get a lot
6 of immediate disclosure cases within my services.

7 Q What kind of factors commonly play a role in a child's
8 delayed disclosure?

9 A In terms of what keeps from coming?

10 Q Yes.

11 A Typically I guess the foremost thing is fear. Fear
12 that they would loose their family; fear that they would get
13 their family in trouble; fear that they would be blamed for
14 whatever happened. Fears in general.

15 The second layer of that would be if the person hurt the
16 child, threaten the child, or asked the child not to say. Or in
17 some cases if they've given the child money. Said don't say
18 anything I will give you this money. Just don't say anything
19 about it. And the then the last one is really confusion of what
20 is happening. Very young children don't understand the
21 significance of what has happened to them. And so for them it's
22 just somebody hurt me or somebody is being mean to me. And most
23 parents and educators we don't recognize somebody being mean to
24 me as maybe one of trigger words that somebody might be hurting
25 this child.

1 Q What would minimization in this context mean?

2 A Minimization is when a child minimizes the contact. So
3 if we have a situation where there has been penetration of the
4 child; digitally or otherwise, the child may only say somebody
5 touched me, or they touched me on top of the clothes. But as we
6 go further we learn that there was penetration. Because
7 disclosure is a process. It's not an event. So when that first
8 disclosure comes out over time that disclosure is going to
9 probably deepen. And so what they might initially say is just
10 somebody touched me on top of my clothes may end up being
11 something more as that goes along because they become to
12 understand they're not going to get in trouble and they can
13 trust to speak more clearly. And so that minimization is a
14 common factor when we get kids in. Almost rarely -- we rarely
15 get any full one hundred percent disclosure on the the initial
16 disclosure.

17 Q Is it common for a victim to minimize when disclosing?

18 A I would say yes. I think that first disclosure is
19 always less than what probably is fully going on. I don't have
20 any hard evidence to say how many children minimize, but from my
21 experience in counseling what I find is that what I start with
22 with a child and from that initial report, then as they start
23 talking and sharing new information comes in and new pieces come
24 in the process of counseling. And so I see that from my
25 practice we always start with a smaller amount then fuller.

1 Q What does recanting mean?

2 A Okay. Recanting is when a child makes a statement that
3 says what I said before was not true. So if a child makes a
4 disclosure somewhere down the road they may say that's not true.
5 I did not do that or that didn't happen or he didn't do this.
6 They take back their statement.

7 Q Is that common in sexual abuse cases?

8 A It happens. It's not -- I wouldn't say common, but it
9 does happen within cases. More often or not there is pressure
10 for the child to recant. If the child is feeling like they are
11 going to get in trouble again or if that fear kicks up sometimes
12 they will recant.

13 Q Okay. In your opinion what would a change in a child's
14 behavior indicate to you?

15 A Any number of things. One specific change in behavior
16 does not indicate really anything. One of the things I've often
17 talked with parents about I can't look out and see based on
18 behavior or based on a child's look whether or not they've been
19 abused or not. All I know is that there's a change in behavior.
20 It would then be incumbent to determine why that behavior is
21 occurring. So in a case where I have somebody referred in
22 because they're masturbating at home that doesn't automatically
23 mean there's sexual abuse. That just may be normal sexual
24 development. If that's in connotation of other things and
25 combination with other elements then we might could look and say

1 there's a possibility a cause. But just one specific behavior I
2 can't say or even a series of specific behaviors, I can't say
3 that's causal. That sexual abuse is causal to that behavior.

4 Q So, in light of that is there any difference between a
5 positive or negative change?

6 A Here again it depends on the child. Okay. There are
7 some children when abuse starts they get to be very good kids
8 because they're afraid of getting in trouble so they change
9 their behavior to be really, really good kids and don't step out
10 of line on a lot of things. There are other kids that become
11 very angry and they become rebellious. So it really depends on
12 the child you have to look at the child in context of what their
13 life is and what those changes mean. So it isn't something that
14 can be applied globally.

15 Q What is grooming?

16 A Grooming is when the person who is intent on hurting a
17 child starts by making small adjustments in the life of the
18 child so the child adapts to the idea of sexual behavior. And
19 the way I explain this is like if your outside in South Carolina
20 in the summertime it's very hot. When you walk in to your house
21 and the air conditioner is on it's very cool when you first walk
22 in. A few minutes later you have adapted to that process inside
23 the house and it normalizes. When in problem behaviors what
24 happens is the person starts a very small come sit over here and
25 play games with me. And it's innocent. It seems perfectly

1 normal and then those games start to take on new connotations.
2 Sit on my lap. All right. Sit on my lap this way. Let's play
3 horse. Whatever. They start to move closer and closer to the
4 process of abusing. By doing that they're slowly adapting the
5 child to normalized sexual behavior. They may lie to the child.
6 They may offer gifts to slowly get that child closer and closer.
7 One of aspects of grooming that's really we look for is the
8 grooming of the parent. They have to get the trust of the
9 parent to be able to get access to the child. So in most cases
10 there's he's been some adjustment or adaption to get close to
11 that child. Most children if you walk up on the playground and
12 without trying to groom and just touched them, they would
13 probably would scream. But in this case they don't because it
14 has been normalized.

15 Q How does that effect a child's disclosure?

16 A They may not disclose because they consider it
17 normalized behavior. So there isn't anything to report. You
18 know if the person has groomed them to believe that touching is
19 part of what you do when you grow up or what the adult does to a
20 child when they grow up the child may not disclose because they
21 feel that is normalized behavior.

22 Q What effect could a perpetrator telling a child to keep
23 abuse a secret have on the child?

24 A For children loyalty is very important and promises.
25 Especially younger children like a pinky promise is a very

1 powerful thing, for a child and when somebody says keep this
2 quiet, keep this a secret, they tend to keep that secret either
3 because of the loyal issue or because of the fear. Especially
4 if they say keep this secret or else. Then that fear can impact
5 the child.

6 Q What do we mean when we talk about risk factors in
7 sexual abuse cases?

8 A Risk factors in sexual abuse come from where we have
9 normalized activities that are not okay. Okay. So, most abuse
10 is is known -- most abusers are known to their victims. About
11 75 percent, 80 percent are known and trusted to the person.
12 That's not considered a risk factor for overall but within
13 sexual abuse that can become a problem. If the child is unaware
14 of normal anatomy and normal processes of anatomy that can be a
15 problem for sexual abuse because they don't know when something
16 is wrong or how something is wrong. Somebody who has had a
17 prior history of abuse doesn't necessarily mean that they would
18 be an abuser. Only about one percent of people who have been
19 abused before end up abusing. But there are some situations
20 where if we had a sexual abuser before certainly that would be a
21 risk factor for them to be around children. I guess the biggest
22 one is lack of communication or lack of the ability to
23 communicate between parents in an honest and open way. That
24 puts most of the kids at risk.

25 Q What's the different between a false denial and false

1 disclosure?

2 A Okay. False denial is when the child makes a statement
3 or when they've been asked about sexual abuse and they say no,
4 it didn't happen when it did. False disclosure is when
5 something has been reported or when they are asked about it and
6 they say, yes, it did but it didn't happen. So if somebody came
7 and said, you know, have you been sexually abused and the person
8 says no, but they have been. That's a false denial.

9 If somebody comes in and says you have been sexually abused
10 can you tell us -- or you say you have been sexually abused, but
11 there is no evidence to support that. There is no abuse. The
12 person was in Hawaii at the time. That may be a false reporter
13 or false disclosure.

14 Q What's more common?

15 A Typically false denial. Somebody saying that nothing
16 happened though something did. In my practice I don't get a
17 whole lot of false reporting or false disclosures. Usually what
18 we get is more false denials where somebody comes in and says
19 no, it didn't happen but all of everybody else is aware and seen
20 it and you can't refute that it happened but the child says no,
21 it didn't.

22 Q Is it common to see affection for the perpetrator?

23 A Yes. What happens in cases with children is that they
24 develop a strong bond with the people in their lives. And they
25 may have a strong bond with the person who hurt them. They may

137

1 like the trips to Carowinds. They may like the candy. They may
2 like the sitting and having some attention by this person. They
3 may not like the sexual abuse. And so it gets them conflicted.
4 I have had a number of them say they would rather this go away
5 so they could have this person back again. This person who was
6 nice to them and treated them wonderfully. And so they tend to
7 care about particularly if it's a parent, care about that person
8 even if behaviors are wrong. And kids are able to separate I
9 don't like the behavior but I love the person.

10 Q Is it common for the perpetrator to blame the victim?

11 A A lot. Yeah. I heard endless numbers of times where
12 somebody said, oh, this person came in was acting very
13 inappropriately sexually and I didn't have a choice. You know,
14 five year old comes in swaying the hips and I didn't have a
15 choice. That blaming the victim is a common process.

16 Q Is it common for a person who suffered from sexual
17 abuse as a child to be hyper-protective of their child when they
18 get older?

19 A I think once abuse has happened the defenses close in
20 and they may be overly protective. I seen a number of parents
21 that become overly protective.

22 MR. KOZAK: No further questions.

23 THE COURT: Mr. Gregory.

24 MR. GREGORY: If it please the Court.

25 CROSS EXAMINATION

1 BY MR. GREGORY:

2 Q Doctor Kellin, in your practice you dealt with a number
3 of children, have you not?

4 A Right.

5 Q Have you found that in your practice that some times
6 children will lie?

7 A I have had occasion where kids lie. I think all kids
8 lie at some point.

9 Q Have you had occasion to see where a child would say
10 something that is not true because they were manipulated by
11 someone else?

12 A I have had one occasion in my practice where I ran in
13 to a knowingly false situation and what ended up happening was
14 that the person had been abused but the time and place where
15 they described it was not where it was. As far as in counseling
16 and in talking with people in the forensic interviews I have
17 done -- denials -- I don't get a whole lot of denials. It's
18 about fifty percent of people will disclose in a forensic
19 interview. I have not run into a lot of those that I would
20 classify as lies. I have had more where they minimize and they
21 don't report all of it. Now, does that classify as a lie, I
22 don't think so. In my practice very few have come out and
23 out-and-out lied to me about sexual abuse or about what
24 happened. From my personnel experience I have not run in to
25 that.

1 Q Well, if someone, if some child would come in and tell
2 you something that wasn't true you may not be able to -- you may
3 not be able to determine whether it's true or not, isn't that
4 correct?

5 A Yes, it's possible I might not know if they are lying
6 to me.

7 Q You have occasion to have children say bad things about
8 other family members for vindictive reasons?

9 A I had a few occasions where children have said stuff
10 negative about other family members. I have not had over the
11 course of my time, I have not had anybody come in and
12 specifically make a false statement against a family member
13 related to sexual abuse. Now, you know they might tell me that
14 so and so did something, you know, it's more family oriented
15 normal stuff, like he didn't give me pizza when he did give me
16 pizza. They are looking for that sympathy I guess is a way of
17 putting it. But not where I have had children come in and say
18 you know so and so touched me and then we find out later the
19 child was lying about that. I have not had that a lot.

20 Q All right. Do you find that these things occur more in
21 families that are dysfunctional as opposed to families that are
22 quote more normal?

23 A Sexual abuse cuts across all families. It is not
24 specific just to one economic status or group.

25 Q All right, now, when something happens to a child

1 abuse or whatever, something traumatic; don't the school records
2 or grades reflect that?

3 A It can. It depends on the child. You know, here again
4 it's in context. If that child losses focus and not able to do
5 their homework, sure, there grades can drop. There are some
6 other kids who throw themselves in to school as a safe haven and
7 they do everything they can to get good grades so they can
8 eventually get out or also to find ways to find ways to find
9 other people to be pleased with them for that.

10 So it just depends on the child. You can't look at a drop in
11 grades and say that is sexual abuse.

12 Q All right. And abuser, someone who has been accused of
13 abuse, don't they normally continue that abuse?

14 A I'm not expert in abusers, per se. What we know is
15 that -- what I know from my own research. Okay. Just from
16 reading. Is that abuse continued until it is disclosed. So it
17 guess progressively worse. That's what I've seen in my practice
18 is it get progressively worse. For somebody who has been
19 accused or found to be oriented towards girls in their offense,
20 about 21 victims is what we've typically seen overall. That's
21 an average. For boys about 240 victims. And so, it does
22 continue and it may be with multiple people. It may be with
23 multiple situations. Here again that is individual to that
24 person. I don't work directly with abusers so I don't have that
25 research base to show what their prevalences are.

1 Q All right. Now what field do you deal with more if you
2 don't deal with abusers? Like molestation or what's your --

3 A I deal with children who have reported physical or
4 sexual abuse who showed traumatic reactions. So like avoidance,
5 fear, intrusive memories. Basically what we would think of as
6 like similar to PTSD.

7 Q Not just related to sexual?

8 A No. For me ^{us} any trauma would be applicable.

9 Q All right. Would that also include a fear caused or
10 confusion caused by the fact that you have made -- had told a
11 lie and your conscious is eating on you?

12 A If a child came in and was talking about that they had
13 told a lie and they needed to process, yeah, we would work with
14 them on that.

15 MR. GREGORY: That's all the questions we have
16 Your Honor. Thank you.

17 THE COURT: Okay. Anything else?

18 MR. KOZAK: Nothing further from the State.

19 THE COURT: Okay. Mr. Gregory your motion?

20 MR. GREGORY: Your Honor, our position is as
21 stated previously, the testimony of this witness
22 although he appears to be an expert and knows what he
23 is doing and has great credentials, has nothing to do
24 with this case. It's irrelevant. He has never spoken
25 with the victims. He has never read the records. He

1 has never seen any of the facts of the case. I think,
2 like I said, I think it would be -- the testimony
3 would be irrelevant.

4 Thank you, Your Honor.

5 MR. KOZAK: Your Honor, actually that's the point
6 of this expert is that he has never seen this case.
7 It is an educational expert for the jury.

8 The Supreme Court has ruled many a times that
9 these are valid experts to take place in these type
10 cases as long as they are not bolstering the witness
11 because they have had contact with the victim. The
12 only time the Supreme Court had a problem with using
13 blind experts is when they've also perform the
14 forensic interview on the victim themselves.
15 Otherwise they say it is necessary in these type
16 cases.

17 THE COURT: Okay. All right. I am certainly
18 going to allow the testimony of this witness and I
19 will instruct the jury before he begins to actually
20 testify that he's giving an opinion about child abuse
21 cases, their assessments and their dynamics in
22 general. Nothing specific about this case. And what
23 I would plan -- and I assume you're going to question
24 him Mr. Kozak?

25 MR. KOZAK: Yes, sir.

1 THE COURT: When we get him qualified as an expert
2 then I am going to instruct the jury about expert
3 testimony and then I'll go into the instruction I have
4 on child abuse dynamics' expert as well and then I
5 will let you proceed with your examination.

6 MR. KOZAK: Sounds great.

7 THE COURT: Everyone know we're on the same page.
8 But this testimony will be admissible.

9 MR. GREGORY: Thank you, Your Honor.

10 THE COURT: All right, let's bring in the jury.

11 (WHEREUPON, the jury enters the courtroom.)

12 THE COURT: Good morning ladies and gentlemen. I
13 realize it's 10:15. We said we would start at 9:30
14 but after you left yesterday we had an issue that
15 arose and we had to deal with it this morning. It
16 took a little bit longer then the 30 minutes that I
17 thought it might take but we are now ready to proceed
18 with the trial. I hope you had had a good evening
19 last night. All right, counsel.

20 MR. KOZAK: We call David Killian.

21 DAVID KILLIAN, called as a witness, having been
22 duly sworn by the clerk, was examined and testified as
23 follows:

24 DIRECT EXAMINATION

25 BY MR. KOZAK:

1 Q Please state your name for the record?

2 A Mahlon David Kellin.

3 Q Mr. Kellin where are you employed?

4 A David Killian. I work for Palmetto Citizens Against
5 Sexual Assault and I also have private practice.

6 Q And what are some of your duties there?

7 A At Palmetto Citizens Against Sexual Assault I'm a
8 counselor and also back up forensic interviewer.

9 Q What kind of services do you provide?

10 A I primarily provide trauma counseling services to
11 children who disclose physical or sexual abuse.

12 Q And what is your title?

13 A Counselor.

14 Q Okay. What is your educational background?

15 A I masters degree in social work from the University of
16 South Carolina. I have an a bachelors in science degree in
17 psychology from Lander University.

18 Q And do you have in specialized training?

19 A I do. I have been trained in forensic interviewing
20 through Finding Words from the State of South Carolina. I have
21 been trained as extended forensic interviewer through the
22 National Child Advocacy center in Huntsville Alabama. I've also
23 been trained as a trauma focus cognitive behavioral therapist
24 and also cognitive processing therapy I have been trained in
25 that as well.

1 Q Will you explain what that is a little bit?

2 A Both trauma focus cognitive behavioral therapy and
3 cognitive processing theory are ways to help overcome PTSD-type
4 symptoms or acute reaction symptoms. So, with cognitive
5 processing theory it's just what happened from the event. How
6 your reactions from the event. With trauma focus cognitive
7 behavioral therapy we actually walk through what happened and
8 then help address any problems that have come up or any adverse
9 reactions to what has happened. Both have been evidence based
10 strongly now in the field.

11 Q What training have you had in counseling sexually
12 abused individuals?

13 A That's is trauma focus cognitive behavioral therapy and
14 cognizance processing theory.

15 Q All right. Do you hold any professional licenses?

16 A I am licensed through the State of South Carolina as a
17 licensed independent social worker.

18 Q How many years have you counseled children and adults
19 in sexual abuse?

20 A Specifically solely in sexual abuse about nine years
21 now. I've been counseling children now for going on twenty six.

22 Q Do you also provide any professional training to others
23 in your field?

24 A I do. Numerous trainings in numerous places.

25 Q Have you testified in court before?

1 A I have.

2 Q How many times have you been qualified as an expert?

3 A In family court about 50 times. In criminal court or
4 in this kind of court about ten times.

5 MR. KOZAK: At this time I would like to enter
6 Mr. Kellian as expert in child maltreatment and child
7 abuse dynamics.

8 THE COURT: Does the child abuse dynamics also
9 include disclosure as well.

10 MR. KOZAK: Yes, Your Honor.

11 THE COURT: Okay. Any objection to this person
12 being qualified as an expert Mr. Gregory.

13 MR. GREGORY: No, Your Honor.

14 THE COURT: All right. I do find that Mr. Kellin
15 is qualified as an expert in the area of child
16 maltreatment and child abuse dynamics and disclosure.
17 All right, that being said, ladies and gentlemen of
18 the jury I want to instruct you that our rules of
19 evidence ordinarily do not permit witnesses to testify
20 to opinions or conclusions. An exception to that rule
21 is with regards to expert witnesses which this
22 gentleman has been qualified as expert. A witness who
23 by education and experience has become expert in some
24 art, science, profession or calling may state an
25 opinion as to relevant and material matters in there

1 in which he claims to be an expert, and may also state
2 the reasons for the opinion.

3 You should consider any expert opinion received in
4 evidence in this case and like any other evidence give
5 it the weight that you think it deserves. If you
6 decide the opinion of an expert witness is not based
7 on sufficient education or experience or if you
8 conclude that the reasons given in support of the
9 opinion are not sound or that the opinion is
10 outweighed by other evidence you may disregard the
11 opinion entirely.

12 An expert witness's testimony should be given no
13 greater weight than that of any other witness simply
14 because he's an expert. Further, you are not required
15 to accept an expert's opinion even though it is not
16 contradicted.

17 Now, having instructed you about an expert's
18 testimony and the basis upon which you decide how much
19 weight to give that testimony I want to go further
20 with regard to this witness who has been qualified in
21 the area of child maltreatment and child abuse
22 dynamics and disclosure.

23 There's one thing I want to caution you about this
24 expert's testimony. As I told you most experts are
25 entitled to give you an opinion about the facts and

1 their observations. This expert is not going to give
2 you an opinion about anything that you have heard in
3 particular in this case. He is going to give his
4 opinion about child abuse cases, there assessment and
5 there dynamics in general. It's important that you
6 understand that he is not giving you his opinion as to
7 whether or not the victim in this case is telling the
8 truth or not telling the truth. That's not his role.
9 He is not to lie detector or truth detector. He is
10 not giving his opinion on that. He's giving his
11 opinion about general things that are said that may or
12 may not apply in these kinds of cases.

13 You may proceed.

14 MR. KOZAK: Thank you, Your Honor.

15 Q Have you ever had any contact with the victim in this
16 case?

17 A No.

18 Q Have you spoken to the victim in this case?

19 A No.

20 Q Have you viewed any of her statements?

21 A No.

22 Q Have you seen any evidence involved in this case?

23 A No.

24 Q Other than the conversations you had with me have you
25 done any investigatory work or interviewed anyone involved in

1 this case?

2 A No.

3 Q Okay. Could you please tell the jury what a purposeful
4 disclosure is?

5 A Okay. Purposeful disclosure is when somebody chooses
6 to disclose something. So in my field with children who have
7 been abused they would go to a trusted adult or somebody a
8 police officer, or teacher and make a disclosure specific by
9 choice. So and so is hurting me. It is their choice to make
10 that disclosure.

11 Q Okay. What is an accidental disclosure?

12 A Accident disclosure is when a child discloses something
13 but they are not intending for that disclosure to come out.
14 This is more typical in my field for disclosures. They go to
15 school and they either view the fifth grade process of anatomy
16 or they are talking with their friends or new programs about
17 sexual abuse and then they say oh, me too. And somebody catches
18 it and starts to ask more questions or they're at home and they
19 they make a disclosure so and so is mean to me and they touched
20 me in the wrong way. They may have had a discussion going on
21 before that the child did not intend to disclosure it as a
22 sexual abuse disclosure. That's what we classify as accidental.

23 Q What is a reason why a child may not purposefully
24 disclose?

25 A The largest one is fear. Fear that they will get in

1 trouble. Fear that they will get blamed. Fear that they would
2 cause problems for the person that is abusing them. They may
3 feel they may lose their parent or lose their caregiver or
4 somebody they love. Fear tends to be the main reason why
5 disclosures don't come out.

6 Q What does the term delayed disclosure mean?

7 A Delayed disclosure is when an event happens and then
8 the point at which disclosure either accidental or purposeful
9 comes out may be months, years later. It is not right when
10 something happens. In fact, for the majority of our cases that
11 I work with in the field, that disclosure doesn't come out until
12 much later. National studies look at about 75 percent of people
13 who have been abused never disclose it. That 25 percent that is
14 across the life time. Within my own practice my estimate would
15 be about ten percent of kids disclose. About 90 percent don't
16 ever disclose or delay their disclosure. But it's usually for a
17 period of time afterwards and it's usually an accidental
18 disclosure that allows that disclosure to come up.

19 Q What kind of factors commonly play a role in a child's
20 delayed disclosure.

21 A Here again, fear. Not being afraid of a number of
22 things about their safety or health. If there was a threat or
23 promise made by the person who is involved with us. So if they
24 said don't tell or, you know, I'll have to go to jail or don't
25 tell. You know, you'll will breakup the family, or here's \$50.

1 Don't say anything.

2 The third and way is for younger children they may not
3 understand the significance of what happened to them. So for a
4 very young child having somebody touch their private part for
5 them doesn't make the same leap that we would as adults to
6 relate it to sexual abuse. They may just feel it's mean or
7 somebody is being -- hurting them. They may not disclose it in
8 a way that is recognized or they may not disclose it at all
9 because they do not know what to disclose.

10 Q What's the difference between a prompt and unprompted
11 disclosure?

12 A Okay. Prompted is when somebody asks a child
13 specifically. So if a child comes in and the parents see a
14 bruise the parents might sit down with the child and say, okay,
15 what happened. Tell me what happened here. The child may not
16 be interested immediately in saying but as the parents works
17 with them they may learn of abuse or they might learn it was on
18 on the playground, that is prompted. Somebody is asking a
19 question of the person to elicit a disclosure.

20 Unprompted is when the person makes a disclosure without
21 anybody asking specific questions.

22 Q When it comes to disclosures what does minimization
23 mean?

24 A Minimization is when the initial disclosure is made.
25 Let's say I will use an example if a child has been sexually

1 assaulted with penetration and that's the action that happened.
2 The child may say somebody touched me in a private area. They
3 may not tell you the whole story. And more often then not won't
4 tell you the whole story until it goes over time. But they
5 minimize the contact at first in hopes that this may be could be
6 go away or not a whole lot is going to be said about this. It
7 might start with somebody touched me on top of my clothes or it
8 might be somebody touch me on private part but then as the time
9 goes on the disclosure really starts to show what happened. But
10 they minimize it in an effort to keep it from blowing up.

11 Q It is common to minimize in disclosing?

12 A Yes.

13 Q In your opinion what would a change in a child's
14 behavior indicate to you?

15 A It could be any number of things. Change in behavior
16 doesn't specifically speak to sexual abuse versus not sexual
17 abuse. Let's say a child suddenly became very good at home and
18 started cleaning the house and started cleaning their room. We
19 would notice that as a change in behavior. That might be
20 because they don't want to get in trouble or don't want to get
21 hurt or don't want to upset somebody at home. On the other hand
22 they might get really angry and they might start punching holes
23 in the wall or might start pitching a fit and not going to
24 sleep. It really has to be accessed on an individual basis.
25 Because any one particular behavior punching holes in the wall

1 does not necessarily indicate sexual abuse. It just indicates a
2 change in behavior that needs to be accessed further.

3 Q Would there be difference between a positive and a
4 negative change?

5 A Not necessarily. A change is change. Increase in
6 positive behavior can be just as problematic as changes to
7 negative behavior. So if a child suddenly changes how they do
8 school and their suddenly all involved in school and doing their
9 homework doesn't necessarily mean that things are absolutely
10 wonderful. They may have just thrown themselves into school to
11 avoid being at home.

12 Q Will you describe to the jury what grooming is?

13 A Okay. Grooming is a process of adaption, and I use the
14 thermometer as a way to say this. You know South Carolina heat
15 here when you are outside it's really hot, when you step into
16 your house that is 10 or 20 degrees cooler then outside it feels
17 very cool. Ten minutes, 20 minutes into the house you are
18 feeling kind of normal in the house. That's a process of
19 adaption. Okay. What happens with grooming is when a person
20 wants to sexually abuse a child they start with small behaviors
21 that allow the child to adapt to inappropriate behaviors. So,
22 it might be sit on on the couch next to me while we watch TV.
23 Then sit on my lap. Then why don't you wear that short dress
24 while you sit on my lap and why don't you wear your swimsuit,
25 sit on my lap and we will play tickle game. It's that process

1 of slowly moving that child. The individual behaviors may not
2 be overtly what we classify as sexual abuse, but they're slowly
3 moving the child to an acceptable place where they could act
4 sexually and the child feels like that's normalized behavior.

5 Q How does that effect a child's disclosure?

6 A It would slow down disclosures. In my practice what
7 I've noticed is that when grooming has happened it takes longer
8 for them to disclose because they don't typically see that as a
9 problem behavior. So when the education goes on in the schools
10 about sexual abuse we have had some kids that have gone, oh,
11 that's what going on. That's what's happening to me. Because
12 they did not see it as abnormal. They saw that this is the way
13 it is in our house. This is the way it is with this person.
14 And that normalized behavior for them that is stuff that we have
15 to back up in counseling, that it's not okay to sit on
16 somebody's lap in your swimsuit or your panties or whatever.
17 You have to -- we have to back that up and get that back to
18 normal appropriate behavior because grooming moves them so far
19 this other way that they don't see that as abnormal.

20 Q What effect could a perpetrator telling a child to keep
21 abuse a secret have on that child?

22 A Children tend to be very loyal and for younger children
23 they see any adult statement that not to say something as an
24 instruction. They will keep that secret or they will if they're
25 loyal to the person they will keep that secret so that they can

1 either get a favor or continue if it's a positive grooming thing
2 like going to Carowinds or, you know, having treats or time out
3 with that person they may -- that loyalty may keep them from
4 saying anything because they don't want to lose that other
5 process. So for a perpetrator or somebody who abused -- abuser
6 to make a statement please don't say anything. I might go to
7 jail if mom finds out. Or don't say anything because we'll
8 never be able to go to Carowinds again.

9 Children are going to keep those secrets in favor of the
10 positives or the lack of negatives. They tend to be good secret
11 keepers.

12 Q What do we mean when we talk about risk factors in
13 sexual abuse cases?

14 A Risk factors are complex things when we are talking
15 about sexual abuse because a number of positive behaviors can be
16 a risk factor for children. So a closeness with an adult or a
17 closeness with somebody within the family we know about 75 to 80
18 percent of abuse is by somebody known and trusted to the child.
19 So while that's a positive thing to have good close family bonds
20 it also can increase the risk of sexual abuse if somebody's
21 intent on doing something wrong.

22 I guess the primary risk factor, if you want to look at the
23 a primary risk factor, it's the lack of communication between
24 the child and parent in a way that allows the child to speak
25 clearly about whatever is going on in their life. What I use as

1 an example when I'm teaching parents if your child spills orange
2 juice in the middle of the kitchen can they walk in to you and
3 say I spilled orange juice all over the kitchen and you would
4 accept that. Not chew them out. Not yell at them, but help
5 them to clean it up and fix it.

6 The ability to come and tell you about negative events and
7 your ability to hear it is important protective factor. The
8 lack of that tends to be a risk factor for children. They feel
9 isolated and can't tell their parent everything that is going on
10 in their life.

11 Q What is about the difference between a false denial and
12 false disclosure?

13 A False denial is when a child is confronted with
14 evidence or confronted with a disclosure that they have been
15 abused and they say it didn't happen to me. A false disclosure,
16 a false report, is when a child goes to somebody and says this
17 happened to me but it actually didn't happen. So a child says
18 something happened to me by, you know, by so and so, but so and
19 so was in Hawaii at the time. That's a false report because
20 there is no way or there is no evidence to indicate that that
21 happened. That would tend to be considered false reporting.
22 Denial is much more common in that when confronted children
23 typically deny first, and then when presented with other
24 information then disclose. But first typical response is to
25 deny.

1 Q What is more common?

2 A Denial, false denial.

3 Q What is recanting?

4 A Recanting is when a disclosure has been made and then
5 at some point later the child says no, that wasn't true. I take
6 it back. I lied. That didn't -- that really didn't happen. I
7 just made that up.

8 That recanting happens in some cases. It's not in every
9 case but it does happen in some cases. Typically more for fear,
10 fear that they are going to lose the person that they care
11 about, or fear of getting in trouble; fear of the family losing
12 the house. Any number of things that can happen. But that --
13 or somebody coming in and saying, you know, that can't be true.
14 You need to tell me you weren't be truthful. So recanting
15 happens for a number of reasons. It is part of what we -- we
16 don't necessarily look for it but it's part of what we know that
17 is in the process of working with sexual abuse.

18 Q Is it common to see affection for the perpetrator?

19 A Yes. Particularly with younger children, because that
20 75 to 80 percent of people are known and trusted to the person
21 who is the victim they may have lots of positive memories, lots
22 of positive relationship with this person but then have problem
23 behaviors that have come up. And their desire -- I see this a
24 lot in counseling -- the desire is to get back to the good
25 relationship with the person who hurt them and get all the rest

1 of this taken care of so they can have this person back. And so
2 there is a lot of conflict that happens between the person I
3 care about versus the person who hurt me. Kids have a real
4 tough time with that.

5 Q Is it common for the perpetrator to blame the victim?

6 A Absolutely. Yeah. Almost universally there is blaming
7 of somebody else and victims tend to be the person who is
8 blamed.

9 I've seen a number of times in my work with kids where the
10 perpetrator would say oh, she was acting sexy or she was showing
11 her stuff or whatever and I just couldn't resist because she was
12 acting too much. And he did not, or they did not, exercise the
13 controls of adult to stop but instead blamed it on the behavior
14 of a child.

15 Q Is it common for a child who -- is it common for a
16 person who suffered from sexual abuse as a child to be more
17 protective of a child when they grow up?

18 A Absolutely. Most of the times when sexual abuse
19 happens there's a desire for that cycle to stop and not have
20 that happen again. And so there's a -- anything that was
21 related to that abuse tends to be avoided or blocked or kept
22 from happening again. So like, I guess an example like sitting
23 on a lap. If a person was sexually abused when there was
24 sitting on a lap as a child they may not not as a parents allow
25 anybody to sit on anybody's lap. They might crimped that down

1 and not allow those pieces of interaction.

2 MR. KOZAK: No further questions.

3 THE COURT: Mr. Gregory.

4 MR. GREGORY: If it please the Court.

5 CROSS EXAMINATION

6 BY MR. GREGORY:

7 Q Doctor Kellin, now your testimony today is general?

8 A Yes.

9 Q It has nothing to do with this case?

10 A That's true.

11 Q Because you have not had any contact with the victim?

12 Don't know anything about the facts of case? You haven't read
13 any of the statements or anything?

14 A That's correct.

15 Q Now understanding that, in your practice have you ever
16 had a child to lie about something?

17 A I've had kids to lie a lot in practice. Not
18 necessarily about sexual abuse, but whether or not they had
19 pizza for lunch. They typically are smaller things that get
20 lied about. But all kids lie.

21 Q Now you earlier said that your -- in your field you've
22 helped children deal with thoughts or events that happened, is
23 that a fair statement

24 A Yes.

25 Q Would that include helping a child who has lied about

1 something in the past and is now being bothered about what they
2 said or that their conscious is bothering them?

3 A If they came to me and they presented me with that as
4 their issue that they had made a false disclosure, sure, I would
5 work with them to try and help them figure out what was going
6 on.

7 Q Doctor Kellin, would fluctuation in school grades be a
8 red flag in a child's behavior that would indicate abuse had
9 occurred?

10 A It really depends on the child. You know, if the
11 fluctuation in grades either way; positive or negative is
12 something that has not been seen with that child before that
13 would be something that would be of interest to look at and
14 access. Does that mean any particular thing in terms of my
15 field in terms of counseling, I can't say, okay, drop in grades
16 or sudden improvement in the grades is indicative of any one
17 particular problem or concern. But it raises a flag to ask more
18 questions. So if the child suddenly had dived into home work
19 and became very good and started doing straight A when they were
20 a C student before then I want to know what is going on that led
21 to that change. It opens the door for concern in assessment but
22 not necessarily indicative of any one particular thing.

23 Q All right. And you mentioned recanting. Is that the
24 same thing as admitting that something that was said previously
25 is now untrue?

1 A It is when something been said at later point they say
2 that whatever they said before was not true.

3 Q All right.

4 MR. GREGORY: That's all the questions I have.

5 Thank you.

6 THE COURT: Mr. Kozak.

7 MR. KOZAK: Just briefly.

8 REDIRECT EXAMINATION

9 BY MR. KOZAK:

10 Q Mr. Kellin, you are trained in forensic interviewing,
11 right?

12 A I am.

13 Q What is forensic interviewing designed to do?

14 A Forensic interviewing is designed to create a safe
15 environment to a child to give a statement or disclosure in a
16 forensically sound way. That is done with a very simple
17 structure but basically try as much as possible to ask open
18 ended questions and to allow the child to make whatever
19 statement they need to make without a lot of prompting or
20 without a lot of direction from the forensic interviewer. The
21 interviewer really is just there to create the environment for
22 the child to make a statement if they do.

23 MR. KOZAK: No further questions Your Honor.

24 THE COURT: Anything else Mr. Gregory.

25 MR. GREGORY: Nothing further.

1 THE COURT: You may step down.

2 MR. KOZAK: Your Honor, may he be excused.

3 MR. GREGORY: No objection.

4 THE COURT: You may be excused.

5 THE WITNESS: Thank you.

6 MR. KOZAK: The State calls Margo Dixon.

7 MARGO DIXON, called as a witness, having been duly
8 sworn by the clerk, was examined and testified as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. KOZAK:

12 Q Please state your name for the record

13 A Margo Bernadette Dixon.

14 Q Miss Dixon, what is your current position?

15 A I'm a children's advocacy director and lead forensic
16 interviewer at Palmetto Citizens Against Sexual. I serve the
17 Assault sixth Sixth Judicial Circuit.

18 Q How long have you been with with PCASA?

19 A I have been with PCASA including my internship 22
20 years.

21 Q What are some of your duties and responsibilities as
22 PCASA?

23 A As CAC director my job is to facilitate forensic
24 interviews for children of allegations of abuse. Also
25 facilitate the MBT meeting. Meaning I'm the mediator for the

1 MBT meetings. I testify in Family Court as well as General
2 Sessions Court.

3 Q How many times have you testified in General Sessions
4 Court do you think?

5 A Well over 80 times.

6 Q All right.

7 Q Where did you work prior to PCASA?

8 A I was a students prior to PCASA. I was going to school
9 majoring in journalism and I changed over to criminal justice
10 with a concentration of forensic psychology.

11 Q Were you working for PCASA at the time of this
12 incident?

13 A I was..

14 Q How did you become involved with this case?

15 A We received a referral from DSS and law enforcement.

16 Q All right. Once you became involved in this
17 investigation what did you do?

18 A An appointment was set up through our followup service
19 coordinator and the children were brought in and conducted
20 forensic interviews on behalf of DSS and law enforcement.

21 Q Did you speak with Witness A?

22 A I did.

23 Q Did she disclose to you that she had been sexual
24 assaulted?

25 A She did.

1 Q Did she tell you where the sexual assault took place?

2 A She did.

3 Q Where did she say?

4 A She spoke of incidents that took place in her home; in
5 her bedroom, in the living room, as well as their bedroom; her
6 parents bedroom.

7 Q Did you tell her when these assaults took place?

8 A She did give me a timeframe.

9 Q When did she say you they occurred?

10 A The initial contact was made when she was three years
11 old when they first moved to [REDACTED]. Actual intercourse
12 took place when she was 11 years old around the time of her
13 birthday, and continued up until our forensic interview when she
14 was 13.

15 Q Do you remember what her demeanor was like when she
16 disclosed to you?

17 A She was calm. It wasn't -- you know, demeanor varies.
18 So it wasn't one of where she was just emotionally crying.
19 She's 13. So 13 year olds can go from one extreme to the other.
20 She was calm in giving her interview.

21 MR. KOZAK: I beg the Court's indulgence.

22 Q You may have already covered this. How old was Witness A
23 when she spoke with you?

24 A Thirteen.

25 MR. KOZAK: All right. No further questions Your

1 Honor.

2 THE COURT: Okay. Mr. Gregory.

3 MR. GREGORY: If it please the Court.

4 CROSS EXAMINATION

5 BY MR. GREGORY:

6 Q Miss Dixon, were talking about interview with Witness A?

7 A Yes.

8 Q And you said that she said this occurred at home. Did
9 she indicate where, what the address of the home was?

10 A [REDACTED].

11 Q [REDACTED]?

12 A Yes.

13 MR. GREGORY: That's all the questions I have of
14 of this witness. Thank you.

15 MR. KOZAK: No further questions from the State
16 Your Honor.

17 THE COURT: You may step down ma'am. Thank you.

18 MR. KOZAK: May she be excused as well?

19 MR. GREGORY: No objection.

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

21 MR. KOZAK: The State the calls April Michelle
22 Rollins.

23 APRIL MICHELLE ROLLINS, called as a witness,
24 having been duly sworn by the clerk, was examined and
25 testified as follows:

1 DIRECT EXAMINATION

2 BY MR. KOZAK:

3 Q Please state your name for the record?

4 A It's April Michelle Rollins.

5 Q Miss Rollins, where do you currently live?

6 A I live at North Myrtle Beach, South Carolina.

7 Q All right. And how do you know Witness A?

8 A I was with her uncle for over 20 years.

9 Q And what timeframe was that?

10 A We have been separated for four years, so the 1990's,
11 early 2000's.

12 Q About how old was Witness A when you first met her?

13 A She was five.

14 Q How do you know the defendant?

15 A The defendant, I know him as her father.

16 Q All right. Did you approach Witness A and ask her if she
17 was sexually assaulted?

18 A Not like that, no, not sexually assaulted. I asked her
19 was anything going on with her. She just seemed distant.

20 Q Why did you feel the need to ask her that?

21 A Because she had got put out at her house and I was
22 walking her to school. She didn't have her mother around or
23 anyone, no clothing, no nothing. So I was walking her to school
24 so she wouldn't be alone there early in the morning in a bad
25 neighborhood. So on the way to school she was just upset about

1 something and I was trying to find out what was going on. So I
2 asked her what was going on? Was anything going on at home and
3 she had replied yes.

4 Q Was she living with you at this time?

5 A She was living with me, her uncle and her grandmother,
6 yes.

7 Q All right. And about how long had she been living with
8 you?

9 A A week or so.

10 Q Would you say you were close with Witness A at this time,
11 relationship wise?

12 A Yes, sort of. As close as could be.

13 Q Do you know why she was living with you at this time?

14 A At the time no, I didn't. I just know what I was told
15 after I asked her what was going on.

16 Q And when you asked her if something was going on with
17 her did she disclose to you she had been sexually assaulted?

18 A Yes.

19 Q Where did she say these assaults took place?

20 A At [REDACTED] park is what she replied, at her home
21 with her mother and father.

22 Q Okay. Did she say when they would take place?

23 A She said it happened numerous times over and over for
24 the past many, many years.

25 Q Did she tell you how old she was when they started?

1 A About four years old.

2 Q What was her demeanor when she told you that?

3 A In tears. Couldn't really speak. She was very sad.
4 Very upset.

5 Q And after she disclosed what did you do?

6 A I advised her that she needed to contact someone with
7 authority and I took her to a pay phone. We didn't have cell
8 phones back then like today. So I walked her to a pay phone and
9 gave her the money and she called her grandmother and she told
10 her grandmother and we proceeded to walk back home. I didn't
11 even send her to school that day.

12 Q Did you tell anyone after she disclosed to you?

13 A After the walk home I walked in the house and I woke up
14 her uncle and I told her uncle and then I let her speak to him
15 in private, and she disclosed to him what happened to her after
16 that. But we had a long conversation on the way home.

17 Q After all this happened did she continue to live with
18 you?

19 A For temporary, yes.

20 Q Do you know where she went?

21 A She went to Monroe, North Carolina to live with her
22 grandmother.

23 Q Okay.

24 MR. KOZAK: I beg the Court's indulgence.

25 Q After the disclosure do you know if an investigation

1 took place?

2 A Yes, there was.

3 Q What house was she living in address wise before she
4 came to live with you guys?

5 A It was on [REDACTED], [REDACTED] and then she
6 come to [REDACTED] and then she went to Monroe from
7 there.

8 Q All right.

9 MR. KOZAK: No further questions Your Honor.

10 THE COURT: Okay, Mr. Gregory?

11 MR. GREGORY: If the please the Court?

12 CROSS EXAMINATION

13 BY MR. GREGORY:

14 Q You go by April or Michelle?

15 A Michelle.

16 Q All right. And you are Jimmy Joe Perez's girlfriend?

17 A Ex-girlfriend.

18 Q Ex-girlfriend?

19 A Yes.

20 Q Okay. So you and Jimmy Joe are not living together any
21 longer?

22 A No, we've been separated for over four years.

23 Q All right. And what you just testified to occurred at
24 the address [REDACTED]?

25 A Yes.

1 Q That's where you and Jimmy Joe--

2 A And Lois.

3 Q -- and his mother were living?

4 A Yes.

5 Q And Lois Campos is Jimmy Joe's mother?

6 A Yes.

7 Q She's also L.M. s's mother?

8 A Yes.

9 Q When Witness A came to live on [REDACTED] how long had
10 she been living there before you had this conversation where you
11 describe you were on the way to school?

12 A Approximately a week or two.

13 Q And Jimmy Joe's mother, Lois Campos, was living in the
14 house all that time?

15 A She was living in the house, but she worked out of town
16 so she stayed out of town a lot of times. She had two houses.

17 Q Is this the bad neighborhood you were talking about?

18 A Yes.

19 Q All right. Did Witness A tell you that -- anything about
20 her grandmother telling her to say certain things about her
21 father?

22 A Her grandmother was never around at this time. She did
23 not have the opportunity to tell her that. She was alone with
24 with me and her uncle prior to this at least a week before. Her
25 grandmother was not even around.

1 Q Well, you're not saying that her grandmother was never
2 there?

3 A I can't testify to what her and her grandmother had a
4 private conversation about. I can't say that she did or did not
5 but there was no opportunity for that.

6 Q All right. So you can't say whether or not Mrs. Lois
7 Campos told her that?

8 A I can't no. Who can say a private conversation.

9 Q And when you took Witness A to a pay phone or you took
10 her to a phone to call, it was a pay phone?

11 A Yes, it was.

12 Q Was it near where you were living on [REDACTED]?

13 A Yes, it was at school bus stop.

14 Q And who was the the first person she called?

15 A Her grandmother.

16 Q All right.

17 MR. GREGORY: That's all the questions.

18 THE COURT: Redirect?

19 MR. KOZAK: Just a few.

20 REDIRECT EXAMINATION

21 BY MR. KOZAK:

22 Q When Witness A moved out of [REDACTED] who was still
23 living in that residence?

24 A Miguel, Lilly, ^{Witness B} and Christina.

25 Q Okay. So you said what was order of events for the

1 disclosure again, you said you were walking to the store with
2 her?

3 A I walked to the store was the school bus stop. It was
4 about 6:15 in the morning and it was still dark and I didn't see
5 a child of her age walking to the school bus stop alone at that
6 age by herself. So I walked her to the school bus stop and we
7 were waiting on the bus and she just had a sad demeanor about
8 her so we just started talking and I asked her what was going on
9 and eventually she told told me. And I asked her if there was
10 any touching going on she said yes. So I told her to call her
11 grandmother and get her grandmother to come take her to the
12 police and on the way home we sat and talked at an abandoned
13 trailer. It was the only place between there and the house that
14 we can stopped and we talked and I reassured her that everything
15 that was going on was not her fault. We went from there to the
16 house to speak to her uncle and then her grandmother picked her
17 up and took her to the police department.

18 MR. KOZAK: No further questions.

19 THE COURT: Mr. Gregory.

20 RE CROSS EXAMINATION

21 BY MR. GREGORY:

22 Q Where are you living now Miss Rollins?

23 A I live in North Myrtle Beach, South Carolina.

24 Q All right.

25 MR. GREGORY: That's all the questions I have.

1 Thank you Your Honor.

2 THE COURT: You may step down now.

3 MS. BURCHSTEAD: The State calls Witness B

4 Witness B, called as a witness, having been
5 duly sworn by the clerk, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MS. BURCHSTEAD:

9 Q Good morning ^{Witness B}. I'm just going to ask you to speak
10 up as loud as you can so everybody can hear you and so the court
11 reporter can take down what you're say. If you need to adjust
12 the microphone do that.

13 Tell the jury your full name okay.

14 A Witness B

15 Q And how old are you?

16 A Twenty-five.

17 Q Where do you live?

18 A [REDACTED], Lancaster, South Carolina.

19 Q Are you working anywhere?

20 A Mariachis Restaurant.

21 Q And who do you live with with?

22 A My finance, Cody Deese (phonetics) and my three
23 children.

24 A And have you three children?

25 A Yes, ma'am.

- 1 Q How old are they?
- 2 A Three, one and six months.
- 3 Q And you said you are living in Lancaster?
- 4 A Yes.
- 5 Q Did you grow up in Lancaster?
- 6 A Yes, ma'am.
- 7 Q And where did you grow up in Lancaster? Where did you
- 8 live as kid?
- 9 A In the [REDACTED] [REDACTED] is what the
- 10 only actual address that I remember.
- 11 Q Okay. But you always grew up in Lancaster?
- 12 A Yes, ma'am.
- 13 Q And who did you grow up? With who did you live?
- 14 A My dad, my mom and my two sister's.
- 15 Q What are your sister's name?
- 16 A Witness A and Kristina Morales.
- 17 Q Are you obviously DER?
- 18 A Witness A is older and Kristina is younger than me.
- 19 Q And you say you lived with who else?
- 20 A My mom and my dad.
- 21 Q What's your mom's name?
- 22 A L.M.
- 23 Q And what's your dad's name?
- 24 A Guadalupe Morales.
- 25 Q Do you know if he's your biological dad?

1 A As far as I know I grew up knowing he was my dad.

2 Everyone else is telling me he's not.

3 Q So, what did you call him when you were growing up?

4 A Dad.

5 Q Do you see Guadalupe Morales in the courtroom today?

6 A Yes, ma'am.

7 Q And can you point him out for us?

8 (WHEREUPON, the witness points him out.)

9 Q Can you describe what he is wearing?

10 A He is wearing a red shirt.

11 MS. BURCHSTEAD: And just for the record purposes

12 she's identified the defendant Your Honor.

13 THE COURT: All right.

14 Q How do you feel about testifying today?

15 A I'm nervous.

16 Q Has it been hard on your family?

17 A It has.

18 Q Did the defendant ever touch you in a sexual way when

19 were you a child?

20 A He has.

21 Q Do you remember when it first happened?

22 A I can remember being about three years old.

23 Q Can you describe to the jury what you remember?

24 A I remember a few times he would have me sitting on his

25 lap and he would just touched me under my panties.

1 Q And was that when you were in the home?

2 A Yes, ma'am.

3 Q Where would you be in the home like the living room?

4 A The living room. There was one time we was in his
5 bedroom. I was in the third grade. I was eight years old and I
6 couldn't sleep. So we had a bedtime. It was about eight
7 o'clock we had to go to bed. He walked by later on that night
8 and I was the the only one awake. I couldn't sleep. He walked
9 by and I told him I couldn't sleep and we didn't have a door on
10 our room. So he told me to come in the room with him and I laid
11 on the bed with him.

12 Q Okay. So you were talking about your room didn't have
13 a door. Did you share a room with your sisters?

14 A Yes, ma'am.

15 Q So when he started touching you did he start over the
16 clothes or under the clothes?

17 A Under.

18 Q And so this time where you couldn't sleep was that the
19 first time or the just the time that you remember?

20 A That's one of the times that I remember.

21 Q And about how old were you then?

22 A Eight.

23 Q So after this time when you were about eight did that
24 type of conduct continue?

25 A No, ma'am.

1 Q Okay. So where was your mom when this happened?

2 A She worked nightshift.

3 Q And what were your sister's doing?

4 A Sleeping.

5 Q Okay. So that particular time your sisters were
6 sleeping?

7 A Yes.

8 Q When you couldn't sleep. Okay. And you said it did
9 happen other times?

10 A Yes, ma'am.

11 Q Where would your mom be the other times?

12 A I don't remember, I just remember no one was in the
13 living room at the time we were sitting in the living room on
14 the couch and I was on his lap.

15 Q So do you have any idea how many times he touched you?

16 A I would say around four times; three to four times.

17 Q Okay. And was it the same way every time?

18 A Except for that last time.

19 Q What was different the last time?

20 A Like I said, we were laying in the bed facing the TV
21 and he just pulled my underwear and my pants down and I felt his
22 penis touch my butt.

23 Q Okay. So was that the last time that he touched you?

24 A Yes, ma'am.

25 Q What grade were you in?

1 A Third.

2 Q So, after the third grade incident it didn't happen any
3 more?

4 A No, ma'am.

5 Q Did you tell anybody while it was happening?

6 A No, ma'am.

7 Q Why not?

8 A I was afraid. I didn't know who to tell or what to
9 say.

10 Q Did you ever tell anybody?

11 A I told my grandmother whenever I was in the 5th grade.

12 Q Who is your grandmother?

13 A Lois Campos.

14 Q Where were you when you told your grandmother?

15 A I was at school. She came to the school and noticed
16 that Witness A had stated to her and Michelle that this was going
17 on with her and she wanted to know if it was happening to me so
18 I told her what happened.

19 Q Okay. So, when you had the conversation at school
20 where were you at the school?

21 A We was in the conference room in the office.

22 Q With the principal?

23 A At the time it was just me and her but the principal
24 was notified.

25 Q Okay. So, this happened after Witness A had the

1 conversation with Michelle?

2 A Yes, ma'am.

3 Q Was Witness A living with you all at the time?

4 A She wasn't.

5 Q How long has she been out of the house?

6 A Maybe a week or two. Not long after.

7 Q What happened after you had the conversation at school?

8 A She -- my mom came and picked us up from school, me and
9 Kristina my younger sister, and took us home and she made us sit
10 at the kitchen table and tell him exactly what he did to us and
11 -- that's it.

12 Q So your mom took you home and had you talk to the
13 defendant about --

14 A Yes, ma'am.

15 Q -- the allegations of sexual assault?

16 A Yes, ma'am.

17 Q Did you ever lied about being sexually assaulted?

18 A I said -- I told it wasn't -- after he went to jail I
19 said it wasn't true, but I was trying to protect my mom.

20 Q Okay. Did he touch you as a child?

21 A He did.

22 MS. BURCHSTEAD: Beg the Court's indulgence.

23 Q Did the defendant ever say you were with boys when you
24 weren't?

25 A He did.

1 Q Tell us about that?

2 A I was in the ninth grade and he just called my mom. I
3 was outside playing. He called my mom and said that I was
4 outside with two guys at the top of the road and I was just out
5 there playing basketball by myself.

6 Q Okay. And did you ever -- were you ever kicked out or
7 did you ever leave the family home when you were child?

8 A Yes, ma'am. I ran away a few times and they kicked me
9 out when I was 16 years old.

10 Q Did you know why?

11 A At the time I didn't but I feel like it was -- like a
12 whole bunch of family issues and I felt like he didn't like me
13 so he was trying to get me to, you know, leave. So my mom
14 eventually kicked me out.

15 Ms. Burchstead: Nothing further at this time Your
16 Honor.

17 THE COURT: Mr. Gregory.

18 MR. GREGORY: If it please the Court.

19 CROSS EXAMINATION

20 BY MR. GREGORY:

21 Q Witness B, who is your father?

22 A Guadalupe Morales.

23 Q Did you ask him to take a paternity test?

24 A I did.

25 Q And what was his response?

1 A He said he would and then when I went to buy the test
2 he didn't want to take it any more.

3 Q And what else did he tell you?

4 A We had a conversation about the way I was treated when
5 I was younger and basically to him they didn't do anything
6 wrong. I was kicked out of the house. I ran away several
7 times. They would put their hands on me so ---

8 Q Now, about the paternity test. Did Mr. Morales tell
9 you he would take a paternity test but he did not want to a
10 do-it-yourself test, he wanted to do it at physician's office?

11 A He didn't tell me. He told my younger sister,
12 Kristina. I had called and said that I bought the test does he
13 want to take it and he said yes. Do you want to meet me
14 somewhere, you can come to my house. I didn't know my mom was
15 going to be there that day and he changed his mind.

16 Q So he never agreed to take one of these do-it-yourself
17 tests?

18 A No, sir.

19 Q But he did say he would do it before professionally?

20 A Yes, sir.

21 Q You're still interested in having that done?

22 A Yes, sir.

23 Q All right. So you're -- you're curious as to whether
24 or not he's your father, right?

25 A Yes, sir.

- 1 Q That's why you want to have this done?
- 2 A Yes, sir.
- 3 Q Are you married?
- 4 A I'm engaged.
- 5 Q And your finance is he here today?
- 6 A He is here.
- 7 Q His name is Cody?
- 8 A Yes, sir.
- 9 Q What's his last name?
- 10 A Deese.
- 11 Q Is he in the courtroom?
- 12 A He is.
- 13 Q He is sitting over there in the far right hand corner?
- 14 A Yes, sir.
- 15 Q And his last name is Deese, D-e-e-s-e?
- 16 A Yes, sir.
- 17 Q And do you have any children of your own?
- 18 A I do.
- 19 Q You have four children -- three children don't you?
- 20 A Three children.
- 21 Q One is age four, one is age one and one is about six
- 22 months?
- 23 A Yes, sir.
- 24 Q And do you live in Lancaster?
- 25 A Yes, sir.

- 1 Q Who else lives -- where do you live?
- 2 A I will in Buford in Lancaster.
- 3 Q Who else lives this is house with you?
- 4 A It is just me and my finance and my three children.
- 5 Q All right. You have two other sisters?
- 6 A Yes, sir.
- 7 Q Older sister is Witness A?
- 8 A Yes, sir.
- 9 Q Younger sister is Kristina?
- 10 A Yes, sir.
- 11 Q And you have two brothers?
- 12 A I do.
- 13 Q Antonio.
- 14 A Antonio and Omar.
- 15 Q Omar. Antonio is 11?
- 16 A Yes, sir.
- 17 Q Omar is ten?
- 18 A Ten.
- 19 Q Do you get along with them?
- 20 A I do.
- 21 Q Do you get along with Kristina?
- 22 A I do.
- 23 Q And what about Witness A, are you all close?
- 24 A Yes, sir.
- 25 Q When is the last time you talked to Witness A?

1 A It was maybe last week. I was telling her about my
2 daughter going to school, starting school.

3 Q All right. Did you go to school in Lancaster?

4 A Yes, sir.

5 Q At elementary school where were you?

6 A North Elementary.

7 Q All right. You with went there the whole time? The
8 whole time were you living in Lancaster.

9 A I went to North Elementary, then I went to A.R. Rucker.
10 Seventh grade I went to Buford and I finished at Buford.

11 Q All right. I think you said that your mom worked
12 nightshift?

13 A At the time, yes, sir.

14 Q Where was she working?

15 A Springs, the cotton plant.

16 Q Do you know how long she worked that nightshift job?

17 A I don't remember.

18 Q All right. Do you recall going to Columbia to be
19 examined?

20 A Yes, sir.

21 Q Who examined you, was it a physician?

22 A Yes, sir.

23 Q And did anyone go with you?

24 A My mom.

25 Q All right. What were the results of that examination?

1 MS. BURCHSTEAD: Objection. Outside the scope of
2 what the witness can testified to.

3 THE COURT: I don't know if she's in a position to
4 be able to testify as to what the results were without
5 the the physician being here to verify that.

6 MR. GREGORY: Well, I'm not asking what the
7 physician's opinion was. I'm just asking what results
8 of the examination.

9 THE COURT: Well, I wouldn't call that an opinion
10 from her though. Let's see what her response is.

11 A They didn't tell me anything.

12 THE COURT: Okay.

13 Q You were examined by a physician but you weren't told
14 anything?

15 A They might have spoke to my mom but as far as me, no.

16 Q All right. Was anyone else there with you, your mother
17 and was your grandmother there?

18 A No, sir.

19 Q Just you and your mother?

20 A And I believe my younger sister, Kristina, was examined
21 at the same time.

22 Q Okay. So Kristina was examined too?

23 A Yes.

24 Q But Witness A was not there?

25 A She was not there.

1 Q How close are you with Lois Campos?

2 A When I was younger I didn't have a relationship with
3 her and now I am trying to build that relationship with her.

4 Q You lived with her for how long a period of time?

5 A I never lived with my grandmother.

6 Q Well now, didn't your grandmother and her son Jimmy Joe
7 Perez and you and your sister Witness A and your sister Kristina
8 all live in [REDACTED] with your parents?

9 A I don't remember them living with us.

10 Q All right. You're not saying they didn't live there
11 you are saying you don't remember them living there?

12 A I don't remember.

13 Q Do you remember having a conversation with your
14 grandmother about telling some bad things about your father?

15 A I remember she come in to the school and she asked me
16 what happened, if anything was going on with me and I stated
17 what was going on.

18 Q Do you recall your grandmother telling you to say that
19 things were done to you by your father?

20 A She never told me to say any of this.

21 Q And do you recall telling your mother that what you
22 said about your father, things that he had done to you, were not
23 true?

24 A I do, because I remember her face and I remember her
25 crying so I was trying to protect her.

1 Q Were you in the courtroom earlier when Doctor Kellin
2 testified?

3 A Yes, sir.

4 Q Do you recall what he said about recanting?

5 A Yes, sir.

6 Q He said that recanting is the same thing as --

7 MS. BURCHSTEAD: Objection, pitting.

8 THE COURT: We 're not going to have any pitting
9 of witnesses against each other. I am not going to
10 permit that.

11 MR. GREGORY: Well, I'm not really doing that. I
12 am just laying a foundation for the the question I am
13 getting ready to ask her. I will restraint that
14 question.

15 THE COURT; we will not pit witnesses against one
16 another.

17 Q Do you recall about what Dr. Kellin said about
18 recanting?

19 A Yes, sir.

20 Q Isn't that what you did when you told your mother that
21 your grandmother told you to say things about your father that
22 weren't true? Wasn't that a recanting statement?

23 A Well, my grandmother never told me to say anything of
24 this. I said it because this is what was happening to me. The
25 only reason that I told her it wasn't happening is because I

1 seen her hurt she was.

2 Q All right. Now, let me see if I got this straight.
3 What you are telling me now is that you told your mother that
4 your grandmother told you to say these things that weren't true?

5 A No. I told my mom that I said it wasn't true because I
6 felt her pain. I never said anything about my grandmother
7 telling me to say this. Me and my grandmother -- the only time
8 we had a conversation about this is when she came to the school
9 and told us that Witness A was saying this was happening to her.
10 So then she proceeded to ask if anything was going on with me.
11 This was the only conversation me and my grandmother ever had
12 about this.

13 Q Your grandmother didn't tell you if you didn't continue
14 saying what you were talking about Guadalupe doing that she
15 would take you away from her mother?

16 A No, sir.

17 Q You deny making that statement to your mother?

18 A She never -- she never told me any of this.

19 Q So when you told your mother that your prior statements
20 about Guadalupe were not true, didn't she take you to the
21 Department of Social Services?

22 A I remember her going to pick my Uncle Jimmy me up
23 because she wanted somebody else to hear it. As far as talking
24 to DSS and letting them know that I was taking it back I don't
25 remember that. I remember speaking to DSS when it first

1 happened.

2 Q You don't remember going to DSS and telling them that
3 you were taking the statement back?

4 A No, sir.

5 Q Do you remember going to the the police department,
6 Lancaster Police Department and telling them that the statement
7 was not true, you're taking it back?

8 A No, sir. I remember going to the police department
9 with my mom and her and the police was arguing. They made us
10 stand outside and I seen them through the glass door and they
11 were standing there arguing and then we left from there.

12 Q So you remember being there with your mother but you
13 don't know what they were saying to each other?

14 A That's correct.

15 Q Now, you said you were kicked out of the house. This
16 would have been the house on [REDACTED]?

17 A No, this was the house on [REDACTED].

18 Q That's the last time you lived there?

19 A No, sir.

20 Q And you were 16?

21 A Yes, sir.

22 Q Do you know why you were kicked out?

23 A I don't know why.

24 Q You think it had something to do with playing outside
25 with three boys?

9 | A With a BB gun.

11 A My grades wasn't too good, but I wasn't failing. I
12 didn't have any A or B's.

14 A Buford High School..

16 MR. GREGORY: Beg the Court's indulgence?

18 Q ^{Witness B}, when you left the house did you have a boyfriend
19 then?

21 Q Was his name John Taylor?

23 MR. BURCHSTEAD: Objection. Matter of law.

25 (WHEREUPON, there was an off the record

1 discussion.)

2 Q Witness B, when you left the house was it because you wanted
3 to be with John Taylor and you were not kicked out of the house
4 you left voluntarily?

5 A No, sir. My mom went to the uncle and told him to come
6 and pick me up or I was going to be outside walking with my
7 stuff in the rain.

8 MR. GREGORY: That's all the questions I have.

9 Thank you.

10 THE COURT: Anything on redirect?

11 MS. BURCHSTEAD: Just briefly on redirect.

12 REDIRECT EXAMINATION

13 BY MS. BURCHSTEAD:

14 Q So, we talked about your sister Kristina. Do you know
15 if she is the defendant's biological daughter?

16 A She is.

17 Q And at the time that the disclosures were coming out
18 with Witness A telling Michelle and your conversation at school
19 you were still living at the [REDACTED] Home, is that right?

20 A Yes, ma'am.

21 Q And then this conversation where your mom had you
22 confront the defendant when did that happen again?

23 A That was the same day I spoke with my grandmother about
24 what happened. She -- the school contacted my mom. She came to
25 the school, picked us up and took us home and made us tell

1 everything that was going on in front of him.

2 Q Okay. And what was her reaction when -- what was your
3 mom's reaction during this time you are are confronting him?

4 A I don't remember her face. I just remember her
5 standing beside us at the table. We were sitting at the the
6 table and she was standing up. He was sitting across the table
7 from us.

8 Q And so it was after that that you changed your story
9 you recanted?

10 A Yes, ma'am. It was when he was in jail.

11 Q And you say you ran away several times?

12 A Yes, ma'am.

13 Q And that they had put hands on you?

14 A Yes, ma'am.

15 Q What do you mean by that?

16 A Just when we would argue they would start hitting me.
17 They never hit my on face but it was always in my head so I
18 would fight back.

19 Q So you recanted but today your testimony is that the
20 defendant sexually touched you as a child?

21 A Yes, ma'am.

22 MS. BURCHSTEAD: Nothing further Your Honor.

23 MR. GREFORY: No further questions.

24 THE COURT: You may step down.

25 MS. BURCHSTEAD: May she be excused, Your Honor?

1 THE COURT: Any objections Mr. Gregory to her
2 being excused?

3 MR. GREGORY: No objection Your Honor.

4 THE COURT: You may be excused ma'am.

5 MR. KOZAK: Your Honor, I don't believe I asked
6 if Michelle can be excused as well. She is the last
7 person to testify.

8 THE COURT: Any objection to Miss Rollins being
9 excused?

10 MR. GREGORY: No objection Your Honor.

11 THE COURT: She may be excused as well. Thank
12 you.

13 MS. BURCHSTEAD: And may we approach for just a
14 minute?

15 THE COURT: Sure.

16 (WHEREUPON, there was an off the record
17 discussion.)

18 THE COURT: All right ladies and gentlemen. We
19 are going to take about a ten-minute break at this
20 point in time. The State needs to determine whether
21 or not they are ready to conclude their case or if
22 they need to call another witness. We need a few
23 minutes to determine that so if you would retire to
24 your jury room we will call you back in a few minutes.
25 Again, I caution you about discussing this case at

1 this point in time.

2 Everyone remain seated.

3 (WHEREUPON, the jury enters the courtroom.).

4 THE COURT: You may call your next witness.

5 MS. BURCHSTEAD: Your Honor, the State rests its
6 case.

7 THE COURT: Okay. All right. Mr. Gregory are you
8 going to have some motions at this point.

9 MR. GREGORY: Yes, Your Honor, I do.

10 THE COURT: We will take those up outside the
11 presence of the jury. I know we just brought you in
12 but I will let you go for a walk. What we will do, we
13 got to argue some motions at this point in time. I
14 will go ahead and let you break for lunch. It's 12
15 o'clock. We got arguments and motions. All right why
16 don't we plan to be back in here by 1:30. Just be
17 ready to start at 1:30. Everything out of the way so
18 we can hit the ground running. Start at 1:30 and see
19 how far we get this afternoon. So I will ask you to
20 leave now and break for lunch.

21 Again, I caution you not to discuss the case with
22 anybody at lunch or with each other in the jury room.

23 (WHEREUPON, the jury exits the courtroom.)/HREURT.

24 THE COURT: All right, Mr. Gregory.

25 MR. GREGORY: At this stage at the conclusion of

1 the State's case the defense moves for a directed
2 verdict of not guilty. Looking at the evidence
3 presented by the State, there is insufficient evidence
4 for the case to go forward at this time.

5 THE COURT: Okay, any response?

6 MS. BURCHSTEAD: Thank you, Your Honor. And I
7 know you're well aware of the standard at the directed
8 verdict motion at that time during the case and we are
9 concerned at this point with the existence of evidence
10 and not the weight of the evidence and it's to be
11 viewed in a light most favorable to the State.

12 To that end the defendant is charged with three
13 counts; CSC with a minor, first, second -- and second
14 degree as well as assault with intent to commit and on
15 each of these we do believe the State has presented
16 sufficient evidence that the jury can -- that it could
17 be submitted to the jury specifically with CSC first
18 degree. This would be under the age of 11. You heard

19 Witness A testify to digital penetration numerous
20 times over the years under the age of 11 and
21 potentially the jury could also find sexual
22 intercourse that occurred prior to the age of 11.
23 You recall as to second degree, her 11th birthday.
24 Specifically on her birthday we had incident that
25 happened prior to going to Carowinds. She also

1 testified to intercourse that day as well as
2 potentially before that and the timeframe within a few
3 months surrounding her 11th birthday.

4 Lastly, assault with intent to commit CSC with a
5 minor; second. She talked about the time she stayed
6 home sick, as well as some other times where he had
7 attempted to commit acts as he had done previously,
8 CSC with a minor she said something along the lines
9 not today, but essentially fought him off and that
10 would have occurred closer to maybe her 12th birthday
11 but some time after the age of 11 to fit that 11 to
12 14, timeframe. Of course we do believe the defendant
13 has been more than sufficient identified. We have
14 established jurisdiction as Lancaster County. And in
15 addition to Witness A's testimony we had a
16 disclosure witness.

17 THE COURT: All right. All right, Mr. Gregory I
18 am going to respectfully deny your motion for a
19 directed verdict of not guilty. I find that there is
20 sufficient evidence that has been introduced that is
21 this a matter that should be submitted to the jury.

22 MS. BURCHSTEAD: Thank you, Your Honor.

23 THE COURT: Okay. Counsel let's plan to be here
24 at 1:30.

25 MS. BURCHSTEAD: Yes, sir.

1 (WHEREUPON, court was in recess for lunch.)

2 THE COURT: Ready for the jury.

3 MS. BURCHSTEAD: We are ready, yes.

4 (WHEREUPON, the jury enters the courtroom.)

5 THE COURT: All right. Mr. Gregory, proceed.

6 MR. GREGORY: Thank you, Your Honor. Please the
7 Court, I would like to call Guadalupe Morales to the
8 stand please.

9 GUADALUPE MORALES, called as a witness, having
10 been duly sworn by the clerk, was examined and
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. GREGORY:

14 Q Mr. Morales, can you hear me?

15 A Yes, sir.

16 Q I want you to speak up loud enough so I can hear you
17 and that means all the jury panel can hear you as well. All
18 right. And what is your name?

19 A Guadalupe Morales.

20 Q And what's your date of birth?

21 A [REDACTED], 1970.

22 Q So you are what, 46 years old now?

23 A Yes, sir.

24 Q All right. And where do you live?

25 A [REDACTED] Blackmon Pond Road.

- 1 Q And that's in Lancaster?
- 2 A Lancaster, South Carolina.
- 3 Q Who lives their with you?
- 4 A My wife, L.M.
- 5 Q And that is her sitting over there?
- 6 A Over there.
- 7 Q Do you have any children?
- 8 A Yes, sir.
- 9 Q How many?
- 10 A I got four and my wife has one with somebody else.
- 11 Q All right. Witness A is your wife's child?
- 12 A Yes.
- 13 Q Before you and Witness A -- L.M. got married?
- 14 A Yes, sir.
- 15 Q When did you and L.M. get married?
- 16 A Back in 1992 I think it was. I really don't remember.
- 17 Q All right. You lived for a while on [REDACTED]?
- 18 A Yes, sir.
- 19 Q All right. Who was -- was that a trailer?
- 20 A Yeah, a trailer.
- 21 Q Who was the landlord of that property?
- 22 A Mac Edmonds and Pie -- I can't remember whole name.
- 23 Q All right. Pie Edmonds?
- 24 A Yeah.
- 25 Q All right. Where are you employed?

- 1 A When, right now?
- 2 Q Yes, right now?
- 3 A Right now I am working with Snyder's Lance.
- 4 Q Snyder's Lance, is that like Lance the cracker?
- 5 A Yeah, that company.
- 6 Q And that's locate where in Charlotte?
- 7 A Charlotte, North Carolina.
- 8 Q You drive back and forth every day?
- 9 A Yes, sir.
- 10 Q What shift do you work?
- 11 A I work first shift.
- 12 Q First?
- 13 A First.
- 14 Q All right. Now Mr. Morales, did you do any of the
- 15 things that being said about you?
- 16 A No, sir. No.
- 17 Q Have you ever molested anyone?
- 18 A No, no, sir.
- 19 Q Have you ever touched anyone inappropriately?
- 20 A No.
- 21 Q Are any of these accusations that have been made
- 22 against you true?
- 23 A No, sir, not true.
- 24 Q Do you have any reason, any idea as to why these girls
- 25 would say the things about you if they are not true?

1 A I have no idea where. You know, I've always been
2 strict with them to make their homework and do chores in the
3 house. That's the only reason I think why they are saying all
4 these things.

5 Q All right.

6 A And maybe mother-in-law put them to say these things.
7 I don't know.

8 Q All right. Now your mother-in-law that is Lois Campos?

9 A Yeah.

10 Q That's your wife's mother?

11 A Yeah.

12 Q How do you all get along?

13 A Not very well.

14 Q All right. Now did you ever have an occasion to ask
15 her about her bringing men to the home?

16 A Yes. I told her to stop drinking and stop bringing men
17 into the house.

18 Q Was she living with you?

19 A Yeah.

20 Q And who else was living there with you?

21 A My wife and Witness A and ^{Witness B}.

22 Q And Lois was there?

23 A Yeah, and Jimmy Joe Perez.

24 Q She had a son, named Billy (sic) Joe Perez and he was
25 living there as well?

1 A Yes.

2 Q This is house that you and ^{Witness B} had were renting from
3 the Edmonds there on [REDACTED]?

4 A It wasn't a lease. It was my wife's L.M.
5 You're saying ^{Witness B}. It's L.M. .

6 Q Okay. L.M. . You and your wife, L.M. . So you and
7 L.M. , that's your wife?

8 A Yes.

9 Q And ^{Witness A}?

10 A Yes.

11 Q And ^{Witness B}?

12 A ^{Witness B}.

13 Q And Lois.

14 A Yeah and Lois.

15 Q And Jimmy Joe were all living there in the same house?

16 A Yes.

17 Q Okay. Now, did you ask Lois to help pay for the
18 expenses?

19 A Yes, sir. Yes, sir.

20 Q What was her response?

21 A She didn't like that very much.

22 Q Was she working somewhere at the time?

23 A Yes, she was working at China Inn. I had called her
24 over there to the job to ask her if she was going to help me pay
25 the bills and she got -- hang up the phone and she right away

1 she came to the house.

2 Q The China Inn in --

3 A It was its not far.

4 THE COURT: Sir, wait a minute. Let him finish
5 asking the question before you answer.

6 THE WITNESS: All right. Sorry.

7 Q The China Inn in that you refer to where Lois was was
8 working was on Meeting Street?

9 A Yes.

10 Q And [REDACTED] was right off of Meeting Street?

11 A Yeah.

12 Q So how far far was it from where she worked until where
13 the house was?

14 A Not far. Not far at at all. You can walk.

15 Q A couple of miles?

16 A Not even. May be not even half a mile. Maybe half a
17 mile. I don't know.

18 Q So she came over to the house right after the telephone
19 conversation?

20 A Yeah.

21 Q She hung up on you?

22 A Yes.

23 Q And what happened when she got to the house?

24 A She start telling me not to be calling her to the job
25 and start pushing me around and then of course Jimmy Joe Perez

1 he starting taking off his shirt like he wanted to fight me but
2 I tell him I was not going to touch them and then she called
3 911.

4 Q And did the police come?

5 A Yeah, the police arrived.

6 Q All right. And did she move out right after that?

7 A Yeah, the police make her move out.

8 Q When, like within two or three days?

9 A No. Well, the police told me just give them a chance
10 to stay here for the weekend. Because it is the weekend they
11 can go no where right now. But she move. The next day she move
12 out, she went to Westgate Apartments.

13 Q So when she left did she take Witness A with her?

14 A Yes, sir.

15 Q What did your wife, L.M. , think about her mother,
16 Lois, having men coming to the house?

17 MS. BURCHSTEAD: Objection. Calls for
18 speculation.

19 THE COURT: I'll sustain the objection. She
20 wouldn't know what somebody thought.

21 Q Did your wife express any -- express anything about her
22 mother's --

23 A Well, she was the one telling me about all these men
24 because I use to work third shift and when I came home she told
25 me all these things about her that she take a different man

1 every -- almost every day and she told me that put a stop to
2 thing or me or her were not going to be together anymore.

3 Q So you did what your wife asked you to do?

4 A Yeah, yeah. Cause -- sorry. Can I say something?

5 Q No. Whenever you were first accused of this what if
6 anything did you do I?

7 A Say what?

8 Q When you were first accused when the allegations were
9 first made against you what if anything did you do? Did you go
10 talk to anybody.

11 A Oh, yeah. Yeah.

12 Q Who did you go see?

13 A That Parson detective or whatever he is.

14 Q You went to the city police department?

15 A Yeah.

16 Q And you went to see the detective?

17 A Yes.

18 Q Did you talk to him?

19 A Yeah.

20 Q What did you tell him?

21 A It was a long time ago. I couldn't speak very good. I
22 still can speak but right now I am more clearer.

23 Q Did you deny --

24 A Yeah.

25 Q -- these allegations?

- 1 A Yeah.
- 2 Q So you told him that they weren't true?
- 3 A Yeah.
- 4 Q All right. And that name of that officer was Officer
- 5 Parsons?
- 6 A I remember the last name Parson. Something like that.
- 7 Q Did you go anywhere else and did you talk with anyone
- 8 else?
- 9 A No, not that I remember.
- 10 Q Did you go to Department of Social Services?
- 11 A No. No. They didn't -- they didn't talk to me.
- 12 Q They didn't ask you to come by and talk to them?
- 13 A No. No.
- 14 Q All right. Now when you talked to Officer Parson that
- 15 was about let's say when, within two or three weeks of when you
- 16 were arrested?
- 17 A I talked to him before I got arrested.
- 18 Q When was it, the first of November?
- 19 A I can't remember the date.
- 20 Q From the time that you were arrested about how long a
- 21 time -- about how much time elapsed from that time until the
- 22 time you went to the police department and talked to Officer
- 23 Parsons?
- 24 A I can't understand.
- 25 Q How much time was it from the time you were arrested

1 until the time you went to see Officer Parson and told him this
2 wasn't true?

3 A I wasn't arrest. I went to talk to him before I got
4 arrested. When I got arrested it was probably about a week.

5 Q Oh, I see. So you went to see the officer before you
6 was arrested?

7 A Yeah.

8 Q I see. I understand. Now, were there any witnesses
9 that you have -- that you had that you intended to bring to
10 Court that have moved away?

11 A Oh yeah, my dad. My dad.

12 Q And who else?

13 MS. BURCHSTEAD: Your Honor, objection.

14 A Some other friend.

15 THE COURT: Hang on second. Yes, ma'am.

16 MS. BURCHSTEAD: I think we have a matter of law.
17 Can we just approach for a minute?

18 THE COURT: Okay. All right.

19 (WHEREUPON, there was an off the record
20 discussion.)

21 Q Now Mr. Morales, what is your father's name?

22 A Arturo Morales.

23 Q And what was your relationship with him, was it good?

24 A Yeah, very good.

25 Q Were you all close?

1 A Yeah.

2 Q Did you talk about this case with him?

3 A Yeah, he helped me with this case.

4 Q Did you expect him to come to court and testify?

5 A Yeah.

6 Q Did he pass away?

7 A Yeah, he passed away.

8 Q Were you able to attend the funeral?

9 A No. No.

10 Q Was it in Mexico?

11 A Yeah, Mexico.

12 Q Now, are you a citizen of the United States?

13 A I'm a resident.

14 Q Do you have temporary residence card?

15 A Yeah.

16 Q Have you attempted to apply for citizenship?

17 A Yes, sir.

18 Q Have you been able to accomplish that?

19 A I can't do it right now.

20 Q Why not?

21 A Because of this problem.

22 Q Because this is pending?

23 A Uh-huh. Yeah.

24 Q Did you have any problems traveling out of the state of

25 South Carolina?

1 A Yes. Yes, sir.

2 Q And your job is in North Carolina?

3 A Yeah.

4 Q Did you have to get the Court to give you permission to
5 leave the state in order to get that job?

6 A Yes.

7 MS. BURCHSTEAD: Your Honor, I object. It's
8 related to that previous matter of law we discussed.
9 I don't believe this is relevant to the facts of this
10 case or any defenses to this case.

11 THE COURT: Where are you headed with this?

12 MR. GREGORY: I think that's about as far as I was
13 going to go.

14 THE COURT: All right. That is not really
15 relevant to the issues before the court.

16 MR. GREGORY: All right.

17 Q Tell me about your family. What do you do for your
18 family?

19 A My family. My kids?

20 Q Yes.

21 A Yeah, I work for them. Work all the time so I can put
22 food on the table for them. That's all I do.

23 Q Who all has lived in your house?

24 A Say what?

25 Q Who all has lived in your house? Now you have two

1 children?

2 A Yes.

3 Q Lives in the house now?

4 A Yeah.

5 Q What are there names?

6 A Antonio M. and Omar M.

7 Q And they are 11 and 10 years old?

8 A Yes, sir.

9 Q The two boys?

10 A Yes, two boys.

11 Q And all the other children that were in the house, the
12 other three girls have all moved out?

13 A Yeah, move out.

14 Q All right. Did you ever have an occasion to have any
15 of your children's children or your grandchildren living in your
16 house?

17 A Oh, yeah.. Yeah.

18 Q How many were they?

19 A Two. Well, yeah two. Three right now because
20 sometimes I babysit my grand kid.

21 Q All right. And whose children were those? Were those
22 Kristina's?

23 A Yeah, Kristina Morales.

24 Q About how long did those grandchildren live in your
25 house?

1 A The two oldest ones they live -- the oldest one
2 probably two years and the youngest one -- not the youngest one,
3 the middle one about a year.

4 Q All right. Now tell me about your wife. How do you
5 all get along?

6 A My wife and me get along very good.

7 Q She's supportive of you?

8 A Yeah.

9 Q You have all been married for what 25 years?

10 A Twenty-five years.

11 Q Does she work?

12 A Yeah she work right now at Walmart.

13 Q How long has she been working at Walmart?

14 A Probably about -- well, she started in Indian Land and
15 then then she quit and she went right here in Lancaster. All
16 together maybe three years.

17 Q All right. She is working in the Walmart in Lancaster
18 now?

19 A Yes, sir.

20 Q All right. Now do you have any offenses against you?
21 Do you have any record?

22 A No. No, sir, only traffic tickets.

23 Q Did ^{Witness B} ask you if you wanted to take a paternity
24 test?

25 A Yes, sir.

1 Q And what was your response?

2 A I ask her first one time and she didn't want to do it.
3 Now she come back and tell me that she want to do it but she
4 wants to do it with a little thing from Walmart. I do it if we
5 go to the doctor. I mean I don't want to just to do with a
6 little thing from Walmart.

7 Q All right. You think a test as doctor's office would
8 be more reliable?

9 A Yeah.

10 Q Why do you think ^{Witness B} would want to have you take a
11 paternity test?

12 A What?

13 Q Why do you think ^{Witness B} would ask you to take a paternity
14 test?

15 A She's tired of hearing that she's not my daughter which
16 I'm the the same way. I'm tired of this thing. I mean I really
17 want to find out the truth if she is mine or not.

18 Q Did your ever work third shift or what they call
19 graveyard shift over night?

20 A I don't remember. She don't hardly work. In the past
21 there we don't have no babysitter. It costs more to pay a
22 babysitter than what she would be making so I told her to stay
23 home and babysit the kids.

24 Q Whenever L.M. left the house did she take anybody with
25 her?

1 A She usually take all of them.

2 Q Did she take all the children with her?

3 A Yeah.

4 Q Did she ever leave some of the children at home?

5 A No. No.

6 MR. GREGORY: Beg the Court's indulgence please.

7 THE COURT: Yes, sir.

8 MR. GREGORY: That's all the questions we have of
9 this witness Your Honor.

10 MS. BURCHSTEAD: Beg the Court's indulgence just
11 one minute Your Honor.

12 THE COURT: All right.

13 MS. BURCHSTEAD: If it please the Court.

14 CROSS EXAMINATION

15 BY MS. BURCHSTEAD:

16 Q So Mr. Morales is it your testimony that all this is
17 being made up by ^{Witness B} and Witness A because you were strict?

18 A I didn't say it was made up I said it could be. I
19 don't know. I was strict. I would make them do their home
20 work, make chores in the house.

21 Q So you were strict 15 years ago?

22 A Not 15 years ago because I told you I worked -- I told
23 you I worked third shift and my wife was in the house.

24 Q Were you strict or not strict?

25 A I was strict.

- 1 Q Fifteen years ago?
- 2 A Not 15 years ago.
- 3 Q Twenty years ago?
- 4 A Not 20 years ago.
- 5 Q When were you strict?
- 6 A When they start getting older like eight years old.
- 7 Q Okay, so not three or four?
- 8 A No. How can I be strict with a kid like that. Too
- 9 small.
- 10 Q Okay. And they don't live with you now, is that right?
- 11 A They're not living with me.
- 12 Q So you are not strict with with them now?
- 13 A No, how can I? They have their own life.
- 14 Q So the grandmother Lois is telling them to make this
- 15 up, is that right?
- 16 A I have no idea what she did or not. It's my
- 17 suggestion. I don't know.
- 18 Q Because she got mad at you? You kicked her out?
- 19 A I didn't kick her out.
- 20 Q So she told them to make this up?
- 21 A I didn't kick her out.
- 22 Q And that was what 15, 20 years ago?
- 23 A Say what?
- 24 Q Fifteen, 20 years ago you all had some sort of
- 25 disagreement?

1 A Yeah, 15, 20 years ago, yeah.

2 Q But Lois testified in here?

3 A Yeah.

4 Q Okay. Now, your father, you mentioned you would have
5 called your father to testify; is that right?

6 A Yes.

7 Q Did he live with you at [REDACTED]?

8 A No, he was living with my brother.

9 Q So anything he would know about this case would be what
10 you told him?

11 A Well, I didn't tell him nothing about anything. I just
12 -- he know what happened to me. I got locked up because of this
13 thing.

14 Q Okay. You talked about watching Kristina your
15 daughter's children, is that right?

16 A No. He never watched them.

17 Q You never watched Kristina's children?

18 A Who me?

19 Q Yeah, you.

20 A I thought were you talking about my dad watching them.

21 Q So you have a daughter Kristina, right?

22 A Right.

23 Q You're her biological father?

24 A Yeah, as far as I know.

25 Q And you watch her children?

- 1 A Yeah, I watch my grandchildren.
- 2 A And she did not testify in this case did she.
- 3 A No, but ^{Witness B} asked me to watch her kid one time.
- 4 Q Okay. So, when the girls were young L.M. worked at
- 5 a cocoa factory, is that right?
- 6 A Cocoa factory?
- 7 Q Yeah.
- 8 A In Indian Land.
- 9 Q I think that's where it is.
- 10 A Yeah.
- 11 Q She was working night shift, is that right?
- 12 A No.
- 13 Q She never worked night shift?
- 14 A No, she worked there for maybe a week or two.
- 15 Q And your testimony is that every time she left the
- 16 house she took all the kids with her?
- 17 A Yeah, I was working third shift. I could not babysit
- 18 my kids.
- 19 Q So when Witness A was three and L.M. left the house
- 20 she always took the kids?
- 21 A She always take the kids.
- 22 Q And when Witness A was four and L.M. left the house
- 23 she always took all the kids?
- 24 A Yes.
- 25 Q And five and six and seven --

1 A Five and since because I was working third shift.

2 Q And eight and nine and ten and eleven?

3 A I was working third shift.

4 Q And 12. You were never alone with the kids?

5 A No.

6 Q Never?

7 A My mother-in-law was there too. She was watching the
8 kids. When they leave somewhere they take the kids.

9 Q So you were arrested October 29th of 2002, is that
10 right?

11 A It was October. I don't remember exactly the date.

12 Q But you do recall talking to Investigator Parson?

13 A Parsons, yes.

14 Q Before were you arrested?

15 A Yeah, before.

16 Q Would it be accurate to say the day before?

17 A What did you say?

18 Q Would you dispute that it was the day before?

19 A Before what?

20 Q You got arrested. Let me he ask you this. Did you
21 talk to Investigator Parsons on October 28th of 2002?

22 A I say I remember it was October. I can't remember the
23 date.

24 Q Okay. But you do recall talking to --

25 A Yeah.

1 Q To Investigator Parsons one time?

2 A One time only.

3 Q Okay. Do you recall telling Officer Parsons or
4 Investigator Parson that he could write a statement for you?

5 A No.

6 Q You deny that he wrote a statement that you signed?

7 A Yeah. I don't know how he got that thing but he didn't
8 ask me none of those questions.

9 Q So did you make a statement "that you told Witness A you
10 were going to tell her mother --

11 A No.

12 Q That she started acting strange"?

13 A No.

14 Q "That Witness A started trying to let me to touch her and
15 sleep with her"?

16 A No.

17 Q "After that she was okay for a while"?

18 A No.

19 Q "Then the summer she started again"?

20 A No.

21 Q You didn't say this. "One morning we were home alone
22 and she came in to my bedroom where I was asleep. I felt
23 someone get into bed and it was Witness A wearing just a
24 nightgown"?

25 A I didn't tell him that. I told my wife what she did

1 because she use to wake me up cause I tell you I worked third
2 shift and then she start pulling my legs and my hair for me to
3 wake up.

4 One time my wife tell Jimmy Joe Perez to cut the grass for
5 somebody and --

6 Q That's not the question sir. The question is did you
7 make that statement to the officer, "that Witness A got in bed
8 with you wearing a nightgown"?

9 A I don't remember.

10 Q "And that after that I told my wife and mother-in-law
11 the last time and they talked to Witness A." Do you remember
12 that?

13 A I never talked to my mother-in-law.

14 Q Okay. "When I told my wife about the last time she
15 kicked her out of the house"?

16 A My wife took her to her mom but she never kick her out.

17 Q So your statement to Officers Parsons, Investigator
18 Parson was that Witness A got in the bed with you wearing a
19 nightgown and then L.M. talked to with her and then kicked her
20 out after the last time?

21 A I never told him that.

22 Q Okay.

23 MS. BURCHSTEAD: If I may have this marked.

24 (State's Exhibit Four, Statement marked for
25 identification as of this date.)

1 MS. BURCHSTEAD: Permission to approach Your
2 Honor.

3 THE COURT: Yes, ma'am.

4 Q I am showing you State's Exhibit Four. Does this look
5 familiar to you?

6 A He never asked me those kinds of questions.

7 Q Is that your signature?

8 A Yeah. He didn't ask me no kind of questions like that.

9 MS. BURCHSTEAD: Beg the Court's indulgence.

10 Q So you have two boys in the house?

11 A Yes, sir. Yes, ma'am.

12 Q And they are your boy?

13 A Yeah.

14 Q So every time L.M. left the house she took all the
15 girls and the boys?

16 A The boys were not born at that time. How could she
17 take them.

18 Q How old are the boys now?

19 A Eleven and ten.

20 Q All right. So at the time you were living with just
21 the three girls; is that right at the time of these allegations?

22 A Yes, ma'am.

23 Q So every time L.M. left she took all the girls?

24 A Yes, ma'am.

25 Q So there was never a time that you were home alone with

1 these girls?

2 A No.

3 Q Ever?

4 A I don't remember being alone with them because my
5 mother-in-law was there too. Sometimes she keep them.

6 Q So, Witness A is lying and ^{Witness B} is lying?

7 A I don't know what they are doing.

8 MS. BURCHSTEAD: Nothing further Your Honor.

9 THE COURT: Mr. Gregory, any redirect.

10 REDIRECT EXAMINATION

11 BY MR. GREGORY:

12 Q Guadalupe, you went to the police department before you
13 were arrested?

14 A Yeah, before.

15 Q You talked to Officer Parsons?

16 A Yeah.

17 Q Did you ever write down anything?

18 A No, I didn't write nothing down. Not even him write
19 anything down.

20 Q Did he give you anything to sign --

21 A No.

22 Q -- that was written out?

23 A No.

24 Q How long were you there?

25 A Maybe about -- maybe 15 minutes.

1 Q Did he write out anything?

2 A No, he didn't write anything down.

3 Q And ask you to sign it?

4 A No, he didn't ask my to sign anything.

5 Q How much English were you able to speak at that time?

6 A Very little.

7 Q Did they ask you if you wanted a interpreter?

8 A No. No.

9 Q Did you need a interpreter at that time?

10 A I did but I didn't ask for one.

11 THE COURT: I am sorry I didn't hear your answer.

12 THE WITNESS: I said I did. I didn't ask for one.

13 MR. GREGORY: All right. That's all the
14 questions. Thank you.

15 MS. BURCHSTEAD: Nothing further from the State.

16 THE COURT: Okay, you may step down Mr. Morales.

17 MR. GREGORY: I call L.M.

18 L.M., called as a witness, having
19 been duly sworn by the clerk, was examined and
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. GREGORY:

23 Q All right. State your full name please?

24 A L.M.

25 Q Now speak up so I can hear you.

1 A L.M.

2 Q That is good. How old are you?

3 A Forty-two.

4 Q All right. And how long have you been married to

5 Guadalupe?

6 A Twenty-five years.

7 Q All right. Where are you employed?

8 A Walmart supercenter.

9 Q Is that in Lancaster?

10 A Yes, sir.

11 Q How long have you been employed there?

12 A I am going to say going on three years.

13 Q All right. How many children do you have?

14 A I have five.

15 Q Witness A?

16 A Witness A.

17 Q Witness B?

18 A Witness B.

19 Q Kristina?

20 A Yes, sir, Kristina.

21 Q Antonio and --

22 A And Omar.

23 Q And were any of the boys -- when were the boys -- what

24 are there birthdays?

25 A Antonio [REDACTED] of '06 and Omar is [REDACTED] of '07.

1 Q All right. Were any of the boys living in the home at
2 the time your girls were living there?

3 A Kristina. I think Kristina had a chance to live with
4 them for about I think she lived with us maybe -- let's see -- a
5 couple of years before she moved out. She was -- I think they
6 were like maybe five or six months when she moved out.

7 Q All right. If you left the house did you take all the
8 children with you?

9 A Yes, sir.

10 Q Would there be a problem in taking all the children?

11 A No. Because every time I left I would tell them to get
12 there things together and lets go. I do that the now with my
13 boys I tell them to get there things and lets go.

14 Q Did you ever leave any of the children alone by
15 themselves?

16 A No, sir.

17 Q When you left the house?

18 A No, sir.

19 Q Did you ever work the graveyard shift or the third
20 shift?

21 A No, sir.

22 Q Never have?

23 A No, I worked for Walmart third shift and that was the
24 first time I worked for Walmart in Indian Land. That was like
25 four years ago. But other than that I never worked not third

1 shift.

2 Q And what shift was that?

3 A Third.

4 Q What were the hours on that job?

5 A When I worked for Walmart third shift was ten at night
6 to seven in the morning.

7 Q Okay. How long did you work that job?

8 A A year.

9 Q One year?

10 A One year.

11 Q All right. Now do you believe your husband did the
12 things that they accused him of doing?

13 A No, sir.

14 Q Have you seen any evidence -- have you seen anything to
15 make you believe he did any of these things?

16 A No, sir.

17 Q What did ^{Witness B} -- did you take ^{Witness B} to be examined?

18 A Yes, sir. They had scheduled -- social services had
19 scheduled them an appointment up in Columbia for ^{Witness B} and
20 Kristina and I took both of them.

21 Q All right. Were they both examined?

22 A Yes, sir.

23 Q And what were the under all the results of those
24 examinations?

25 A They told me --

1 MS. BURCHSTEAD: Objection. Calls for
2 speculation.

3 A -- it was negative.

4 THE COURT: Don't say anything ma'am.

5 MS. BURCHSTEAD: Objection. I don't believe she
6 has first hand knowledge of that. It calls for
7 speculation. Can't authenticate it.

8 THE COURT: You have to lay a better foundation
9 before I let her respond to that Mr. Gregory.

10 Q Were you provided the results?

11 A Yes, sir.

12 Q All right. Were the results both the same for both
13 girls?

14 A Yes, sir. All three of them actually.

15 Q Who was the other one, Witness A?

16 A Uu-huh. Yes, sir.

17 THE COURT: Say yes or no to answer the question.

18 Q Did ^{Witness B} ever tell you that what she had said about
19 Guadalupe was not true?

20 A Yes, sir. I remember when the case had first come
21 about I was getting visitation with Witness A and we was going to
22 see her and I remember we were in the truck that we had at the
23 time and we were sitting in the truck going to McDonalds and she
24 was like, momma, she was like, how come if this is not true how
25 come they don't just drop the charges against my daddy. And I

1 was like because you all have to tell the truth. I can't make
2 you all say stuff. I can't put stuff in your head. And then I
3 turn around and I looked and I said, what are you trying to say
4 that it's not true. And I was like, if it's not true you need
5 to talk to somebody. You can't just leave it like that and she
6 was like -- and I said why would you want to lie anyway.

7 MS. BURCHSTEAD: I object. I believe this whole
8 line of questioning is hearsay.

9 THE COURT: I'll let her go into this. I'll
10 overrule the objection. Go ahead.

11 A I asked her why she wanted to lie and who would put her
12 up to it and she just said that she didn't know but she said
13 that her grandma had -- had did this to her. And I was like
14 when did she have the opportunity to talk to you and she just
15 said when she came up to the school. That's what she told me.

16 Q All right.

17 A So I left it at that because I didn't want nobody
18 thinking that I was putting stuff in their head because I never
19 have.

20 Q Okay. And when you you were talking about at the
21 school, who was in the conference room?

22 A I asked her --

23 MS. BURCHSTEAD: Objection. Calls to speculation.
24 She wasn't present.

25 THE COURT: If she wasn't there she certainly

1 can't testify as to who was in the room, Mr. Gregory.
2 If you can establish she was present. But if she
3 wasn't there she can't say.

4 Q You weren't in the conference room?

5 A No, sir, I was not.

6 Q Do you know who was?

7 A No, sir, I do not. Just what ^{Witness B} told me.

8 Q All right. Well, what did ^{Witness B} -- who did ^{Witness B} say was
9 there?

10 MS. BURCHSTEAD: Objection. Hearsay.

11 MR. GREGORY: Your Honor, ^{Witness B} has already
12 testified. It's not hearsay unless the witness is
13 unavailable.

14 MS. BURCHSTEAD: I wholeheartedly disagree and he
15 could have asked ^{Witness B} when she testified.

16 THE COURT: It's a hearsay statement. I will
17 sustain the objection.

18 MR. GREGORY: All right.

19 Q Now, after ^{Witness B} told you that did you take her
20 anywhere?

21 A No, not that day because like I said we was going to do
22 my visitation with ^{Witness A}. But then that next day because it
23 was the weekend that following Monday I had called and they told
24 me I had to bring her up there and I did but they wouldn't talk
25 to her because they were saying that I was probably putting this

1 stuff in her head.

2 Q Who was this?

3 A The case worker.

4 MS. BURCHSTEAD: Objection. Hearsay.

5 THE COURT: Sustained. You can't tell us what
6 some case worker told you ma'am. That would be
7 hearsay.

8 Q So this was at DSS?

9 A Yes, sir.

10 Q Did you go anywhere else?

11 A Yes, sir. I also went to the sheriff's department, but
12 I was informed the same thing I was at DSS.

13 Q But you told them what you had been told?

14 A Yes, sir.

15 Q Who did you tell at the DSS?

16 A I actually talked to the case worker.

17 Q Do you remember his name?

18 A Her name. No, sir, I don't remember her name.

19 Q Was it male or female?

20 A It was a woman.

21 Q Okay. Did you know somebody named Ray Rainey?

22 A The name sounds familiar.

23 Q All right. Do you know who you spoke with when you
24 went to the city police department?

25 A Yes, the detective that was on the case.

1 Q Detective Parsons?

2 A Yes, sir.

3 Q And you told him what ^{Witness B} had just told you about this
4 being untrue?

5 A Yes, sir.

6 Q Miss L.M. were you abused as a child?

7 A Yes, sir.

8 MS. BURCHSTEAD: Objection, relevance.

9 THE COURT: What's the relevance of that?

10 (MR. GREGORY: Your Honor, the expert testified
11 about how child abuse -- how abuse victims handle the
12 raising of their children.

13 MS BURCHSTEAD: Your Honor, may we take this up
14 outside the presence of the jury.

15 THE COURT: All right ladies and gentlemen, I will
16 ask you to retire to the jury room for a few moments
17 as I go over this point of law.

18 (WHEREUPON, the jury leaves the courtroom.)

19 THE COURT: Yes, sir.

20 MR. GREGORY: Your Honor, I asked L.M.

21 whether she had been abused as a child and I think she
22 said yes. Doctor Kellin had given extensive testimony
23 to the jury about what happens when someone has been
24 abused and he went into detail about how they raise
25 their children; they're strict on their children. I

1 think that's what he said. Because they don't want
2 the same thing to happen to their children. And I
3 think this falls directly in line with his testimony.

4 THE COURT: I recall he testified they can be
5 protective, more protective. But what's the point
6 Miss Burchstead?

7 MS. BURCHSTEAD: Your Honor, the State's concern
8 is that we are essentially going to open a trial about
9 whether or not L.M. was abuse or not and she
10 can say she was we and we've got nothing to say that
11 she wasn't. This is going to turn into another trial
12 about whether or not L.M. was abused or not
13 to see whether she actually was strict or over
14 protective of her children or not. It goes far afield
15 from the evidence and presentation of this case.

16 THE COURT: What about Mr. Killen, he did testify
17 concerning people who have been abused, the parents
18 have been abused. How they can be protective of their
19 children.

20 I think it's admissible. I will let you go into
21 it Mr. Gregory.

22 MR. GREGORY: Thank you.

23 THE COURT: It has been raised by the State in
24 there case.

25 MS. BURCHSTEAD: Very well, Your Honor. Thank

1 you.

2 THE COURT: I mean, we don't want it to become a
3 trial concerning her. We are just going to let her
4 testify. You ask what you want to. We will address
5 it question by question. If there is anything
6 objectionable I'm sure Ms. Burchstead or Mr. Kozak
7 will object.

8 MS. BURCHSTEAD: Thank you, Your Honor.

9 MR. GREGORY: Thank you, Your Honor.

10 THE COURT: I will let you go into it. While the
11 jury is out do you need to take a restroom break?

12 RM. GREGORY: That will be fine.

13 THE COURT: We will take a restroom break L.M.

14 . I must caution you, you cannot talk to your
15 attorney or the defendant at any point in time during
16 this break. You can go to bathroom and come straight
17 back. Don't communicated with anybody. Do you
18 understand?

19 THE WITNESS: Yes, sir.

20 (WHEREUPON, there was a brief recess.)

21 THE COURT: Ready for the jury?

22 MR. GREGORY: Yes, sir.

23 THE COURT: Bring them in

24 (WHEREUPON, the jury enters the courtroom.)

25 THE COURT: All right Mr. Gregory.

1 MR. GREGORY: If it please the Court.

2 CONT'D DIRECT:

3 Q L.M. , I believe I had asked you question
4 earlier as to whether or or not you have been abused as a child?

5 A Yes.

6 Q You said yes. Did that make you more protective of
7 your own children?

8 A Of course.

9 Q Who abused you? Was the a family member?

10 A It wasn't one person. It was multiple.

11 Q Was it relatives?

12 A Yes, close relatives and guys that would come over to
13 the house.

14 Q Where did this take place?

15 A Different places.

16 Q In Texas?

17 A Yes, sir in Texas.

18 Q None of that happened in South Carolina?

19 A No, sir.

20 Q About how old were you?

21 A I was around between the age of seven, up to probably
22 about ten.

23 Q Do your children -- did tell your children about this?

24 A No, not at first but when I started having issues with
25 Witness A, I did mention that to her. I think that's how about

1 this case came about. I didn't want to put stuff in her head,
2 but I just thought she would know what had happened to me. I
3 didn't tell her who or nothing like that but I just tried to
4 tell her I was abused as a kid so I didn't want them to go
5 through nothing like that. That's why I was so protective of
6 them.

7 Q Were -- did you have occasion to have a boyfriend named
8 Billy or William?

9 A Excuse me.

10 Q Did you have a boyfriend named Billy or William?

11 A Yes, sir.

12 Q Is that the one that Lois referred to as Billy?

13 A Yes, sir.

14 Q What happened to him in regards to you?

15 A Well, we lived in Edgemoore.

16 MS. BURCHSTEAD: Objection, relevance. Why would
17 we care about the mother's boyfriend.

18 THE COURT: There was testimony. I will overrule
19 the objection.

20 MS. BURCHSTEAD: Thank you.

21 THE COURT: Go ahead Mr. Gregory.

22 A We lived in Edgemoore and I was about 15 at the time
23 and I think he was like twenty something years old and my mom
24 didn't like him. She had him charged with statutory rape
25 because I was underage but then we moved to Lancaster so I don't

1 know what happened with that case.

2 Q And you don't have any relationship with Billy any
3 longer?

4 A That was the last time I saw him when we moved from
5 Edgemoore.

6 Q Do you agree with your husband's decision to have a
7 paternity test conducted as to whether or not he is the father
8 of ^{Witness B}?

9 A I mean if she has doubts and he has doubts if that's
10 what they want to do they can.

11 Q Do you have any doubts as to who the father is?

12 A No, sir. The reason I said that was because when I got
13 pregnant with ^{Witness A} she moved from Texas over here because she
14 didn't want me to live with her father and I didn't want the
15 same thing to happen with him so I lied and said that he was the
16 father so she wouldn't take me away from here and take me away
17 from him. I was underage. She had control of what -- of my
18 life. I was underage. And I didn't want to be having kids with
19 different guys. I wanted to be settled down. I wanted to have
20 my family settled down. Even though I was young I was pretty
21 mature to my age. I took care of my kids.

22 Q All right.

23 MS. GREGORY: That's all the questions I have of
24 this witness.

25 CROSS EXAMINATION

1 BY MS. BURCHSTEAD:

2 Q So who is Witness A's dad?

3 A Richard Canales. And I always told her that.

4 Q So when ^{Witness B} recanted she was living at the home with
5 you, right?

6 A Ma'am?

7 Q ^{Witness B}, she recanted. She changed her statement?

8 A Yes, ma'am.

9 Q When he she was living in the home with you?

10 A Yes, ma'am..

11 Q After you made her confront the defendant?

12 A I didn't make her confront. I just wanted her to
13 express what she was saying in front of him.

14 Q Why?

15 A What do you mean why.

16 Q Answer the question, why?

17 A I don't know, I just did it.

18 Q What were trying to accomplish?

19 A I wasn't trying to accomplish anything.

20 Q Okay. So did you ever work at night? You never worked
21 at night?

22 A No, ma'am, not third shift. Never.

23 Q Never worked third shift?

24 A Just worked that one time Walmart for third shift and
25 the girls weren't living with us at the time.

1 Q Okay. And you never left them home alone with your
2 husband?

3 A No, ma'am.

4 Q Never? That was there dad, right?

5 A Yes, ma'am.

6 A So you never left them a home alone with their dad is
7 that right.

8 A Like I said I was very protective of my girls. If you
9 would be in my shoes you probably would have too.

10 Q Okay. Your super protective because you were abused?

11 A Yes.

12 Q Okay and you have sitting --

13 A I mean I wouldn't even leave them with a baby sitter
14 that long.

15 Q So you have been sitting in this court listening to all
16 the testimony, right?

17 A Yes, ma'am.

18 Q And suddenly you are coming in saying you are abused?

19 A No. I have been telling my family that for years now.

20 Q So you have been kind of messed up for years, is that
21 right?

22 A I guess, if that's how you want to put it.

23 Q Okay. So you're super protective and that's why you
24 kicked your girls out?

25 A I'm not only like that with them even with my boys.

1 Q So you kick your boys out too?

2 A I mean protective over them.

3 Q How do you explain being protective and kicking your
4 girls out?

5 A I didn't kick them out.

6 Q You didn't?

7 A If I kicked them out I would have got their stuff and
8 threw it out, but I did not. I would call my brother or my
9 mother to come and pick them up. There's a difference between
10 them two.

11 Q So you are protective but you got them out of the
12 house?

13 A Yes, because --

14 Q How is that protective?

15 A -- they are at the age where they want to do what they
16 want to do. Look, this is my house. This is my husband's
17 house. We are not perfect. We do have rules. If they cannot
18 abide by them -- I mean, there's either you have to go by our
19 rules or you are going have to go live with your grandmother or
20 your uncle and do what you want to do.

21 Q So abide by the rules or get out?

22 A I didn't kick them out. Like I said if I would have
23 kicked them out their stuff would have been on the porch or out
24 in the yard..

25 Q You would you have packed their stuff up?

1 A I called somebody to come and get them. There's a
2 difference if you think about it.

3 Q Sure. There's a difference. You would have packed up
4 for them. That's nice.

5 Q So, you're so protective that you don't leave them home
6 alone with their dad. Do you trust him?

7 A Yes, I trust him.

8 Q Then why didn't you leave them home alone with him?
9 Which is it?

10 A When you get abused you have issues and those issues
11 are hard to explain to somebody that doesn't understand.

12 Q So you trust him but you don't leave them home alone
13 ever?

14 A Like I say I could say the same thing with you. I
15 wouldn't trust them with you either.

16 Q But you kicked them out?

17 A I didn't kick them out.

18 Q That's right, you didn't pack their stuff. They just
19 needed to get out. Okay.

20 So the story about being abused and overly protective it is
21 awfully convenient today isn't it?

22 A (No response.)

23 Q Okay. So your supporting the defendant. That's why
24 you have been sitting there helping him with the trial, right?

25 A (No answer.)

1 THE COURT: Answer the question.

2 Q That's all. Nothing further.

3 THE COURT: Mr. Gregory.

4 REDIRECT EXAMINATION

5 BY MR. GREGORY:

6 Q L.M. , you believe your husband?

7 A Yes, sir.

8 Q And you believe him when he says he had nothing to do
9 with this?

10 A Yes, sir.

11 Q It's not true.

12 A There's no evidence.

13 Q All right.

14 MR. GREGORY: That's all the the questions I have.
15 Thank you Your Honor.

16 MS. BURCHSTEAD: Just one final question if I may
17 judge.

18 THE COURT: Yes, ma'am.

19 RECROSS EXAMINATION

20 BY MS. BURCHSTEAD:

21 Q Just so the jury is clear. You're protective and you
22 are going to leave the girls or send them or let them go be with
23 lois and Uncle Jimmy and Michelle but not the dad; is that
24 right?

25 A (No response.)

1 Q Is that right?

2 A Excuse me. What was the question? I'm not
3 understanding.

4 Q Okay. You let the girls go with Uncle Jimmy, right?

5 A Yes.

6 Q You let them go with Lois, right?

7 A Yes.

8 Q But not be alone with the defendant?

9 A He worked third.

10 Q That's not the question.

11 A My husband worked a lot.

12 THE COURT: Answer the question directly.

13 A Okay. No.

14 Q Thank you.

15 A It wasn't like that.

16 MS. BURCHSTEAD: No further questions Your Honor.

17 THE COURT: You may step down.

18 MR. GREGORY: Your Honor, the defendant rests its
19 case.

20 THE COURT: Any rebuttal witnesses?

21 MS. BURCHSTEAD: If we could have just a few
22 minutes to confer, judge.

23 THE COURT: All right.

24 MS. BURCHSTEAD: Nothing further Your Honor.

25 THE COURT: All right. Let me confer with

1 counsel.

2 (WHEREUPON, there was an off the record
3 discussion.)

4 THE COURT: All right. Mr. Foreman, ladies and
5 gentlemen, I realize that it is early, but at this
6 point in time with regard to the trial there is some
7 motions that have to be made. Then we have got to
8 allow time for the argument by the attorneys. I have
9 to charge you on the law. So we are looking at
10 probably, say if the lawyer argue for an hour which I
11 don't doubt they will argue that long. My charge will
12 probably take 20, 30 minutes. We will be looking at
13 well after four o'clock, maybe 4:30 before we could
14 even get started with your deliberations and that's
15 your purview with regards to how long that takes. But
16 that being said, that that's a little bit late to
17 submit a matter to the jury in the afternoon. I know
18 you probably like to go ahead and finish today and I
19 would too if at all possible, but it doesn't look like
20 it is going to be able to done. I have to go over
21 with the lawyers my charge. I don't want you just
22 sitting back in the jury. You have been doing that
23 enough today already.

24 I am going to let you leave for the day. Ask that
25 you be back at 9:30 tomorrow morning. We will get

1 started promptly and we be able to get through with
2 the charge and the arguments to the jury surely by 11
3 o'clock or so tomorrow morning to submit the matter to
4 you and you will have as long as you need to
5 deliberate tomorrow.

6 I hope you have a good evening. But again, I
7 caution you again, please don't talk about the matter
8 at home with your spouse, girlfriend or boyfriend.
9 Don't talk about it coming and going with regard to
10 the jury room and the courthouse and we be back at
11 9:30 in the morning. Thank you. And I appreciate --
12 --let me say this, I appreciate your patience. I told
13 you when I first gave you the general charge at the
14 beginning of the trial there would be times I have
15 have to send you in and out and I know it's enough
16 inconvenience for you to be here when you have to keep
17 going back and forth. I know that's somewhat
18 disconcerting. It's just the way the process works
19 and as I told you I can't let you hear arguments about
20 the law because you are the judges of the facts and I
21 got to keep it that way.

22 Thank you though for your patience.

23 (WHEREUPON, the jurors leave the courtroom.)

24 THE COURT: All right, Mr. Gregory.

25 MR. GREGORY: If it please the Court. Your Honor,

1 at this time now that all of the testimony has been
2 received, both the state and the defense have rested
3 their cases I would like to renew my motion for a
4 directed verdict of not guilty, but I have addition
5 national ground other than what was stated earlier,
6 and that is in regards to statute 16-3-356 -- I'm
7 sorry, 16-3-657. That's statute Your Honor is a
8 statute that says that criminal sexual conduct has to
9 have testimony -- the testimony of the victim need not
10 be corroborate. However, you know that statute was
11 found unconstitutional in the case of State versus
12 Witherspoon, opinion 27675. South Carolina Supreme
13 Court found that statute was unconstitutional. It
14 said the victims -- it said a victim -- a victim's
15 testimony in a criminal sexual conduct case need not
16 be corroborated. So, now that statute has been found
17 unconstitutional you look at the evidence that was
18 presented today. The only witness -- the only
19 testimony that came in about abuse of Witness A came
20 from Witness A. The other witness that testified about
21 the alleged abuse was from Witness B. But if you go back
22 and look at the testimony I don't recall hearing Witness B
23 say anything about observing Mr. Morales abusing
24 Witness A. So therefore based on that we feel that the
25 victim's testimony is not corroborated. Therefore

1 it's not admissible and therefore the Court should
2 direct a verdict of not guilty.

3 Thank you Your Honor.

4 THE COURT: Miss Burchstead.

5 MS. BURCHSTEAD: In addition to what we stated
6 during the directed verdict motion portion of it I
7 would add and respond directly to what Mr. Gregory has
8 raised. I don't have the case in front of me, but my
9 understanding of that case is we are talking about how
10 the judge should charge the jury, not the way a case
11 is presented and what is required to move to a jury
12 for deliberation. So we would suggest to the Court we
13 recognize there is a new way of charging the jury such
14 that -- I can't recall exactly but there's some way
15 the judge may need to fashion a charge to the jury
16 concerning corroboration of a victim but that has
17 nothing to do with whether the jury gets the case or
18 not. We submit, as we stated at the direct verdict
19 motion, more than sufficient evidence has been
20 presented to the jury to get the case and anything
21 that Mr. Gregory is touching on goes to the weight of
22 the evidence. Part of why we have the bad act
23 evidence of the sister is because of the common scheme
24 or plan exception because we don't have witnesses to
25 children being sexual abused but we do have a common

1 scheme or plan which would assist the jury in making
2 that determination. And again, specific to this new
3 case that has come out, State's position is that
4 relates to how a judge instructs the jury not whether
5 the jury gets to deliberate on the case Your Honor.

6 THE COURT: Anything else Mr. Gregory? Anything
7 else, sir?

8 MR. GREGORY: I think the State made a good point,
9 Your Honor, but I think the State is incorrect. The -
10 it does not go to the weight of evidence. It goes to
11 the admissibility. If the evidence is not admissible
12 it doesn't matter how much it weighs or not. There's
13 no case. And we feel that the State's case is against
14 my client in regard to Witness A , not Witness B. And
15 there is absolutely no corroborating testimony of
16 Witness A's alleged being abused by my client.

17 Now the complaining witness testified as to what
18 she told him but if you go back down, and boil it
19 down, it all comes from one person; one person only.
20 She told the detective. She told the doctor. She
21 told DSS. She told anybody that would listen to her.
22 But nobody came in here to court to testified that
23 they saw Mr. Morales abuse Witness A except Witness A.
24 And therefore we feel it has uncorroborated and
25 therefore cannot be admitted.

1 Thank you Your Honor.

2 MS. BURCHSTEAD: Your Honor, briefly in response
3 to that. If that logic were followed we'd never have
4 a case going to the jury. That's -- I hate to say it
5 -- I wouldn't call it offensive, but I just can't
6 follow that logic, respectfully. Plenty of cases have
7 victims where people didn't see them get touched. I
8 do think it's the weight of the evidence and that is
9 again why we're allowed to have bad act evidence and
10 I'm going to leave it at that judge.

11 THE COURT: Okay. All right. I agree with you,
12 Miss Burchstead. I don't know that we would have any
13 -- well, there would be very few sex abuse cases
14 prosecuted particularly children if we didn't allow
15 bad act; prior bad act, whatever, and the common
16 scheme of plan testimony to come in and assist in the
17 corroboration.

18 I take your point Mr. Gregory and you can certainly
19 look at the charge as a way of correcting what you
20 think needs to be corrected if there is anything that
21 needs to be corrected. But I am going to respectfully
22 deny your motion with regards to the directed verdict
23 at this point in time. I need to -- let's see. Are
24 you in position now to tell me anything you want to
25 request for the charge if we do this afternoon rather

1 than wait for the morning.

2 MS. BURCHSTEAD: Sure Your Honor.

3 THE COURT: I can give you time to work on it and
4 look at it. We can stick around.

5 MS. BURCHSTEAD: Absolutely.

6 THE COURT: I just hate to come in tomorrow
7 morning and you hand me a bunch of requests to charge.

8 MS. BURCHSTEAD: I agree. I don't intend to pass
9 up anything supper specific other than what I already
10 shared with your law clerk which I found from the 2006
11 bench book and I believe we can make copies for Mr.
12 Gregory if he wants to look. But I am assuming you
13 are taking that under consideration for your charge.
14 My main concern was just making sure we were looking
15 at that old law for the assault with intent to commit
16 since that law has been changed.

17 In addition to I believe I passed up something
18 related to when you have multiple charges that are
19 being faced related to CSC with a minor. Of course we
20 would ask for some sort of charge to the jury on
21 determining credibility of the witnesses, per usual.
22 I think most of the charges that we would ask are what
23 Your Honor would normally charge in any sort of any
24 criminal case and as for the corroboration defer to
25 Your Honor in terms of newest case law but we do

1 understand that we may need to address that.

2 The last issue I would have -- and I don't know how
3 to address this the best way, but I have concern about
4 this 15-year delay. We recognize the defense needs to
5 put up a defense, however, as it relates to anything
6 being said in closing and potentially how we would
7 charge the jury would not want us to get into finger
8 pointing and making some sort of allegation that if
9 the State thought it was important they would have
10 brought it sooner or something where it puts the State
11 in a defensive position.

12 Your Honor, I would ask that we stick to the facts
13 of the case and if we want to talk about witnesses
14 that aren't available and that kind of thing I believe
15 that's appropriate. But just strictly the length of
16 time being considered against the State I would like
17 to fashion something to protect against that prejudice
18 to the state.

19 THE COURT: Well, obviously there was no testimony
20 concerning any delays and why it was 15 years old. So
21 it wouldn't be appropriate to address that in any type
22 of closing argument. It's not before the jury.

23 MS. BURCHSTEAD: I would agree Your Honor. I have
24 not had the privilege of trying a case with Mr.
25 Gregory but I have certainly seen defense counsel on

1 other cases argue things that weren't presented to the
2 jury.

3 THE COURT: I understand that. You had earlier --
4 I think it's on my desk -- had left me a request prior
5 to trial which I denied --

6 MS. BURCHSTEAD: Yes, sir.

7 THE COURT: -- your motion to do that, but do you
8 want me to considering using that. I don't see any
9 point in addressing it at all. I mean, it's not
10 relevant to the case the fact that it took 15 years.
11 I don't know why it took 15 years. Don't care why it
12 took 15 years. It's before me.

13 MS. BURCHSTEAD: I know. That's my position as
14 well, judge. I'm just concerned the jury is going to
15 get back there and start deliberating about the fact
16 it has been 15 years and somehow --

17 THE COURT: If they want to talk about it from
18 what they heard that's fine.

19 MS. BURCHSTEAD: Right.

20 THE COURT: But I don't want to draw any real
21 attention to it from the State or the defendant. It's
22 not important why it took 15 years.

23 MS. BURCHSTEAD: Right. If that's the Court
24 approach I understand and appreciate that.

25 THE COURT: I mean, it's not your fault.

1 MS. BURCHSTEAD: Right.

2 THE COURT: I don't know whether it's the
3 solicitor's fault or whose fault. Somebody dropped
4 the ball.

5 MS. BURCHSTEAD: Correct.

6 THE COURT: But that's not for the jury to be
7 worried about.

8 MS. BURCHSTEAD: Agreed.

9 THE COURT: They have to be worried about whether
10 there was criminal sexual conduct committed as to
11 Witness A.

12 MS. BURCHSTEAD: Agreed, Your Honor, yes.

13 THE COURT: And if not find him not guilty.

14 MS. BURCHSTEAD: That's right. We agree.

15 THE COURT: We are clear on that everybody.

16 MR. GREGORY: Your Honor, our position on that is
17 still Judge Gibbon's ruling that we raised is due
18 process violation. We still renew that position.

19 THE COURT: I understand that. I understand that
20 and it's noted for the record so ---

21 MS. BURCHSTEAD: I am just conferring with
22 co-counsel to make sure I haven't missed anything.

23 THE COURT: I'm here.

24 MS. BURCHSTEAD: I don't think there is anything
25 specific we want to ask, or ask Your Honor to charge.

1 Just the usual charges you would give.

2 THE COURT: I'm going to look at this case that
3 has been raised by Mr. Gregory closely.

4 MS. BURCHSTEAD: Yes, sir.

5 THE COURT: I'm going to be around. I will stick
6 around and go over everything and get my charge ready.
7 I don't know if you all getting ready to leave or will
8 be around.

9 MS. BURCHSEAD: We can stay and take a look at it
10 if that will help things move faster tomorrow.

11 THE COURT: I got a lot of it already if you want
12 to look at what I already have.

13 MS. BURCHSTEAD: Sure.

14 (WHEREUPON, court was in recess for the day.)

15 (WHEREUPON, the trial continued on August 23,
16 2017).

17 THE COURT: Good morning.

18 MS. BURCHSTEAD: Good morning.

19 THE COURT: All right. Counsel, are you all ready
20 to make your closing arguments and charge the jury.

21 MR. GREGORY: Yes, Your Honor.

22 THE COURT: Any requests concerning the argument.

23 MR. GREGORY: Yes. The defense would request that
24 the State open.

25 THE COURT: Okay. All right. They will open in

1 full on the facts and the law and be allowed to reply
2 or refute anything that is argued by defense counsel.

3 MS. BURCHSTEAD: We're ready Your Honor.

4 THE COURT: Okay. Bring the jury in.

5 (WHEREUPON, the jury enters the courtroom.)

6 THE COURT: All right. Good morning ladies and
7 gentlemen. Hope you had a pleasant evening last
8 night.

9 We have reached the the point in the trial where
10 the attorneys will now make their closing arguments or
11 closing summations to you. I want to remind you that
12 what the the attorneys say to you during these closing
13 arguments or summations is not evidence. You to
14 consider the facts that were presented from the
15 witness stand as I told you at the beginning of the
16 trial. That's where the evidence comes this and
17 through any documents. I believe there was one set of
18 photographs that was introduced as an exhibit which is
19 the only documents that we have. But what they say to
20 you is their position concerning the facts as were
21 brought out throughout the testimony and what they
22 consider the law should be applied -- or as to how the
23 law should be applied to those facts.

24 So I ask you to give them close attention, pay
25 close attention to what they have to say. When both

1 of the attorneys have finished there closing arguments
2 I would then charge you on the law and then send you
3 back to your jury room. Thank you.

4 Miss Burchstead.

5 MS. BURCHSTEAD: Thank you, Your Honor. May it
6 please the Court.

7 Good morning. The defendant, Guadalupe Morales,
8 was suppose to protect a little girl who called him
9 daddy. Instead from the time she can remember he
10 sexually abused her. He used his position as her
11 father, who she believed to be her father; the father
12 figure, for his own sexual gratification. It's time
13 to hold him accountable.

14 She testified on the stand as an adult but the
15 actions were as a child and because of that he is
16 charged with criminal sexual conduct with a minor
17 first disagree, criminal sexual conduct, second degree
18 and assault with intent to commit criminal sexual
19 conduct with a minor, second degree.

20 Mr. Kozak talked to you at the beginning of the
21 case. Gave you a little bit of the parameters of what
22 those laws are. The judge is going to instruct you
23 after closing arguments are concluded.

24 For now, in the context of my closing arguments, I
25 want to refresh you very briefly on what those charges

1 are. Criminal sexual conduct with a minor first
2 degree requires -- and second degree -- requires a
3 sexual battery. The main difference you are looking
4 at the age of the victim at the time of the sexual
5 battery occurs. And the assault with intent to commit
6 is an assault with the intent but you don't actually
7 have that sexual battery that occurs. The sexual
8 battery includes sexual intercourse, an intrusion
9 however slight into the genital or anal opening of the
10 body. It could include other things like cunnilingus,
11 fellatio, things of that nature. For purposes of this
12 case evidence that we presented to you we are
13 primarily focused on vaginal intercourse and digital
14 penetration in the sense that we are looking at
15 intrusions, however slight, into the body. And I
16 would like to talk now and just refresh you on
17 Witness A's testimony. Remember we started our case
18 with Witness A sitting right there. She is an adult
19 now. Using adult terms. But told you what happened
20 to her as a child. Remember she told you that she was
21 living in [REDACTED] with her mother and her two
22 sisters and from the time she was about three or four
23 the defendant started touching her in an inappropriate
24 way. He touched outside of her clothing. She told
25 you about that first time that she can really remember

1 him doing that and they are on the bed. And he pulled
2 her close and she can feel him rubbing on her. And
3 then that behavior continues to increase, to escalate.
4 To normalize her. Groom her. And he then starts
5 putting his hand under her panties and inserting his
6 fingers inside of her from the age of six. He
7 continues to do that over and over again. She told
8 you it happened on a weekly basis. It would happen in
9 the home. Primarily in the home, her home where she
10 should feel safe. It would happen in the bedroom, the
11 living room. Mom is in the shower. Mom is not home.
12 The other girls are younger. Don't know what is going
13 on and remember you heard from ^{Witness B}. Some of this
14 happened to her too. And we'll talk about that in a
15 minute. But it happened over and over again. At the
16 river. He will pull her close in the river where you
17 can't see. You're under the water. In the car.
18 Remember she talked to her about the time she went to
19 pick up her mother and he touched her in the seat of
20 the car and asks if she wants to pull over. This is
21 before she is 11 yes, sir old.

22 He has inserted fingers into her. That is CSC with
23 a minor in the first degree. I submit intercourse
24 also happened. She told you about her 11th birthday.
25 She said he had to have sex before she go to

1 Carowinds. She just wanted to go to Carowinds for her
2 birthday. But no, we have to sexually abuse her
3 first. Remember the details she told you that was
4 daytime in the parents' bed. Her mom is in the
5 somehow. The other girls are are getting ready to go.
6 She didn't want to do it. Takes her bottoms off.
7 Makes her do it. She said, never mind I don't want to
8 go to Carowinds, but he makes her do it. Her 11th
9 birthday. She tells you about third time is a charm,
10 right. Kids think funny things. Third time is a
11 charm. She gets her period the May after her 11th
12 birthday. Her birthday is in [REDACTED]. She gets her
13 period in May. She thinks she's dying because she is
14 bleeding because he's been sexually abusing her to the
15 point of having intercourse now. And the 11th
16 birthday is not the first time. So CSC with a minor,
17 first degree, he all these times digital penetration
18 that alone is enough to convict on that. But I submit
19 intercourse actually began before the 11th birthday as
20 well. The intercourse on the eleventh birthday, and
21 anything after that in terms of intercourse and
22 intrusion, however slight; which again we are talking
23 digital penetration. That is CSC with minor, second
24 degree. Her 11th birthday, CSC with minor, 2nd
25 degree.

1 She told you about some other times that this
2 happened. Some where he was successful. Some where he
3 was not. Remember the time in her room. She is
4 confined to her room. She's got the window open. She
5 remembers these details because it was so heinous.
6 Her whole life she has had to think about this and now
7 she's finally getting to tell you.

8 Mom goes to Walmart, leaves her home alone. He
9 tries to touch her. Remember the time she was sick.
10 She told you she stayed home from school. She's sick.
11 She so sick she doesn't want to eat. She thinks she's
12 going to throw up. He's on the couch. Not working.
13 He's on the couch and asked her to come to the couch
14 and starts touching her. And as I recall I believe he
15 puts his hands in her pants something of that nature
16 and she says not today. She can't even be sick
17 without this man touching on her.

18 Now, she didn't tell, right. She didn't tell until
19 she was 13. She gets kicked out of the house. Leaves
20 the house. Mom packs the bag. Whatever. Somehow
21 she's out of the house. She's living with Uncle Jimmy
22 and Aunt Michelle. Michelle -- remember Michelle
23 testified, Michelle told you something wasn't right
24 with Witness A. Her demeanor is not right. She asked
25 Witness A one morning going to the bus stop. What is

1 happening to you? What happened? Her exact words,
2 she asked her, what's going on? Is anything going
3 on? And she does disclose daddy has been touching
4 her. Remember at this point she still thinks it's
5 daddy. Daddy has been touching her. Now why would
6 she not tell. All right. So Witness A told you why she
7 didn't tell. She said she felt threatened and afraid.
8 She was afraid of her mother. He told her her mother
9 would kill her. She told you she didn't feel like she
10 could tell help mom. She didn't want to get it
11 trouble. It was help dad. Because it's dad she
12 didn't know if it was formal. She didn't know. She
13 knew how it made her feel. But she didn't know she
14 needed to tell. When she was asked she told. She
15 told. And after she told what happened? All right,
16 so she is living with Jimmy and Michelle and Michelle
17 tells her we need to tell. We need to tell some other
18 people, right. So grandma gets notified. Lois.
19 Remember Lois had taken care of her when she was a
20 young child. Lois told you that and then Lois gets
21 her again when she's 13 after this all comes out.
22 She's been with Michelle and Jimmy maybe a couple of
23 weeks. Disclosure comes out. Now Lois is going to
24 take care of her and the school is notified. Witness B
25 told you. We now have DSS, law enforcement involved.

1 Michelle told you the same thing as far as DSS and law
2 enforce. Remember ^{Witness B} told you their that's
3 conversation in the principal's office at the school.
4 So now we got -- we're looking into ^{Witness B} and what els
5 is going on.

6 In terms of the disclosure we just don't have
7 Witness A telling you today what happened but we do have
8 these other witnesses that say yes, she told back
9 then. She told us that he was touching her. After
10 Michelle asked we had Michelle telling you what she
11 told Michelle that was happening over and over and
12 over again. And remember Michelle told you about how
13 Witness A demeanor was when she disclosed this to her.
14 You have Lois saying, yeah, she told me that too.
15 Lois didn't tell her to say it. Lois told you she
16 didn't tell her to say it. Witness A told you she
17 didn't her to say it. We also have Kristen, Sled
18 agent, who was with Lancaster Police Department at the
19 time. Kristen told you the same thing. Yes, she
20 disclosed. This had been going on including
21 intercourse. Margo Dixon, the forensic interviewer.
22 Forensic interviews are designed to be conducted in a
23 controlled environment. What did she state, to tell
24 the truth. What did she say; at home, in the bedroom,
25 living room, children's room beginning at the age of

1 three, intercourse on 11th birthday until 13. It went
2 on until she got out of the home at 13.

3 Let's talk a little more about the disclose. You
4 heard from the expert, David Kellin. An expert in
5 child maltreatment, child abuse dynamics and child
6 disclosure. And he talked with you about reasons a
7 child may not disclose and other aspects of child
8 maltreatment and the dynamics of abuse. He didn't
9 know anything about this case. He told you he had not
10 talked about anybody involved in this case. It was
11 just to help you understand and put some things in
12 perspective. You all have to decide the facts. Don't
13 forget David's testimony when you're looking at what
14 happened here. Reasons not to disclose; fear, blame,
15 love for the abuser, loyalty to the abuser. Witness A
16 told you those things. She told you that. He never
17 talked to her.

18 Grooming; the process of adaption to increase the
19 behavior to where it feels normal. She told you she
20 didn't know if it was normal. Delayed disclosure;
21 minimization, prompted disclosure. He talked about
22 the ways it comes out. That's what we have here, we
23 have a delay in disclosure in a sense that it was
24 going on for years, over and over again. But when she
25 was asked, when someone who cared enough to ask who

1 saw the signs and asked, she told. She told. And she
2 was consistent after she told. Remember false denials
3 and false disclosures. Not a lot of times we get
4 false disclosures. More common to get false denial.
5 Recantation. Witness A never recanted. Never. Never,
6 ever. Witness B -- you heard from Witness B. And we are going
7 to talk about her specific testimony in just a minute.
8 But Witness B did. Think about that. She still in the
9 home. L.M. makes her sit down and confront her
10 abuser. Mom is upset. The world is upside down. Of
11 course she recanted. What did David tell about
12 recanting, when you're feeling pressure. Yeah, she
13 couldn't stick with the truth. She had to recant.
14 She told you today why she recanted. And she told you
15 -- she told you yesterday why she recanted and what
16 really happened. Risk factors; can't talk to the
17 parent, right. How about L.M.? Witness A couldn't
18 talk to L.M. .. You're not going to hear anyone tell
19 you -- the judge is not going to instruct you that the
20 victim has to be corroborated. You are not going to
21 hear that there has to be any sort of physical
22 evidence shown to you. There doesn't have to be
23 corroboration, but I submit there is corroboration in
24 the sense that we had the disclosure witnesses come
25 and tell you that Witness A was consistent. Also

1 remember how she says it effected her family. Her
2 little girl. She's a nursing assistant now.
3 Palliative care. She has her own little girl and
4 husband. She's very protective of her little girl
5 now. Remember what she said about when she was a
6 little girl and all this came out and she was
7 suicidal, rebellious, angry. Lois told you when she
8 lived with her she was angry. She went to treatment.

9 For 15 years her story stayed the same. Through
10 nobody's fault in this courtroom this case got old.
11 She didn't wait until 2017 to tell. She told in 2002.
12 Nobody's fault in this courtroom it took 15 years to
13 get here. But we are here and she's got no reason not
14 to tell the truth now. If grandma made her do it way
15 back when or made ^{Witness B} do it way back then why are
16 they going to stick with that now. That doesn't make
17 any sense. They've got their own families. In fact
18 they told you this is hard on the family to keep going
19 with this. It would be a whole lot easier to say,
20 yeah man, we were scared. Our parents were strict.
21 Grandma put us up to it. Whatever. Put your family
22 back together now. But instead they are telling you
23 what really happened. Because it happened. Lois
24 testified she told you that ^{Witness A} did disclose
25 sexual assault. She told you she didn't put her up to

1 that. She wouldn't put anybody up to that. The
2 defense would have you believe with Lois moving to
3 Texas and all these dynamics about where Lois was
4 living and Lois getting into fights with the defendant
5 and whether she called 911. No, she didn't put
6 Witness A up to it. We're talking about sexual assault
7 and not where Lois lived and whether she paid rent.
8 And even if that were true 15 years ago why are they
9 going to come in here now and continue to say they
10 were sexually abused.

11 So let's talk about ^{Witness B's} testimony. ^{Witness B} also
12 said she was sexually assaulted. She didn't testify
13 that it went as far as it went with Witness A. The last
14 incident with her was third grade. Remember that she
15 is a little bit younger than Witness A. Some time after
16 that DSS is getting involved. But what she said to
17 you is it started the same way. It's common scheme
18 by the defendant. He takes his position as the
19 father, daddy -- they call him daddy -- to groom these
20 girls and normalize it and meet his own sexual
21 desires. He started with her the same way; three or
22 four, touching in her panties, on his lap, in the
23 house, in the home. She told you mom's not there. In
24 the home where they are suppose to feel safe. This is
25 what he is doing.

1 Let's talk about the mom whether she's home or not.
2 Okay. So L.M. testified. She acknowledges that she
3 kicked the girls out over and over again but she tells
4 me she didn't kick them out. She helped them pack.
5 Follow the rules or get out I think is what she
6 acknowledged. She says she's been abused so she was
7 over protective. She been in here to hear David
8 Kellin's testimony. I think it's awfully convenient
9 that suddenly she abused and over protective. She's
10 really over protective she is kicking the girls out.
11 Remember she says to you, yeah, they can go with
12 Michelle, then can go with Jimmy, then go with Lois,
13 but no, no, no, they can't be alone with her daddy.
14 I'm so protective. That makes no sense. Makes no
15 sense at all. She's protective that when the
16 disclosures comes out she makes ^{Witness B} confront the
17 abuser. And she lashes out at Witness A. Remember
18 Witness A told you she talked to her after the
19 conversation with Michelle. She lashed out at her.
20 Supper protective mom. Yeah, she's real protective.
21 Real, real protective. I submit to you her testimony
22 does not come from a place of over protection or love
23 of these girls. It comes from a place of protecting
24 herself or the defendant. Because let's think about
25 this. If this was happening in the home, while she is

1 the momma in the home maybe she needs to be thinking
2 about her role in all this. She can't admit it
3 happened right. So the defendant testifies and of
4 course he denies everything. But let's think about
5 that. Not only does he deny touching these girls he
6 denies ever being alone with them. Are you kidding.
7 You're the daddy and you are never alone with these
8 girls. That's crazy. His testimony is not believable
9 because of that. Just look at it. No. He denies so
10 much it just doesn't make any sense. What we are
11 looking at here is the defense of liar, liar. Witness A
12 is lying. ^{Witness B} is lying. Everybody is lying. And
13 when you are thinking about that you judge the
14 credibility of the witnesses.

15 The judge is going to instruct on that. You decide
16 what the truth is. You decide what the facts are and
17 when you are looking at that you look at the
18 credibility of the witnesses. Look at their demeanor
19 on the witness stand. Look at what you think the
20 truth is. Remember Witness A sobbing. Having to tell
21 you this. Remember ^{Witness B} crying. Remember all that
22 when you are deliberating.

23 Now, the State has the burden of proof. That is
24 our job. We welcome that. The judge will instruct
25 you on the full law of what that means, but it is

1 proof beyond a reasonable doubt. That doesn't mean
2 beyond any doubt. You don't check your common sense
3 at the door. It's proof that leaves you firmly
4 convinced. You think he did it. Firmly convinced he
5 did it, he did it.

6 I just want to show you these pictures one more
7 time because I know with this delay we got an adult on
8 the stand. We got to remember what happened to a
9 little girl. State's two, she is nine. All right.
10 He has penetrating her for years. State's one, five,
11 about when it started. State's three -- actually
12 that's state's one; 11 years. Carowinds. Can't go to
13 Carowinds. Got to have sex. Witness A did not get to
14 have a childhood like a normal little girl. He took
15 her innocence. He used his position as daddy to abuse
16 her. She didn't get to be a little girl.

17 The time for justice is here. Let's do justice
18 today. Convict Guadalupe Morales because he sexually
19 abused Witness A as a little girl.

20 Thank you for your attention and time.

21 THE COURT: Mr. Gregory.

22 MR. GREGORY: If it please the Court.

23 THE COURT: Sir.

24 MR. GREGORY: Mr. Foreman, ladies and gentlemen of
25 the jury, I want to thank you again for your service

1 in this case for the the last two days and today.

2 As a father and grandfather much of the testimony
3 in this case has been difficult for me to hear and I
4 am sure it's probably been difficult for you to hear.

5 MS. BURCHSTEAD: Your Honor, objection. He's
6 personalizing.

7 THE COURT: I will him go forward just a little
8 bit. Just don't dwelling on that Mr. Gregory.

9 MR. GREGORY: As an attorney in practice for over
10 45 years I have seen and heard children used as pawns,
11 for vindictive purposes against their parents. I have
12 seen children coerced by others to tell untruths.

13 MS. BURCHSTEAD: Your Honor, objection. He is
14 testifying, facts not in evidence, personalizing.

15 THE COURT: Stick with the facts that have been
16 introduced during the course of the trial Mr. Gregory.
17 You are getting a little bit far afield from that.

18 There was no testimony with regard to that.

19 MR. GREGORY: Well, I believe these are the facts
20 of the case. I am referring to coercion by others to
21 tell untruths.

22 THE COURT: Stick with the facts of this case I
23 don't have a problem and the testimony.

24 MR. GREGORY: It is not uncommon for that to
25 happen. Mr. Morales has been supported -- he has

1 supported his family. He has helped feed and cloth
2 his children, his grandchildren and he is been a
3 loving partner to his wife and he has been law abiding
4 person with no criminal charges for over 25 years
5 while here in Lancaster. He has remained not only in
6 the United States but in Lancaster while it would have
7 been very easy for him to have fled. He's ready to
8 put this behind him. Free himself of these unjust
9 charges and declare his name.

10 During the last two days of testimony there have
11 been some things that have come to the forefront that
12 I feel that show reasonable doubt as to Mr. Morales'
13 guilt. L.M. stated in her testimony that all
14 three girls were examined by a physician and that
15 results were provided to her. As a victim of child
16 abuse herself had the results of the exam revealed
17 abuse would she have stayed with Mr. Morales.

18 MS. BURCHSTEAD: Objection. Facts not in
19 evidence.

20 THE COURT: She had no idea what the results were.
21 She didn't testify about any results. We don't know
22 what the results were.

23 MR. GREGORY: I am not testifying about the
24 results. I am testifying about what happened. What
25 she testified to.

1 She testified that they were examined and she
2 received the results.

3 THE COURT: That's all.

4 MR. GREGORY: I'm not saying what the results are.
5 I don't know what the results are.

6 Suppose the results of the examination had shown
7 abuse would Mrs. Morales have stayed with Mr. Morales
8 and allowed the children to stay with him in the home.
9 Absolutely not. Since she was abused as a child
10 herself the State's expert testified that she would be
11 more protective, and also not nothing what the results
12 of the physical examination were. If suppose they had
13 been positive and shown abuse the State would have had
14 the doctor come and testify and disclose the results
15 to you. That did not happen.

16 Ladies and gentlemen of the jury and gentleman
17 there is no physical evidence of abuse even though the
18 three girls were examined by a physician.

19 Now ^{Witness B}, recanted her statement to her mother and
20 said that the grandmother had told her to say that her
21 father had abused her. And the police report was made
22 of this recanting of ^{Witness B}. Although ^{Witness B} said that
23 the molestation happened while her mother worked at
24 night Mrs. Morales testified that she never worked at
25 night except for one time three or four years ago

1 after the girls had left the home. Witness A said in
2 her testimony that the mother was never around.
3 However L.M. stated that she was always around
4 the home and she would of course notice anything out
5 of the or ordinary concerning the girls's welfare and
6 safety. The opportunity for Witness A was not there.

7 Mr. Morales had never had a criminal record
8 before these accusations, during these accusations,
9 nor since these accusations were made. There has been
10 no one else to accuse Mr. Morales --

11 MS. BURCHSTEAD: Objection.

12 MR. MORALES: -- of these offenses.

13 ^{Witness B} noticed -- noted that she was molested I
14 believe three or four times if I'm not mistaken. You
15 heard the testimony. The judge tells you to believe
16 what you heard not what I say she said, but I believe
17 she said she was molested three or four times.

18 The State's expert witness stated that once a
19 molester begins their abuse it becomes more frequent.
20 So three or four times during a 16-year period just
21 does not make sense. And the fact that she continued
22 to live in the home does not make sense. She stayed
23 in the home until she was 16. I think she testified
24 the last time she was abused was when she was age ten.
25 And then the request that ^{Witness B} made of her father for

1 a paternity test means that she apparently doubts that
2 he is her dad. And that's why she's decided to side
3 with Witness A because he's not Witness A dad.

4 The only witness to Witness A abuse is Witness A
5 herself. Even though she and her sister ^{Witness B} shared a
6 bedroom that had no door. ^{Witness B} never corroborated her
7 sister's story. She never said anything about seeing
8 her father or Mr. Morales abuse Witness A. All of these
9 things in my mind show reasonable doubt as to Mr.
10 Morales's guilt.

11 I looked over the judge's charges that he is going
12 to present and they are excellent. I don't need to go
13 through and tell you what he is going to tell you
14 about the law about presumption of innocence, about
15 the test of beyond a reasonable doubt. But I would
16 like you to keep those in mind. There's one central
17 figure that keeps appearing in this case and you can
18 probably guess who that is; the grandmother. Who does
19 Witness A run too after she is been asked to leave the
20 house and goes with her, the grandmother. Who takes
21 Witness A to report the molestation to the officials and
22 to the police; the grandmother. Who was with Witness A
23 in the conference room at the school; the grandmother.
24 Who takes Witness A to talk to the therapist about the
25 abuse; the grandmother. Who does ^{Witness B}(sic) call

1 after being asked by Mrs. Rollins what's troubling her
2 they go to a pay phone and who does she call; the
3 grandmother. Why? Because she needed to know what to
4 say. Who was asked to leave the home by Mr. Morales
5 because of unsavory behavior in the home; the
6 grandmother. Coercion, vindictiveness, hatred; the
7 grandmother.

8 Ladies and gentlemen, this is not a Beaver/Cleaver
9 family. That's for those who are old enough to
10 remember leave it to Beaver. But I remember the judge
11 remembers that show. This is not that type of family.
12 This family is full of anger, hatred, and
13 vindictiveness. The mother-in-law who loathed Mr.
14 Morales for holding her accountable for her actions.
15 The daughters that were ejected from the home and have
16 bonded together with their grandmother because of many
17 like circumstances. Could this happen to anyone? I
18 am afraid it could even with lack of physical
19 evidence.

20 Grandmother had motive. The grandmother had
21 opportunity. Mr. Morales is not a child abuser. He
22 is a victim of vindictiveness brought on by his
23 mother-in-law. Mr. Morales is victim of untrue
24 accusations and vindictive lies.

25 I want to thank you again for your attentiveness

1 and I would like to thank you for being such an
2 intricate part of our system of justice. I ask you to
3 please find in your heart to see through these
4 untruths and give Mr. Morales his life back. A
5 verdict of not guilty in this case would be like the
6 leopard being healed by Jesus. Not only was he healed
7 of his disease but the stigma associated with it as
8 well. It's been a long time to be under this black
9 cloud of suspicion. Please help Mr. Morales see the
10 sunshine again.

11 Thank you.

12 THE COURT: Ms. Burchstead.

13 MS. BURCHSTEAD: Thank you, Your Honor. In reply
14 just a few thoughts as you -- before you begin your
15 deliberations.

16 The physical exam, again, you're not going to hear
17 the judge instruct you that we need a physical report,
18 or physical trauma shown. And recall Special Agent
19 Grant told you it's law enforcement's understanding
20 from a doctor doing the time/physical thing would be
21 of no value. She testified as to that. This is not a
22 physical case. It is a case about the testimony and
23 what they told you happened. And again, look at the
24 demeanor on the stand for that. And talking about
25 being protective, the mom being protective, she's been

1 abused. I'm not going to rehash that. You saw her
2 testify. I submit to you it is just wholeheartedly
3 false.

4 Attacking ^{Witness B} for continuing to live in the home,
5 she's still a kid. What she's suppose to do when you
6 are having to confront your abuser. She actually told
7 you she ran away a few times, right. She didn't
8 really want to be there but what do you do.

9 The only witness is **Witness A**. Yeah, sex acts are
10 private. You don't typically abuse in front of
11 others. Your not going to have a smoking gun in a sex
12 case. What you have is testimony that you can
13 evaluate. Thank goodness she had Michelle who asked
14 her. That goodness she had the grandmother. This
15 isn't Lois's fault. It's 15 years later and they're
16 still telling you it happened. Whatever beef
17 happened, 15 years later. This isn't Lois's fault.
18 This is the defendant's fault. Hold him accountable.

19 Thank you.

20 THE COURT: All right, ladies and gentlemen of the
21 jury, we have reached the point in the trial where I
22 charge you with the law that is to be applied to the
23 facts that you heard from this witness stand this
24 week. I remind you that during this trial you and I
25 have both had certain duties to perform. As the trial

1 judge it is my responsibility to preside over the
2 trial of this case, and I also have the duty to rule
3 on the admissibility of the evidence offered here
4 during the trial and you were inconvenienced several
5 times when I had to do that. You were asked to leave
6 the courtroom when the attorneys approach the bench.

7 You are to consider only the competent evidence
8 before you. If there was any testimony ordered
9 stricken from the record in this case during this
10 trial, you must disregard that testimony. You are to
11 consider only the testimony which has been presented
12 from this witness stand, any exhibits which have been
13 made a part of the record in this case, and any
14 stipulations of counsel.

15 I have additional duty on to charge you the law
16 applicable to this case. As presiding judge, I am the
17 sole judge of the law of this case, and it is your
18 duty as jurors to accept and apply the law as I now
19 state it to you. If you already have any idea as to
20 what the law is or what the law ought to be and it
21 does not agree with what I now tell you the law is you
22 must abandon this idea because you are sworn to accept
23 the law and apply a law exactly as I state it to you.

24 In every case tried in this court before a jury,
25 the jury becomes the sole and exclusive judge of the

1 facts in any case. A trial judge can not intimate,
2 state, common on, or make any statement to a trial
3 jury about the facts in the case. Since you, the jury
4 are the sole judge of the facts of this case, you are
5 not to infer from what I have said during the progress
6 of this trial in ruling upon the admissibility of
7 evidence, or otherwise, or anything that I say now
8 during the course of this instruction to you, that I
9 have any opinion about the facts in this case.
10 Because I do not. The law does not allow me to have
11 have an opinion about the facts in this case. This is
12 a matter solely for you, the jury, to determine. As
13 jurors, it is your duty to determine the effect,
14 value, weight,, and truth of the evidence presented
15 during this trial.

16 The indictments which we referred to earlier in the
17 trial charge the defendant with criminal sexual
18 conduct with minor, first degree; criminal sexual
19 conduct with minor, 2nd degree; and assault with
20 intent to commit criminal sexual conduct the with
21 minors, 2nd degree. I remind you that the fact that
22 the defendant was arrested, charged and indicted in
23 this case, is not evidence in this case and can not be
24 considered by you as evidence of guilt in this case,
25 nor does it create any presumption or inference of

1 guilt. This document is simply are the formal written
2 instrument which contains the charges made against the
3 defendant. It is the formal documents by which this
4 case is brought in to this courtroom.

5 Each indictment charges -- and again there are
6 three -- charges a separate and distinct offense. You
7 must decide each indictment separately on the evidence
8 and the law applicable to it un influenced by your
9 decision as to any other indictment. Very simply they
10 are to be considered separate. Each three charges.
11 The defendant may be convicted or acquitted on any or
12 all of the offenses charged. You will be asked to
13 write a separate verdict of guilty or not guilty for
14 each indictment.

15 The defendant has pled not guilty to these
16 indictments, and that plea puts the burden on the
17 State to prove the defendant guilty. A person charged
18 with committing a criminal offense in South Carolina
19 is never required to prove himself innocent.

20 I charge you that it is important rule of the law
21 that the defendant in a criminal trial, no matter what
22 the seriousness of the charge may be, will always be
23 presumed to be innocent of the crime for which the
24 indictment was issued unless guilt has been proven by
25 evidence satisfying you of that guilt beyond a

1 reasonable doubt. This presumption of of innocence
2 does not end when you begin your deliberations, but it
3 accompanies the defendant throughout the trial until
4 you reach a verdict of guilt based on evidence
5 satisfying you of that guilt beyond a reasonable
6 doubt.

7 The presumption of innocence is like a robe
8 of righteousness placed about the shoulders of the
9 defendant which remains with the defendant until it
10 has been stripped from the defendant by evidence
11 satisfying you of the defendant's guilt beyond a
12 reasonable doubt.

13 The presumption of innocence is not mere legal
14 theory. It is not just a legal phrase. It is a
15 substantial right to which every defendant is entitled
16 unless you, the jury, are satisfied from the evidence
17 of the defendant's guilt beyond a reasonable doubt.

18 Now, what is reasonable doubt. The State has the
19 burden of proving the defendant guilty beyond a
20 reasonable doubt. Some of you may have served as
21 jurors in civil cases, where you were told that it is
22 only necessary to prove that a fact is more likely
23 true than not true, such as by the greater weight or
24 preponderance of the evidence. In criminal cases the
25 State's proof must be more powerful than that. It

1 must be beyond a reasonable doubt.

2 Proof beyond a reasonable doubt is proof that
3 leaves you firmly convinced of the defendant's guilt.
4 There are very few things in this world that we know
5 with absolute certainty, and in criminal cases the law
6 does not require proof that overcomes every possible
7 doubt. If, based on your consideration of the
8 evidence, you are firmly convinced that the defendant
9 is guilty of the crime charged, you must find the
10 defendant guilty. If on the other hand, you think
11 there is a real possibility that the defendant is not
12 guilty, you must give the defendant the benefit of the
13 doubt and find him not guilty.

14 Now there are two types of evidence which are
15 generally presented during a trial; direct evidence
16 and circumstantial evidence.

17 Direct evidence is the testimony of a person who
18 claims to have actual knowledge of a fact such as an
19 eyewitness. It is evidence which immediately
20 establishes the main fact to be proved.

21 Circumstantial evidence is proof of a chain of
22 facts and circumstances indicating the existence of a
23 fact. It is evidence which immediately establishes
24 collateral facts from which the main fact may be
25 inferred. Circumstantial evidence is based on

1 inference and not on personal knowledge or
2 observation.

3 The law makes absolutely no distinction between the
4 weight or value to be given to either direct or
5 circumstantial evidence. Nor is a greater degree of
6 certainty required of circumstantial evidence than of
7 direct evidence. You should weigh all of the evidence
8 in the case. After weighing all of the evidence, if
9 you are not convinced of the guilt of the defendant
10 beyond a reasonable doubt, you must find the defendant
11 not guilty.

12 Now, I've always even as an attorney and since I've
13 been a judge have a little bit of a problem with the
14 definition of circumstantial evidence. I don't have a
15 problem with the actual definition but it is hard to
16 follow. I'm looking at it word-for-word and it still
17 troubles me and I realize you may have had some
18 trouble with it too. Let me give you an example that
19 I've come up with that I think is a simple explanation
20 of direct and circumstantial evidence.

21 If we were to go outside in a few minutes and look
22 up at the sky and we see a jet plane flying across the
23 sky. That's direct evidence. We see it. We know
24 what we are looking at a jet plane. If we go outside
25 in a few minutes and look up at the sky and we see the

1 vapor trail that is left by a plane. We don't see the
2 the jet plane. We don't know that the jet plane has
3 been there but we know from the circumstantial
4 evidence of vapor trail which is circumstantial
5 evidence that there has been a plane flying across the
6 sky we ask establish it that way. That's my simple
7 explanation of what a direct and circumstantial shall
8 evidence may be. Sometimes it's a little bit
9 difficult to follow what we are instructed to give
10 you. All right, that being said we need to talk about
11 credibility it of the witnesses.

12 Necessarily, in any case particularly in this case)
13 you must determine the credibility of witnesses who
14 have testified in this case. Credibility simply means
15 believability. It becomes your duty as jurors to
16 analyze and to evaluate the evidence and determine
17 which evidence convinces you of its truth.

18 In determining the believability of witnesses who
19 have testified in this case, you may believe one
20 witness over several witnesses or several witnesses
21 over one witness. You may believe a part of the
22 testimony of a witness and reject the remaining part
23 of the testimony of the same witness. You may believe
24 the testimony of a witness in its entirety or reject
25 the testimony of an a witness in its entirety. You

1 may consider whether any witness has exhibited to you
2 any interest, bias, prejudice or other motive in this
3 case. You may also consider the appearance and manner
4 of a witness while on the witness stand.

5 Normally, a person in a trial can not give opinion
6 testimony. Normally, when a person testifies they
7 must testify as to what they either saw, heard, or
8 sensed by smell or something of that nature. However,
9 there is exception when someone is qualified because
10 of education or experience. They are permitted to
11 give their opinion in certain areas if the Court
12 qualifies them that way. You heard one witness that
13 was qualified in the area of child maltreatment and
14 child abuse dynamics and disclosure and he gave an
15 opinion and he gave opinion testimony in those areas.
16 That does not mean that you must accept the opinions,
17 but it is the evidence for you to use in any way you
18 see fit and give the weight and credibility you
19 believe is appropriate.

20 In order to establish criminal liability, criminal
21 intent is required. For example, the mental state
22 required to be proven by a state for a particular
23 crime might be purpose, intent, knowledge,
24 recklessness, or criminal negligence. Criminal intent
25 must be proven by the State beyond a reasonable doubt.

1 Criminal intent is always a matter that must be
2 determined by the jury from the circumstances
3 surrounding the situation. There's no way to prove
4 intent to a mathematical certainty. There's no way
5 medical science can dissect a person's brain and
6 determine what the person had in mind. So the law
7 says that criminal intent maybe inferred from the
8 circumstances shown to have existed. This is how you
9 make a determination of whether or not the element
10 requiring intent was present. It's not necessary to
11 establish intent by direct and positive evidence, but
12 intent may be established by inference in the same way
13 as any other fact by taking into consideration the
14 acts of the parties and all the facts and
15 circumstances of the case.

16 Criminal intent is a mental state, a conscious
17 wrongdoing. It is up to you to determine what the
18 defendant intended to do based on the circumstances
19 shown to have existed.

20 Criminal intent can arise from action or a failure
21 to act. It may arise from negligence, recklessness,
22 or an indifference to duty or to consequences that is
23 considered by the law to be equivalent of criminal
24 intent.

25 Probable cause is a good faith belief that a person

1 has committed a crime when that belief rests on
2 grounds that would make an ordinary prudent and
3 cautious person, under the circumstances, to have the
4 same belief. Probable cause for arrest in misdemeanor
5 cases without a warrant is something more than a mere
6 suspicion that the person committed a crime. An
7 arrest made on a hunch, a mere belief, or guess
8 unsupported by facts, circumstances or credible
9 information showing that the person has committed a
10 crime, is not made on probable cause. Probable cause
11 is somewhere between suspicion and sufficient evidence
12 to convict. In deciding whether there was probable
13 cause to arrest, the probability cannot be technical,
14 but must be based on factual and practical
15 considerations of everyday life on which reasonable,
16 prudent and cautious people act.

17 Now there has been evidence presented that
18 witnesses had made prior statements which are not
19 consistent with the witness' present testimony. You
20 may use this evidence to decide whether to believe the
21 witness. You may also use evidence of the earlier
22 contradictory statements to determine the truth of
23 those statements. It is up to you to decide whether
24 to believe the earlier statements or the testimony
25 begin at trial.

1 If a witness is shown to have knowingly testified
2 untruthfully concerning any material matter, you may
3 consider this in determining whether to trust the
4 witness' testimony as on other matters. You may
5 reject all testimony of that witness, or give all or
6 part of the testimony the weight you think it
7 deserves.

8 Now the defendant is charged with first degree
9 criminal sexual conduct with minors. The State must
10 prove beyond a reasonable doubt that the defendant
11 engaged in a sexual battery with the victim.

12 A sexual battery is sexual intercourse, cunnilingus,
13 fellatio, anal intercourse, or any intrusion, however
14 slight,, of any part of of a person's body or of any
15 object into the genital and national or anal openings
16 of another person's body except when the intrusion is
17 is accomplished for medically recognized treatment or
18 diagnostic purposes.

19 The State must then prove beyond a reasonable doubt
20 that the victim was less than eleven years old at the
21 time of the sexual battery.

22 Consent, willingness, indifference or ignorance on
23 the part of the minor, if any, as to what was taking
24 place does not in any way affect the charge of
25 criminal sexual conduct with a minor because an

1 unmarried woman under the age of 14 can not legally
2 concept to sexual intercourse.

3 The defendant is charged with second degree
4 criminal sexual conduct with minors. The State must
5 prove beyond a reasonable doubt that the defendant
6 engaged in sexual battery with the victim.

7 And again, sexual battery is sexual intercourse,
8 cunnilingus, fellatio, anal intercourse, or any
9 intrusion, however slight, of any part of a person's
10 body or of any object into the genital or anal
11 openings of another person's body, except when the
12 intrusion is accomplished for medically recognized
13 treatment or diagnostic purposes.

14 The State must then prove beyond a reasonable doubt
15 that the victim was at least 11 years old, but not
16 more than 14 years old at the time of the sexual
17 battery. Consent, willingness, indifference or
18 ignorance on the part of the minor, if any, as to what
19 was taking place does, not in any way affect the
20 charge of criminal sexual conduct with a minor because
21 again, an unmarried woman under the age of 14 can not
22 legally consent to sexual intercourse.

23 In order to prove assault with intent to commit
24 second degree criminal sexual conduct, the State again
25 must prove beyond a reasonable doubt that the

1 defendant assaulted the victim in a attempt to engage
2 in sexual battery with the victim.

3 An assault occurs when a person violently or
4 forcefully attempts to hurt or injure another person
5 and has the present ability to complete the attempted
6 injury. An assault is the intentional creation of
7 fear of immediately bodily harm.

8 A sexual battery again, is sexual intercourse,
9 cunnilingus, fellation, anal intercourse or any
10 intrusion, however slight, of any part of the person's
11 body or of any object into the genital or anal
12 openings of another person's body, except when the
13 intrusion is accomplished for medically recognized
14 treatment or diagnostic purposes.

15 The State must also prove beyond a reasonable doubt
16 that the defendant intended to use aggravated coercion
17 to accomplish the sexual battery.

18 Intent may be shown by acts and conduct of the
19 defendant and other circumstances from which you may
20 naturally and reasonably infer intent.

21 Aggravated coercion means that the defendant
22 threatened to use force or violence of a high and
23 aggravated nature to overcome victim or another
24 person, if the victim reasonably believed the
25 defendant had the present ability to carry out the

1 threat. Aggravated coercion may also exist if the
2 defendant retaliate in the future by the infliction of
3 physical harm, kidnapping, or extortion, under
4 circumstances of aggravation, against the victim or
5 any other person.

6 There are six possible verdicts ladies and
7 gentlemen which you may find in this case: Guilty of
8 criminal sexual conduct with minors, first degree; not
9 guilty of criminal sexual conduct with minors, first
10 degree; guilty of criminal sexual conduct with minors,
11 second degree; not guilty of criminal sexual conduct
12 with minors, second degree; guilty of assault with
13 intent to commit criminal sexual conduct with minors,
14 second degree; not guilty of assault with intent to
15 commit criminal sexual conduct with minor, second
16 degree.

17 There is no significance whatsoever in the order in
18 which I state these possible verdicts. It is just
19 simply one must be stated first.

20 Ladies and gentleman, your verdict must be a
21 unanimous one. Mr. Foreman, when the jury agrees on
22 the verdict you will write the verdict on the verdict
23 form which I will provide to you to take into the jury
24 room with you and then you will sign your name as
25 foreperson on each one of the jury verdict forms. You

1 will then knock on the jury room and inform the
2 bailiff that you have reached a verdict and at that
3 time we will receive you back into the courtroom.

4 Now at this time I am going to ask everyone except
5 the two alternates, Mr. Evans and Mr. Fowler, to
6 retire to the jury room. As I cautioned you before do
7 not begin your deliberations yet. There maybe some
8 matters that we have to discuss with the attorneys,
9 some legal matters or issues. They may have some
10 objections to what I have said whatever. We have to
11 clear up those matters. Once those matters are
12 cleared up we will send word to you to begin your
13 deliberations. We will have the photographs which are
14 the only exhibits that have been introduced brought
15 into the jury room at that point in time. But once
16 the bailiff tells you to begin your deliberations you
17 may commence those deliberations and we will have you
18 back in the jury room at such point in time as you
19 have reached any verdict. If there are any questions
20 that arise during the course of your deliberations,
21 Mr. Foreman those will be written down by you on a
22 piece of paper that will be submitted back to me. At
23 that point in time I will consider them with the
24 attorneys and then we will address that question if
25 you have any.

1 All right, you may retire to the jury room except
2 the two alternates.

3 (WHEREUPON, the jury leaves the courtroom.)

4 THE COURT: All right Mr. Evans and Mr. Fowler,
5 your service in this matter has concluded since
6 everybody is available to go in and deliberate. You
7 gentleman are welcome to stick around if you want to
8 and see what the your fellow jurors decide with
9 regards to the the case or you are free to leave at
10 such time as you so desire. Again, as I said earlier
11 I thank you from the State of South Carolina for your
12 service in this matter. Our law clerk and I were
13 talking on the way up here. What an awesome
14 responsibility it is to serve on a jury, to have the
15 responsibility of making a decision concerning one of
16 your fellow citizens. But that's how our system works
17 in this country and there's no better system that has
18 been devised anywhere in this world even with its
19 flaws which it may have. But again, I thank you for
20 that. I know you didn't volunteer to do this and you
21 were summons to do but you responded to summons and I
22 appreciate that. You will be surprised that the
23 people try to flee jury duty. So I appreciate you
24 being one of them willing to come forward. If you
25 gentleman wish to stay as I said you are welcome to

1 stick around and see how this thing turns out.

2 All right, counsel, any objection to my charge.

3 MR. GREGORY: No, Your Honor. I thought it was an
4 excellent charge.

5 MS. BURCHSTEAD: No objection, Your Honor.

6 THE COURT: All right. If we have the exhibits out
7 we'll get those and take them and tell them they may
8 commence their deliberations.

9 Counsel, you saw the verdict forms did you not
10 yesterday?

11 MS. BURCHSTEAD: I don't know that I looked at it.
12 If I could take a quick peak.

13 (WHEREUPON, a document was shown to Ms.
14 Burchstead.)

15 THE COURT: All right, bring this back to the
16 jurors.)

17 (WHEREUPON, the jury began deliberating).

18 THE COURT: Counsel we already have a question from
19 the jury. The jury requested Exhibit Four introduced
20 by the State. I assume what they are referring to is
21 the statement which was not introduced or admitted
22 into evidence. It was just marked for identification
23 purposes only. It's not really an exhibit. So I will
24 send instruction back that it was not admitted into
25 evidence therefore it's not an exhibit.

1 MS. BURCHSTEAD: Right, I just questioned him
2 about it.

3 MR. GREGORY: I'm going to be honest though, be
4 advised not to consider what was in essence is not in
5 evidence.

6 MS. BURCHSTEAD: Well, they don't have the
7 document.

8 THE COURT: They can consider the testimony just
9 because they don't have the document doesn't matter.

10 MS. BURCHSTEAD: He denied everything I asked him.

11 THE COURT: Right. If you tell them it was not
12 admitted into evidence. It was only marked for
13 identification purposes and therefore it's not an
14 exhibit, so it is not something we can submit to them.

15 (WHEREUPON, the jury continues deliberations.)

16 THE COURT: All right. I understand we have a
17 verdict.

18 THE CLERK: Yes, sir.

19 THE COURT: Counsel are you ready for the jury to
20 come in with a verdict.

21 MR. GREGORY: Yes, Your Honor.

22 MR. BURCHSTEAD: Yes, Your Honor.

23 THE COURT: Okay, bring them in. .

24 All right, Mr. Foreman have you reached a verdict.

25 MR. FOREMAN: Yes, Your Honor.

1 THE COURT: Would you pass it up please to the
2 clerk.

3 All right, Mr. Hammond will you publish the
4 verdict please.

5 THE CLERK: Sure will Your Honor. Case now
6 2016-GS-29-564, the State of South Carolina versus
7 Guadalupe Morales, the defendant, we the jury find the
8 defendant, Guadalupe Morales, guilty of assault with
9 intent to commit criminal sexual conduct with minors,
10 Second degree. Signed W. E. Sims, Foreperson, date
11 August 22, 2017.

12 Case 2016-GS-29-565, State of South Carolina versus
13 Guadalupe Morales, the defendant, we the jury find the
14 defendant, Guadalupe Morales, guilty of criminal
15 sexual conduct with minors, second degree; W. E. Sims,
16 foreperson, August 22, 2017.

17 Case number 2016-Gs-29-559, the State of South
18 Carolina versus Guadalupe, Morales, the defendant, we
19 the jury find the defendant, Guadalupe Morales, guilty
20 of criminal sexual conduct with minors, first degree;
21 W.E. Sims, foreperson, August 22, 2017.

22 Ladies and gentlemen of the jury if this be your
23 verdict say so you all by the raising of your right
24 hands. Let the record reflect all jurors raised their
25 right hands.

1 THE COURT: Does the defendant wish for the jury
2 to be polled?

3 MR. GREGORY: I am sorry.

4 THE COURT: Do you wish for the jury to be polled.

5 MR. GREGORY: No, Your Honor.

6 THE COURT: Thank you Mr. Hammond.

7 All right, Mr. Foreman, ladies and gentlemen of
8 the jury, you have now completed your duties as jurors
9 in the trial of this case. I want to tell you at this
10 point in time you are free to discuss this and your
11 verdict with anybody that you want to at this point in
12 time. However, if you wish not to discuss it with
13 anybody you certainly have that right as well and you
14 don't have to talk to anybody about it you don't want
15 to. Or if you decide to talk to somebody and after
16 you talked to for a little while you decide you don't
17 want to talk to them any more you break it off and
18 tell them you don't want to talk any more. If someone
19 were to try to bother you or harass you with regards
20 to your verdict and want to talk to you about it and
21 you don't want to talk about it you report that to Mr.
22 Hammond, who your Clerk of Court, who in return will
23 get in touch with the Court and we will take care of
24 that situation for you.

25 Now, as I told you earlier, I, on behalf of the

1 State of South Carolina, sincerely appreciate the
2 service you have rendered to the State of South
3 Carolina. I was telling the two alternates after you
4 went into the the room for your deliberations that my
5 clerk and I were talking on the way up here today and
6 I have been doing this for forty years, but that never
7 stops making me think about what an awesome
8 responsibility it is for people to serve on a jury.
9 It's something that no one really looks forward in
10 doing. Nobody volunteered for this but you all
11 responded to the summons when you were requested to be
12 here and you are performing your civic duty. Probably
13 the most important civic duty that can be performed by
14 a citizens in this country.

15 It's always difficult to have to sit in judgement
16 of a fellow citizen but you've taken that
17 responsibility and you have worked diligently. Again,
18 I appreciate it on behalf of the State of South
19 Carolina. I realize that you don't receive much
20 compensation for this but you don't really do it for
21 compensation, you do it for the civic service. That
22 being said you will be excused. Are they excused for
23 the week?

24 THE CLERK: They are, and if you need a work
25 excuse just go down the bailiffs will take you to the

1 clerk's office if you need a work excuse and on behalf
2 of Lancaster county thank you for your service.

3 THE COURT: Any jurors have any questions that you
4 with like to ask the Court.

5 Okay, again thank you so much for your service and
6 we look forward to seeing you some time again in the
7 future.

8 If you are interested in seeing the sentencing you
9 are welcome to stick around. When you leave you come
10 back around in to the courtroom. That's entirely up
11 to you. If you wish to do that you may come back
12 around. So, again, totally up to you. I will delay
13 sentencing for a little while in order to give you an
14 opportunity to come back in the courtroom if you so
15 desire.

16 (WHEREUPON, the jurors leave the courtroom.)

17 THE COURT: All right, if you'll bring the
18 defendant forward please.

19 Before I hear from the defendant does the State
20 have anything else they would like to present to the
21 Court concerning sentencing.

22 MS. BURCHSTEAD: Your Honor, you've heard the
23 facts of the case and we had been discussing the
24 potential penalties. I believe the Court does
25 understand penalty is up to thirty years for CSC

1 first, up to 20 for CSC with a minor second and up to
2 20 for the assault with intent to commit. I would
3 just reiterate to the Court the current potential
4 sentence for CSC first is 25 to life. Based on that
5 we believe society views this as a crime where
6 punishment is appropriately at least 25 years. Based
7 on that I would ask for a sentence of at least 25
8 years. Beyond that I would just ask that we allow

9 Witness A to address the Court. She's the Witness A
10 in this case.

11 THE COURT: Certainly.

12 MS. BURCHSTEAD: She's going to sit at the table
13 if that's all right.

14 THE COURT: Just make sure the microphone is on so
15 we can hear.

16 MS. BURCHSTEAD: Yes, sir.

17 THE COURT: Witness A .

18 MS. BURCHSTEAD: She is going to read to you Your
19 Honor.

20 Witness A : Good morning Your Honor. First I
21 would like to thank everyone for listening to my case
22 and I know it has been hard and no one wanted to hear
23 the things that they heard, but for a person to do
24 something and ask for forgiveness and it not be wrong
25 any more is something I can live with. I could

1 forgive. However, this wasn't the case we were
2 dealing with this week. I have given a lot of thought
3 in asking for reasonable judgement for a person who
4 had molested, raped, intimidate and bullied me along
5 with calling me a liar and tearing my family apart.
6 While some people thing molestation and rape is only
7 physical abuse of a person I'm here to tell you, tell
8 all ever you, it's not only physical; its physical,
9 emotional and mental. It's always social abuse in a
10 way that I was confined most of the time to the home.
11 After asking my grandma and my uncle if it was okay
12 for me to spend the night I still wasn't allowed to.
13 I often felt the reason was to have me at his
14 disposal. I could not look at, have or talk to any
15 male friends or I would get yelled at and threatened
16 that he was going to beat my ass. Eventually I didn't
17 even want friends and would push people away from me
18 so I wouldn't get hurt more than I was already being
19 hurt. Also because I had this very bad secret that if
20 I let slip I was often told my mom would kill me. But
21 the truth is finally out.

22 All this time I have been hearing this case is 15
23 years old. He has gotten away with it for more than
24 15 years. I'm currently 28 years old and this started
25 when he was about four. This means he has gotten away

1 with this for about 24 years. And this 24 years he's
2 also managed to tear my family apart and at times turn
3 them against me. I know that all of this could have
4 been avoided if I had told the truth sooner when I was
5 four, but I was scared. Another way this could have
6 been avoided is by him being honest about it 15 years
7 ago. That the best way for all of this to have been
8 avoided was for him not to commit the wrongdoings in
9 the first place and being a good parent like he was
10 suppose to. Whether he was a biological father or a
11 stepparent I spent about 24 years with the guilt of
12 not confining in someone sooner to tell them what was
13 going on at the time. These past few days I have been
14 relieved of that guilt.

15 Today I am going to ask you, Your Honor, for the
16 maximum sentence and then for him to face deportation.
17 I hope that some time he will tell the truth and find
18 mercy in God.

19 I thank everyone here for their time, your
20 compassion in allowing me to finally get the truth
21 out. May God bless you all and be with you always.
22 Thank you.

23 THE COURT: Anything else from the State.

24 MS. BURCHSTEAD: No, Your Honor. Thank you.

25 THE COURT: Mr. Gregory.

1 MR. GREGORY: Your Honor, if it please the Court.
2 As the presiding judge over this case you probably
3 learned a good bit about Mr. Morales's background;
4 work history, family history. He is now in the
5 country under a temporary residence card which will
6 come up for renewal within a year, I think. And I
7 imagine with the conviction now he will probably be
8 denied and they may institute deportation proceedings.
9 I really don't know. That's my guess.

10 In regards to the sentence, Marie Saison
11 (phonetics) who was the previously prosecuting this
12 case for the Attorney General's office had offered Mr.
13 Morales an opportunity to plead guilty and receive a
14 sentence of 15 years. You are aware of Mr. Morales's
15 position. He denied that this occurred. He plead not
16 guilty, and he maintained his innocence so he
17 therefore rejected the offer proposed by Marie Saison
18 of 15 years.

19 Your Honor, he has no record. I've checked his
20 record. He has got some traffic violations.
21 Something like that. Something that everybody has and
22 there is nothing else on his record. The only thing
23 on his record. He's too old for youthful offender but
24 I think if you take that into consideration you may
25 find a sentence a little bit less than what the State

1 is proposing would be appropriate.

2 THE COURT: Mr. Morales, do you want to say
3 anything sir?

4 THE DEFENDANT: I want to say to my wife, take care
5 of my two little kids that I have at home now that I
6 am not going to be around any more. And my girls, I
7 always loved them. I worked hard for them. I never
8 did anything wrong. I worked for them to provide food
9 for the house so they can eat and now that I'm not
10 going to be around I hope they don't have any regrets
11 about what they say. I guess that is all I have to
12 say.

13 THE COURT: The jury has spoken in this case and
14 they have spoken loudly and clearly and they have
15 found Mr. Morales guilty of all three charges
16 contained in the indictments. All three of these
17 offenses are serious. Some of the most serious crimes
18 that can be committed in the State of South Carolina.
19 These crimes are disgusting and despicable to the
20 Court. Anybody that preys on young children like this
21 and young girls as they grow in my opinion doesn't
22 deserve a whole lot of of mercy.

23 I heard from the State and from the defendant as to
24 what they think would be appropriate sentences in this
25 matter. The State of South Carolina provides me with

1 the authority to sentence as I deem appropriate and I
2 will do so.

3 With regards to these crimes, sentence of the Court
4 with regards to indictment 2016-GS-29-559, criminal
5 sexual conduct with a minor first degree, sentence of
6 the Court is you be committed to the State Department
7 of Corrections for a term of thirty years. As to
8 indictment 2016-GS-29-565, criminal sexual conduct,
9 second degree with a minor, sentence of the Court is
10 you be committed to the State Department of
11 Corrections for a term of ten years. This will run
12 consecutive with the thirty-year sentence. As to
13 indictment 2016-GS-29-564, assault with intent to
14 commit criminal sexual conduct, second degree with a
15 minor, sentence of the Court is you committed to the
16 State Department of Corrections for a term of ten
17 years. That sentence will run consecutive with the
18 first two sentences. Concurrent. I am sorry,
19 concurrent. I meant concurrent. I took my glasses
20 off. That will run concurrent. So it is a total of
21 40 years.

22 Good luck to you.

23 MR. GREGORY: Your Honor, 565 was consecutive to
24 the 30-year sentence?

25 THE COURT: Five sixty-four is concurrent. Five

1 sity-five is consecutive.

2 MR. GREGORY: All right. So you got a sentence
3 and another one consecutive and then the third one was
4 concurrent.

5 THE COURT: Concurrent.

6 MR. GREGORY: Thank you, Your Honor.

7 THE COURT: The assault with intent to commit is
8 concurrent. First two are consecutive. Total of 40
9 years.

10 MR. GREGORY: All right. Thank you, Your Honor.

11 THE COURT: Thank you.

12 Witness A : Thank you, Your Honor.

13 THE COURT: Anything else from the State or
14 the defendant?

15 MS. BURCHSTEAD: No, Your Honor. Thank you.

16 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Lancaster County, South Carolina, on the 21-23rd of August, 2017.

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

December 3, 2017

Aileen Butler

OCT-03-17 10:56 AM
Greene & Greene Attorneys
803.753.8390

ARREST WARRANT

H-067093

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of Lancaster

THE STATE
against

adalube Guzman Morales
tress: [redacted] Paladin Road
Lancaster, SC 29720

mer: [redacted] SSN: [redacted]
c. Race: H Height: [redacted] Weight: [redacted]
State: SC DL#: [redacted]
B: [redacted] /1979 Agency ORI#: SC0290100
secuting Agency: LANCASTER POLICE DEPARTMENT
secuting Officer: Sgt. A.P. Parsons
ense: Criminal Sexual Conduct with a Minor, Second
egree
Offense Code: [redacted]
le/Ordinance Sec. 16-3-655 (2)

s warrant is **CERTIFIED FOR SERVICE** in the
County/ ☐ Municipality of [redacted]
The accused
to be arrested and brought before me to be
alt with according to law.

(L.S.)
Signature of Judge [redacted]

le: [redacted]

RETURN
copy of this arrest warrant was delivered to
lendant C. Anderson
10/29/2002
R. [redacted]
Signature of Constable/Law Enforcement Officer [redacted]

TURN WARRANT TO:
ethryn A. Hayes, Associate Judge
0. BOX 1149
Lancaster, SC 29721
1171

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of Lancaster)

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 28, 1990
SCCA 518

Personally appeared before me the affiant Sgt. A.P. Parsons who
being duly sworn deposes and says that defendant Guadalupe Guzman Morales
did within this county and state between July 1, 2000 & July 31, 2000 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Lancaster)
in the following particulars: Criminal Sexual Conduct with a Minor, Second Degree
DESCRIPTION OF OFFENSE: Criminal Sexual Conduct with a Minor, Second Degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
One Guadalupe Guzman Morales did commit second degree criminal sexual conduct against his
stepdaughter, [redacted] who is now thirteen (13) years old, in her home at [redacted]
[redacted] now lives with her grandmother at [redacted] During an interview by Margo Biron at
Palmetto Citizens Against Sexual Assault Center, [redacted] stated that Morales has been touching her
inappropriately since she was three or four (3 or 4) and [redacted] forced sexual intercourse on her six (6)
times. She states this happened sometime in July of 2000 when she was 11 after the family had
returned from the river. Her mother and sister went to [redacted] store and her stepfather Morales came into
the living room, removed her pants, and inserted his penis into her vagina. [redacted] did not tell anyone
because once Guadalupe told her her mother would kill them both.

Sworn to and subscribed before me)
on 10/29/2002)
Signature of Affiant: [redacted]
Affiant's Address: P.O. BOX 1149
Lancaster, SC 29721
Affiant's Telephone: (803) 283-1171

Signature of Issuing Judge: Kathryn A. Hayes (S.)

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of Lancaster)

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that
on July 1, 2000 & July 31, 2000 defendant Guadalupe Guzman Morales
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of Lancaster) as set forth below:
DESCRIPTION OF OFFENSE: Criminal Sexual Conduct with a Minor, Second Degree

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge: Kathryn A. Hayes (S.)
Judge's Address: P.O. BOX 1149
Lancaster, SC 29721
Judge's Telephone: (803) 283-1171
Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit
Judge Code: [redacted]

DEFENDANT COPY

H-067093 Xref #: 2002-22417

ARREST WARRANT

H-067094

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Lancaster

THE STATE

against

Guadalupe Guzman Morales

 Address: Paladín Road
Lancaster, SC 29720

DOB: SSN:

Race: H Height: Weight:

State: SC DL#:

DOB: /1970 Agency ORI#: SC0290100

Prosecuting Agency: LANCASTER POLICE DEPARTMENT

Prosecuting Officer: Sgt. A.P. Parsons

 Offense: Attempted Criminal Sexual Conduct with a Minor,
Second Degree

Code/Ordinance Sec. 16-3-656 (K)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

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

(L.S.)

Signature of Judge

Date:

RETURN

 A copy of this arrest warrant was delivered to
defendant G. Morales

on 10/29/02

R. B. B. II

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Kathryn A. Hayes, Associate Judge

P. O. BOX 1149

Lancaster, SC 29721

(803) 283-1171

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Lancaster

AFFIDAVIT

 Form Approved by
S.C. Attorney General
July 28, 1990
SCCA 618

 Personally appeared before me the affiant Sgt. A.P. Parsons who
being duly sworn deposes and says that defendant Guadalupe Guzman Morales
did within this county and state on April 23, 2001

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

in the following particulars:

DESCRIPTION OF OFFENSE: Attempted Criminal Sexual Conduct with a Minor, Second Degree

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

 One Guadalupe Guzman Morales did attempt to commit second degree criminal sexual conduct against his
daughter, who is now thirteen (13) years old, in her home at [redacted]
[redacted] now lives with her grandmother at [redacted] On her twelfth (12th) birthday when her
mother was in the shower, Morales called [redacted] into his room, pulled her onto his bed, took down his
pants, and attempted to force her to have sexual intercourse with him. [redacted] states that she was able
to fight him off. She did not tell her mother because one time Morales told her that if her mother found
out she would kill them both.

 Sworn to and subscribed before me
on 10/29/2002

 Signature of Affiant
Affiant's Address P. O. BOX 1149
Lancaster, SC 29721
Affiant's Telephone (803) 283-1171

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Lancaster

ARREST WARRANT

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

 It appearing from the above affidavit that there are reasonable grounds to believe that
on April 23, 2001 defendant Guadalupe Guzman Morales

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

☐ County/ ☒ Municipality of Lancaster as set forth below.

DESCRIPTION OF OFFENSE: Attempted Criminal Sexual Conduct with a Minor, Second Degree

 Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

 Signature of Issuing Judge
Judge's Address P. O. BOX 1149
Lancaster, SC 29721
Judge's Telephone (803) 283-1171

Judge Code:

 Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

DEFENDANT COPY

H-067094 Yref #: 2002-22417

 OCT-03-17 10:57 AM
400
Gresorn & Gresorn Attorneys
803.753.8390

P. 03

ARREST WARRANT
H-067095
STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of Lancaster

THE STATE
against

Guadalupe Guzman Morales
address: [redacted] Paladin Road
Lancaster, SC 29720
one: [redacted] SSN: [redacted]
Race: H Height: [redacted] Weight: [redacted]
State: SC DL#: [redacted]
DOB: [redacted]/1970 Agency ORI#: SC0290100
Prosecuting Agency: LANCASTER POLICE DEPARTMENT
Prosecuting Officer: Sgt. A.P. Parsons
Offense: Attempted Criminal Sexual Conduct with a Minor, Second Degree
Offense Code: [redacted]
Code/Ordinance Sec. 16-3-656

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

Signature of Judge (L.S.)
Date: [redacted]

RETURN

A copy of this arrest warrant was delivered to
defendant G Morales
on 10-25-01

Ridd
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Kathryn A. Hayes, Associate Judge
P. O. BOX 1149
Lancaster, SC 29721
(903) 283-1171

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of Lancaster

AFFIDAVIT

Personally appeared before me the affiant Sgt. A.P. Parsons who
being duly sworn deposes and says that defendant Guadalupe Guzman Morales
did within this county and state Between May 1, 2001 & May 31, 2001 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Lancaster)
in the following particulars:

DESCRIPTION OF OFFENSE: Attempted Criminal Sexual Conduct with a Minor, Second Degree

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

One Guadalupe Guzman Morales did attempt to commit second degree criminal sexual conduct against his
stepdaughter [redacted] who is now thirteen (13) years old, in her home at [redacted]
[redacted] now lives with her grandmother at [redacted] In May of 2001 when [redacted] was twelve (12)
and was home sick from school, Morales took her clothes off while they were in the living room and
attempted to penetrate her vagina with his penis. Jessica states that she was able to fight him off.
She did not tell her mother because one time Morales told her that if her mother found out she would kill
them both.

Sworn to and subscribed before me
on 10/29/2002
Kathryn A. Hayes (L.S.)
Signature of Issuing Judge

Signature of Affiant
Affiant's Address: P. O. BOX 1149
Lancaster, SC 29721
Affiant's Telephone: (903) 283-1171

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of Lancaster

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that
Between on May 1, 2001 & May 31, 2001 defendant Guadalupe Guzman Morales
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of Lancaster) as set forth below:

DESCRIPTION OF OFFENSE: Attempted Criminal Sexual Conduct with a Minor, Second Degree

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Kathryn A. Hayes (L.S.)
Signature of Issuing Judge
Judge Code: [redacted]

Judge's Address: P. O. BOX 1149
Lancaster, SC 29721
Judge's Telephone: (903) 283-1171
Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

DEFENDANT COPY

H-067095

Ref #: 2002-22477

WITNESSES

Valerie Williams – SC Attorney General's
Office

ARREST WARRANT/TICKET NUMBER

Direct Presentment

ACTION OF GRAND JURY
TRUE BILL


Foreperson of Grand Jury

Date: MAY 19 2016

VERDICT

Foreperson of Petit Jury

Date:

Docket Number 2016-GS-29-559

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

MAY Term 2016

THE STATE

vs.

Guadalupe Morales a/k/a Guadalupe
Guzman Morales a/k/a Guadalupe
Melqueades Morales

DEFENDANT

Indictment for

Criminal Sexual Conduct with Minors
First Degree

SC Code: 16-3-655(1)
CDR Code: 159

Felony/A

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury

Defendant

I, _____
hereby appear in my own proper person
and plead guilty to the within indictment or
to _____

Defendant

Witness:

C.C.C. Pls. And G.S.

FILED
CLERK OF COURT
LANCASTER, SC
2016 MAY 19 AM 12:43

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on May 19, 2016 the Grand Jurors of Lancaster County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH MINORS – FIRST DEGREE

That in Lancaster County, South Carolina, between the dates of December 1, 1999 and April 22, 2000, the Defendant, Guadalupe Morales a/k/a Guadalupe Guzman Morales a/k/a Guadalupe Melqueades Morales, did commit a sexual battery upon a minor, Witness A DOB: [REDACTED]/1989, who was less than eleven years of age. In violation of §16-3-655(1) of the South Carolina Code of Laws (1976), as amended.

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


 ALAN WILSON/SMS
 SOUTH CAROLINA ATTORNEY GENERAL

WITNESSES

Valerie Williams – SC Attorney General's
Office

ARREST WARRANT/TICKET NUMBER

H-067094

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: MAY 19 2016

VERDICT

Foreperson of Petit Jury

Date:

Docket Number 2016-GS-29-564

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

MAY Term 2016

THE STATE

vs.

Guadalupe Morales a/k/a Guadalupe
Guzman Morales a/k/a Guadalupe
Melqueades Morales

DEFENDANT

Indictment for

Assault with Intent to Commit Criminal
Sexual Conduct with Minors
Second Degree

SC Code: 16-3-655(2), 16-3-656
CDR Code: 159

Felony/C

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury

Defendant

I, _____
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. Pls. And G.S.

2016 MAY 19 AM 12:43
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

)
)
)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT

At a Court of General Sessions, convened on May 19, 2016 the Grand Jurors of Lancaster County present upon their oath:

**ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT
WITH MINORS - SECOND DEGREE**

That in Lancaster County, South Carolina, between the dates of April 1, 2001 and September 1, 2001, the Defendant, Guadalupe Morales a/k/a Guadalupe Guzman Morales a/k/a Guadalupe Melqueades Morales, did attempt to commit a sexual battery upon a minor, ^{Witness A} DOB: [REDACTED]/1989, who was fourteen years of age or less but at least eleven years of age. In violation of §16-3-655(2) and §16-3-656 of the South Carolina Code of Laws (1976), as amended.

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



ALAN WILSON/SMS
SOUTH CAROLINA ATTORNEY GENERAL

WITNESSES

Valerie Williams — SC Attorney General's
Office

ARREST WARRANT/TICKET NUMBER

H-067093

ACTION OF GRAND JURY
TRUE BILL

[Signature]
Foreperson of Grand Jury

Date: MAY 19 2016

VERDICT

Foreperson of Petit Jury

Date:

Docket Number GS-29-565

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

MAY Term 2016

THE STATE

vs.

Guadalupe Morales a/k/a Guadalupe
Guzman Morales a/k/a Guadalupe
Melqueades Morales

DEFENDANT

Indictment for

Criminal Sexual Conduct with Minors
Second Degree

SC Code: 16-3-655(2)
CDR Code: 159

Felony/C

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury

Defendant

I, _____
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. Pls. And G.S.

FILED
OFFICE OF CLERK
OF COURT
2016 MAY 19 AM 12:43
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on May 19, 2016 the Grand Jurors of Lancaster County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH MINORS – SECOND DEGREE

That in Lancaster County, South Carolina, between the dates of April 23, 2000 and September 30, 2000, the Defendant, Guadalupe Morales a/k/a Guadalupe Guzman Morales a/k/a Guadalupe Melqueades Morales, did commit a sexual battery upon a minor, ^{Witness A} DOB: [REDACTED] 1989, who was fourteen years of age or less but at least eleven years of age. In violation of §16-3-655(2) of the South Carolina Code of Laws (1976), as amended.

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


ALAN WILSON/SMS
SOUTH CAROLINA ATTORNEY GENERAL

408

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Lancaster

VS.

Guadalupe Guzman Morales

AKA:

Race UNKNOWN/O Sex: M Age: 46

DOB: 1970 SS#:

Address: Paladin Road

City, State, Zip: Lancaster, SC 29720

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct - First degree (Not More than 30 years)

in violation of § 16-03-0652 16-3-655(1) of the S.C. Code of Laws, bearing CDR Code # 0160

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

General Attorney

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment

of \$ plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on.☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied.

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ plus 20% fee: \$

Payment Terms

☐ Set by SCDPPPS

Recipient:

*Fine.

§ 14-1-206 (Assessments 107.5%)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Probation)

§ 14-1-212 (Law Enforce Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2016GS2900559

A/W# H067092 Direct Presentment

Date of Offense: 10/29/2002

S.C. Code § 16-03-0652

CDR Code #: 0160 151

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0652 16-3-655(1) of the S.C. Code of Laws, bearing CDR Code # 0160

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

General Attorney

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment

of \$ plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on.☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied.

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ plus 20% fee: \$

Payment Terms

☐ Set by SCDPPPS

Recipient:

*Fine.

§ 14-1-206 (Assessments 107.5%)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Probation)

§ 14-1-212 (Law Enforce Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (07/2016)

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other.

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF Lancaster
STATE VS.

Guadalupe Guzman Morales

AKA:

Race: UNKNOWN/O Sex: M Age: 46

DOB: -1970 SS#:

Address: Paladin Road

City, State, Zip: Lancaster, SC 29720

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: ~~Sex / Criminal sexual conduct - Second degree~~ (Not More than 20 years) Assault with Intent to Commit

in violation of § 16-03-0652 16-3-655(2) of the S.C. Code of Laws, bearing CDR Code # 0101 0159

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

General Attorney

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment

of \$ plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee. \$

Payment Terms

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$

TOTAL

\$128.75

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2900564

A/W#: H067094

Date of Offense: 10/29/2002

S.C. Code § 16-03-0652 16-3-655(2), 16-3-656

CDR Code #: 0101 0159

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSCS CON
W/A
MURDER

Mandatory GPS(CSC §17-25-45

w/minor 1st or Lewd Act)

(defendant's initials)

Recommendation by the State.

Attorney for Defendant

SC Bar#

☒ State Department of Corrections,☐ County Detention Center,

Youthful Offender Act not to exceed years

days/months/years and/or payment

probation for

2016-GS-29-00559

§ 24-13-40 to be calculated and applied

§17-25-135.

Domestic Violence)

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code:

Sentence Date:

2754
8-23-17

410

STATE OF SOUTH CAROLINA

COUNTY OF Lancaster
 STATE VS
Guadalupe Guzman Morales

AKA:

Race: UNKNOWN/O Sex: M Age: 46DOB: 1970 SS#: Address: Paladin RoadCity, State, Zip: Lancaster, SC 29720DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct - Second degree (Not More than 20 years)

in violation of § 16-03-0653 10-3-655(2) of the S.C. Code of Laws, bearing CDR Code # 0161☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45

w/minor 1st or Lewd Act)

The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Maga & Bunkel
General AttorneySC Bar# 71716

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee. \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(B) (Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2900565A/W#: H067093Date of Offense: 10/29/2002S.C. Code §: 16-03-0653CDR Code #: 0161 159

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS2016-GS-2900559
§ 24-13-40 to be calculated and applied

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees

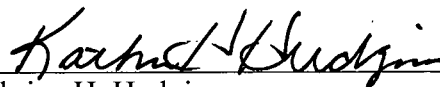
Presiding Judge

Judge Code: 7754Sentence Date 8-23-17

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 3rd day of January, 2019.

RECEIVED
JAN 03 2019
SC Court of Appeals