

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2018-001684

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SC Court of Appeals

The State,..... Respondent,

v.

Michael Cliff Eubanks, ... Appellant.

Record on Appeal – Volume II of II

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1 A Now that you've told me, I do. Sounds terrible though.

2 Q I understand. So it's a song, not a movie.

3 A Okay.

4 Q But J.L. felt free enough to come to you with some
5 concerns about that?

6 A Yes, sir.

7 Q In fact, when you and -- after -- well --So you and
8 J.L. , I guess, over the first four or five years got very
9 close because you were the sole parent in her life?

10 A My parents helped me as well because I worked three
11 jobs.

12 Q But still, you were the sole parent in her life?

13 A Yes, sir.

14 Q And so, you all got pretty close?

15 A Of course.

16 Q Out of necessity if nothing else, right?

17 A I agree.

18 Q And you all would discuss things?

19 A She would choose. I let her talk about what she wanted
20 to talk about, but we talked about a lot.

21 Q And you say since -- in the last year, so since July of
22 -- let's say July 1st of last year J.L. 's gained 25 to 30
23 pounds?

24 A Since June she's started putting on weight, almost
25 immediately after May '16.

1 Q Now, you said earlier that when you observed what you
2 perceived to be Cliff paying more attention to J.L. that you
3 all joked about it?

4 A We joked about it.

5 Q Right. And you all -- it sounded like you kind of made
6 light of it.

7 A I did, because I didn't think what I know now.

8 Q And you made light of it because there was nothing
9 apparent there that alerted you to do anything other than
10 make light about it?

11 A I would have never thought he would have done it.

12 Q And you never sat and discussed it with J.L. either,
13 did you?

14 A Never had any thought that he would.

15 Q But you never sat down and discussed with J.L. about
16 you thought Cliff was too close to her?

17 A I spoke with the adult and told the adult he needed to
18 spend more time with all kids. There was no reason to shame
19 J.L. . It wasn't her fault.

20 Q So you never sat down with J.L. and asked her about it?

21 A No, sir.

22 Q One other question. Right after May of 2017 did Josh
23 Lyons come back in your life?

24 A Into the kids' life. Yes, sir.

25 Q Did he come back into your home?

1 A J.L. asked that he -- but since my dad passed away and
2 since I had an injury, she was scared.

3 Q So he moved into Beaver Dam Creek Road?

4 A He didn't live there. He stayed on the couch.

5 Q How long did he stay there?

6 A To be honest, maybe a couple of nights, but he'd come
7 over every day that she asked that he be there.

8 Q And you would go out with him grocery shopping during
9 the day?

10 A If J.L. was there, yes. She was scared.

11 Q So if we have a picture of you June 11, 2017 grocery
12 shopping with Josh Lyons, that would probably be accurate?

13 A Sure.

14 Q So you were able to get out in June of 2017 to at least
15 go grocery shopping with an ex-husband?

16 A Like I told you, I would do anything for my kids. And
17 if they're okay, I am also.

18 MR. WISE: Thank you.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MR. SCOTT:

22 Q That picture that Defense showed you, I don't want to
23 put words in their mouth, but I assume this is going to be
24 provocative because the girls are up in the air with their
25 legs?

1 A Correct.

2 Q And they're wearing bloomers; is that --

3 A That's correct.

4 Q Let me ask you, did you ever see J.L. do this? What

5 -- you called it something. That's it called?

6 A It's called a straddle hold.

7 Q And so, that is a --

8 A It's done in cheer, dance. A lot of different things.

9 Q So if they're going to argue this as provocative -- you
10 taught dance. Did you have a lot of parents say that's a
11 provocative move?

12 A Never.

13 Q I wonder why they chose that picture. Is this -- do
14 you recognize this to be the dance studio Facebook page?

15 A Yes, sir. It is.

16 Q And what do you see in these pictures?

17 A I remember Laura going up there and wanting to take a
18 picture of J.L. on the Facebook page. They could have
19 picked several out of that.

20 Q I wonder why they didn't.

21 MR. WISE: Objection, Your Honor. That's an improper
22 question.

23 THE COURT: Sustained. Sustained. Sustained. Not a
24 proper question to ask.

25 Q Who are these people? Who they -- what do they have to

Denise Eubanks-Redirect Examination

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- 1 do with this case today?
- 2 A Absolutely nothing.
- 3 Q Do you see J.L. ?
- 4 A No, sir.
- 5 Q See A.E. ?
- 6 A No, sir.
- 7 Q Is B.E. in that picture?
- 8 A No, sir.
- 9 Q Where's L.L. ?
- 10 A He's not in that picture.
- 11 Q So if I go to the Facebook page, if anybody goes to the
- 12 dance studio --
- 13 A They now go by TDS --
- 14 Q TDS.
- 15 A The Dance Shop.
- 16 Q What are you looking at when I scroll through these
- 17 pictures?
- 18 A A bunch of happy kids holding trophies, dancing with
- 19 their moms. Doing what they love.
- 20 Q The straddle hold is the one that they showed you?
- 21 A Yes.
- 22 Q And you don't know who -- you didn't recognize these
- 23 people?
- 24 A I do. I don't feel comfortable saying --
- 25 Q No, we don't need to.

1 A -- kids' names out loud.

2 Q But did they have absolutely anything to do with this
3 case we're here for this week?

4 A No, they don't.

5 Q You said L.L. is quiet. L.L. is reserved.

6 A He was in a house full of girls.

7 Q I happened to see something this morning. Did you all
8 have a group prayer?

9 A We do every morning.

10 Q How many people were in that group circle prayer?

11 A At least 20.

12 Q And who led the prayer?

13 A L.L. . He wants to be a preacher.

14 Q He can't really be reserved, he can't really be quiet
15 if he's going to be a preacher, can he?

16 A No, sir.

17 Q I heard something that the lawyers asked you. I don't
18 think I need to -- Cliff and you didn't even sleep in the
19 same bed?

20 A We slept in the same room, but B.E. would cry if she
21 wasn't in the bed with me. So he slept in a rollaway bed
22 beside me.

23 Q He didn't want to sleep next to you?

24 A No, sir. Not after my wreck.

25 Q Well, let me ask you this. I'm hearing about cuddling

1 on couches and the bottom of bunk beds. Did he cuddle with
2 you?

3 A Not after my wreck he didn't. Nothing like that. But
4 I didn't want to make him feel guilty because he couldn't
5 have an erection.

6 Q Did you know he couldn't get an erection?

7 A I never saw an erection, so I assumed he couldn't.

8 Q The last time you even saw his naked body was January
9 1st of --

10 A He would undress in front of me, or get in the shower.
11 But I thought he couldn't help it, so I didn't want to make
12 him feel bad.

13 Q Because he told you he couldn't?

14 A Right.

15 Q And did you know that J.L. was 81 pounds at the time of
16 Dr. Pritchard's exam on her?

17 A Yes, sir.

18 Q Last thing I'm going to ask you. Who was it that asked
19 to speak with J.L. when she disclosed the sexual
20 allegations?

21 A Kim Little, L.L. 's therapist.

22 Q It was Kim Little. Who was it that called the police
23 after hearing --

24 MR. WISE: Your Honor, I would object to this as
25 repetitive of what he went over on direct.

1 THE COURT: You raised an issue. You can -- he can
2 touch on it one more time.

3 MR. WISE: I don't recall raising an issue, but -

4 THE COURT: You brought up something in cross that's an
5 implication and he's allowed to respond to that. Go ahead.

6 Q Was it you that ran down to the police department and
7 said, gosh, I've got to report --

8 MR. WISE: Objection.

9 Q -- I've got to report some child abuse. Was it you?

10 A No, sir.

11 THE COURT: Hold on. Hold on.

12 A I never reported it.

13 THE COURT: Hold on. Sustained as it relates to the
14 theatrics. Okay. So no leading, please. I think you made
15 your point.

16 Q I'm going to ask a non-leading question. Was it you or
17 was it Dr. Kim Little who reported the abuse?

18 A Dr. Kim Little.

19 MR. SCOTT: Thank you.

20 THE COURT: Any recross?

21 MR. WISE: Nothing further.

22 THE COURT: Ma'am, thank you very much. You may step
23 down.

24 THE WITNESS: Thank you.

25 (Whereupon, the witness stepped down from the witness

1 stand.)

2 THE COURT: Solicitor, any additional witnesses?

3 MR. SCOTT: No, Your Honor.

4 THE COURT: Ladies and gentlemen, here's what I'm going
5 to do. I'm going to ask that you adjourn to the back. I do
6 need to take up some matters with the attorneys. I might --
7 I'm going to conference with them real quick on logistics
8 and scheduling, and I might bring you back out here in about
9 five or 10 minutes and just let you go to lunch while we
10 take up a few things and we'll see where things stand.
11 Okay? But don't talk about the case yet.

12 MR. WISE: Can we approach real quick?

13 THE COURT: Sure. Come on up.

14 (Whereupon, a sidebar was held.)

15 THE COURT: All right. Ladies and gentlemen, I'm going
16 to go ahead and send you all to lunch because I've got to
17 eat, too. I'm going to ask that you be back, if you would
18 -- let me ask that you be back at 1:45, okay, to try and --
19 try and move this along, but I want to give you enough time
20 to eat lunch. If what I do out here takes a little bit
21 longer and if we keep you waiting, sorry. Be back at 1:45.
22 Okay? Don't talk about the case. See you at 1:45.

23 (Whereupon, the jury exited the courtroom at 12:19
24 p.m.)

25 THE COURT: A genuine five minute break. Back in five

1 minutes. Okay? So if you step out, please be back in five
2 minutes.

3 (Whereupon, a recess was held from 12:19 p.m. to 12:28
4 p.m.)

5 THE COURT: DV motion is what we need to address. Mr.
6 Wise will be moving for a Directed Verdict and renewing all
7 previous motions. The Trauma Narrative, State's 10, if
8 there's any redaction that you all have not been able to
9 agree to, we need to talk about that. And then there's the
10 issue that was mentioned at the bench, something found on
11 his cell phone --

12 MR. WISE: Right.

13 THE COURT: -- that Mr. Wise had an issue with. So
14 let's do it in that order, if we could.

15 MR. WISE: Do you want me to go ahead?

16 THE COURT: Sure. Mr. Wise.

17 MR. WISE: I move for a directed verdict on criminal
18 sexual conduct first degree on the grounds in light -- and
19 taken in the light most favorable to the State there really
20 has been no showing of criminal sexual conduct first degree.
21 At the best, I think the testimony is confusing and appears
22 to be testimony that certainly should -- confusing testimony
23 among the State's primary witness on this issue should not
24 be a basis to allow a jury to pass judgment on it, and I
25 give this example. In the trauma narrative she talks about

1 the worst experience. Well, the worst experience is only
2 described a lewd act on a minor child. We have no medical
3 testimony to show anything happened. Granted it doesn't
4 have to be, but certainly that is a factor that the Court
5 can consider in a directed verdict. We are dealing with the
6 memory of a six year old, some six years after the alleged
7 incident, to determine whether or not there is substantial
8 evidence to allow a jury to consider criminal sexual conduct
9 first or second degree. And I think that is simply not
10 sufficient evidence.

11 THE COURT: Do you care to reply?

12 MR. SCOTT: Just as to -- I assume just the DV on the
13 CSC minor first is what he's arguing?

14 MR. WISE: First and second.

15 MR. SCOTT: Oh, the second. So a sexual battery. The
16 testimony for the CSC with minor first, I'm just going to
17 give you one example that we had, and that's just enough.
18 She was eight years old. She was on the couch. She said
19 this man put his mouth on her private part. She said this
20 man put his tongue inside of her private part. She said
21 this man used his penis and put it inside her vagina. She
22 said it hurt. She said this man put it inside of her anus
23 and it hurt. She was eight years old at the time.
24 Therefore would meet the definition of a sexual battery both
25 through cunnilingus and also anal and vaginal intrusion.

1 Then you recall I used the tissue box as well.

2 A good way to delineate the first from the second, we
3 know she was 12 when they moved to Beaver Dam Road. So
4 every time she testified to any kind of sexual battery there
5 that would be a CSC with a minor second. Of course, there
6 we talked about the barn. He intruded -- put it -- there
7 was intrusion inside of her vaginal opening. We talked
8 about cunnilingus there as well. In fact, I don't have it
9 in front of me, but there was numerous times she alluded to.
10 He has admitted in his own statement to a lewd act of a
11 child. We have also had witnesses talk about him fondling
12 her in various ways. She herself has talked about him
13 fondling her in various ways. We think this would be
14 something for the jury to consider, Your Honor. We think we
15 have had testimony -- competent testimony regarding all of
16 these incidents through various witnesses. Trauma
17 narrative, I was always just worried about it. I don't
18 think they're discoverable. It's a therapeutic document.
19 He insisted on it. I said just so we don't have any hiccups
20 I'm going to give it to him. And that's what I was afraid
21 of, that he was going to take that and he was going to run
22 with it, this is the sole case right here. We'll it's not.
23 It is a therapeutic exercise. The therapist testified this
24 is by no means to cover every incident that occurred with
25 her. That is one element, one piece of our case, and that

1 is to be taken in conjunction with all the other testimony
2 and all the other evidence that's come in. And, Your Honor,
3 we do think we have provided sufficient evidence for the
4 jury to consider.

5 THE COURT: In the light most favorable to the State
6 there is evidence for which the jury could reasonably
7 conclude that the Defendant is guilty of CSC with a minor
8 first and second, as well as the CSC with a minor third. So
9 the Court will deny the Defendant's motion for a directed
10 verdict.

11 The Defense also renews all prior motions and
12 objections. Same rulings as before. The trauma narrative,
13 have you all been able to agree upon redaction of that item?

14 MR. SCOTT: I think it's all relevant, Your Honor. I
15 wasn't even going to allude to it, but that was one -- a
16 choice -- a strategy they decided to make when they tried to
17 piecemeal ask her about certain parts of it. Rule of
18 completeness I think it all comes in. I find it all to be
19 relevant at this point. I don't see anything that I would
20 consider irrelevant to this case at this point.

21 THE COURT: But what part of the --

22 MR. WISE: Your Honor, the problem -- I think there are
23 three questions at the end she supposedly discussed with her
24 mother that I don't think are relevant. He and I differ as
25 to how much of the trauma narrative -- let me see your copy

1 a second. I can - Thank you. Once you get past the basic
2 allegations and start with number one, I have a question of
3 whether number one through nine or should -- are irrelevant
4 and should be redacted.

5 MR. SCOTT: Your Honor, I'm going to hand it up to you.

6 THE COURT: Please.

7 MR. SCOTT: In case you want to review what he's talking
8 about. He's alluding to these questions.

9 MR. WISE: His recall is that she testified to items
10 one through nine. I don't think she did. If she testified
11 to it then I think it probably arguably would be admissible.
12 But if she didn't testify to it I think it should be
13 redacted. And the last three questions in particular.

14 THE COURT: Under the rule of completeness I think the
15 Solicitor has a point. It was the Defense who brought this
16 up. It was the Defense who talked about it. And again, I
17 understand the State's position that maybe this should have
18 never been referred to in the first place, but that's water
19 under the bridge at this point in time. And candidly, I
20 mean, it is somewhat of a prior recorded recollection.
21 There wasn't much of a fight over whether it was
22 discoverable or not. Now that it's out there I think that
23 it's appropriate for the jury to consider the document as a
24 whole instead of just cherry-picking portions of it.

25 The questions that start on the third page, one through

1 nine that Mr. -- Mr. Wise alludes to, there's some --
2 there's some stuff in there which is consistent with how she
3 testified, things that she talked about on the stand.
4 There's also clearly statements in here which are indicative
5 of the PTSD that she was diagnosed with after the fact. So
6 that's evidence that would support the diagnosis of PTSD.
7 And again, it's the Defense who brought these issues up.

8 Does the State feel terribly strong about seven through
9 nine, those questions? "I've learned these things about
10 myself in therapy. If I had a friend who went through
11 something similar I'd give them this advice. If a friend --
12 talking about the abuse is too hard, I would tell them,
13 colon." How she would proceed going forward I don't know is
14 terribly relevant.

15 MR. SCOTT: I don't -- here's what I would ask.

16 THE COURT: Yes, sir.

17 MR. SCOTT: I want to hear his closing argument before
18 we make that decision. And let me tell you why. Let me
19 tell you why. Because a lot of what I suspect they're going
20 to do is say she didn't tell anybody, therefore it didn't
21 happen. The questions at the end are important. I suspect,
22 Judge, and I don't want to put any ideas in their head but
23 they've already insinuated. Grandma, she would have heard
24 if it had happened. Her question at the end, "I wonder if
25 Grandma's noticed anything weird going on." This is

1 something she was thinking about back then. It's relevant.
2 If they bring it up. Now, it might not be if they don't
3 bring these up. I suspect they will though. And I think
4 kind of the -- these cases, I've done a lot of them, and
5 typically, you know, it's blaming the child, you're making
6 it up. If you weren't making it up you would have told
7 somebody. And here in here therapy she's telling what --
8 her advice for other people was speak up if it happens to
9 you. Don't do as I did, keep it to yourself. Speak up.

10 So I think what I would rather do is revisit seven,
11 eight, nine, those questions at the very end just based on
12 his closing. That's all I ask. And I'm not -- right now at
13 this point I'm not -- I think you asked if I had very strong
14 feelings about those. I do not. But I'll reserve those
15 feelings depending on what his argument is, if that makes
16 sense.

17 THE COURT: My only concern with that is I'm going to
18 instruct the jury that a closing argument is not evidence
19 and we're going to be making a decision on a piece of
20 evidence, namely State's 10, based upon a closing argument.
21 I don't know how appropriate that is. I think it's either
22 up or down relevant or not at this stage, based upon what's
23 been presented today. Maybe things will change after the
24 Defendant's case. I don't know. But I think that decision
25 needs to be made before closing, and I don't feel terribly

1 comfortable necessarily holding off ruling on that question
2 until after Mr. Wise's closing. That's sort of where I am
3 on State's 10. Any other thoughts?

4 MR. SCOTT: I will just reserve the right to -- I don't
5 know what he's going to do. And I understand it's not
6 evidence. Certainly, you know, a persuasive trial
7 litigator, somebody who has a persuasive argument, can put a
8 thought in a juror's mind. And even though that evidence
9 was this, he could put that in their mind, and then I have
10 this right there that could go back with them.

11 MR. WISE: I don't know how seven, eight and nine would
12 ever enter into my closing argument. The three questions at
13 the end.

14 THE COURT: Right. All right. Well, right now my
15 default setting is to allow State's 10 into evidence and
16 perhaps redact seven, eight and nine. Maybe I'll look at
17 this in greater detail over lunch.

18 MR. WISE: And I would like to compliment the Solicitor
19 on the ingenious argument about waiting until my closing
20 argument to redact.

21 MR. SCOTT: Well, they wouldn't have the evidence yet.

22 THE COURT: I understand.

23 MR. WISE: It had some logic to it.

24 THE COURT: It did. I just didn't know if -- I really
25 would rather lawyers be able to deal with evidence in their

1 closing and they know what that evidence is before they
2 close, and I think that's probably --

3 MR. WISE: We can deal with it in this respect. If
4 seven, eight and nine's mentioned it's unredacted. But I
5 don't see how they come in play in my argument.

6 MR. SCOTT: And they may not. And maybe I'm just
7 worried a little bit. Overly worried. But that will be --
8 that's just -- I'd make that request.

9 THE COURT: Sure. You all know what my default setting
10 is. I'll let you know if the default setting changes. And
11 the third thing was something that was recovered from a cell
12 phone. Are these -- or is this item something that was
13 taken from a phone that the defense provided last Wednesday?

14 MR. SCOTT: No, this would be something that we had all
15 along and -- part of a phone dump. And it has a number of
16 searches that we would argue the Defendant made. They were
17 from his phone. It was whatever one that was we just
18 entered. State's No. 11.

19 THE COURT: 11, yeah. Let me see the --

20 MR. SCOTT: These are handwritten. I've got the
21 document. But those are some of the dump.

22 MR. WISE: And I haven't seen what you're looking at.

23 MR. SCOTT: I'll show you.

24 MR. WISE: If you've ever analyzed a phone dump you can
25 appreciate the problems, as Mr. Bentley has attested to.

1 THE COURT: So this was from the phone that Ms. Eubanks
2 provided to law enforcement?

3 MR. SCOTT: Yes, Your Honor. We had these early on and
4 we had the phone dump done early on. That is not that
5 iPhone that showed up last week. That is a Samsung Galaxy
6 that we've had all along. We provided that phone dump to
7 Rauch ages ago. What he's talking about is accurate. When
8 you go do these phone dumps there's link after link after
9 link and you --

10 MR. WISE: I got it and spent a couple hours looking
11 through it and I finally just called down and said, Dale, is
12 there any porn on that thing, and he said we -- we didn't
13 find any. And then I think Walter this week was going
14 through it again and found those links. So it's not like
15 anybody's been hiding anything, I don't think.

16 MR. SCOTT: No. And there are no pictures. Those are
17 searches that were done on that phone. And, you know, I
18 don't want to -- I'm not going to introduce in my case in
19 chief. But I do reserve the right, if he takes the stand,
20 to ask him about them. I think they're highly relevant in
21 this case. If he denies it, then I'll explore calling
22 rebuttal witnesses. But if he has a plausible reason for
23 those searches to be on his phone I can just move on.

24 THE COURT: All right.

25 MR. WISE: I think it comes up with that case out of

1 Lexington where they found a bunch of sex toys and the Court
2 said no, that's just not relevant. None of -- as I
3 understand from Mr. Bentley, none of that involves child
4 pornography.

5 MR. SCOTT: I think all of it does actually.

6 THE COURT: Well, I'm looking at some of the sites. I
7 guess this is -- I'm having a hard time reading some of your
8 writing. But the third one, Teen Kittens, I guess, Young
9 Girls Sex dot com, Teen Sex mania. Eight -- number eight,
10 numeric eight, Teen Triple X. Teen Message Porn dot com.
11 Your writing is atrocious, Solicitor.

12 MR. SCOTT: That's Walter's.

13 THE COURT: Oh, I'm sorry. Mr. Bentley, your writing
14 is atrocious.

15 MR. SCOTT: Mine is too, Your Honor.

16 MR. WISE: And I -- you know, are any of those sites
17 illegal?

18 THE COURT: I have no knowledge.

19 MR. WISE: If they're all legal I don't think they're
20 relevant. And I don't have any knowledge either, frankly.

21 THE COURT: Well, I think the State's theory of the
22 case is the Defendant is predisposed to engage in sexual
23 relations with minors.

24 MR. WISE: Well, I would point out those refer to teen
25 and not preteen.

1 MR. SCOTT: I'll just ask him some questions about his
2 sexual kind of desires. He may have an answer for me that
3 makes a lot of sense, and -- but if he denies being
4 attracted to young girls, if he denies making those
5 searches, I would reserve the right to call rebuttal
6 witnesses. I think they're highly relevant. He's saying
7 none of this happens. That's pretty much a smoking gun that
8 he's attracted to very young girls.

9 THE COURT: All right. According to the little notes
10 at the top there were 1,285 cookies apparently that Mr.
11 Bentley found in the phone. He's nodding yes. And 215 of
12 which were deleted. Let's see where his testimony goes.
13 Before you go into this I want a heads up. Okay?

14 MR. SCOTT: Yes, sir.

15 THE COURT: Is that fair?

16 MR. SCOTT: Yes, sir.

17 MR. WISE: It may be, quote, fair, but it certainly
18 puts the Defendant in a dilemma.

19 MR. SCOTT: It's a strategic move putting him on the
20 stand. I know that.

21 MR. WISE: I understand.

22 THE COURT: I understand. I mean, a witness can be
23 questioned about any relevant matter. I don't know what
24 he's going to say. I don't know what the --

25 MR. WISE: Yeah. I just think of a 403. Unless the

1 state can prove these sites are illegal, they're certainly
2 more prejudicial than probative. Now, if they're illegal,
3 then we got a different discussion.

4 THE COURT: I don't know that I necessarily agree. In
5 a homicide prosecution where we agree that it's a .357
6 Magnum that killed the decedent, but the firearm was never
7 located, it might be relevant. That the Defendant on trial
8 in that case Googled multiple websites for .357 Magnum and
9 maybe even made a call.

10 MR. WISE: I understand. But that's a totally
11 different relationship, because the State is not, at least
12 from what I've heard, saying that he Googled any site about
13 child porn.

14 THE COURT: I don't know if those sites are legal or
15 not. That might be something that perhaps, Solicitor, if
16 these were pedophilia type sites that are totally
17 inappropriate, that might be -- your argument might be a
18 little bit stronger obviously. If this is run of the mill
19 online porn, maybe Mr. Wise has somewhat of a point. I'm
20 not really encouraging you to obviously -- I'm not even
21 going to go there. But let's just leave that question open.
22 I'm not able to give a definitive answer because, A, I don't
23 know if it's a legal site or an illegal site. Obviously
24 something that depicts child pornography may be more
25 probative to the state. I would think that somebody would

1 be able to shut down the sites if it shows child porn, but I
2 don't know how that stuff works.

3 MR. SCOTT: Judge, let me -- even if it depicts girls
4 who are of age who are labeled as teens or younger girls
5 somehow, that shows his state of mind. And if the argument--
6 - I heard it in opening, it's not the act; it's the intent.
7 Do you remember that? I have got to show what his intent
8 was, and I think his predisposition to being attracted to
9 teens and younger girls, that plays a very relevant role in
10 -- if the argument is it didn't happen, well, this is
11 circumstantial evidence. And it was consistent with every
12 other piece of circumstantial evidence. It leads to one
13 conclusion. I think that's a pretty strong link in that
14 whole circumstantial evidence chain.

15 THE COURT: I understand. I can't say at this
16 particular point in time whether or not questioning the
17 Defendant about those sites will be relevant. I have to
18 reserve judgment on that. I may allow you to. I may not
19 allow you to. Obviously I think your argument is stronger
20 if it's an illegal site or if it clearly depicts underage
21 girls. I'm assuming that those don't, because I'd like to
22 think that there's some mechanism or that some server would
23 shut something like that down. But I don't know how that
24 works.

25 MR. SCOTT: Even Young Girls Sex dot com there's not

1 young -- I mean, Young Adults Sex dot com, I wouldn't even
2 think hardly anything of it. Teen Kittens. I understand,
3 Your Honor. I understand your ruling.

4 MR. WISE: The only thing I would request is before he
5 asks the question about it he excuse the jury and let the
6 Court rule.

7 THE COURT: Well, I'm going to let him walk up here. I
8 may not necessarily kick the jury out. But if necessary,
9 I'll kick the jury out. I just want a heads up before he
10 goes there. You know, again, we're dealing with websites of
11 a unknown character, let's say. And let me put it to you
12 this way. Gentlemen, I'm -- I remember reading in The State
13 newspaper about two years ago some study that they were
14 trying to do. I think it was at USC where they were trying
15 to find -- they were wanting to study the psychological
16 affects of pornography on people. And because they were
17 looking to use college students, which most research does,
18 they were trying to find a controlled group. One group that
19 had never seen pornography before, males who had never seen
20 pornography before. I understand they couldn't find anyone.
21 That was what the report was in The State newspaper. I
22 don't know what those sites are. I'm leaving it at that and
23 we'll get lunch. All right?

24 MR. WISE: All right.

25 THE COURT: Let's try and be back as close to 1:45 as

1 possible if we could, please. It's probably going to be
2 closer to 2:00, but --

3 MR. WISE: Were any dates on those websites?

4 THE COURT: Yes. Go ahead and show that again. Make a
5 copy, if you would, for Mr. Wise. See you all around 1:45,
6 slash, two o'clock.

7 (Whereupon, a lunch recess was held from 1:00 p.m. to
8 2:00 p.m.

9 THE COURT: Mr. Eubanks, I've got to question you and
10 make sure that you understand your Fifth Amendment rights,
11 okay. Raise your right hand.

12 MICHAEL CLIFF EUBANKS, having first been
13 duly sworn, testified as follows:

14 EXAMINATION BY THE COURT

15 Q You are Michael Cliff Eubanks; correct?

16 A Yes, sir.

17 Q Mr. Eubanks, I'm not going to ask you anything about
18 the substance of these allegations, but I do need to review
19 with you briefly your Fifth Amendment rights under the
20 Constitution. You do understand that at this point in the
21 trial you and your attorney will be able to present a
22 defense. Mr. Wise alluded to the fact, in his opening, that
23 you anticipated taking the stand or that the jury was likely
24 to hear from you during the course of this trial. Do you
25 understand?

1 A Yes, sir.

2 Q So, I'm assuming that you and Mr. Wise have already
3 discussed what we are going to talk about, but you do
4 understand that you do not have to testify in this case.
5 You've got the Fifth Amendment right to remain silent
6 throughout these proceedings and obviously this is a
7 personal right that only belongs to you. Nobody can waive
8 it. Not you, your attorney -- only you can waive your right
9 to remain silent. Do you understand that?

10 A Yes, sir. I do.

11 Q Now, if you take the stand you understand you'll have
12 to answer all questions put to you. Any questions that I
13 find relevant, you'll have to answer that question whether
14 it's coming from your attorney or the Solicitor. Understand
15 that, again, no one can force you to testify in this
16 particular case. I'm assuming, however, you have made the
17 decision to testify. Is that correct?

18 A Yes, sir. I have.

19 Q Do you have any questions about your Fifth Amendment
20 right to testify?

21 A No, sir. I don't.

22 Q Or Fifth Amendment right to remain silent, rather.
23 You're good?

24 A I'm good.

25 Q Very good.

Alexis Eubanks-Direct Examination

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1 THE COURT: Mr. Wise, I'll assume that when you call him
2 to testify that he waives his Fifth Amendment. Let's have
3 the jury, please.

4 The record will reflect that the jury is back and
5 seated. Ladies and gentlemen, we've finished with the
6 State's presentation of evidence. At this point, Mr. Wise,
7 your case, sir.

8 MR. WISE: I'd like to call Alexis Eubanks.

9 ALEXIS EUBANKS, having first been duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. WISE:

13 Q Please give us your full name.

14 A Alexis Eubanks.

15 Q Where do you live?

16 A I live at 103 Countryside Circle.

17 Q How are you related to Cliff Eubanks?

18 A I am his niece.

19 Q Who is your momma?

20 A Christy Eubanks Cline.

21 Q Who?

22 A Christy Eubanks Cline.

23 Q Who is his sister.

24 A Huh?

25 Q Who is Cliff's sister.

1 A Yeah.

2 Q How do you know Cliff? You know Cliff obviously
3 because you are his niece?

4 A Uh-huh.

5 Q Tell us have you had a chance to -- let me back up a
6 second. When you grew up, where did you live?

7 A With my grandparents at Colin Road in Clinton.

8 Q When did you start living there?

9 A When did I start living with them?

10 Q Right.

11 A I've been living with them since I was a baby.

12 Q So virtually all your life?

13 A Yes.

14 Q And was Cliff living there while you were living there?

15 A Recently, yes.

16 Q So, you've known him pretty close for a number of year?

17 A Yes.

18 Q Have you -- what happens at your grandparent's house on
19 most Fridays and Saturdays? Excuse me -- Saturdays and
20 Sundays.

21 A Most of the time my family gathers, especially during
22 holidays, but most of the time on Sundays we get together
23 and cook out and all the children are around outside playing
24 or inside.

25 Q Is this a pretty regular thing?

1 A Yes.

2 Q Did you have occasion to see Cliff there with his --
3 with J.L. , A.E. , B.E. , and P.E. ?

4 A Yes, plenty of times.

5 Q Did occasionally L.L. come?

6 A Yeah. He didn't come as much as the others, but he
7 did.

8 Q But he would -- what about Deanie?

9 A I mean, for the most part she did come, but toward the
10 end there she didn't come a lot.

11 Q Did you have, during these visits, occasions to observe
12 Cliff with these children?

13 A I did see him with his children, yes.

14 Q How long at a time would you see him?

15 A At my grandparents house?

16 Q Yes.

17 A For the whole time he was there he was with his kids
18 unless --

19 Q And that would generally be about how long?

20 A A few hours out of the time he was there.

21 Q Can you tell us what you observed regarding any
22 favoritism that Cliff may have shown?

23 A No. I've always seen him be very equal with his kids.

24 Q And that's with --

25 A Even with the step-children, yes.

1 Q Even with the step-children?

2 A Uh-huh.

3 Q How did he get along with J.L. ?

4 A He got along with her well as to what I've seen. He
5 treated her just as he would his regular kids. I didn't see
6 any difference in how he acted towards her or nothing. From
7 what I see he's been a very good father.

8 Q Did you see -- ever see any conduct that you would deem
9 to be inappropriate?

10 A No, sir. I did not.

11 Q Anything close to it?

12 A No.

13 Q And you've been -- you were there basically the whole
14 time he was married to Deanie?

15 A Considering I lived there at the time, yes.

16 Q And I believe you have a daughter that lives there now?

17 A She lives with me, but my grandmother does watch her on
18 a daily basis.

19 Q Watches her on a daily basis. Okay. So and your
20 daughter is two years of age.

21 A Yes, sir.

22 Q Okay. Thank you very much. Answer any questions Mr.
23 Scott may have.

24 CROSS EXAMINATION

25

- 1 BY MR. SCOTT:
- 2 Q You live with Cliff now?
- 3 A No, not at this time.
- 4 Q Were you living with him recently?
- 5 A Yes. I moved out about four months ago.
- 6 Q How long did y'all live together?
- 7 A Since this started and then four months ago I moved
- 8 out, so...
- 9 Q Y'all talk a little bit about this case?
- 10 A I mean, pretty much.
- 11 Q So you would see the kids on weekends for a couple of
- 12 hours at a time?
- 13 A However long he was there is when I would see the kids,
- 14 and then on holidays as well. Sometimes he would just
- 15 drop by whether he needed to grab something.
- 16 Q Just a minute ago you said one or two hours during the
- 17 weekends though. Is that how long he'd be there with
- 18 the kids?
- 19 A He'd be there longer, but what I meant was I'd see him
- 20 with the kids for one to two hours at the time he was
- 21 there.
- 22 Q So you really can't answer what he may have been doing
- 23 with the kids when he was alone with them, can you?
- 24 A Alone at my grandparent's house?
- 25 Q When he was alone with children, you really don't know

1 what he was doing with them, do you?

2 A I mean, I wasn't there to see anything.

3 Q Right. So you can't really say what he's doing when
4 he's alone with the children. You can only testify to
5 what you see when he's with them a couple of hours
6 during the weekends in front of you; correct?

7 A I mean, I can testify on how I know him and...

8 Q Okay. Well, how deeply can you testify to how you know
9 him?

10 A I mean, I think of him as being a great man. I've
11 never seen otherwise. Never known otherwise.

12 Q Do you know anything about his sexual desires or
13 anything like that?

14 A No.

15 Q You don't know that?

16 A No.

17 Q Where is Countryside Circle? Is that in Clinton?

18 A Yes, sir.

19 Q Your mother is his sister?

20 A Yes, sir.

21 Q And your daughter is his blood relative?

22 A Uh-huh.

23 Q Thank you.

24 MR. WISE: Thank you very much. We'd like for this
25 witness to be excused.

Jessica Eubanks-Direct Examination

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1 THE COURT: Thank you for coming. Mr. Wise?

2 MR. WISE: We call Jessica Eubanks.

3 JESSICA EUBANKS, having first been duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WISE:

7 Q Please give us your full name.

8 A Jessica Lynn Eubanks.

9 Q Where do you live?

10 A I live at 578 Little Acres Road in Clinton.

11 Q You are what kin to Cliff Eubanks?

12 A He's my brother.

13 Q Older brother or younger brother?

14 A Fourteen months older than me.

15 Q So you grew up with him.

16 A Yes, I did.

17 Q And you go to the family get-togethers at his parent's
18 house?

19 A I do.

20 Q Is that a pretty regular thing?

21 A It is.

22 Q If you're looking for a Eubanks on a Saturday or
23 Sunday, where are you going to find them?

24 A I'm going to find them at my mom and dad's house.

25 Q Did you ever see Cliff come by there with his children,

1 both his step-children and his natural children?

2 A Yes.

3 Q On more than one occasion?

4 A More than one occasion, yes.

5 Q How often would he be there?

6 A For my brother, he would probably be there almost every
7 Saturday or Sunday of the month.

8 Q And two of his natural children he only had every other
9 weekend.

10 A Right.

11 Q So obviously they wouldn't be there every weekend.

12 A Right.

13 Q Did you have occasion to see him with J.L. , A.E. , and
14 P.E. ?

15 A All together?

16 Q All together.

17 A Yes.

18 Q And did he tend -- what did you notice about his
19 interactions with them?

20 A He treated all the kids the same. Nothing different.

21 Very playful with them all. If they did something bad
22 or talked back to somebody he'd do what any other
23 parent would do as far as correcting them, disciplining
24 them, any other parent should do.

25 Q While he was married to Deanie, did you also visit with

- 1 him on Teague Road?
- 2 A Sometimes, but not much.
- 3 Q What did you observe when you saw him on Teague Road?
- 4 A I noticed he would either be cooking, cleaning, out in
- 5 the yard doing something, continuously always hands on
- 6 doing something. I would be in the majority in the
- 7 livingroom talking to Deanie most of the time.
- 8 Q Did you ever notice any favoritism over on Teague Road?
- 9 A No, I did not.
- 10 Q And you have a fourteen-year-old daughter?
- 11 A I do.
- 12 Q Did you bring her over to Cliff's house on Teague Road?
- 13 A I have.
- 14 Q Have they ever spent the night over there?
- 15 A My daughter has one time when they had some type of
- 16 birthday gathering a few years back.
- 17 Q How often did you notice Deanie around your parent's
- 18 house?
- 19 A Pretty much most of the time she would be with them.
- 20 There's been quite a few times that I've noticed that
- 21 she was not with them.
- 22 Q Was that more recent than previous or what?
- 23 A I think it would be fair to say more recent than now,
- 24 yes.
- 25 Q That she's been absent more recently than earlier?

1 A Correct.

2 MR. WISE: Thank you. Answer any questions Mr. Scott
3 may have.

4 CROSS EXAMINATION

5 BY MR. SCOTT:

6 Q Cliff is your full brother?

7 A Yes, he is.

8 Q Your daughter is his full blooded niece?

9 A Yes.

10 Q What, if anything, do you know about your brother's
11 sexual interests or sexual desires?

12 A I have -- I don't know that type of business of what
13 his sexual stuff is.

14 Q So you don't know what his interests are sexually?

15 A I don't.

16 Q Thank you.

17 THE COURT: You may step down. You are free to go.

18 MR. WISE: I'd like to call Mitchell Allen Eubanks.

19 MITCHELL EUBANKS, having first been duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WISE:

23 Q Please give us your full name.

24 A My full name is Mitchell Allen Eubanks.

25 Q Where do you live, Mr. Eubanks?

Mitchell Eubanks-Direct Examination

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- 1 A 102 Lick Creek Circle, Waterloo, South Carolina.
- 2 Q Where are you employed?
- 3 A I'm employed at Ace.
- 4 Q Ace Hardware?
- 5 A Yes.
- 6 Q The one right down the street?
- 7 A Yes.
- 8 Q And what kin are you to Cliff?
- 9 A He's my cousin.
- 10 Q Your first cousin?
- 11 A Yes, first cousin.
- 12 Q You've known him how long?
- 13 A All his life.
- 14 Q All your life?
- 15 A All his life.
- 16 Q Okay. First of all, let me ask you how well do you
- 17 know J.L. ?
- 18 A I've known J.L. ever since they've been married.
- 19 Q So since 2010?
- 20 A Pretty much, yes.
- 21 Q Where have you seen J.L. ?
- 22 A Spook trail, when they have family outings at their
- 23 house on Teague Road and on Beaver Dam Church Road, and
- 24 occasionally at Cliff's parents' house.
- 25 Q So you've been around J.L. both on Teague Road and

1 Beaver Dam Church Road?

2 A Yes.

3 Q What occasion would you go to Beaver Dam Church Road?

4 A Family gatherings like Thanksgiving or just an
5 occasional visit, or during the Spook trail.

6 Q Have you seen -- how does J.L. act?

7 A When she don't know you she's kind of shy in the
8 beginning, but once she gets to know you she's very
9 talkative and -- she's very talkative.

10 Q Have you been around her and seen any activities of
11 hers that you would not necessarily -- activities of
12 hers that you thought were inappropriate?

13 A The only thing I ever seen that was very inappropriate
14 to me was an incident on Teague Road where they was --
15 she had friends over and they was having what they call
16 -- you know, they was out on the -- near the pool
17 twerking. That's a type of dance.

18 Q What is twerking?

19 A It's a type of dance.

20 Q Is it a -- how would you describe it?

21 A It's where they move their butt up and down. I mean,
22 there's really no way to --

23 Q And she was twerking with who?

24 A She was what?

25 Q She was twerking with whom?

- 1 A It's just her and her friends out there.
- 2 Q Something that -- what was your opinion of it?
- 3 A I find twerking very vulgar in a child to be doing.
- 4 Q Did you see -- have you ever seen P.E. do anything
- 5 about sitting in relative's laps?
- 6 A P.E. ?
- 7 Q Not P.E. . J.L. .
- 8 A I've seen her sit in her grandfather's lap. I've seen
- 9 her sit in her mother's lap.
- 10 Q What was she doing in her grandfather's lap?
- 11 A I've seen her, you know -- the girl liked to dance. I
- 12 mean, she danced in her mother's lap. She danced in
- 13 her grandfather's lap.
- 14 Q Music went on and she was dancing in somebody's lap?
- 15 A There wouldn't be music on. She likes to dance.
- 16 Q Regardless of whether music is there or not.
- 17 A Yeah.
- 18 Q Now, you've seen -- have you been to some of her dance
- 19 recitals?
- 20 A No.
- 21 Q Have you seen pictures of them?
- 22 A I've seen pictures of them.
- 23 Q I believe I'll show you Defense Exhibit 3. Is that one
- 24 you downloaded? Did you find that one?
- 25 A Yes.

1 Q Is that something you would approve of?

2 A No, not really.

3 Q Do you have any children?

4 A Yes. I've got two sons.

5 Q You've got two sons?

6 A Yeah.

7 Q What else did you notice about some of the attire that
8 J.L. and them would wear at these dances?

9 A Their makeup would be more of an adult -- you know,
10 more adult makeup. Some of the dress, you know, they'd
11 be showing a lot of skin as far as, you know, middle
12 section and stuff like that. They would be showing
13 more of the buttocks in certain cases. Just real tight
14 dressed.

15 Q I think you -- how did you describe the attire at one
16 point? Daisy Dukes?

17 A Yeah.

18 Q That type?

19 A Yeah. That short.

20 Q Thank you very much. Answer any questions that Mr.
21 Scott has.

22 CROSS EXAMINATION

23 BY MR. SCOTT:

24 Q I've got a daughter that does ballet. Do you approve
25 of that?

- 1 A Ballet, yes.
- 2 Q You do approve of that? But you don't approve -- you
- 3 found that picture?
- 4 A Yes.
- 5 Q Why did you look this picture up?
- 6 A Why did I look that picture up?
- 7 Q Yes.
- 8 A I was just looking at pictures and seen that.
- 9 Q Why?
- 10 A Why?
- 11 Q What did you Google search to find that?
- 12 A I didn't Google search anything.
- 13 Q Tell me how you found this picture.
- 14 A I found it on Facebook.
- 15 Q Okay. What made you go on Facebook and look at
- 16 pictures of little girls dancing?
- 17 A I was asked to find pictures of J.L. and that was
- 18 pictures that was on a Facebook profile.
- 19 Q Whose Facebook?
- 20 A Huh?
- 21 Q Whose Facebook?
- 22 A Her mother's.
- 23 Q Okay. Her mother had this picture on Facebook?
- 24 A Yes.
- 25 Q Who asked you to go on Deanie Eubank's Facebook page

1 and try to find photos of little girls dancing?

2 A No one.

3 Q You just said somebody asked you to look on Facebook.

4 A I was asked to look on Facebook and I seen that and I
5 showed it to them.

6 Q You're under oath. Who asked you to look for that
7 picture?,

8 A The attorney.

9 Q Why did he think you were somebody that needed to look
10 up pictures of little girls dancing?

11 A I don't know.

12 Q By the way, can I go into Ace Hardware after today?

13 A Yeah.

14 Q You find twerking vulgar. What is twerking again? Can
15 you get off the stand, please? Stand down here. I
16 want you to show me something. Can you stand up?

17 A Yeah, I can stand up.

18 Q Show us what twerking is.

19 A I'm not going to do that.

20 Q Why not?

21 A Because I find it vulgar.

22 Q You just testified -- how do you know what twerking
23 even is, let me ask you that. Where have you seen it?

24 A I've seen people doing it.

25 Q Why are you watching such vulgarity?

- 1 A I mean, you see it.
- 2 Q Tell me what twerking is. I need to know and these
- 3 jurors, who don't know what this vulgar twerking is,
- 4 they want to know too. Show me. You're not going to
- 5 do it are you?
- 6 A No.
- 7 Q Is there a reason?
- 8 A My knee won't allow me.
- 9 Q Okay. Do you find it vulgar when a little girl sits in
- 10 somebody's lap?
- 11 A Not just sitting, no.
- 12 Q Would you find me vulgar if I told you my daughter sits
- 13 in my lap sometimes?
- 14 A No.
- 15 Q Okay. So you're not saying that's vulgar. Let me ask
- 16 you this. What do you -- describe it when a little
- 17 girl sits in a man's lap and he ejaculates in his
- 18 pants.
- 19 A I call that -- that's not good.
- 20 Q It's not good?
- 21 A No, sir.
- 22 Q Twerking is vulgar. Twerking is terrible, but a man
- 23 climaxing when a little girl sits in his lap is just
- 24 not good? Do you want to explain any more?
- 25 A (NO VERBAL RESPONSE)

1 Q Are you here to say this is all J.L. 's fault?

2 A I'm here to find the truth.

3 Q Okay. Is it J.L. 's fault that he ejaculated in his
4 pants when she sat in his lap? She's twelve by the
5 way.

6 A I mean, he's his own boss. You know, if he ejaculated
7 in his pants that's him.

8 Q Have you ever ejaculated in your pants when a girl sat
9 in your lap? A young girl.

10 A No.

11 Q Thank you.

12 THE COURT: Sir, you can step down.

13 MR. WISE: Just a couple of questions.

14 REDIRECT EXAMINATION

15 BY MR. WISE:

16 Q Mr. Eubanks, we were meeting last night?

17 A Uh-huh.

18 Q You were requested to find pictures of the dance that
19 J.L. was doing. Anyone request you to go to a specific
20 place to find it?

21 A No.

22 Q That was your decision?

23 A That was my decision.

24 Q Thank you.

25 THE COURT: Sir, you can step down. Thank you. Mr.

1 Wise, call your next witness.

2 MR. WISE: We call Amy Philson.

3 AMY PHILSON, having first been duly
4 sworn, testified as follows:

5 THE COURT: Spell your last name, please.

6 WITNESS: P-h-I-l-s-o-n.

7 DIRECT EXAMINATION

8 BY MR. WISE:

9 Q Please give us your full name.

10 A Amy Philson.

11 Q Ms. Philson, where do you live?

12 A I live at Countryside with Alexis.

13 Q That is Alexis Eubanks?

14 A Yes.

15 Q How long have y'all been friends?

16 A For nine, almost ten years.

17 Q Where are you employed?

18 A At the hospital in Laurens.

19 Q How long have you been employed there?

20 A Two years.

21 Q When did you get out of high school?

22 A 2015.

23 Q So virtually since you got out of high school?

24 A Yes.

25 Q Tell us first of all how do you know the Eubanks?

1 A Alexis and me met in middle school, which is Cliff's
2 niece, we met in middle school and we've been best
3 friends ever since. The Eubanks took me in because I
4 didn't have a good childhood.

5 Q They kind of took you in?

6 A Yeah. So, they're like my family.

7 Q When was that?

8 A So, all throughout our friendship, but recently like
9 seven or eight months ago I started really like I stay
10 with Cliff's parents some and with Alexis.

11 Q So starting about ten years or so how much contact
12 would you have with the Eubanks?

13 A At first not that much, but since I started high school
14 is when I really started going over there a lot. Like,
15 I would go over there for holidays and stuff like that.

16 Q And you got to know Cliff over this period of time?

17 A Uh-huh. Yes, sir.

18 Q How was he when you first met him?

19 A When I first met him I didn't really have a lot of
20 contact with him. I was young, you know. I would just
21 spend a lot of my time with Alexis, but I never
22 observed anything.

23 Q About how old were you when you first got to know
24 Cliff?

25 A I was probably -- do you mean when I really got to know

- 1 him or when I first started coming around him?
- 2 Q First started coming around him.
- 3 A I was twelve.
- 4 Q And then when you really got to know him.
- 5 A Just recently I really started to get to know him.
- 6 Q Have you been over at the Eubanks house when all the
- 7 kids are there?
- 8 A Yes, sir.
- 9 Q You know J.L. ?
- 10 A Uh-huh.
- 11 Q You know L.L. ?
- 12 A Yeah.
- 13 Q And you know A.E. ?
- 14 A Uh-huh.
- 15 Q And Becka and P.E. ?
- 16 A Uh-huh.
- 17 Q Is that correct? Say yes or no.
- 18 A Oh, yes. I'm sorry.
- 19 Q No problem. What have you observed about Cliff when
- 20 he's around all his kids?
- 21 A That he was just a good loving parent is what I think
- 22 anyways. He never showed more attention to one child
- 23 than he did the other.
- 24 Q Did you notice any conduct on his part that would cause
- 25 you any concern?

1 A No, sir.

2 Q You've been around them on how many occasions?

3 A Several occasions.

4 Q Are you usually there on the weekends when the family
5 has a get together?

6 A Uh-huh. Yes, sir.

7 Q How often is Cliff there for those get togethers?

8 A He was there just about every time.

9 Q So it would be once every four weeks you would see him
10 an average of --

11 A I didn't go to every -- when I first started coming
12 around I didn't go to every gathering, but I was, you
13 know, a couple of times a month I would say.

14 Q Okay. What about recently? You see him --

15 A I see him a lot recently.

16 Q Let's go back recently being before May 2017.

17 A I didn't see him that much before then.

18 Q But you were at some of the gatherings before then.

19 A Yes. Some of the gatherings, yeah.

20 Q What activities would -- I mean, you see Cliff much on
21 a regular basis now?

22 A Uh-huh.

23 Q Yes or no.

24 A I'm sorry.

25 Q That's all right. Do you get along fine with him now?

1 A Yes, sir.

2 Q Thank you. Answer any questions Mr. Scott may have.

3 CROSS EXAMINATION

4 BY MR. SCOTT:

5 Q Hey, Amy.

6 A Hey.

7 Q So, you didn't really -- you weren't really around
8 Cliff that much before May 2017?

9 A Not that much. I seen him, like, at holidays. But
10 that was about it.

11 Q Now, which children do you remember seeing him with?

12 A I remember seeing him with J.L. and Beck -- B.E. . I
13 don't think I remember seeing L.L. there, but I
14 remember seeing, like, P.E. and A.E. there.

15 Q Would it surprise you to know that A.E. and J.L. have
16 no idea who you are?

17 A Yeah. I've seen them a few times.

18 Q Did you talk with them?

19 A Not that much, no, because that was when I was younger
20 and I was Alexis' friend, so I would mostly hang out
21 with Alexis.

22 Q Okay. Thank you.

23 THE COURT: You can step down.

24 MR. WISE: We call Cristy Cline.

25 THE COURT: Spell your name, please.

Cristy Cline-Direct Examination

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1 WITNESS: You want me to speak into the mic?

2 THE COURT: Yes.

3 WITNESS: C-r-i-s-t-y C-l-i-n-e.

4 CRISTY CLINE, having first been

5 duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. WISE:

8 Q Ms. Cline, where are you employed?

9 A At Hickory Tavern Elementary School.

10 Q What do you do there?

11 A I work in the lunchroom.

12 Q Do you live in the Hickory Tavern area?

13 A Yes, sir.

14 Q How do you know Cliff?

15 A He is my brother.

16 Q So you've known him his entire life?

17 A Yes, sir.

18 Q Do you have any children?

19 A I do. You want all of their names?

20 Q Yeah.

21 A I have -

22 Q How many do you have first?

23 A I have six all together. Two are my step-children.

24 Q Let's go with your natural children right now.

25 A Okay. There's Alexis, Elizabeth, Matthew, and

- 1 Savannah.
- 2 Q How old is Savannah?
- 3 A She will be twelve in December.
- 4 Q Do you come to the Eubanks gatherings?
- 5 A Yes, sir. I do.
- 6 Q How often are they held?
- 7 A With cook outs and family get togethers it's usually
- 8 just about every weekend and then holiday times.
- 9 Q And you also visited Cliff at his residence.
- 10 A I have. Yes, sir.
- 11 Q On which road?
- 12 A On Teague Road and on Beaver Dam.
- 13 Q First of all, what have you observed of Cliff at the --
- 14 let me back up. Did he bring the children to the
- 15 family get togethers at your parent's house?
- 16 A He did.
- 17 Q Would that be all the children?
- 18 A Yes, sir. There were several times that L.L. wasn't
- 19 with them.
- 20 Q Would Deanie always come?
- 21 A In the beginning she would, but towards the end I
- 22 didn't see much of her.
- 23 Q What can you tell us about Cliff's attitude towards his
- 24 children and step-children at these family get
- 25 togethers?

1 A From what I observed and seen he was good with them.
2 He never directed any attention towards one particular
3 child. He was always playful with them, doing things
4 with them.

5 Q How did he get along with them?

6 A He got along with them fine.

7 Q Did you have a chance to -- you said you had a chance
8 to see him going by his house on Teague Road and on
9 Beaver Dam Road.

10 A Yes, sir.

11 Q What did you observe there?

12 A On Teague Road I actually stayed overnight there with
13 my children as well to help participate in the Spook
14 trail. I observed nothing inappropriate at all. I
15 observed my brother always doing the house cleaning as
16 well.

17 Q Was that before or after Deanie had her wreck?

18 A That was before.

19 Q I assume he continued afterwards.

20 A Yes, sir.

21 Q And your daughter Savannah is eleven?

22 A Yes. She'll be twelve in December.

23 Q She's been staying for the last week or so where?

24 A At my parent's house with me.

25 Q Has Cliff been there?

1 A Yes, sir.

2 Q Did that cause you any concern?

3 A No, sir.

4 Q Thank you. Answer any questions Mr. Scott may have.

5 CROSS EXAMINATION

6 BY MR. SCOTT:

7 Q Cristy, do you have any knowledge of your brother's
8 sexual interests or desires?

9 A No, sir.

10 Q Thank you.

11 THE COURT: You may step down.

12 MR. WISE: We would call Lou Ann Price.

13 LOU ANN PRICE, having first been
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. WISE:

17 Q Please give us your name.

18 A LouAnn Price.

19 Q Where do you live, Ms. Price?

20 A 168 Smith Irwin Road, Cross Hill.

21 Q Do you know Cliff Eubanks?

22 A Yes, I do.

23 Q How do you know Cliff Eubanks?

24 A He started going to the church --

25 THE COURT: Hold on, please. Do we need a break?

Lou Ann Price-Direct Examination

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1 Ladies and gentlemen, if y'all will step to the back for
2 just a moment. Let her stay around, please.

3 (Whereupon, the jury exited the courtroom at 2:40 p.m.)
4

5 THE COURT: Ma'am, I got the impression you needed to
6 tell me something.

7 (Whereupon, Juror #16, Carolyn Blackstock, speaks to
8 the Court privately.)

9 THE COURT: I appreciate you telling me that. If you
10 would, just rejoin the jury in the jury room, please.

11 (Whereupon, juror exits courtroom.)

12 THE COURT: Let the record reflect that one of the
13 jurors approached me. It was Juror number 16, who indicated
14 to me that the last witness, Ms. Cline, actually works with
15 her in the lunchroom in Hickory Tavern. The witnesses --
16 there hasn't been an objection yet. I was kind of waiting.
17 My Clerk actually passed me a note some time ago. I was
18 kind of waiting for an objection, because none of these
19 witnesses have been listed initially.

20 MR. WISE: I gave your clerk a witness list.

21 MR. SCOTT: I don't have one in front of me, but the
22 Philson woman -- at first I didn't really recognize that
23 name.

24 THE COURT: The only one I called out was the witness
25 list that I had here.

1 MR. WISE: I made up a witness list. I gave one to the
2 State and one to you.

3 MR. SCOTT: He might have given you a different list.

4 MR. WISE: He didn't even ask for a witness list.

5 MR. SCOTT: This is the one I have.

6 THE COURT: Mr. Wise, as I mentioned the other day I got
7 your voir dire. It's five pages.

8 MR. WISE: Before we started I thought your clerk came
9 out and asked for a witness list. I gave her one, and then
10 I turned and gave one to the State. That's what I recall.

11 THE COURT: I'm looking through the materials up here.
12 I will double check.

13 MR. WISE: I made three or four copies and I've got one
14 left.

15 THE COURT: Okay. The list that you have, Mr. Wise, I
16 never got. It's not up here in any of the paperwork. We
17 haven't moved anything that's associated with this case to
18 the back and I called out the State's potential witnesses
19 and I assumed they were the same as the ones --

20 MR. WISE: I noticed you didn't call mine out, but you
21 didn't ask me if I had any either, so I figured -- Judge
22 Hughston never calls out Defense witnesses for some reason.
23 Don't ask me why, but he never has.

24 THE COURT: I always call out all witnesses just to make
25 sure we don't run into this issue.

1 MR. WISE: I understand, but, you know, --

2 THE COURT: I never got it. I looked out at you and
3 asked if that was all the witnesses I think.

4 MR. WISE: I don't remember that.

5 THE COURT: From both sides.

6 MR. WISE: I don't remember you asking that.

7 THE COURT: Can I see your witness list now?

8 MR. WISE: Sure.

9 THE COURT: You can step down for a moment, okay?

10 (Whereupon, witness steps down from witness stand.)

11 (Whereupon, a recess was held from 2:50-2:55 p.m. Juror
12 Carolyn Blackstock returned to the courtroom by herself.)

13 THE COURT: Ms. Blackstock, you're not in trouble. I
14 just need to ask you a couple of questions on the record,
15 ma'am. Here's what happened. The last witness, I think it
16 was Ms. Cline, apparently you and she work together in the
17 lunchroom. What happened was basically, for whatever
18 reason, some witness names never made it onto the witness
19 list. Ms. Cline has already testified. Are you able to
20 still serve as a juror even though you work with her? Are
21 you able to still be fair to both the State and the
22 Defendant and judge this case based on the law and the
23 evidence even though she testified?

24 JUROR BLACKSTOCK: Yes.

25 THE COURT: Are you certain of that?

1 JUROR BLACKSTOCK: Yes.

2 THE COURT: Okay, good enough. That's all I need to
3 know. Just hang out in the hallway, because the Bailiff is
4 going to bring the other twelve here in a moment.

5 (Whereupon, juror exited the courtroom.)

6 THE COURT: Go ahead and bring the other twelve back in.

7 (Whereupon, all jury members entered the courtroom at
8 2:55 p.m.)

9 THE COURT: The record will reflect the jury is back and
10 seated. Ladies and gentlemen of the jury, here's kind of
11 what happened. For whatever reason some of the witnesses
12 names, mostly witnesses that have just been called, never
13 made it onto the master list of potential witnesses in this
14 case. The ones who have testified this afternoon -- and Ms.
15 Blackstock, I've already spoken to her so she doesn't need
16 to respond. Do any of y'all know any of the witnesses who
17 have testified thus far? Just raise your hands?

18 (Whereupon, no hands were raised.)

19 THE COURT: There are two additional witnesses that are
20 going to be testifying. LouAnn Price, that was the lady who
21 was just up here, and there's a Kathleen Shumpert who will
22 be testifying next. Those two names were also not on the
23 master list. Anybody know those folks? Any relationship
24 with any of those folks? No?

25 (Whereupon, no hands were raised.)

1 Solicitor, I think we're good. Is the Defense good
2 with the inquiry I've made so far?

3 MR. SCOTT: Can we have a side bar?

4 THE COURT: Yes.

5 MR. WISE: Yes.

6 (Whereupon, a sidebar was held off the record.)

7 THE COURT: Let's have Ms. Price back up, please. Come
8 on up, please.

9 (Whereupon, witness retook the stand to resume direct
10 examination.)

11 DIRECT EXAMINATION

12 BY MR. WISE:

13 Q Ms. Price, I was asking how do you know Cliff Eubanks.
14 If you can be sure to speak into that microphone it would be
15 helpful. You can move it around.

16 A I've seen him at church and through when we have plays
17 at church and when --

18 Q Excuse me.

19 A -- and he does work for me at the lake.

20 Q You'd forgotten about that.

21 A Yes. Sorry.

22 Q Let's go back to how you know him through the church.

23 What church is that?

24 A Beaver Dam Baptist Church.

25 Q Who would he come there with?

- 1 A His wife.
- 2 Q That would be Deanie?
- 3 A And children.
- 4 Q Do you know Deanie?
- 5 A Uh-huh.
- 6 Q Did Cliff ever come with his two natural children?
- 7 A They would come with them, yes, occasionally.
- 8 Q A.E. and --
- 9 A Yes.
- 10 Q Did you have a chance to observe Cliff around all of
- 11 his children, both natural and step-children?
- 12 A Yes. Some.
- 13 Q What have you observed as how he treats them?
- 14 A Nothing came to mind. As a matter of fact, I didn't
- 15 even know the two older girls weren't part of the
- 16 natural family I guess.
- 17 Q You learned that later? You learned that later?
- 18 A Yes.
- 19 Q So, everybody appeared to get along with each other?
- 20 A They looked like the perfect family.
- 21 Q Any favoritism shown?
- 22 A I didn't see any.
- 23 Q Now, you've also known J.L. through the -- what do you
- 24 -- the plays at the church?
- 25 A Yes.

1 Q What plays are there at the church?

2 A They do Easter plays and then they do Christmas plays.

3 J.L. is very very talented. She's a very talented

4 girl. She loves to dance and she's a wonderful actor.

5 You give her a part and she can -- she nails it.

6 Q Have you seen her at -- with Cliff at plays?

7 A Yeah. He'd be in the audience. Usually the kids are

8 already there early and the parents come later on.

9 Q What about at rehearsals? Would they come to

10 rehearsals?

11 A Yeah, but the grandmother usually brought her.

12 Q To the rehearsals?

13 A Uh-huh.

14 Q What did you notice about J.L. from her activities at

15 the church?

16 A She's a teenage girl.

17 Q Even though she's twelve.

18 A Even though she's twelve, she's a teenage girl.

19 Q What do you mean by that?

20 A Well, she would dance around kind of flirty with the

21 guys and everybody. You know, she's a teenage girl.

22 Q Thank you very much. Answer any questions Mr. Scott

23 may have.

24 CROSS EXAMINATION

25 BY MR. SCOTT:

- 1 Q Describe what you mean by flirty.
- 2 A Well, I mean, you know, we used to throw stones at boys
- 3 when we wanted to get their attention. She would just
- 4 dance around. She loves to dance.
- 5 Q Okay, so you flirted with boys too?
- 6 A Of course. I'm 72 years old. I'm not dead.
- 7 Q All right. Did you see her doing things that you just
- 8 disapproved of?
- 9 A Well, I don't approve of -- even my granddaughters. I
- 10 don't approve of the new age dances.
- 11 Q It's different than it used to be.
- 12 A Yes. You are a lady before and you should act as such.
- 13 Q You danced didn't you?
- 14 A Yes.
- 15 Q There's nothing wrong with dancing.
- 16 A I didn't say there was anything wrong with dancing. I
- 17 just don't like the moves.
- 18 Q Do you know what twerking is? I'm not going to make
- 19 you twerk.
- 20 A Okay. No. Yes, I do know what twerking is.
- 21 Q What do you think about a man who ejaculates in his
- 22 pants when a girl sits in his lap?
- 23 A Disgusting.
- 24 Q Yeah. I agree. That's all. Thank you very much.
- 25 MR. WISE: We call Kathleen Shumpert.

Kathleen Shumpert-Direct Examination

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1 KATHLEEN SHUMPERT, having first
2 been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. WISE:

5 Q Please give us your full name.

6 A Kathleen Eubanks Shumpert.

7 Q Ms. Shumpert, where do you live?

8 A Teague Road.

9 Q Where is that in relation to Cliff Eubanks when he
10 lived on Teague Road?

11 A Across the road.

12 Q What kin are you to Cliff Eubanks?

13 A I'm his aunt.

14 Q You're what? You're kin to -- you're his father's
15 sister? Is that correct?

16 A No. His dad is my brother.

17 Q Right. Now, so how long have you known Cliff?

18 A Since he was a baby. Since he was born.

19 Q Tell us, if you would, about the Eubanks tradition of
20 getting together.

21 A I didn't go that much because of my husband, David, but
22 I lived across the road from him so I would go over
23 occasionally.

24 Q On Teague Road?

25 A On Teague Road.

- 1 Q You saw Cliff more at -- now, his parents live where?
- 2 A In Clinton.
- 3 Q You saw him more at the Clinton residence or the Teague
- 4 Road residence?
- 5 A The Teague Road residence.
- 6 Q Living across the street, how often would you see him
- 7 there?
- 8 A I would see him out in the yard or I would go over, you
- 9 know, and visit. I would take meals over to them or
- 10 call Cliff to come by and I would cook supper for them.
- 11 Q And did you see him on a regular basis on Teague Road?
- 12 A Pretty much.
- 13 Q You saw him primarily around J.L. and B.E. ?
- 14 A J.L. , B.E. , P.E. , A.E. .
- 15 Q You saw him around all of them?
- 16 A Uh-huh.
- 17 Q What did you observe about his conduct toward the
- 18 children and step-children?
- 19 A When I would go over and visit they would be playing or
- 20 out in the pool, playing in the yard, or they would be
- 21 doing homework. I didn't see anything any different
- 22 than any family, you know, doing homework together or
- 23 cooking. Just being together in the afternoon.
- 24 Q Did you see anything that remotely indicated that there
- 25 was any favoritism?

1 A No, sir. I did not.

2 Q You lived across from him on Teague Road even when he
3 was married to Jennifer?

4 A Yes, sir.

5 Q Do you have any grandchildren?

6 A I have two granddaughters.

7 Q How old are they?

8 A Taylor is a senior at Wofford. She's 21. I have a
9 tenth grader at Laurens High School. She will be 15.

10 Q When they were growing up did they stay with you?

11 A They would visit, yes.

12 Q Would they go visit over at Cliff's too?

13 A They would go over some. Not often, because they live
14 out of town.

15 Q Now, you remember when Deanie had a wreck?

16 A Yes, sir.

17 Q How did you help out with that?

18 A I would take them meals over or if I baked, like, a
19 peach cobbler or something like that I would take over.

20 You know, I have stayed with B.E. when she was a baby
21 so they could go out to dinner together.

22 Q When Deanie had a wreck did you help with A.E. and
23 P.E. ?

24 A I took -- this was before the wreck. I think I took
25 P.E. and A.E. to school one morning because Cliff had

1 to be at work early and I took them by the nursery.

2 Q Did you ever observe any inappropriate conduct by Cliff
3 when he was around his children?

4 A No, sir.

5 Q Did you ever notice anything that would raise even a
6 scintilla of suspicion about anything he did?

7 A No, sir.

8 Q Thank you very much. Answer any questions Mr. Scott
9 may have.

10 CROSS EXAMINATION

11 BY MR. SCOTT:

12 Q Ms. Shumpert, on Teague Road do you have other
13 neighbors?

14 A (No verbal response.)

15 Q Do you still live there on Teague Road?

16 A Yes.

17 Q Do you have any other neighbors besides Cliff when he
18 was there?

19 A There's some across the road, but we don't have any
20 dealings with them. Then there's another family down
21 the road. It's in a rural area, so our house is off
22 the road.

23 Q Do you interact with any of these neighbors?

24 A No, sir.

25 Q Do you have any brothers or sisters?

1 A I have a brother, Billy, Mike, and a sister, Ann.

2 Q Do they have families of their own?

3 A Yes, sir.

4 Q Do they appear happy?

5 A They seem to be, yes.

6 Q Do you know everything that goes on behind closed doors
7 when they go home though?

8 A No. No one would.

9 Q Nobody would, would they?

10 A No.

11 Q I asked you about your neighbors. Do you know what
12 they go home and do when they close the doors?

13 A No.

14 Q Of course, you know what they display in public when
15 they're around you, but you don't know what goes on
16 when they go home and shut the doors, do you?

17 A Nobody would.

18 Q I agree. Nobody would except for the people who are
19 behind those closed doors, right?

20 A That's their business.

21 Q That's right. Thank you.

22 MR. WISE: Ms. Eubanks.

23 ELIZABETH EUBANKS, having first been

24 duly sworn, testified as follows:

25 DIRECT EXAMINATION

- 1 BY MR. WISE:
- 2 Q Ms. Eubanks, give us your full name.
- 3 A Elizabeth Lawson Eubanks.
- 4 Q You're the mother of Cliff Eubanks.
- 5 A Yes, sir.
- 6 Q Where do you live?
- 7 A 439 Old Colony Road, Clinton, South Carolina.
- 8 Q Who do you live there with?
- 9 A Well, I live with my husband, Mike Eubanks, and my son
- 10 lives there, Michael Cliff Eubanks.
- 11 Q Do you have a grandson?
- 12 A A grandson. Yes, I have some grandsons --
- 13 Q That lives there.
- 14 A Uh, my great grand daughter, while my granddaughter
- 15 works I watch her a lot. I watch her about every day.
- 16 She's like --
- 17 THE COURT: If you could, move away from the microphone.
- 18 WITNESS: I'm sorry.
- 19 Q Tell us about the Eubanks get togethers at your house
- 20 on Saturdays and Sundays.
- 21 A A lot of times on the weekends we cook a big meal and
- 22 we'll have all of my children there and my
- 23 grandchildren. We'll just cook and eat dinner.
- 24 Q How often would y'all do that?
- 25 A It would be almost every weekend. Maybe not every, but

1 every now and then they didn't come, but most of the
2 time it was every weekend.

3 Q The entire family get together?

4 A Yes.

5 Q Would Cliff come by with his children and step-
6 children?

7 A Yes.

8 Q Tell us about that.

9 A He would come there. He would have, like, A.E. and
10 P.E. on the weekends he had them. With J.L. and
11 B.E. . Sometimes he would have L.L. and sometimes L.L.
12 wouldn't come.

13 Q What about Deanie?

14 A Deanie used to come over all the time, but it seems
15 like after her accident and everything with this came
16 up that we hardly ever seen her.

17 Q What did you observe about Cliff with his children and
18 step-children?

19 A From what I observed he is a good father. He played
20 with his children. He never showed special to one
21 child. He was always fair to all the children. There
22 was no favoritism. I seen him get onto the kids and
23 discipline them, you know, and tell them you can't do
24 this. As for anything else, I never seen it.

25 Q Did you notice any inappropriate conduct on his part?

- 1 A No, sir.
- 2 Q Any touching that would be suspicious to you?
- 3 A No, sir.
- 4 Q How did he and J.L. appear to get along?
- 5 A They got along like they were real daughter and father.
- 6 My son was actually -- him and Deanie had agreed a
- 7 while back for my son to adopt the children.
- 8 Q But that obviously didn't come to fruition.
- 9 A No, sir.
- 10 Q Now, did you have occasion last November/December to be
- 11 sitting on the porch with Deanie?
- 12 A Yes, sir.
- 13 Q And tell us about that conversation.
- 14 A First it was me and Deanie hanging out, just talking
- 15 and just like cutting up and this and that, and my
- 16 husband came out there and sat with us. Deanie made
- 17 the remark, you know, get rid of somebody, and she made
- 18 the remark she said well, I know how to get rid of
- 19 somebody.
- 20 Q How did that strike you?
- 21 A Well, it sort of shocked me. I didn't know how to take
- 22 it. My husband looked at her and looked at me. But
- 23 then, you know, I didn't know, you know what she meant.
- 24 Q Didn't have a clue what she meant.
- 25 A No, sir.

1 Q Thank you very much. Answer any questions Mr. Scott
2 may have.

3 CROSS EXAMINATION

4 BY MR. SCOTT:

5 Q That was in November or December?

6 A Somewhere in there. Yes, sir.

7 Q What year?

8 A 2016.

9 Q '16?

10 A Uh-huh.

11 Q These allegations are in May. Okay. What were y'all
12 talking about for that to come up again?

13 A We were just picking around and kidding, talking about,
14 you know, about getting rid of somebody or something,
15 you know. Like, when we watch movies we talk about
16 what the movies are about.

17 Q Okay, so y'all were picking around and kidding about
18 getting rid of somebody.

19 A We were kidding.

20 Q Okay, was she kidding?

21 A Well, when she made that remark I don't think she was
22 kidding, sir.

23 Q Well, how about this. If you and me -- I don't know
24 why y'all were talking about that, first of all, but if
25 you and me start picking and kidding and we're talking

- 1 to one another about getting rid of somebody, why can't
2 I joke and say I know how to get rid of somebody? If
3 that's the topic, why wouldn't she make that statement?
- 4 A It was just odd.
- 5 Q Well, I think it's odd that y'all were joking about
6 that.
- 7 A Yes, it could've been, you know.
- 8 Q The whole thing is weird. Why were y'all even talking
9 about getting rid of somebody on your front porch?
- 10 A We were just talking.
- 11 Q And you were picking and kidding, is what you said?
- 12 A We were just picking and kidding about stuff at first.
- 13 Q All right. I don't know how to take that. You said
14 you didn't know how to take it. I don't either. But
15 anyway.
- 16 A Okay.
- 17 Q Let me ask you this, how old was Cristy when you
18 stopped bathing her?
- 19 A Cristy?
- 20 Q Your daughter. Isn't that her name?
- 21 A Uh-huh.
- 22 Q All right. How old was she when -- did Mike ever bathe
23 her?
- 24 A No. I don't think so. No, sir.
- 25 Q Okay. At what point did you think Cristy is old enough

1 where she can bathe herself?

2 A About four or five.

3 Q Okay. What about Mike? Did he need help bathing when
4 he got to be seven, eight, nine, ten?

5 A Mike? You mean Michael Cliff?

6 Q There are so many Michaels in this family. Cliff
7 Eubanks, your son. How old was he when he didn't need
8 your help anymore bathing?

9 A Well, he was probably five or six.

10 Q He needed a little more time. Did y'all go in there
11 and look at them when they got to be seven, eight, and
12 nine? Did you go in there and look at him when he was
13 naked in the shower for any reason?

14 A No, sir.

15 Q Okay. I think that's all. Thank you.

16 MR. WISE: Mr. Eubanks.

17 MIKE EUBANKS, having first been
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. WISE:

21 Q Please give us your full name.

22 A Michael Eubanks.

23 Q Mr. Eubanks, you're the father of Michael Cliff
24 Eubanks?

25 A Yes, sir.

1 Q Tell us also what you've observed on your family get
2 togethers.

3 A Usually mostly every weekend we would get together and
4 smoke stuff, stuff like that. Mainly at Easter and
5 stuff like that the kids would like to come over and we
6 have a ham and do eggs and stuff like that.

7 Q Could you move a little closer? Okay. And who all
8 would do that?

9 A Mostly everybody. Especially on holidays or something
10 like that. Usually everybody. On Cliff's side
11 everybody would come on that side.

12 Q Did Cliff come by?

13 A Yes.

14 Q With the children and step-children?

15 A Yes.

16 Q Is that a regular event?

17 A Most every weekend. Mostly every other weekend they
18 would eat and stuff with us. I love to have all the
19 grandkids there. Mostly them two would be every other
20 weekend when he gets them.

21 Q Tell me what you observed about Cliff and his
22 relationship with his children and step-children.

23 A He's a great father. There's no doubt in my mind. I
24 never seen anything out of the ordinary. Mostly he
25 would play with the kids. He enjoyed -- he always

1 wanted to be a father. Right now it bothers me to see
2 them.

3 Q Did he ever show any favoritism with the children?

4 A No, he hasn't.

5 Q Did you ever see anything to indicate that?

6 A No.

7 Q Did you ever see any type of conduct by him with any of
8 the children?

9 A No, sir.

10 Q Anything that would be suspicious?

11 A No, sir.

12 Q He and A.E. going off to the corner or something?

13 A No, sir.

14 Q Or missing for a while?

15 A No, sir.

16 Q Tell us about the conversation on the porch last fall.

17 A Well, every weekend they usually come over with most of
18 the kids. I can't remember if L.L. was there or not.
19 Sometimes he comes and sometimes he don't. I always ask
20 where he's at. I always ask where everybody is at. My
21 wife, Elizabeth, and Deanie was on the front porch and
22 there was a conversation. By that time everybody else
23 had come up and it was, you know, it was about getting
24 rid of somebody. The first thing that come out of
25 Deanie's mouth was I know how to get rid of him.

1 Q Get rid of who?

2 A She looked at Cliff and said, "I know how to get rid of
3 you."

4 Q And Cliff was out in the yard playing? How did that
5 strike you?

6 A At first I didn't think a lot about it. It was kind of
7 odd, but I didn't think really anything about it until
8 later on the first of the year when things started
9 changing. I just noticed things like that. I noticed
10 that things were changing. I'm not seeing everybody,
11 you know.

12 Q So she wasn't coming over as much?

13 A Not as much. She likes Clemson and I like Carolina. I
14 always picked on her about that.

15 Q Tell us if you would about going to Cliff's house to
16 retrieve the safe.

17 A Well, it was the day right after he got locked up. We
18 got him out. He was asking about his medicine, and his
19 medicine was at the house. While he was texting back
20 and forth about the medicine with Deanie, you know, she
21 was wanting to leave it on the church steps instead of
22 -- and I told my wife to call the cops, 'cause he was
23 going to get his medicine. It was his heart medicine.
24 We got there first and went down to the building.

25 Q When you say "went down to the building", tell us about

1 that.

2 A Just a little storage building and everything was in
3 it. Went in there mainly to get some clothes, usually
4 -- we were going to get the winter clothes. Then he
5 mentioned something about the safe --

6 Q Let me just -- did you know there had been a safe at
7 the place?

8 A Yes.

9 Q Had he mentioned it to you before?

10 A Yes. We looked and the safe wasn't there. After that
11 we just didn't bother nothing else. We went back up
12 and met the cop, get the medicine.

13 Q What was Cliff's intention for going down there and
14 looking at the safe? Do you remember.

15 A Well, basically when we went there it wasn't about the
16 safe, we were just talking about it and he got to looking
17 and looked around and it wasn't there.

18 Q Do you know what was in the safe?

19 A What was told to me it was \$40,000 in the safe.

20 Q Cash?

21 A Cash in the safe.

22 Q Thank you. Answer any questions Mr. Scott may have.

23 CROSS EXAMINATION

24 BY MR. SCOTT:

25 Q Had you ever seen that cash in the safe?

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- 1 A I've seen the cash, sir.
- 2 Q Did you count it?
- 3 A I probably looked at it coming out of an envelope.
- 4 Yes, sir.
- 5 Q \$40,000 went missing is what you're testifying to?
- 6 A I didn't say it went missing. I said he showed me
- 7 \$40,000 before, because they were wanting to buy a home
- 8 or something to live in. That was the goal.
- 9 Q And you and Cliff went back over there looking for the
- 10 safe and it was gone.
- 11 A We wasn't planning on looking for the safe, sir.
- 12 Q You weren't planning on it?
- 13 A No, sir. We went there to get his medicine. Nobody
- 14 was there yet. We drove down and we was going to see
- 15 if we could get some more clothes or whatever in the
- 16 back. We looked around and everything, and he said --
- 17 he told me there wasn't no safe there.
- 18 Q Okay. What has that got to do with anything?
- 19 A Nothing, sir.
- 20 Q Why is he bringing it up?
- 21 A He asked me about a safe.
- 22 Q I'm just trying to follow you guys, because that was
- 23 you guy's conversation.
- 24 A Well, I answered the question. He asked me about the
- 25 safe. We got down there and that's when I was
- 26 explaining to him about the safe in the storage

1 building. I noticed it's been mentioned in the court.

2 Q You're not following that either are you? What's that
3 got to do with child molestation?

4 A Nothing, sir. I was just answering the question.

5 Q Let me ask you this, if it wasn't there and it went
6 missing, did y'all file a police report?

7 A No, sir. At the time everything just -- your head
8 freezes and everything is going on. And going through,
9 you know, taking care of him.

10 Q Well, help me so --

11 A And not being able to see my grandkids.

12 Q Listen, I'm sorry about that. They're good kids,
13 aren't they? They're real good kids and -- have they
14 ever made any real big lies to you, those good
15 grandkids?

16 A They're good grandkids.

17 Q Huh?

18 A They're good grandkids.

19 Q Not the kind that would make up big lies, right?

20 A I can't say that, sir. Kids is kids these days.

21 Sometimes an older person is different. Kids today are
22 different.

23 Q They're good kids though, aren't they?

24 A They're good kids. I've never seen anything out of the
25 ordinary with the kids.

26 Q Just like I asked Ms. Shumpert -- that's your sister.

1 A My sister.

2 Q You don't always know what people do behind closed
3 doors, do you?

4 A No, sir. All I can say is kids is kids these days.
5 Everything is different.

6 Q Everything is different, yeah.

7 A Yes.

8 Q Well, all right. I'm just going to ask you. I think I
9 know the answer to this. Do you know about Cliff's
10 sexual interests? Has he talked to you about that?

11 A No, sir. Never. It's none of my business. I always
12 worried about my girls.

13 Q Do what?

14 A I always worried about my girls, not the boys. That's
15 a Daddy.

16 Q Did you and him used to collect old Playboys and stuff
17 maybe?

18 A No, sir.

19 Q And he wouldn't discuss with you --

20 A No, sir.

21 Q -- things like that?

22 A None of that.

23 MR. SCOTT: Thank you. You can step down.

24 MR. WISE: The next witness will be lengthy, Your Honor.

25 THE COURT: The next witness is going to take some time,
26 so we're going to go ahead and take a brief break to make

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1 sure we don't have to break in the middle of their
2 testimony. Adjourn to the back.

3 (Whereupon, the jury exited the courtroom at 3:29 p.m.)

4 THE COURT: The record will reflect that the jury is
5 back and seated. Mr. Wise, if you'll call your next
6 witness, please.

7 MR. WISE: I call Michael Cliff Eubanks.

8 MICHAEL CLIFF EUBANKS, having first
9 been duly sworn, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. WISE:

12 Q You're Michael Cliff Eubanks?

13 A Yes, sir. I am.

14 Q Where are you living now?

15 A I live with my mom and dad on 439 Old Colony Road,
16 Clinton.

17 Q Is that where you grew up?

18 A That is where I grew up, correct.

19 Q Where -- are you employed right now?

20 A No, sir. I'm not. I do like odds and ends.

21 Q Where were you employed last?

22 A I was employed in Simpsonville at BlueLine Rental.

23 Q And what is that?

24 A That is a rental company that rents out equipment.

25 Q And how long you been working there up until May of
26 last year?

- 1 A Maybe a year and two to three months maybe.
- 2 Q A little over a year?
- 3 A Yeah, a little over a year.
- 4 Q Where did you work before that?
- 5 A Before that I worked at the State, SCDOT.
- 6 Q And what did you do with them?
- 7 A I operated -- I cut brush on the side of the road with
- 8 a John Deere tractor and a bush hog.
- 9 Q And where before that?
- 10 A I worked at International Paper for 10 years, right out
- 11 of high school.
- 12 Q And how long did you work for the Department of
- 13 Transportation?
- 14 A Maybe roughly two years maybe, somewhere along in
- 15 there.
- 16 Q Let's go back first. You were first married to
- 17 Jennifer Newsom?
- 18 A Yes, sir. I was.
- 19 Q And you all had two children?
- 20 A Yes, sir.
- 21 Q And that was --
- 22 A A.E. -- A.E. and P.E. .
- 23 Q And where were you all living at that time?
- 24 A At one time when had A.E. we was living with her mom
- 25 and dad, and then basically we ended up getting a place of
- 26 our own off on East Cherry, and then we moved out to Teague

1 Road and bought a double-wide out there. It has a mortgage.

2 And then we had -- ended up having P.E. around that time.

3 Q Did you buy a double-wide and the land or --

4 A Yeah, it was like a package deal.

5 Q Package deal?

6 A Yes, sir.

7 Q But eventually it would have been you all's?

8 A Yes, sir. It has a mortgage.

9 Q You and Jennifer ultimately broke up?

10 A Yes, sir.

11 Q Let's go back a little bit actually while you and
12 Jennifer were still together. How did you come to meet
13 Deanie?

14 A I met her at the Blind Horse.

15 Q And where is that?

16 A That is in, I believe, Greenville.

17 Q And how did you meet her?

18 A She was sitting at a table with her boyfriend, Michael
19 Lyons, and he --

20 Q That's not her husband Joseph?

21 A No, sir. She was -- Deanie was sitting at the table
22 with Michael Lyons. That was her boyfriend. When me and
23 Jennifer walked in Deanie stood up and pretty much
24 introduced herself. And then that's where I seen her and
25 pretty much met her.

26 Q Did you later contact her about -- how long after --

1 about how long after that did you and Jennifer break up?

2 A I don't really recall, but it was like within a few
3 months, somewhere along after that.

4 Q So that was on the tail end of your marriage with
5 Jennifer?

6 A Yeah, it was on the tail end of the marriage.

7 Q So after you and Jennifer broke up did you contact
8 Deanie about Spook trail?

9 A Well, after mine and Jennifer's final divorce, you
10 know, I stayed in my home on Teague Road for a while. A few
11 months. And I seen on MySpace where Deanie was offering,
12 you know, help for a Spook trail. So I wrote her on MySpace
13 and offered her my help, and that's when we started, you
14 know, talking and communicating and I'm going out there
15 helping them build things.

16 Q Did she correctly describe it as no intention of any
17 great relationship in the beginning?

18 A No, not really. Just, you know, start off as friends
19 kind of deal.

20 Q Over time?

21 A Yeah, over time we kind of, you know, fell for each
22 other.

23 Q She was living where then?

24 A Denise?

25 Q Yes.

26 A She was living with her mom and dad on Beaver Dam

1 Church Road.

2 Q You still had your home on Teague Road?

3 A I still had my home on Teague Road. Yes, sir.

4 Q Would they come over there?

5 A They would come over there, you know, very often.

6 Well, Denise would mainly, and sometimes very rarely the
7 kids. Her kids.

8 Q Before you got married?

9 A Yeah, before we got married.

10 Q Before you got married did Denise come over and spend
11 the night?

12 A I think the first night she actually spent the night
13 was the night I offered -- because I had my kids that
14 weekend and I wanted the kids to get to kind of know one
15 another. So we got pizza and movies, and Deanie offered to
16 stay herself. And then that night -- you know, we kind of
17 hit it off that night.

18 Q And that was probably the -- so to speak, the magic
19 moment?

20 A Yes, sir.

21 Q Did you all eventually get married?

22 A Yes, we got married.

23 Q In September of 2010?

24 A Yeah, roughly around there.

25 Q Did you have a formal wedding, or whatnot?

26 A We went and had some papers signed and then just took

1 it to the court. You know, just -- we didn't really have a
2 all full out, you know, church wedding.

3 Q Had she moved in with you prior to the marriage?

4 A No, I don't believe so. I don't recall.

5 Q And what makes you think that she didn't move in before
6 the marriage?

7 A Well, her father told her, and Deanie told me what her
8 father said, that pretty much she cannot move in until she
9 marries me. You know, he was an old school guy. You know,
10 he was a good man. A very good man. And that's the way he
11 was.

12 Q So eventually you all get married and move in?

13 A Yes, sir. You know, all the kids moved in, she moved
14 all her stuff in.

15 Q So you all lived on Teague Road. You were working then
16 with the Department of Transportation?

17 A I believe I was also employed with International Paper.

18 Q Do you know when you left International Paper and went
19 to the Department of Transportation?

20 A I started in 2004 and I did 10 years of it. So roughly
21 around 2014 maybe when I -- when I quit, because I got
22 assaulted by the plant manager and I left from there.

23 Q And went to work at DOT?

24 A Yes, sir.

25 Q And was Deanie working at that time?

26 A I believe Deanie was -- at first she was working

1 Beltram, I think, and then she got a job working at the
2 Detention Center.

3 Q Now, financially you all were in what kind of shape?

4 A Starting off, you know, by myself after Jennifer, you
5 know, had left I was doing okay. You know, my mom and dad
6 was helping me a little bit. And then, you know, Deanie and
7 the kids, they came along. And, you know, I really didn't
8 have, you know, a problem taking on two other kids and
9 ourselves. You know, me being the man I am, I stepped up to
10 the plate and, you know, I'll bat. You know, I'll take care
11 of these kids even though they're not my biological kids.
12 And really we didn't -- I mean, we was okay financially.

13 Q I mean, Deanie was working, so --

14 A Yeah, Deanie was working. You know, I was working. I
15 mean, we was okay financially.

16 Q You weren't rolling in money, but --

17 A Yeah, we weren't rolling in -- we wasn't throwing it
18 around or nothing but, you know, we just pretty much made it
19 paycheck to paycheck.

20 Q Then there was that wreck in November of 2013?

21 A Yes, sir.

22 Q And she was involved in an automobile wreck and pretty
23 well, I think, tried to go back to work for a short period
24 of time?

25 A Yeah. After the wreck -- I believe that day she came
26 and brought me breakfast at work. She left from there and

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1 went back home. I think it kind of happened -- it happened
2 here in Laurens County right in front of the Post Office.
3 She got rear-ended.

4 Q Right.

5 A And that was pretty much, you know, with the wreck and
6 all. But she did try to work a few days, you know, prior to
7 that -- well, after that. And when I came home -- see, she
8 didn't tell me she was in a wreck that day. She didn't tell
9 me until I got home. And I asked her why didn't you go by
10 ambulance if you felt any kind of pain or anything getting
11 rear-ended at 50 something miles an hour. And she just, you
12 know, wanted to tough it out and go to work.

13 Q It didn't work out?

14 A It didn't work out.

15 Q So she eventually had to leave work?

16 A Yeah, she eventually had to leave work. I think the
17 doctor put her out of work because they seen that she had
18 some plates in her back that needed to be -- you know, put
19 plates in her back.

20 Q She needed to have surgery?

21 A Yeah, needed to have surgery. Yes, sir.

22 Q And had she -- up until from the time of the wreck and
23 -- or shortly after the wreck in November of 2013 up until
24 May of 2016 did she ever go back to work anywhere else?

25 A I don't recall.

26 Q So from November 2013 you all were on Teague Road?

1 A Yes, sir.

2 Q And I assume after she lost her work, her job,
3 financially it became difficult?

4 A Yeah, she was -- she was getting a disability through
5 the state. I guess some standard. And they seen that it
6 wasn't work-related, so they ended up cancelling it. Put a
7 lot of stress on me, you know, and all the family because I
8 was the only one working and trying to, you know, take care
9 of the mortgage and, you know, basically gas, food. You
10 know, for me to get back and forth to work and put food in
11 the house. I mean, just a big stress.

12 Q And eventually did you end up losing the house on
13 Teague Road?

14 A Yes. I eventually had up settling with the bank and
15 taking a loss.

16 Q And where did you all move then?

17 A We moved into Denise's mother and father's house.

18 Q I believe there's testimony of being that was about
19 April 1st of 2016?

20 A That sounds about right.

21 Q Now, when you went to live on Beaver Dam Road -- Beaver
22 Dam Church Road who all was living there?

23 A It was her father, her mother, her grandmother, and
24 then it was me, Deanie, L.L. , J.L. , B.E. , and every other
25 weekend my two kids would come over.

26 Q Let's go back a little bit when you all first got

1 married. How would you describe L.L. ?

2 A How would I describe L.L. ?

3 Q Uh-huh.

4 A He was more -- like more focused on his past and what

5 went on in his past versus what he could have had in his

6 future. I know he wanted a dad, and I tried everything

7 possible I could to be there for him by talking with him.

8 You know, we would have talks. I would take him outside and

9 talk with him. I even built him -- prior -- at Teague Road,

10 a tree house for him. You know, I tried everything I could

11 with him. But even just -- he was stuck in the past of what

12 he, you know, pretty seen the way Josh treated his mother.

13 Q You were in racing.

14 A Yes, sir. I was.

15 Q That started about when?

16 A It's been in the family for years. I started driving

17 maybe 2002, 2003 as a four cylinder and then progressed up

18 to a super late model.

19 Q Did you ever take L.L. to the race track? Take any of

20 the kids to the race kids?

21 A I know there was a practice. It was a practice. I

22 took J.L. , I took A.E. and I took P.E. . We all walked

23 around and looked at cars. Then when they started racing I

24 took L.L. three times to the races, and every third time --

25 every time I took him, you know, he would complain he was

26 tired. He wanted to go home.

1 Q He wasn't a racing fan?

2 A He didn't -- I tried to get him into it, you know, get
3 his mind occupied, but he just wasn't -- wasn't into it.

4 Q There's been some talk about a pretty good sized
5 go-cart at Beaver Dam Road. Is that --

6 A Yes, sir. We bought that, I think, shortly after
7 Christmas. It was one of their Christmas presents. And we
8 bought it them for all the kids to ride and have, you know,
9 enjoyment on it.

10 Q Now, when you got to Beaver Dam Church Road -- let me
11 back up a second. How was your relationship with J.L. at
12 Teague Road?

13 A It was -- I mean, it was pretty normal. I mean, all
14 the kids -- you know, I tried to show attention to all the
15 kids. The attention we had -- you know, me and J.L. , you
16 know, it was normal. It was like a father/daughter. I
17 mean, like I said, everybody had their little say that she
18 wanted a father. Well, I always told the kids, look, I'm
19 not your father, but I'll be whatever you want me to be.
20 I'll be there for you. I'll be your friend, you know. I'm
21 just here for you if you need me. And it was that way with
22 L.L. and J.L. .

23 Q Been some comments that J.L. liked to do things outside
24 more than perhaps L.L. and --

25 A J.L. was more of an outdoorsman, you know, kind of
26 girl, you know. Outside kicking the ball around or

1 something like that. L.L. was more of a video gamer, and he
2 liked to stay in the house playing video games.

3 Q And B.E. was --

4 A And his -- his grandfather, Johnny, would always tell
5 him, boy, you need to get outside, you know, and live a
6 little.

7 Q How did you get along with Mr. Wilson?

8 A Oh, I got along great with him. I mean, if he -- if he
9 needed anything fixed, you know, he always came to me
10 because it got fixed. There was no going back redoing
11 anything. You know, I'm pretty smart when it come
12 mechanical-wise.

13 Q Is that basically what you were doing with BlueLine
14 Rental?

15 A Yes, sir. I was working on heavy equipment.

16 Q And what equipment did he have around the place on
17 Beaver Dam Road?

18 A He had a hauling big tractor. I can't remember the
19 size of it. But he had a Kubota, and that Kubota is
20 probably maybe over 30 something years old and, you know, I
21 kept it running for him. The deck was flying out from under
22 it, parts flying out from under it, but I would always, you
23 know, make sure it was running for him.

24 Q And obviously A.E. was also close to Mr. Wilson?

25 A Yes. A.E. was real close to Mr. Wilson.

26 Q You noticed that?

1 A Yeah, I noticed that.

2 Q Even though she was a step-grandchild, so to speak?

3 A Yeah, she was a step-grandchild, but she -- she loved
4 Johnny.

5 Q So going back in the wreck before you moved to Beaver
6 Dam Road?

7 A Yes, sir.

8 Q What did you -- where did you -- when did you start
9 working then and where did you last work?

10 A I think once we moved in over at Beaver Dam I finally
11 got a good job opportunity. My cousin is maintenance. He's
12 over maintenance at BlueLine and he pretty much helped me
13 get the job as a mechanic, too.

14 Q And do you remember what you were making there?

15 A When I left I think it was like 17 -- a few cents over
16 \$17.00.

17 Q An hour?

18 A An hour. Yes, sir.

19 Q So once you got on at BlueLine and you were living with
20 her parents how were you doing financially?

21 A We was doing pretty great.

22 Q Now, at the house on Beaver Dam there's been some
23 testimony that Johnny was not in the best health. Mr.
24 Wilson.

25 A No. No, sir. He was not.

26 Q And then how did that manifest itself?

1 A He -- like I say, Johnny was a good man, but he wanted
2 to do it his way and nobody else's. He would try to pretty
3 much get up, go outside and get on his riding mower or his
4 tractor. He didn't want nobody to help him. And, I mean,
5 he would just -- he wanted to be outside, and that was his
6 thing. And there was one time we -- me and him both was in
7 the barn and I was servicing his tractor, and as I was
8 laying down pulling the tires off of it, he was propped up
9 on the tire and he -- he fell back and hit his head pretty
10 hard, you know. And I was concerned about him. I tried --
11 tried my best trying to pick him up. But, you know, he just
12 -- he was pretty much dead weight. Like picking someone
13 straight up off the floor. But, you know, he was -- he was
14 all -- all straightforward man. I mean, he just -- solid.
15 You know, like I said, it was his way.

16 Q He wasn't working outside the house?

17 A Sir?

18 Q He wasn't working outside the house? He didn't have a
19 regular job?

20 A Well, he had -- he owned Wilson Curb Market. And I
21 think shortly after that they closed it down, when he --
22 when he got to where he couldn't hardly move around.

23 Q So from the time you moved in in 2016 was Mr. Wilson
24 going to work on a regular basis?

25 A I don't think he was going to work when we moved in
26 over at Beaver Dam Road.

1 Q So during the -- during the day, 24 hours a day, Mr.
2 Wilson would be there?

3 A Yes, sir. He would.

4 Q And what about his wife?

5 A His wife would be there most of the day until it was
6 time to go pick the kids up from school.

7 Q She helped pick the kids up?

8 A Yeah, she -- she helped pick the kids up.

9 Q And what about the grandmother?

10 A The grandmother stayed home and cooked southern home
11 food.

12 Q So she could get up around the house?

13 A Yeah, she could get up around the house. She loved
14 being in the kitchen. I mean, you couldn't tell her to get
15 out of the kitchen.

16 Q Did she go anywhere out very often?

17 A She -- very rarely. You know, she would -- you know,
18 like if she had a doctor visit or something or -- you know,
19 she would try to go herself sometimes.

20 Q So eventually you all settled the civil suit involving
21 your wife's wreck?

22 A Yes, sir.

23 Q And there's been testimony about \$89,000.

24 A It was 89,000 after taxes and after lawyer fees. Yes,
25 sir.

26 Q And what did you all do with the money?

1 A Deanie agreed to put it into my account at SunTrust.

2 SunTrust Banking out of Laurens. We both had to put our

3 signatures on it, because it was in mine and her name, and

4 we took it to the bank and deposited it, and it cleared the

5 next day.

6 Q And that was a regular checking account?

7 A Yes, it was a regular checking account.

8 Q I hand you this and ask you if you can identify this.

9 A Yes, it --

10 Q What is that?

11 A It's a copy of different transactions out of my

12 checking account.

13 Q Starting on what day did you -- I think they may be in

14 reverse order. What's the first date on that page?

15 A The first date on this one is July the 24th.

16 Q And then let's go to the bottom page. Here we go. And

17 this bottom page, what does it show in relation to a

18 deposit? A big deposit.

19 A On December the 28th, 2016, \$89,812.55 was deposited

20 into mine and Deanie's joint checking account.

21 Q So these go from December of 2016 to basically July of,

22 I believe, '17?

23 A Yes, sir.

24 MR. WISE: I'd like to introduce these.

25 THE COURT: No objection?

26 MR. SCOTT: Judge, the only question I have, the

1 testimony is just regarding one deposit and he's attempting
2 to introduce 36 pages of transactions.

3 MR. WISE: Correct. It'll involve -- the testimony
4 will involve a lot more than one deposit.

5 THE COURT: All right.

6 MR. SCOTT: I guess I don't have any objection.

7 THE COURT: Very good. We'll let it be one exhibit.
8 That's Defendant's 4 or 5? 4. Defendant's 4 will be in
9 evidence.

10 (Whereupon, Defendant's Exhibit No. 4 was admitted into
11 evidence.)

12 Q So I hand you Defendant's 4, and as you mentioned it
13 reflects a deposit on December 28th of \$89,812.25, right?

14 A Yes, sir.

15 Q After that deposit was made was there anything about
16 that account that you began to observe?

17 A It started drastically coming down.

18 Q Did you -- was it money that you were spending?

19 A It was money that I was spending and also Deanie. But
20 most of the money that I was spending would be while I'm
21 getting lunch, or when I'm at work or putting gas in my
22 truck, or doing something for my kids.

23 Q What other money went into that account?

24 A My payroll.

25 Q Went into the joint account?

26 A Yes, sir. It did.

1 Q Direct deposit?

2 A Yes, sir. It did.

3 Q What did you eventually decide to do with a substantial
4 portion of that money?

5 A I decided to invest it and put it into a money market
6 account.

7 Q But before that even. We'll get to that -- we'll get
8 to that in a minute. I think I'm in the correct order.

9 Hold on. No, you're correct. I'm wrong. So how much did
10 you take out and put in a money market account?

11 A I believe it was 25,000 I put into a money market
12 account.

13 Q I hand you this and ask if you recognize that.

14 A Yes, sir. It's 25,000.

15 MR. WISE: I'd like to introduce this as --

16 MR. SCOTT: No objection, Your Honor.

17 THE COURT: Defendant's 5.

18 (Whereupon, Defendant's Exhibit No. 5 was admitted into
19 evidence.)

20 Q So do you know of the dates you -- approximate date you
21 withdrew 25 and put it into a money market account?

22 A The date here is January the 12th.

23 Q Of what year?

24 A I believe it was 2007.

25 Q '17?

26 A Yeah, 2017. I'm sorry.

1 Q Did you later make another decision concerning some
2 withdrawals from that account?

3 A Yes, sir. I did.

4 Q Not the money market but the regular checking. You've
5 got the money market in your hand.

6 A Yeah, shortly after that --

7 Q Hold on. Not the money market. The regular checking.
8 Did you make another decision about a substantial withdrawal
9 from that account? I believe in March of that year.

10 A There's a lot of pages.

11 Q Hold on. Excuse me. January 10th of that year. My
12 mistake.

13 A Oh, yes. January the 10th, 2017 me and my wife,
14 Denise, decided to take out \$40,000 for a home that we were
15 going to put down as a down payment to try to get.

16 Q What did you do with that money?

17 A At the time we decided to get a safe and put it into a
18 safe, because at that time by around -- she was having
19 problems with her father, and he was -- and he pretty much
20 went into the hospital. So we decided just to put it into
21 the safe.

22 Q On the property?

23 A On the property inside a little storage building that I
24 was paying for monthly that was in her mother's name.

25 Q Did you have the combination of that safe?

26 A Yes, sir. I did.

1 Q Did Deanie have it?

2 A She did not want it.

3 Q Was there any other reason to take the cash out at that
4 time and put it in a safe?

5 A We never took cash out until the week before we went to
6 the beach which was --

7 Q Well, let me ask a quick question. Any other reason
8 for taking cash out of the checking account on January 10th
9 and putting it in a safe? Let me back up. You took the
10 cash out before you took out the money market?

11 A Yes. I took the cash out before I took out the money
12 market.

13 Q So you took about \$65,000 out in January of 2017,
14 between the money market and the cash?

15 A No, sir. I didn't take out 60 something --

16 Q Well, you took out -- excuse me, 40,000 in cash?

17 A Yeah, 40,000 in cash.

18 Q And 25,000 in the money market?

19 A Yes, and I put it --

20 Q About 65,000?

21 A The 25,000 come out of checking --

22 Q Correct.

23 A -- to go to the money market.

24 Q Right.

25 A The 40,000 come of checking --

26 Q To go to cash?

1 A -- to go to cash to go into the safe.

2 Q So when you took the 25,000 out in January of 2017 what
3 was the balance in your checking account approximately?

4 A After the 40,000 came out?

5 Q After the 25,000 came out. The second one. If you
6 can't find it quick, I think I can.

7 A Yeah. These are too many.

8 Q Let me see it real quick. We might be missing a page,
9 I believe. Yeah, here we go. January the 12th is when you
10 took out for the money market. The bottom of the page.

11 A Yes. That was --

12 Q And that left you a balance of about how much?

13 A It came down to 15,000.

14 MR. SCOTT: Wait a minute. You all said -- testimony
15 on January 10th 40,000 came out, and now you're saying
16 January 12th?

17 MR. WISE: 25,000 came out.

18 MR. SCOTT: And you said January 12th?

19 MR. WISE: The 25 on the 12th, 40 on the 10th.

20 MR. SCOTT: Both 2017?

21 MR. WISE: Yeah.

22 Q Still a nice sum of money?

23 A Yes, sir. It is.

24 Q And what were your deposits? How much were you
25 depositing in there?

26 A My -- it just depended on like overtime.

- 1 Q Right.
- 2 A It would be anywhere from maybe 920 up to a little over
- 3 \$1,000, my payroll.
- 4 Q And that would be per week, every other week?
- 5 A That was biweekly.
- 6 Q Biweekly?
- 7 A Yes, sir.
- 8 Q So financially you all were in good shape?
- 9 A Yes, sir.
- 10 Q You had a good job?
- 11 A Yes, sir. I did.
- 12 Q Bring in after taxes a little over 2,000 a month?
- 13 A Yeah, right around in there.
- 14 Q Didn't have any real expenses for housing?
- 15 A No, sir.
- 16 Q What happened to the 15 or so thousand dollars that was
- 17 in the account?
- 18 A In the money market.
- 19 Q No, in the regular account. Is that balance increasing
- 20 or decreasing?
- 21 A It is decreasing.
- 22 Q And do you know why it was decreasing?
- 23 A There was funds coming out.
- 24 Q And both of you had access to that account through
- 25 debit cards?
- 26 A Yes, sir.

1 Q Then eventually the funds in your checking account
2 somewhere around March get real low?

3 A Yes, sir.

4 Q And what did you have to do then?

5 A That was when I had to create a money market account.

6 Q Create or withdraw from?

7 A The checking account.

8 Q The checking account got low?

9 A Yes, sir. It did.

10 Q What did you do to help the checking account?

11 A I took 1,000 out and put into checking. At the time me
12 and Deanie was kind of having an argument because she needed
13 money to go and spend it in Greenville as far as getting the
14 kids their dance stuff --

15 Q Right.

16 A -- and \$1,000 was enough, and we just got into kind of
17 like an argument that day and I just -- I just kind of had,
18 you know -- I put 15,000 over into checking from the money
19 market.

20 Q Over into checking. So in January -- middle of January
21 roughly you had 15,000 in your checking account?

22 A Yes, sir.

23 Q And you were putting about another 2,000 a month into
24 that checking account?

25 A Yes, sir. I was. I was also -- with the money market
26 I had money coming directly out of my paycheck going into

1 the money market.

2 Q Don't worry about that. So and again in March you had
3 put another 15,000 into the checking account?

4 A Yes, sir. I did.

5 Q Did you all have discussions about that?

6 A Yes, sir.

7 Q Were they pleasant discussions?

8 A I mean, they wasn't heated arguments but, you know, it
9 was just a little bit of, you know, bickering.

10 Q It was what?

11 A A little bit of bickering back and forth.

12 Q About finances?

13 A Finances. Yes, sir.

14 Q And there really shouldn't have been?

15 A Yeah, there really shouldn't have been.

16 Q So you're sitting there in March with about \$40,000 in
17 cash in a safe on your property?

18 A Yes, sir.

19 Q And did you all ultimately decide to go on a vacation
20 in May?

21 A Yes. We decided to go to the beach because the kids
22 had a competition that week. I believe we took out around
23 2,000 for the food, the gas, the kids to do activities and
24 stuff like that. We took an additional 900 out to finish
25 paying for the hotel that we had down there, because her
26 mother and grandmother went with us, so we had to get extra

1 rooms. And another 300 because it was -- J.L. , L.L. and
2 B.E. took. So we gave them \$100, you know, just to put in
3 their pockets.

4 Q So how did you get the money out of the safe?

5 A That day -- it was the day before we walked up there to
6 the barn. It was me, Deanie -

7 Q Walked up to the barn or the shed?

8 A I mean, we walked up to the little utility building. It
9 was me, Deanie, B.E. and J.L. . We went in there. We
10 uncovered it, because I had like a blanket and like a star
11 that I made for Christmas that was covering it. And like
12 when you walk in it was to the backside on the right as you
13 go in. And we punched in the key code --

14 Q Who punched in the key code?

15 A J.L. did, because she wanted to punch it in. So I told
16 her the key code. So it was about -- you know, we proceeded
17 to get the money bag. It was in a blue money bag. Also was
18 in there was like checks, because when money market you can
19 only draw out like -- you can only write six checks out of
20 money market and maybe draw off of it four, five times a
21 year --

22 Q Right.

23 A -- and then they won't let you get any more. So we got
24 that amount of money out, and Deanie, of course, gave the
25 kids, you know, the \$100 to put in their pockets, we closed
26 it and went back to the house.

1 Q Prior to that day had you gone into that safe any?

2 A No, sir. I have not. Once we -- once me and Deanie
3 purchased that safe at Walmart we brought it home and we
4 stuck it in the building.

5 Q How heavy is that safe?

6 A I struggled with it a good bit, you know, and Deanie
7 helped a little bit to get it off of the truck on -- into
8 the building, and we cut the straps and unboxed it.

9 Q And that was the only time you're telling me was for
10 the beach trip?

11 A That was the only time we opened it up was for the
12 beach trip.

13 Q How was the beach trip?

14 A The beach trip went great. I mean, when we got there,
15 you know, we got -- everybody was excited about the hotel
16 and all, and we got, you know, to swim a little bit, and
17 they were going back and forth to their, you know,
18 conventions there. Also L.L. had an incident there where he
19 passed out on stage. I was the first one there.

20 Q So you all were at the beach how long?

21 A We left that Friday and came back Monday.

22 Q Roughly three, four days?

23 A Yeah, roughly three, four days.

24 Q So you get back from the beach and then what happened?

25 A We got back from the beach. We got back into town. We
26 stopped at the store, got some food to take home because it

1 was kind of late and nobody wanted to cook and everybody was
2 with us. When we stopped into -- J.L. had -- J.L. had
3 bought some hermit crabs at what they call Sparky's. She
4 brings them into the restaurant, you know, goes into the
5 women's restroom, and I hear them both in there screaming,
6 crying, you know, and laughing. And then J.L. swings the
7 door open and says they're loose. I mean, hermit crabs were
8 running everywhere in the bathroom.

9 Q So you all get home on Monday?

10 A Yeah, we got home that Monday.

11 Q Tell us about the day the allegations arose?

12 A The day the allegations arose I was at work, of course.
13 I had been communicating with Deanie off and on throughout
14 the day.

15 Q And we've seen some of those text messages?

16 A Yeah, we've seen some of the text messages. I think it
17 was about around maybe three o'clock I received a phone call
18 from J.L. . And I was in the office with my boss and I'm not
19 allowed to answer my phone in front of my boss, you know.
20 It's disrespectful. And so, I ended up calling her back,
21 and she was basically telling me how excited she was because
22 she was in a talent show. And I told her, you know, that's
23 great. I'm proud of you. And I told her that -- that I
24 would see her shortly at the thing that they had at the
25 Dance Shop that day.

26 Q All right. And that was -- then at the dance?

1 A Yeah, they had some kind of award thing at the Dance
2 Shop. My mom met me there. She wanted to watch.

3 Q And what happened then?

4 A When I got there they wasn't there. I mean, I
5 panicked. I thought maybe they were in a wreck, because
6 that's not like them. They're always -- they're either the
7 first ones there or the second ones there. Like I say, the
8 kids love to take dance. And, like I say, when I got up
9 there they wasn't there and I panicked. I worried. I had
10 this app on my phone that was like a family sharing app
11 where it showed the location of, you know, whoever was in
12 your family sharing group, which was J.L. and L.L. .

13 Q And how long had that app been on the phone?

14 A Every since I got the iPhone, I do believe, because
15 they only worked on the iPhone.

16 Q When did you get the iPhone?

17 A I got the iPhone when I started working for BlueLine, I
18 do believe, because that was the only time I could really --

19 Q So sometime around mid-2016?

20 A Yes.

21 Q And what -- what led putting this tracker app on the
22 phone?

23 A At first, you know, I keep trying to call them. No
24 answer.

25 Q Back up. Back up. When you got -- you put a tracker
26 out on L.L. 's phone and J.L. 's phone?

1 A Well, it's not really like a tracker. It's a family
2 sharing where you can see where everybody's at. I mean,
3 it's not like a tracker. It's like a -- kind of like a GPS,
4 but --

5 Q Right.

6 A -- it's family sharing.

7 Q They knew it was on there?

8 A They knew it was on there.

9 Q Go ahead.

10 A Like I said, when I got to the Dance Shop they was not
11 there. Like I said, I panicked. I thought maybe they was
12 in a wreck. I got my mom and I called Deanie and she did
13 not answer. I think I called J.L. and she did not answer.
14 But L.L. answered, and I asked L.L. , I said, where are your
15 momma and them. You all are supposed to be here at the
16 Dance Shop. His reply was he was still at school and did
17 not know.

18 Q He was what?

19 A He was still stuck at school and did not know. So I
20 turned on -- you know, looked onto the family sharing app
21 and it took me to some kind of place off of, I believe it
22 was, West Main, and they were all -- her mom's car was
23 parked there in the parking lot. I proceeded to walk in and
24 this woman came around and asked me who are you looking for.
25 I said I'm looking for, you know, my wife Denise. You know,
26 her car and everything is here. And by that time an officer

1 come around and took me outside.

2 Q And that -- and he explained to me what was going on?

3 A He explained that my step-daughter J.L. had made some
4 allegations.

5 Q And that was it?

6 A And pretty much the best thing I should have done -- I
7 should do was to go home and to get some of my clothes and
8 go to my mom and dad's.

9 Q Did you do that?

10 A Yes, sir. I did. I didn't argue. I didn't --

11 Q Just -- what was your state of mind at that point?

12 A My state of mind was, you know, what's going on, you
13 know. Has somebody been hurt or, you know -- I mean, I
14 didn't know what the place was. All I know was nobody would
15 talk to me.

16 Q No. No. I'm talking about after the officer told you?

17 A Oh, after the officer told me, you know, it -- it
18 shocked me, you know. Like what kind of allegations -- and
19 at first I didn't even know what allegations meant, you
20 know. And he told me, you know, basically she told the
21 therapist and all that I'd been kissing her on her neck and
22 kissing her ear and rubbing her across her butt and, you
23 know, stuff like that.

24 Q So your mother was with you?

25 A Yes, my mother was with me.

26 Q So you all went home?

1 A No. We proceeded to Mountville to get my clothes and
2 stuff because that's --

3 Q Get your clothes and stuff.

4 A -- where the officer told me to go. And then when I
5 got there everything was shut down, the garage doors,
6 everything was locked up. My clothes were supposed to be on
7 the front door. They were not there. So I texted Deanie
8 and ask her where were my clothes because, you know,
9 Deanie's mom was supposed to put everything out. I think me
10 and my mom sat there for maybe 10 to 15 minutes.

11 Q Anything happen?

12 A Only -- well, we went back and sat in the truck and
13 kept waiting, and by that time -- I didn't ever see anybody
14 put it on the front porch, but when I waited and went back
15 around it was there.

16 Q And you got your stuff and went home?

17 A I got my stuff and went back to my mom and dad's.

18 Q Did you go back the next day?

19 A I went back the next day after I talked to Hunnicutt
20 that morning.

21 Q And what happened then?

22 A When I went back that day -- because I needed my
23 medicine. I didn't have my medicine. And we called an
24 officer to -- because Hunnicutt -- at first Hunnicutt, when
25 I spoke to him that morning, he told me, you know, just
26 basically get an officer and let the officer take you out

1 there, so long as you got, you know, law enforcement there
2 with you, to get your stuff. So when I got there -- you
3 know, their house is like real far off the road and the
4 grass is real tall. So I couldn't tell if an officer was
5 there or not. And me and my dad --

6 Q Who was with you at this point?

7 A Huh?

8 Q Who was with you?

9 A My father.

10 Q Your father was with you?

11 A Yes, sir. When we pulled up we sat there for maybe
12 five minutes. You know, we thought maybe an officer was
13 already down there, because it was maybe kind of more
14 convenient and quicker for the officer to get there than it
15 was for us. And so, we proceeded down the driveway. As we
16 proceeded down the driveway I noticed that the barn -- the
17 building, utility building, the door was pried open. The
18 back latch was bent all the way around, and I opened it up
19 to get, you know, at least what I could get as far as winter
20 clothes and I noticed the safe was gone.

21 Q Is that the first time you noticed it?

22 A That's the first time I noticed it.

23 Q What did you do then?

24 A Tried to close the door back, turned around and went
25 back up to the driveway, because the cop wasn't there, and
26 we waited until he got there. And he met us and he told me

1 and my father -- he told my father to stay in the truck.

2 And I got out and he told me to sit tight. He knocked on
3 the door. And I can't remember which child came to the
4 door, it kind of sounded like B.E. , but he proceeded in and
5 told them that, you know, I -- I don't know exactly what he
6 told them, but they knew I was there.

7 Q Did you get your stuff then?

8 A The only thing I was able to get was like toiletry
9 stuff, like toothbrush, deodorant, some what was left of my
10 clothes.

11 Q And your medicines?

12 A Yeah, and at that time I was able to get my medicines.

13 Q And that afternoon you went back to see Officer
14 Hunnicutt again?

15 A Yes, sir. I got a call later on after we got back
16 home. I was expecting it might have been around 3:00, 4:00,
17 somewhere in there. He said that he wanted to meet up with
18 me to just, you know, go over some stuff. So me, my dad and
19 my sister proceeded up there. When I got there he met us at
20 the door and --

21 Q And this was where?

22 A I believe it was -- the building in front of SunTrust.
23 You know what building that is?

24 Q Yes.

25 A I don't know what they call that one. But we got into
26 an elevator, and I remember going up and going into a room

1 that had a big glass in the background, and then a table
2 with like maybe six chairs at it, and cameras in all four
3 corners. And the room was like dark. No lights on or
4 nothing.

5 Q I assume they cut them on eventually?

6 A They did not cut the lights on. No, sir. We was in
7 the dark.

8 Q Did they have lights through the window?

9 A Just -- just the light through the window is the only
10 light we really had.

11 Q So it was during the daytime?

12 A Yeah, it was during the daytime, yeah.

13 Q And they did have windows in --

14 A Yeah, they had like one big window in the back. I
15 could see another building in the background.

16 Q And then what happened in that interview?

17 A He proceeded to say that -- you know, the first thing
18 that I wrote when I went and seen him that morning. And he
19 said, you know, we're just going to go over some stuff, and,
20 you know, basically we went over that first statement that I
21 wrote and then he said he would be right back. Well, when
22 he came back he had a clipboard with a CD inside like a
23 little green case. He told me, he said -- he said, Cliff,
24 I'm going to be -- he said you need to be honest with me.
25 There was a video camera up in the barn. He said if you're
26 honest with me, he said, I can help you. And, of course,

1 there was other -- two officers there. Matthew Polson, and
2 I can't remember that other guy's name. So at that time,
3 you know, I didn't know what was going on. I was kind of
4 panicking. I was scared. You know, I didn't have my
5 medication like I was supposed to be taking it. I was
6 drowsy, and it was just a bad issue.

7 Q Right.

8 A A bad vibe me sitting there.

9 Q You were very nervous?

10 A I was very nervous, yes. And he --

11 Q Tell me what happened after he told you that they had a
12 nanny cam, or video?

13 A He told me to tell him about what happened in the barn.
14 And, of course, I told him what happened in the barn, which
15 was what I wrote in my statement.

16 Q And you wrote that?

17 A And I wrote that.

18 Q Did you intend for any of that to happen?

19 A I did not have any intentions of that happening. No,
20 sir.

21 Q Did you want it to happen?

22 A No, sir. I did not.

23 Q You put in your statement you were embarrassed?

24 A I was embarrassed. I was, you know, kind of in shock,
25 and I didn't know what to --

26 Q Is that an accurate statement?

- 1 A Yes, sir.
- 2 Q Did you intend for her to sit in your lap and cause
3 this?
- 4 A No, sir.
- 5 Q Did you ask her to?
- 6 A No, sir. I did not.
- 7 Q Did you even ask her to sit in your lap?
- 8 A No, sir. I did not.
- 9 Q So after you gave that statement you were arrested?
- 10 A After I gave that statement they left the room and came
11 back and said you know what I'm going to have to do, and I
12 was like no, what are you going to have to do. He said I'm
13 going to have to place you under arrest. And I said okay,
14 can I at least speak to my father and sister downstairs and
15 let them know what's going on, and Matthew Polson commented
16 that I will go down there and tell them, you know, what's
17 going on. And it wasn't Hunnicutt, but it was the other guy
18 that pretty much put the handcuffs on you.
- 19 Q Did they ask you at that time anything about a cell
20 phone?
- 21 A No, sir. They did not.
- 22 Q Now, let's go back a minute. I show you Defendant's
23 Exhibit 1. Do you remember getting this from J.L. ? And
24 that's the -- your birthday greeting.
- 25 A Yes, sir.
- 26 Q Tell me about that.

1 A This was DOB of 2016. The DOB , which is my
2 birthday. It has a picture of a father and daughter. The
3 pictures says, "One of the greatest gifts I've ever gotten
4 come from God and I call him daddy."

5 Q Did you believe her?

6 A Yes.

7 Q And what did you respond to that?

8 A I responded, "Thank you so much, sweet girl, and I love
9 you to the moon and back, and I'm proud to call you my
10 daughter." And then she responded, "I love you, too."

11 Q And that was Month of 2016, correct?

12 A Yes, sir.

13 Q Now, you got out on bond after you were arrested on the
14 17th of May?

15 A Yes, sir. I got out the next day for -- for the first
16 charge.

17 Q And then on roughly a month or so later you were
18 arrested again?

19 A Yes, sir. I was.

20 Q And that's part of the charges we're here today on?

21 A Yes, sir.

22 Q Mr. Eubanks, have you ever in your life touched J.L.
23 inappropriately?

24 A No, sir. I have not.

25 Q Would you ever do that?

26 A No, sir.

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1 Q Let me go back. You sat here through the testimony of

2 J.L. , didn't you?

3 A Yes, sir. I did.

4 Q Let's go back and talk about one specific thing she
5 mentioned. The time B.E. was at the house with you and her
6 and part of the family had gone to L.L. 's band competition.

7 A Yes, sir.

8 Q The testimony was that she heard you tell B.E. to turn
9 off the water -- how old was B.E. then?

10 A Maybe four or five. Somewhere around in there.

11 Q Told B.E. to turn off the water when the water gets to
12 her bellybutton.

13 A No, sir.

14 Q Do you remember that testimony?

15 A I remember the testimony.

16 Q Is that something you would have ever thought about
17 telling B.E. ?

18 A No, sir.

19 Q Why not?

20 A If you put a child into a bathroom versus cold and hot
21 water, why would I take advantage of my child trying to turn
22 off the water faucet and scalding her.

23 Q Something you wouldn't do?

24 A Something I would not do.

25 Q When that band competition was taking place, Johnny was
26 at the house?

1 A Yes, sir. He was. I was helping taking care of him.

2 Q And the grandmother?

3 A The grandmother would go occasionally.

4 Q Would go occasionally?

5 A Yeah. The great -- great-grandmother.

6 Q I think J.L. may have testified the grandmother was
7 there that day also.

8 A The grandmother would go like off and on. It depended
9 on how she felt --

10 Q Right.

11 A -- I mean.

12 Q You've heard testimony of numerous allegations of abuse
13 both at Beaver Dam Church Road and Teague Road. Did any of
14 that even remotely happen?

15 A No, sir. It did not.

16 Q Describe, if you could, when you were on Teague Road
17 before the wreck how the morning normally progressed.

18 A When we was on Teague Road I believe I had the job
19 working for the State, and I had to be at work at like 7:30,
20 somewhere along in there. I would -- I would get up. And
21 Deanie, she was like a real heavy sleeper, and I would kind
22 of like help her, as far as helping her wake up, and then
23 going and getting the kids and everything. But I pretty
24 much left them there and went straight to work.

25 Q Deanie went to work after you? On what shift was she
26 working back then?

1 A Back then she was working third. Third shift, I
2 believe.

3 Q Would she come in before you left, or how would you all
4 --

5 A No. When she was working third shift some of my kids
6 would stay with her mother.

7 Q Excuse me?

8 A When she was working third shift some of my kids would
9 stay with her mother.

10 Q With Deanie's mother?

11 A Yeah, with Deanie's mother.

12 Q So you would carry them over to Deanie's mother's house
13 in the morning?

14 A If they -- yeah, if they stayed with me.

15 Q And you came over to the house the next morning?

16 A Yes, sir.

17 Q There's been testimony also about -- tell us what you
18 all would do as a family at night about activities and so
19 forth?

20 A We'd play like games -- board games. We had this thing
21 where if it was on the weekend we would go to like late
22 night Waffle House. If they had friends over we would go,
23 or there were nights where we'd go bowling. They loved to
24 bowl.

25 Q Let's go back to when you were at home at night. A lot
26 of television watching?

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1 A Yeah, pretty much at night when we got home and settled
2 down, after we got through eating, you know, we'd kind of go
3 lay down and watch TV.

4 Q Where would you watch TV?

5 A Of course, Johnny and big momma would watch TV in the
6 living room. Sometimes Deanie. I would be in mine and
7 Deanie's room watching TV. L.L. would be either in the
8 living room or in his room playing like a video game, and
9 B.E. and J.L. would just be playing.

10 Q Be what?

11 A Be out playing somewhere.

12 Q Would they ever come watch TV with you all in your room
13 with you?

14 A Yes, they would sometimes come in there and watch.

15 Q Did you ever get under covers with them?

16

17 A Yes, sir. I would get under the covers with them.

18 Q Ever do anything inappropriately?

19 A No, sir.

20 Q This was when you were watching television?

21 A Yes, sir. This was at night.

22 Q What would you do -- or what would -- there was some
23 talk about bathing B.E. and washing J.L. 's hair. What was
24 the policy on that?

25 A Over at, let's see, Teague Road, I would help, you
26 know, as far as being -- when she had the wreck and all I

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1 would help, you know, bathe the kids. You know, and Deanie
2 had the saying, you know, when the girls --

3 Q Had what?

4 A Deanie had this saying, when the girls started growing
5 body parts it was my time to step out.

6 Q Right.

7 A And that's exactly what I did.

8 Q Did you wash -- help maybe B.E. on Teague Road while
9 Deanie was out?

10 A Yes, sir.

11 Q There's been some talk about J.L. being underweight.
12 What did you observe about that?

13 A To me, I mean, she's like real petite, plus being in
14 dance. I mean, she does dance a lot. And, I mean, with her
15 dancing all the time, I mean, I don't see how she could, you
16 know, gain as much weight. But, I mean, she would eat.
17 That wasn't an issue. She would eat.

18 Q And she always --

19 A And it was either food that big momma cooked, or if she
20 didn't like it, it was junk food.

21 Q How was her energy level?

22 A It was -- she was like bouncing around. I mean, she
23 had good energy level. She loved to go outside and shoot
24 hoops at the basketball goal.

25 Q Showing athletic abilities?

26 A Yeah, athletic things.

1 Q Participated in dancing?

2 A Yes.

3 Q Was there ever a time that you noticed her not taking a
4 bath?

5 A No, sir.

6 Q Was there ever an issue where Deanie said anything to
7 you about J.L. 's not taking a bath, anything like that?

8 A No, sir.

9 Q Did you ever notice anything about her having
10 nightmares or something?

11 A Not nightmares. I mean, she would kind of like talk in
12 her sleep. I mean, especially she kind of like sleepwalked,
13 too. I mean, we had to keep -- make sure the doors were
14 locked. I mean, my daughter, A.E. , even kind of
15 sleepwalked, too. For instance, we was at the beach one
16 year and we was all in the livingroom. A.E. walks in there,
17 and not knowing where she's at and just completely scared
18 the crap out of all of us.

19 Q Did you ever give J.L. money?

20 A I would give her money occasionally, like when she --

21 Q Money --

22 A Occasionally, when she would ask for it, like for an
23 extra snack or something. But I would never toss her 10s,
24 20s and 50s or anything like that.

25 Q Is it true to say that Deanie never made a decision on
26 money involving more than \$50 without you?

1 A No, sir. She always made her own decisions.

2 Q And is that shown on the bank record with withdrawals?

3 A Yes, sir. It does.

4 Q The grandmother in the home, what was her routine?

5 A She would get up when the roosters crow, pretty much.

6 She pretty much -- I don't even know if she even slept.

7 Q She what?

8 A I don't even know if she even slept. She would get up

9 and like make breakfast for -- like if it was a school day,

10 she would make breakfast for L.L. . Make him an egg

11 sandwich. But not really make anything for J.L. or, you

12 know, pretty much B.E. . It was always make sure L.L. had

13 an egg sandwich in the morning.

14 Q Did you ever buy a jacket or a gold necklace for her?

15 A No, sir.

16 Q I assume you did buy some clothes for her occasionally?

17 A I don't even know their sizes. You could ask my Aunt

18 Kathy, every time it come around Christmas time she would

19 text me and ask me the kids' sizes and I would have to

20 respond, let me talk to my wife because I do not know.

21 Q Now, the allegations this occurred -- the sexual abuse

22 occurred almost on a daily basis. Particularly on --

23 particularly after Deanie had her wreck in November of 2013,

24 could that have possibly gone unnoticed?

25 A I don't understand.

26 Q The testimony from J.L. was -- from J.L. was the

1 alleged abuse occurred almost on a daily basis.

2 A Yeah.

3 Q Remember that?

4 A Yeah, I remember that.

5 Q After Deanie had her injury she was at home?

6 A Yeah, she was at home.

7 Q 24/7 just about?

8 A Yeah, pretty much 24/7 right after she had the surgery.

9 Q Would it have been possible for any of this abuse to
10 have occurred without her being literally at least in the
11 same house, if not the next room?

12 A No, sir. And also, it was right after she had the
13 surgery she wanted to stay at her mom's for a few weeks and
14 the kids stayed over there with her.

15 Q The kids stayed over there with her?

16 A The kids stayed over there with her.

17 Q And you stayed at Teague Road by yourself?

18 A I stayed at Teague Road. Yes, sir.

19 MR. WISE: Give me one minute.

20 Q Did you ever show J.L. any x-rated movies on your
21 iPhone?

22 A No, sir. I did not.

23 Q There was testimony about a piece of plywood in the
24 barn being set up. Do you know anything about that?

25 A I mean, I've built a lot of stuff in that barn. There
26 was plywood, there was pallets, there were farm equipment,

1 there was tools. Everything was in there.

2 Q There's been some testimony about your medical
3 condition, correct?

4 A Yes, sir.

5 Q When you lived on Teague Road what was your medical
6 condition?

7 A I believe it was low testrone (sic).

8 Q And some erectile dysfunction?

9 A Yes, sir.

10 Q Do you recognize this?

11 A Yes, this was from Dr. Brownlee.

12 Q And what's the address on that?

13 A Teague Road in Mountville.

14 Q So that would have been when you were living on Teague
15 Road?

16 A Yes, sir.

17 MR. WISE: I'd like to move to introduce this.

18 MR. SCOTT: I don't think he's laid a foundation, Your
19 Honor. I've never seen this. I'd like to take a minute and
20 look at it.

21 MR. WISE: I didn't know it would be relevant until
22 today.

23 MR. SCOTT: Judge, my only concern is that it's a
24 doctor's report. Dr. Joanne Brownlee has generated this.
25 I've never seen it. I think we have to have some testimony
26 from Dr. Brownlee to interpret some of these medical

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1 findings in this document. I think he can question him on
2 some things he's experienced and whatnot. I don't think
3 that document is admissible.

4 (Whereupon, a sidebar was held.)

5 THE COURT: Go ahead and mark it. It'll be Defendant's
6 6, in evidence subject to Defense -- or State's objection.

7 (Whereupon, Defendant's Exhibit No. 6 marked and
8 admitted into evidence.)

9 Q Is this the record you obtained from Dr. Brownlee?

10 A Yes, sir.

11 Q Excuse me?

12 A Yes, sir.

13 Q All right. On page two it has two diagnoses that
14 relates to testimony from Deanie Eubanks about testosterone
15 and erectile dysfunction. Can you find that and read it to
16 us on -- it's on the top of page two.

17 A Where it's got history?

18 Q No. Let me see. Under --

19 A It's small writing. I can't really --

20 Q Yeah, under history, the bottom part. The last two on
21 history.

22 A Has some erectile --

23 Q Dysfunction.

24 A -- dysfunction --

25 MR. SCOTT: He can't do that. He's testifying for him.

26 THE COURT: Sustained. Let me see that document again.

1 Hold on. Hold on. Let me see that again.

2 MR. WISE: Do you see what he's talking about, Judge?

3 Under history the last two items, top of the page.

4 THE WITNESS: I can barely read it.

5 MR. WISE: Yeah, it's hard to read.

6 THE COURT: Ladies and gentlemen of the jury, if you
7 would adjourn to the back for a few moments. Go ahead and
8 take a break. Understand it's my intention to finish with
9 this witness for today. So there will be some additional
10 examination when Mr. Wise finishes on direct. Okay? So
11 we're going to go to around 6:00, or whenever it takes to
12 get done with this witness. I do believe this may be the
13 final witness that we hear from. That way, we can have this
14 case to you in the morning. Okay? Adjourn to the back.
15 Don't talk about the case yet. If you need to make a phone
16 call, let somebody know that you're going to be running
17 late, ask the bailiff. They'll get you your cell back or
18 they'll get you to a landline. Okay?

19 (Whereupon, the jury exited the courtroom at 5:05 p.m.)

20 THE COURT: The jury is out. Here's what -- here's
21 what I'm struggling with, Mr. Wise. First of all, there's
22 no indication on this document what -- when it was created.
23 Okay? So whether it's -- it shows that it was faxed on --

24 MR. WISE: Correct.

25 THE COURT: -- 6/12 of 2018.

26 MR. WISE: We know it was created before April of 2016

1 because that's when he was living on Teague Road, and they
2 didn't put a date on it and don't ask me why.

3 THE COURT: Okay. There's -- under notes it has a line
4 that says created by, and I can make out C. Brownlee, M.D.
5 The rest is obscured. Typically on that line I can make out
6 AM, ante meridian, at the very back of that. And in records
7 like this, typically when the document is created it will be
8 stamped with a time and -- and a date. Okay?

9 MR. WISE: They emailed it to me that way. I didn't --
10 I didn't think it was going to be relevant in this case
11 until she testified.

12 THE COURT: The other problem --

13 MR. WISE: Now, I can -- I can bring Dr. Brownlee in.

14 THE COURT: And it may be necessary to do that. Here's
15 the -- here's the other problem. Under history, yeah, it
16 does note testosterone low times two. It does -- has some
17 erectile dysfunction. It does say that. But I don't know
18 whether this is from Dr. Brownlee's prior medical records or
19 a patient's self-report, because very often you come into a
20 doctor, you have any problems, yeah, I've got -- I'm being
21 treated for A, B, C, D and erectile dysfunction, so --

22 MR. WISE: I understand. Now, you would not know low
23 testosterone unless there's a test. The only reason -- like
24 I say, I don't even -- I had this stuck in a pile, the back
25 part of it, until the testimony today about he was lying to
26 her about low testosterone and that refutes that, even --

1 period.

2 THE COURT: I understand. But without really -- I
3 don't know how to put this gingerly. But without knowing
4 when this document was generated, obviously it would have --
5 I presume when it was on -- when he was on Teague Road. But
6 there maybe does need to be just a little bit more --

7 MR. WISE: And the only way we can do that is Dr.
8 Brownlee. I can contact her and see if she can be here
9 tomorrow.

10 THE COURT: Or we can have a clean copy of this that
11 doesn't have the portion --

12 MR. WISE: That's the cleanest copies I got. I mean,
13 like I said, I didn't think it was relevant until they made
14 it relevant.

15 THE COURT: Right. Your objection, did I center on the
16 objection or did I miss something?

17 MR. SCOTT: You did. Because here's the thing, I had
18 the same thought. There's a lot of guys who go to a doctor
19 and say I'm having erectile dysfunction because they like to
20 have the erection pill.

21 THE COURT: Viagra.

22 MR. SCOTT: They want to have that thing. And, you
23 know, a lot of people say I have low T so they can get
24 testosterone prescribed to them. I want to know if she
25 diagnosed it medically. And again, that is also important.
26 You hit the nail on the head, when was that generated,

1 because he was living on Teague Road well before he even met
2 Deanie. She testified when they first met they were having
3 normal sex. So I don't know what to make of that. Yeah,
4 they were having normal sex. The testimony --

5 THE COURT: All right. And, of course, there can be
6 varying levels of erectile dysfunction. Just because it's
7 dysfunction doesn't mean it won't work 100 percent. But
8 that's -- we're really getting into some kind of medical
9 stuff here, and maybe it's best to call Dr. Brownlee.

10 We're going to go ahead and take a break because we're
11 going to finish with this witness on your cross today, but
12 it's only going to be a 10 minute break. Okay? So I'll be
13 right back.

14 (Whereupon, a recess was held from 5:05 p.m. to 5:23
15 p.m.)

16 THE COURT: Go ahead and get the jury moving. I'm sure
17 they'll be here in just a moment. Go ahead and get the jury
18 moving for us. Bring the jury back in, please.

19 THE BAILIFF: I can't hear you.

20 THE COURT: That's okay. I can't hear either. Go get
21 the jury, please.

22 THE BAILIFF: You're ready?

23 THE COURT: Yeah, go ahead and get them, please.

24 Here's where we are. He can testify as to his physical
25 condition. What he reported to the doctor, what he said to
26 the doctor, that kind of thing, his understanding of his

1 physical condition, but we're going to need more
2 authentication for this to come in. Okay? So we're going
3 to pull 6 out. All right. 6 is not in evidence at this
4 point.

5 MR. WISE: And, for the record, we've called Dr.
6 Brownlee.

7 (Whereupon, the jury entered the courtroom at 5:23
8 p.m.)

9 THE COURT: The jury is back and seated. Mr. Wise, if
10 you'll please continue your examination.

11 Q Mr. Eubanks, you don't -- do you have low testosterone?

12 A Yes, sir.

13 Q All right. Has that been reported to the doctor?

14 A Yes, sir.

15 Q Okay. That and erectile dysfunction?

16 A Yes, sir.

17 Q Okay. Now, you saw in here yesterday a big, green box?

18 A Yes, sir. I did.

19 Q Tell us about it.

20 A That box is -- it's got pornography in it. It's been
21 accumulated since I lived on East Cherry and it's just --

22 Q Lived where?

23 A Since I lived on East Cherry when I was with Ms.

24 Newsom, and it went from East Cherry to Teague Road. And

25 then, when I was living at Teague Road, I had it all up in

26 the top of my closet where nobody could get to it. Me and

1 Deanie shared the same closet. She knew it was up there.

2 Q She knew where it was at?

3 A Yeah. She knew it was there, because her clothes were
4 in there and you had to see it every time you go in the
5 closet.

6 Q How did it get from Teague Road to the shed?

7 A Well, in the process of when we was moving, you know,
8 we was boxing everything up. They came down to the
9 bathroom. Deanie was in there, L.L. was in there --

10 MR. WISE: Have you got --

11 THE WITNESS: I'm sorry.

12 MR. WISE: Excuse me. Give me -- there you go.

13 A When we was in the bathroom boxing everything --

14 MR. WISE: Pull your chair up a little bit more.

15 THE WITNESS: All right.

16 MR. WISE: Okay.

17 THE WITNESS: Is that better?

18 MR. WISE: Yes. Yes.

19 A All right. When we was in the bathroom, we was in the
20 process of boxing everything up. We was taking clothes out,
21 of course, and putting them in boxes. Like winter clothes
22 and stuff like that. And then, we got to where the stuff --
23 the pornography was at the top. At the time, Deanie was in
24 there, J.L. was in there, L.L. was in there, even B.E. . We
25 was all moving stuff out each room one thing at a time. We
26 was all helping one another. Particularly, the kids didn't

1 see what I was pulling down from the top of the closet to
2 put in there. But once I put it into that green bin, I put
3 the lid on it and duct taped it with grey duct tape and
4 wrote on top of it, Cliff's stuff, do not open. Then when
5 we loaded everything up --

6 Q Now, when you saw the green box yesterday did it have
7 duct tape residue on it?

8 A It had duct tape residue on it and it was missing the
9 lid.

10 Q It was missing the lid?

11 A Yes, sir. It was.

12 Q Okay. All right. Go ahead.

13 A So we was in the process of loading everything in the
14 trailer. We got everything over to Paula's house. We had
15 to get a storage building so we could start putting stuff
16 into it because we couldn't pile everything into the house.
17 It would, you know, be cluttered. So we ended up getting a
18 storage building. We started packing it out and, you know,
19 it started getting real tight in there. The storage
20 building had two lofts and it was maybe -- I could jump up
21 and try to touch the floor. There was already enough weight
22 up there. Well, I couldn't get up there without being
23 afraid of it breaking, because at the time I was overweight.
24 Deanie couldn't get up there because, you know, of her
25 accident. L.L. couldn't get up there. The only person who
26 could really get up there was J.L. . So we handed -- I

1 picked the stuff up, put it up over head and kind of slid it
2 to her and she just kept pushing stuff back one at a time
3 until eventually we packed out that top loft.

4 Q And was it -- it had a lid on it?

5 A It had a lid on it.

6 Q Ever tell J.L. what was in it?

7 A I never told J.L. what was in it.

8 Q Have you ever opened it in front of J.L. ?

9 A I never opened it in front of J.L. .

10 Q All right. Now, your wife unfortunately, or
11 fortunately, I don't know, testified about it and, you know,
12 it was good up until the wreck, your marriage was pretty
13 good, even including your sex life. Is that an accurate
14 story or condition?

15 A Yeah. Somewhat accurate. Yes.

16 Q After the wreck, how did -- how did the marriage go?

17 A It started going downhill a little. I mean, she had a
18 wreck. She was injured and, you know, pretty much bed rest
19 for a little while and, you know, even after that she would
20 just lay around a lot. I mean, she told me that, you know,
21 she just feels worthless because she can't do nothing. She
22 can't -- I mean, she said it's hard for her to even hold a
23 pencil and to write a letter.

24 Q Now, was a rollaway bed in the bedroom?

25 A Yes. There was a rollaway bed in mine and Deanie's
26 bedroom.

1 Q And how did that come about?

2 A It came about -- Deanie kind of got up and down
3 throughout the night, so she started off sleeping on the
4 rollaway bed where it wouldn't kind of wake me up in -- you
5 know, in the process. B.E. didn't really want to sleep in
6 the room, you know, by herself, so sometimes she would
7 sleep, you know, in the bed beside me. But, you know, she
8 would end up like kind of sideways with her feet in my back
9 waking me up, and I had to get up and go to work. So, you
10 know, I needed more rest than, you know -- I'm not saying,
11 you know, Deanie needed rest, but I had to get up and go to
12 work. So we ended up kind of swapping, you know, off and
13 on. I'd get in the rollaway bed and she'd sleep in the
14 other bed.

15 Q And did the sex life drop off appreciably after the
16 wreck?

17 A Not necessarily. We -- we've had a few times.

18 Q More than one January -- December 31st, right?

19 A Most definitely. Most definitely.

20 Q There was testimony about a video called Birthday Sex.

21 A Yeah. That's a video on Youtube. I mean --

22 Q That's -- and what kind of video is it?

23 A It's plainly about someone singing about birthday sex.

24 Q It's a song?

25 A Yeah. It's a song.

26 Q Did it have anything to do with pornography or

1 anything?

2 A No. There was no pornography in it. I mean -- no.

3 MR. WISE: All right. Thank you very much. Answer any
4 questions --

5 THE WITNESS: Yes, sir.

6 MR. WISE: -- Mr. Scott might have.

7 CROSS-EXAMINATION

8 BY MR. SCOTT:

9 Q The thing I've been wanting to ask you.

10 A Yes, sir.

11 Q What have you been smiling about all week?

12 A What I've been smiling about?

13 Q Yeah.

14 A I mean, I'm always like real cheery. I mean, I'm not
15 kind of like a down person, I would say.

16 Q Okay.

17 A I mean, I'm not trying to -- I mean, I've overheard
18 some people say here that all I do is smile, like in rude
19 comments.

20 Q All right.

21 A But I'm not doing that.

22 Q Okay.

23 A I mean, it's just who I am. I mean, my family will
24 tell you that.

25 Q If somebody thought you were smirking during testimony,
26 that's just not --

- 1 A No. No. No. No. I'm not smirking. I mean, I don't
2 -- I don't even know that term or even know how to.
- 3 Q All right.
- 4 A Even like rolling my eyes. I don't even know how to
5 roll my eyes. I mean --
- 6 Q You don't know how to roll your eyes?
- 7 A I mean, I probably could learn if you teach me. I
8 mean, I can --
- 9 Q All right. Let's see. We were talking about -- I want
10 to talk about L.L. first.
- 11 A Yes, sir.
- 12 Q How old is L.L. ?
- 13 A L.L. is -- he'll be turning 16.
- 14 Q Okay. And when's his birthday?
- 15 A Let's see. DOB -- DOB . I mean, I'm not
16 good with birthdays. I mean, I have five kids.
- 17 Q What's J.L. 's birthday?
- 18 A I know -- the only way I know their birthdays is I know
19 that P.E. 's and J.L. 's and L.L. 's is in the same month.
- 20 Q And what's P.E. - I mean, J.L. , her birthday is when?
- 21 A It's in DOB . I mean, I know all of them are in the
22 same month.
- 23 Q Month . You don't know a day?
- 24 A No, sir.
- 25 Q B.E. , when's her birthday?
- 26 A Let's see. B.E. is -- she was a Christmas baby.

1 Q She was born on Christmas?

2 A No. She wasn't born on Christmas, but it was during
3 Christmas. I believe the DOB , if I ain't mistaken.

4 Q DOB ?

5 A Yeah. DOB .

6 Q What year?

7 A I think in DOB .

8 Q She is six now?

9 A I believe so.

10 Q You believe she's six? You don't know how old your
11 daughter is?

12 A Well, I mean, I haven't seen them in over a year and a
13 half and it's been like real stressful on me.

14 Q Okay. All right. P.E. , when's her birthday?

15 A P.E. is in Month , also.

16 Q What day? Do you know?

17 A I could -- I think I could remember P.E. 's because I
18 used to race against a guy with a number that I didn't
19 really like and it was the 18th.

20 Q Okay. And how old was she?

21 A I believe nine.

22 Q Okay. A.E. , when's her birthday?

23 A A.E. 's is in DOB . The DOB , I believe.

24 Q Okay. And how old is A.E. ?

25 A She would be turning 14.

26 Q Okay. So she's 13 now?

- 1 A She's 13 now. Yes.
- 2 Q The BlueLine Rental --
- 3 A Yes, sir.
- 4 Q -- that was the last place you worked?
- 5 A Yes, sir. The last place I worked.
- 6 Q All right. And you were making, I think you said,
- 7 about 17 and some change?
- 8 A Yeah. Seventeen and some change.
- 9 Q How many hours a week?
- 10 A It varies on the overtime and whether they wanted me to
- 11 stay if someone was bringing some equipment in late. So, I
- 12 mean, it varies.
- 13 Q Typically, would you just work a 40 hour week?
- 14 A Yeah. Typically, it'd be like a 40 hour week.
- 15 Q Okay. So before taxes, I have \$680 a week.
- 16 A No. That's not right.
- 17 Q Well, I just did the math. I did 17 times 40.
- 18 A I mean, even on my bank records, like 900 and
- 19 something, because I claimed two or three dependants.
- 20 Q Okay. So I've got about 1,360 a month. 1,360 a month
- 21 that you were -- I mean, every two weeks.
- 22 A Yeah. It was every two weeks.
- 23 Q So 1,360 every two weeks?
- 24 A I mean, roughly, it'd be around nine to a little over
- 25 1,000.
- 26 Q And then, did you pay child support on P.E. and A.E. ?

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1 A Yes. I paid child support on A.E. and P.E. .

2 Q Okay. So what was your take home?

3 A Let's see. It was biweekly. So I was paying 375 out
4 of my check every time I got paid.

5 Q \$375?

6 A Yes. It was biweekly, so it was 750 a month.

7 Q Okay.

8 A And plus, I had benefits on them. I was paying that,
9 too.

10 Q Well, so really what I'm saying is, the 89,000, that
11 was Deanie's money. That was her payment for that nearly
12 fatal wreck, I guess, she had -- or not -- maybe not fatal,
13 but, I mean, life-changing wreck.

14 A Yeah. You're correct. But from my understanding, when
15 we sat down with her lawyer, he sued on my behalf and her
16 behalf.

17 Q Okay. Did you get in a wreck?

18 A I did not get in a wreck. No, sir.

19 Q Did you have any injury?

20 A No, sir. Not physically injured.

21 Q Okay. So that 89,000 was for her wreck that she was in
22 and she got injured in, correct?

23 A Yeah. It was for her wreck. Yeah. She was in it.

24 Q Yeah. That's right.

25 A Yes, sir.

26 Q So that 89,000 -- and you had access to it, right?

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1 A Yeah. We both -- we both had access. It came in both
2 of our names.

3 Q She had agreed to give you access to it even though it
4 was money for her pain and suffering, I guess, and her wreck
5 and injuries, right?

6 A Yes, sir.

7 Q She was concerned about spending money and you were
8 spending some money, too, weren't you?

9 A Yes. I was spending money.

10 Q Okay. I mean, she had to remind you a few times,
11 shouldn't we be saving, Cliff?

12 A No. Not necessarily. I mean, my payroll check was
13 going into the --

14 Q Look at this real quick and just see if you recognize
15 it.

16 A Yes. I remember this text. I was at Harbor Freight
17 buying tools for work.

18 Q Okay. Well, I mean, does it not say -- she says,
19 "Don't spend a lot of money. We need to save, if possible".

20 A Yeah. I understand that.

21 Q So she's reminding you, too, Cliff?

22 A Yes, sir. Yeah, she is.

23 Q Okay. So it seemed during your direct testimony with
24 your lawyer you were always having to tell her we've got to
25 save money, but it was kind of a two-way street, correct?

26 A It was kind of a two-way, but it was more -- I mean,

1 I'm at work, my payroll's going in there and we're trying to
2 build up enough money to get, you know, a good home and have
3 education for the kids as they got older.

4 Q With your paycheck, making \$750 -- every two weeks?

5 A Yeah. About right along in there, after child support.

6 Q All right. After that. How long would it take you to
7 make \$89,000?

8 A Well, if I was still at my job, I would have been
9 making \$21 an hour. So it probably wouldn't have took long.

10 Q To save up 89,000?

11 A Yeah. I'm a good saver. You can -- my parents can
12 vouch for that.

13 Q With child support and making 17 or \$21 an hour, you
14 think you could save up \$89,000 pretty quick?

15 A Not in a year's time. No, sir.

16 Q No. You wouldn't be making \$89,000 in a year?

17 A No, sir. No.

18 Q But regardless, she shared that money with you,
19 correct?

20 A Yes, sir.

21 Q And you, at some point, made the decision to put it in
22 a SunTrust account; is that right?

23 A Yes, sir. We both made that decision to put the --
24 when we got the check, her lawyer called, and he called me,
25 and said the check was ready. Me and her both went on our
26 way to get it, we both signed the back of it because our

1 names are on it and we deposited into my account. She
2 agreed to put it into my account because it would have
3 cleared the next day.

4 Q Okay. And then, you made the decision to put \$25,000
5 into a money market account?

6 A We both agreed to do that.

7 Q All right. You did that in January 12th? I believe
8 that was the testimony earlier. Do you need to see the --

9 A I believe it was.

10 Q Okay. All right. And so, you would know, though, that
11 -- what did you call Deanie's dad?

12 A Johnny.

13 Q Okay.

14 A I called him Johnny.

15 Q Okay. So you took that money out on January 12th. Do
16 you know he went to ICU on January 9th? So Deanie was with
17 him in the ICU looking after her dad and you took that money
18 out and put it into a money market account?

19 A Yes. She was there and we both agreed on it.

20 Q Okay. How --

21 A Because I had -- that day I made the money market
22 account, we had to have two signatures. One was mine and
23 the second was hers. She told me to go ahead and go there
24 and open it up, and then the woman gave me the piece of
25 paper to bring home for her to sign, and then we had to take
26 it back.

1 Q Okay. Why was that something you needed to do while
2 she was with her dad in the hospital?

3 A It's just something that we both agreed upon.

4 Q I mean, why right then? Why was that the time to do
5 it?

6 A I couldn't tell you, sir.

7 Q Why not?

8 A Because I do not know.

9 Q And then, you actually took some money and you bought a
10 -- is it a Chrysler Pacifica?

11 A Yes, sir. I did. My truck -- I had a Ford F150. It
12 was down. The motor was pretty much shot. I had no way
13 back and forth to work and Paula needed her vehicle to go
14 back and forth to the hospital. Me and Deanie both agreed
15 upon to get me a car to get me back and forth to work.

16 Q Okay. So you bought a Chrysler Pacifica. How much did
17 you spend on that?

18 A I believe it was around maybe 1,800 or so.

19 Q \$1,800?

20 A Yes.

21 Q Okay. And what did you do with the truck? It started
22 working again, didn't it?

23 A No. No. The truck, they came and got.

24 Q Okay. And who helped you picked out the Pacifica?

25 A The guy -- it was on Facebook. I found the picture, I
26 showed it to Deanie and Deanie said go ahead and get it.

1 Q J.L. helped you pick that one out, though, didn't she?

2

3 A No, sir. She did not.

4 Q She didn't?

5 A No.

6 Q Okay. But it's safe to say both of you all were
7 dwindling the money in that account; is it not?

8 A Yeah. At that time, yes, sir.

9 Q I'm still trying to follow this safe and figure out why
10 it's relevant. Tell me about -- describe the safe. Was it
11 a big safe, a little safe?

12 A It was maybe like this wide (indicating), and maybe
13 this tall (indicating), all metal with a big latch on the
14 front with a little round dial on the front. But it wasn't
15 a dial, it was a push button.

16 Q Okay. And you told J.L. ? Why did you tell J.L. the
17 pass code?

18 A I did not tell J.L. the pass code.

19 Q Well, if memory serves, when you all went to the beach,
20 you testified maybe 30 minutes ago that you had her type in
21 the code.

22 A That's correct. Because me, Deanie, J.L. and B.E.
23 went up to the building and we was all in there. J.L.
24 wanted to punch in the code, so I told her the code.

25 Q Okay.

26 A Deanie was in the building with us.

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1 Q You didn't tell Deanie the code, but you told J.L. the
2 code?

3 A Deanie did not want to know the code. It was on their
4 property.

5 Q Why wouldn't she want to know the code? I don't --

6 A Sir, I could not tell you that.

7 Q Okay. Now -- all right. So the safe, it was -- it was
8 a big, heavy safe?

9 A It had some weight to it. Yes, sir.

10 Q Well, you testified earlier that you struggled with it.

11 A Yeah. I struggled with it a little bit trying to
12 remove it from the truck.

13 Q You're a muscle-y man. You've got some muscles?

14 A I mean, I used to be. But, I mean, not -- I done got
15 some age on me.

16 Q How old are you?

17 A Thirty -- thirty-two.

18 Q Look at that.

19 A Yeah. That's me on a float.

20 Q When was that?

21 A That was this past maybe -- June or July maybe.

22 Q A couple months ago?

23 A Yeah. That don't -- I mean, to me, I look kind of fat.

24 Q You think you're a fat guy?

25 A Yeah. I'm a fat guy.

26 Q Is that why you can't get up there to the porn that's

1 up in the loft?

2 A Yeah. Because I was scared I would fall in because of
3 all the weight up there.

4 Q All right. And why can't J.L. -- I mean, not -- you
5 knew J.L. could get up there. That's who you sent up to get
6 the porn. Why can't L.L. go up there?

7 A Because he didn't want to get up there.

8 Q All right.

9 A It was -- it was all of our decisions to -- because
10 J.L. was the smallest and it was packed out, for me to hold
11 the tote up -- every tote that we put up there and -- like
12 right there at the edge, and push and she would pull it.

13 Q How much do you weigh, or how much did you weigh -- how
14 much do you weigh in this picture?

15 A Maybe 195. Somewhere along there, give or take.

16 Q Okay. And that doctor said J.L. was 81 pounds, I
17 think. Is that what your recollection is?

18 A I think it was like 84. Somewhere along there.

19 Q I think we've got the records, but I remember 81. So
20 you're 195 and she's 81 and you've got some muscles on you.
21 You can pick up a safe.

22 A I can't --

23 Q You struggled with it, but you could pick it up.

24 A I couldn't pick the whole thing up by myself.

25 Q Who helped you?

26 A Deanie helped me remove it from the back of my truck

1 that night?

2 Q You think Deanie could pick it up with her broken neck?

3 A Yeah, she can. I've seen her weed-eat out in the yard
4 with a broke neck.

5 Q And she can pick up that safe?

6 A Not by herself. No, sir.

7 Q Okay. But, anyway, my recollection of the testimony
8 was you go to get your clothes and you're driving down the
9 driveway and can see that broken latch on there. And so,
10 you say, I'm going to check it out.

11 A Now, hold on a minute. I didn't understand what you
12 just said.

13 Q What were you talking about the broken latch on that
14 outbuilding?

15 A You said broken glass.

16 Q Latch.

17 A Oh, latch.

18 Q Isn't that what you talked about?

19 A Yes, sir. The broken latch.

20 Q And the door was pried open?

21 A Yes, sir. It was.

22 Q And you could see that from the driveway?

23 A Okay. Not from the driveway. As I explained to Rauch
24 -- okay? -- we had to have a police escort to escort us out
25 there to that property that day, you know, because of what
26 all was going on. They farmed the land. The grass was so

1 tall you couldn't see what was going on at the house because
2 the house was too far off the road. The grass would grow
3 tall. And me and my dad figured the cops may already have
4 been down there. We couldn't see. We didn't know. So we
5 drove in, and as we drove in there's a road that kind of
6 does like this (indicating), and it goes to the barn. Well,
7 right when the road goes like this that little building is
8 right there, and I noticed the door was swung open and you
9 could see the latch kind of all beated (sic) up and the wood
10 like pried.

11 Q All right. And then, you wanted to go over there and
12 get some winter clothes?

13 A I wanted to go in there and get, you know, some of my
14 clothes, because I didn't receive -- when they put all my
15 stuff out, all my stuff.

16 Q You said you went to go get your winter clothes out of
17 there.

18 A Yeah. I went to get -- yeah. As much as I could find
19 that was mine.

20 Q Why did you need winter clothes in May?

21 A Because I wanted to go ahead and get as most as I
22 could.

23 Q Okay. And that's when you were looking for the safe,
24 though, right?

25 A I wasn't really looking for the safe. I wanted to have
26 proof that there was a safe in there.

1 Q Okay.

2 A And my father was with me.

3 Q All right. How many of the -- how many of J.L. 's
4 performances did you go to? The dance performances.

5 A Well, every competition they had, I was pretty much
6 there with all of the kids. L.L. danced, J.L. danced. They
7 both danced.

8 Q Okay.

9 A Because I was the one mostly driving, you know, to the
10 destination where they were going to dance at.

11 Q Okay. And, I mean, the dances. What kind of dances
12 were they?

13 A I mean, there were some dances that were kind of a
14 little, you know, over the limit. But, you know, the bigger
15 -- when the bigger kids gets up there and dance they kind
16 of, you know, show more than what, you know, the little kids
17 was.

18 Q Okay. Was J.L. a big kid or a little kid?

19 A She was like -- she wasn't probably like one of the
20 little kids, but she was in the -- like the big girl's
21 dance. Like team dances and stuff like that.

22 Q Okay. Were there provocative dances?

23 A Some of them that I seen, yes, but not most of them.

24 Q Okay. Well, did you ever say, you know, this is it, I
25 can't stand this, I'm not coming to these anymore?

26 A There's been times and there's been times that I have

1 talked with Deanie and discussed it. You know, I don't -- I
2 don't think, you know, my daughter should be waved above
3 someone's head with her legs out and the crotch behind the
4 dude's head. You know, I just don't --

5 Q You don't like that?

6 A I don't like that.

7 Q Did it stop you from going to watch?

8 A Well, I did it to support my kids. I was always there.
9 Just like all my kids had activities. I tried my best to be
10 in one place, you know, but I had -- well, in five places
11 just being me.

12 Q What was it that was the most provocative to you? Was
13 it clogging, ballet or jazz?

14 A It wouldn't have been clogging. It would have been
15 more like hip-hop kind of deal.

16 Q You don't like that?

17 A Yeah. I mean, in most videos in this day and time, if
18 you turn on a video and watch hip-hop, I mean, there's a lot
19 of -- too much shaking going on.

20 Q Yeah. That hip-hop is provocative. How do you compare
21 that to that tube of porn that you've got back there?
22 What's more provocative to you?

23 A Well, that tube is something -- I mean, it sounds --
24 and I know it is provocative, but it's something I
25 accumulated over the years when I was with Ms. Newsom and I
26 didn't really keep it out for anybody to look at it.

1 Q You're kind of just a connoisseur? Like a collector?

2 A Well, I kind of -- I kind of collected it.

3 Q Okay. Would you be comfortable like taking it out and
4 showing us some of your favorite collectibles, I guess?

5 A No. That's -- I mean, that's kind of personal.

6 Q I see.

7 A I mean, when I moved it, I always moved it and it had a
8 lid on it. Apparently, if you look at the tote, the tape
9 that was on there has been ripped off and there's no lid on
10 it.

11 Q There's certainly not a lid on it.

12 A Yeah. The tape that I had on it has been ripped off
13 and --

14 Q Okay.

15 A -- the lid -- on top of the lid, I had wrote, Cliff's
16 stuff, do not open.

17 Q Would you agree with me that it's obscene stuff?

18 A Yeah. I mean, it's got some obscene stuff. But what
19 man -- you know, you may not look at porn, there might be
20 men here that don't, but there are some men that do. I
21 mean, they read it for the articles, you know, and it's just
22 kind of -- I mean, I understand where you're getting to.

23 Q Okay. You read those magazines for the articles?

24 A Well, I mean, you read it for the articles and you look
25 at, you know, the pictures and stuff. But, I mean --

26 Q Come on.

1 A I'm being -- I'm being honest with you.

2 Q Okay. And in the movies, what artistic value do those
3 hold for you?

4 A It just -- like it's kind of like roleplay like, you
5 know, realistic kind of deal.

6 Q You like the storylines?

7 A Well, it's not really like a storyline. It's just got
8 like -- I mean, it's hard to explain.

9 Q Well, I mean, now's your chance. Tell me your favorite
10 storylines.

11 MR. WISE: Your Honor, if I may, I think he has
12 explored this area as far as it needs to be explored.

13 THE COURT: I understand. I'm going to give him a
14 little bit more latitude. He is on cross. So go ahead.

15 Q Tell some of your favorite storylines. Tell me some
16 things -- you've got low T. You testified about that.
17 Testosterone.

18 A Yes.

19 Q Low testosterone. How does that effect you?

20 A It is harder for me to like get an -- you know, an
21 erection.

22 Q But you're still aroused. I mean, like you said, some
23 men like looking at porn.

24 A I mean, yeah. I mean, some men like looking at it, but
25 -- there was somewhere that I read that, you know, maybe if
26 you start to kind of like looking into magazines and

1 everything, it was boost your testosterone.

2 Q What medical journal was that?

3 A I mean, I'm not -- I'm not no medical person. But, you
4 know, it's something -- I was trying to help me and Deanie.

5 Q I see. Instead of being with your wife, you looked at
6 porn in hopes that would boost your testosterone. And tell
7 me some of your favorite storylines. What does Cliff
8 Eubanks -- I kept asking all your family. You know, what
9 are your sexual interests and desires? What are you
10 attracted to?

11 MR. WISE: Your Honor, that is going too far beyond
12 anything that's relevant to this case.

13 MR. SCOTT: From the testimony, Your Honor, he has low
14 testosterone, he has erectile dysfunction, dancing is
15 provocative and --

16 MR. WISE: Your Honor, if we're going to discuss this
17 in detail, it should be out of the presence of the jury.

18 (Whereupon, a sidebar was held.)

19 THE COURT: Mr. Scott, please continue, sir.

20 Q All right. I'm going to ask the million dollar
21 question. Are you attracted to young girls?

22 A If they're over 18. Yes, sir.

23 Q Okay. Over 18. Are you attracted to teens?

24 A If they're over 18.

25 Q Are you attracted to younger looking females?

26 A If they're over 18.

1 Q I'm not asking you if you're attracted to women over

2 18. Are you attracted to younger appearing females?

3 A No, sir. I mean, you need to describe how --

4 Q All right.

5 A -- what you mean by young.

6 Q All right. I will. Let me ask you about a couple.

7 MR. WISE: Your Honor --

8 THE COURT: This now fair game.

9 Q Let me ask you if you've heard of any of these --

10 MR. WISE: Your Honor, I'd like to be heard.

11 THE COURT: Ladies and gentlemen, I need you to step

12 outside. We'll have you back in just a second. Okay?

13 Don't talk about it yet.

14 (Whereupon, the jury exited the courtroom at 5:56 p.m.)

15 THE COURT: All right. Solicitor, I assume that you're
16 wanting to now inquire of the witness about the sites that
17 were recovered off of his cell phone?

18 MR. SCOTT: Yes, sir. And I've got a number of cases
19 -- or rather two cases. During direct, intent was
20 questioned regarding J.L. sitting in his lap a number of
21 times. That's what I was waiting for and they went for it
22 and it was the intent. That was not his intent. So now
23 it's fair game. And then, after he indicated that he -- no,
24 he is not attracted to younger females, it is my belief that
25 he has opened the door, at least, for me to question him
26 regarding his familiarity with these. And then, he can

1 either deny or accept these websites and his familiarity
2 with them. If he denies it, I would hold the right to call
3 rebuttal witnesses. If he accepts familiarity with these, I
4 can move on.

5 MR. WISE: Your Honor, here's the problem. During the
6 break, I got in touch with Lawrence Daniel, who is a
7 computer expert, cell phone searcher and all that, and I
8 went over this with him. All right? The problem is this.
9 Based upon what they've given me and what I've seen and
10 discussed with him, these cookies they refer to could
11 possibly be a pop-up site where if you're going on a site
12 that says, you know, my favorite girlfriend or sex with my
13 favorite girlfriend, up pops a site that's one of these.
14 Never looks at it, but it would show up, as I understand it
15 from Mr. Daniel, as a, quote, cookie because it popped up on
16 his screen. It doesn't mean he looked at it or anything.
17 It doesn't mean he intentionally went to it.

18 Now, if they want to go into that, fine. I would
19 simply request this. That after the testimony in this case,
20 we recess until I can get the CD from Mr. Daniel in North
21 Carolina and have him look at it, possibly even over the
22 weekend, and get down here Monday or Tuesday of next week,
23 and if they want to do that, that's fine. But I don't --
24 one, I don't think it's relevant because it just goes to
25 show -- I mean, they have not even come close to
26 establishing that any of these sites are illegal and Mr.

1 Daniel tells me that he can't figure out how they would be
2 legal -- illegal. So you have -- you have someone going on
3 a -- on a porn site that's totally legal and they're going
4 to use it to influence the jury.

5 Now, I think that falls directly under the case out of
6 Lexington where they had all the sex stories on the rape
7 case. Showing that he likes sex doesn't mean he's guilty of
8 child sex abuse.

9 THE COURT: All right. Mr. Wise raises a point that in
10 my personal experience has some validity. I will just throw
11 it out there. Okay? My wife -- there's a furniture company
12 called Hooker Furniture and about eight years ago she was
13 looking to purchase something from Hooker Furniture and she
14 Googled that and there was a whole bunch of stuff that
15 started popping up on her computer completely unrelated to
16 the new chaise lounge that she was looking for. Until Mr.
17 Wise mentioned that, I mean, that -- without an expert, we
18 do run the risk, in my opinion, perhaps, of going somewhere
19 that's not accurate. At the same time, I feel like,
20 Solicitor, you are entitled to inquire about whether he
21 visits internet sites and that kind of a thing. But if
22 these are in fact just cookies that we're inadvertently --
23 like my wife when she entered in Hooker Furniture. Okay? I
24 mean, maybe the Defense has a point. I don't know.
25 Obviously, these cookies don't pop up just for any old
26 reason.

1 MR. SCOTT: Right. And these are multiple cookies,
2 Your Honor. They're all the same type. He can say, I don't
3 know what you're talking about, I don't know how they got on
4 my phone, just like your wife did. But the content matter,
5 the multiple sites, the multiple days.

6 THE COURT: I understand. But if I'd gone in my wife's
7 computer without that explanation, and then saw some of the
8 stuff which was popping up, I would -- I would sincerely
9 suspect --

10 MR. SCOTT: It might be --

11 THE COURT: -- that she was into -- that she was into
12 some stuff that being married to me maybe she shouldn't have
13 been into, if you understand what I'm saying. If you want
14 to question him about searching online for porn, I feel like
15 -- I think he's -- I think he's opened that door, but I
16 don't know about specific instances.

17 MR. WISE: Your Honor, he hasn't open that door because
18 he answered the question truthfully, I look at -- no -- at
19 girls over 18 -- 18 and over. That has opened the door no
20 more than the green box did. I mean, he really hasn't -- it
21 gets too collateral and it's too prejudice. Under the 404.3
22 analysis, it clearly is more prejudicial than probative.

23 MR. SCOTT: If you look at *State v. Miller*, that's the
24 Lexington case he keeps talking about, it cites a case out
25 of Oregon and that is -- or *State v. Nelson* is the one out

1 of Lexington. Nelson cites *State v. Miller* out of Oregon.
2 The key issue is intent in that case. In the Lexington
3 case, he said I didn't do anything. So intent really wasn't
4 an issue. That's why the sex toys and all that come in.

5 In the *Miller* case, it was kind of like this. He said
6 there was content -- contact, but it wasn't my intent. It
7 was more that my hand slipped down her pants, that kind of
8 thing. Thereafter, they were allowed to bring in the -- it
9 was a sex magazine at that time. It was focusing on girls
10 who appeared younger than 18. So it wasn't internet
11 searches. It was magazines. But the same issue. And
12 that's why in *Nelson*, it was different. He says not only
13 did I not have intent, it didn't happen, period. Our case
14 is different. He's talking about sexual contact, but it
15 wasn't his intent.

16 THE COURT: The situation involved the ejaculation on--

17 MR. SCOTT: Yes, sir. Yes.

18 THE COURT: -- when the girl's -- when the victim --

19 MR. WISE: That's the intent on criminal sexual conduct
20 in the third degree.

21 THE COURT: I understand. Mr. Wise, he answered was it
22 his intention to ejaculate when the victim/complainant was
23 sitting on his lap, he's allowed to explore that. You are
24 perhaps correct that the central question in this case is,
25 A, whether it happened, B, what his intention was, at least

1 with regard to various charges. Okay? Perhaps his defense
2 -- the first and second, as I'm seeing this, to the CSC
3 first and second is it didn't happen. With regard to lewd
4 act, I didn't have any intent. And you're nodding your head
5 as if perhaps that's where you're going with this.

6 MR. WISE: I understand where we're going. I just
7 don't know how searching a porn site of adults establishes
8 an intent anymore than -- I mean, because it just -- I don't
9 see how that establishes a specific intent on that.

10 THE COURT: Well, the witness has testified that he's
11 got erectile dysfunction. We don't know the degree of which
12 he does. And yet then he's testified, okay, I do have sex
13 with my wife. It's more than that one occasion that she
14 testified to. So clearly this is not a case of impotence or
15 something like that.

16 MR. WISE: Right, and we never pretended -- pretended
17 it to be.

18 THE COURT: The Defendant, in my opinion, has opened
19 the door by saying it was not his intent. I'm going to
20 allow a limited inquiry on we know he views porn and DVDs,
21 we know he views it in magazines, it's -- I'm going to let
22 them ask one additional question, whether he accesses
23 online, and see what the answer is. Okay? But for reasons
24 that you brought out about the cookies I think you are
25 correct. I'm going to sustain your objection as it relates
26 to direct questions about those sites because it is -- the

1 representations you've made from your North Carolina expert
2 are the only representations I've got to go on from an
3 expert on this kind of a deal. So --

4 MR. SCOTT: But, Judge, even that, this is a phone call
5 he just had. He's had months and months to have that expert
6 look at that disc. This thing's been on the docket for six
7 months. He could have had that expert review it.

8 MR. WISE: Your Honor, I am tired of that, and I'm
9 going to tell you why. They didn't know about those
10 websites until this week. I asked him specifically, when I
11 started to spend several hours looking at that download, is
12 there anything -- any obscene pictures on there. No, there
13 isn't. Thank you very much. I closed the file and I quit
14 looking. And then they're coming in here today, or
15 yesterday, and they tell me, oh, there are these cookies on
16 there that we found the day before. So, to say I'm to blame
17 is simply not correct.

18 THE COURT: I understand.

19 MR. SCOTT: In discovery, don't take a Solicitor's word
20 for what you may find. Look -

21 MR. WISE: I will remember that in the future, Your
22 Honor, and abide by it.

23 MR. SCOTT: And I'll stand by there's no obscene
24 pictures that I found. There are obscene website searches.

25 THE COURT: All right. You gentlemen are always so
26 very kind and so very polite, I must conclude that perhaps

1 some of the frustration is due to the lateness of the hour,
2 but it is my intention to continue with this witness until
3 finished.

4 My ruling stands. I respect your respective positions.
5 I appreciate the passion that you articulated a few moments
6 ago, as well as perhaps some of the frustration that maybe
7 is being exacerbated by maybe a long day.

8 MR. WISE: And understand, his being on the stand I
9 can't talk to him. I would request permission to talk to
10 him about contacting Dr. Brownlee tomorrow morning.

11 THE COURT: You may by all means. You want to do that
12 now or you want to do it when you break?

13 MR. WISE: I want to do it in the break, talk to him
14 about whether he needs to get Dr. Brownlee. So I need to
15 have some conversation with him about his --

16 THE COURT: Well, I wasn't going to break for the
17 evening. We're going finish with this witnesses.

18 MR. WISE: Oh, okay. Excuse me. I got the impression
19 you were --

20 THE COURT: No. It is a late hour but we're going to
21 finish. Okay? Let's have the jury, please.

22 (Whereupon, the jury entered the courtroom at 6:07
23 p.m.)

24 THE COURT: Ladies and gentlemen, thank you for your
25 continued attention on this case. Solicitor, if you'll
26 continue, please, sir.

1 Q Had you done internet searches where you looked for
2 young looking girls?

3 A I have done searches.

4 Q Have you done searches where you looked for younger
5 looking girls?

6 A Yes, sir.

7 Q Now, the statement -- you gave a couple of statements.
8 We talked about those. State's No. -- State's Exhibit 1.
9 This was your first chance to tell your side of the story to
10 law enforcement; was it not?

11 A Yes, sir. You're correct.

12 Q You went to the station?

13 A Yes, sir.

14 Q And I want you to -- I'm going to read it and I want
15 you to tell the jury what you meant by these statements.

16 A Can I have like a copy?

17 Q Yeah. Well, here, take that. Following along State's
18 No. 1. I'll read it from the board.

19 A Okay.

20 Q "Came in to see Hunnicutt about the allegations my
21 daughter, J.L. , said towards me. She says I kissed
22 her neck, rubbed my arms across her chest, touched her butt
23 and put my hand down her pants. As far as I can remember, I
24 have not touched her in any way that I can remember to make
25 her feel this way." Why did you use the words "as far as I
26 can remember"?

1 A Just as far as I can remember, you know, while I'm
2 sleeping.

3 Q Well, so maybe it happened but you just didn't
4 remember? Is that why you wrote that?

5 A No, I didn't mean it in that way. No, sir.

6 Q That's what I'm saying. This is your chance. What did
7 you mean "as far as I can remember"? That's your
8 handwriting, isn't it?

9 A Yes, sir. It is.

10 Q As far as I can remember I've never touched her that
11 way. What does that mean?

12 A Well, when you're sleeping, I mean, you're like half
13 and half. And all I was stating was as far as I can
14 remember I had never touched her while laying beside her.

15 Q But it may have happened though?

16 A No. I mean, I'm not saying that it may or may not.
17 It's just -- that's just the term -- the term that I used.

18 Q "She has fell asleep at times with me and my daughter
19 B.E. in the bed, but I have also picked her up and took her
20 to her bed and I have also fell asleep in my bed watching TV
21 with me waking up with her next to me. I have no clue what
22 goes on when I sleep, and I'm not saying I did or I didn't
23 while I was asleep." So instead of saying, "She said what?
24 I would never. I have never. I will never touch her." You
25 said, "Well, as far as I can remember I didn't."

26 A Yeah. I mean, as far as I can remember I've never

1 touched her while I'm sleeping.

2 Q So you didn't deny it, but it's maybe I did and maybe I
3 didn't.

4 A Well, I mean, you can be sleeping beside somebody and
5 rub across them the wrong way. I mean, in your sleep you
6 move around. When I sleep I move around a lot.

7 Q Have you ever woken up with your hand down somebody's
8 pants?

9 A No, sir.

10 Q And then, you didn't really tell the whole story then,
11 did you?

12 A That's -- that's my story that I told.

13 Q Right. But that really wasn't the whole story, was it?

14 A That was the whole story.

15 Q Well, that brings me to statement number two.

16 A Yes, that -- it was statement number two when I went to
17 speak to them the second time.

18 Q I know, but what I'm saying --

19 A See, you kind of got me confused there. You were
20 saying --

21 Q If I confuse you tell me to stop, Mr. Scott. Repeat
22 your question. I don't want to confuse you.

23 A I didn't know you was coming back with that one. I
24 thought you was still on this piece of paper here. I'm
25 sorry.

26 Q Stay right there.

1 A Okay.

2 Q What time did you go to give statement number one?

3 A That statement was completed at 10:45 a.m.

4 Q And after you talked about well, maybe I did and maybe
5 I didn't, you wrote end of statement. Goodbye.

6 A Yes, sir.

7 Q And you walked on out. But you left a lot of
8 information untold, didn't you?

9 A Yes, sir. According to the next statement.

10 Q According to -- why didn't you tell them the other
11 information?

12 A Because that day I had not had my medicine.

13 Q Tell me about the medicine.

14 A The medicine is for my heart and for my blood pressure.
15 I have very thick blood. I have very -- the oxygen level in
16 my brain, it causes a problem when you have thick blood.

17 Q Well, did you say, guys, I'm not really feeling like
18 doing this today. Can we do it when I get some medicine in
19 me?

20 A I understand that. This is the first time I've ever
21 been in trouble. I didn't know what I could do and what I,
22 you know, couldn't do. I tried to do the right thing and
23 just write down as far as I can remember at that time.

24 Q Why didn't you go to the doctor and get some of that
25 medicine that you needed?

26 A Because I already had the medicine at their house. And

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1 how could I get more medicine showing that I already had
2 some already.

3 Q Heart medicine? The doctor's going to give you some
4 heart medicine. If you really need that bad, he'll give you
5 some.

6 A Well, we got in touch with a cop and he ended up
7 getting us where I could get my medicine.

8 Q Okay. So you did get it?

9 A I did get it later on that day.

10 Q But you didn't need it when you went in this time?

11 A Yes. I didn't take it -- I didn't take it that night,
12 and then I didn't take it all that day when all this came
13 out. And then after it came out I did not eat. I mean, I
14 was confused. I went home and pretty much stayed up all
15 night on my mom and dad's couch. And then that morning is
16 when he called and my mind was not in the right place.

17 Q I see. And so, maybe that's why you left some of this
18 stuff out?

19 A I mean, pretty much. Yes, sir.

20 Q But then you got your medicine in you? You got some
21 later that day?

22 A Well, I got some late that day. Yes, sir.

23 Q And then that night you went back up there, right?

24 A Yes, sir. Yes, sir. You're correct. Went back up
25 there right around 4:00 or 5:00. It was kind of -- I mean,
26 it wasn't too late, but it was just enough to where the sun

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1 was still shining into that room he took me in.

2 Q And that brings us to statement number two.

3 A Yes, sir.

4 Q You want me to read that one?

5 A You can read it in -- I mean, however you want to do
6 it.

7 Q You don't want to read it?

8 A I mean, I'll read it. I mean --

9 Q Statement number two. That's when -- let me ask you.
10 Would you have told them that story had they not told you,
11 hey, man, maybe we got you on video? Would you have still
12 told them that story, or did they kind of fool you into
13 telling some truth there?

14 A Well, they kind of put me in a spot to where I've never
15 been in before and I'm trying to be honest. I was scared.
16 I mean, like I said, I've never been in trouble. I didn't
17 know how these things worked.

18 Q Well, the way it works for future reference, when you
19 get your Miranda warnings and they tell --

20 A See, that's -- that's another thing. With Miranda
21 warnings, I know they mentioned about it. But, you know,
22 the first time, you know, I was -- I was drowsy. I mean, it
23 was hard for me to even understand what was going on.

24 Q You had momma and daddy with you the second time.

25 A They -- see the first time when we went it was just me
26 and Hunnicutt when I went into the room. Also, his phone

1 rang and said that the DSS lady was on her way up. She came
2 in that room, handed me a card with her name and number on
3 it.

4 Q Yeah. Let's talk about number two though. Momma and
5 daddy came right -- or was it sister?

6 A It was -- it was my father and my sister and they
7 stayed downstairs --

8 Q Yeah, okay.

9 A -- because they had to drive me.

10 Q Did you say, guys, I don't know. Should I do this?
11 Should I go in there and tell the truth or not?

12 A I was -- I was trying -- I was trying to do the right
13 thing. And I'm a truthful man. I try to do the right
14 thing. I stick by whatever I do. I mean, that's just who I
15 am.

16 Q Are you sticking by this statement?

17 A Yes, sir. I wrote this statement. I'm ashamed of it
18 and I wish it never happened.

19 Q Right now you wish it never happened or back then?

20 A Back then and now. I mean, I wish it never happened.

21 Q When you got caught that's when you wished it hadn't
22 happened, right?

23 A I didn't get caught.

24 Q You didn't get arrested for this?

25 A Yes, I got arrested. But I was also tricked in saying
26 that there was a DVD which there was not.

1 Q You wouldn't have admitted to that had they not done
2 that, would you have?

3 A I would have told -- if they would have told me that
4 they had some kind of camera in that room, you know, it -- I
5 would have -- I would have told them. I mean, I was trying
6 to be honest and straightforward with them.

7 Q But you weren't the first time. It was only the second
8 time when they had to tell you about this camera and come
9 forward with this, talk with Hunnicutt as far as what went
10 on in the barn. That was myself and J.L. was working
11 tearing apart pallets, cleaning up. I went to sit down.
12 Was it in that chair? That picture of that chair that we
13 have?

14 A No, sir. It was not.

15 Q That's not the chair?

16 A That's not the chair.

17 Q What did that chair look like you sat in?

18 A It was more like a lawn chair, like you put out in the
19 yard.

20 Q You weigh about 195 pounds when this happened? You
21 said you used to be more.

22 A Yeah, roughly around probably 210 or so.

23 Q Two hundred and ten pounds --

24 A And I was having health issues.

25 Q Huh?

26 A I was having health issues at the time.

1 Q Why you out there tearing up pallets and working out
2 there doing manual labor?

3 A Because that's just -- that's who I am. I like -- I
4 like to stay busy. I mean, I like woodworking. I like -- I
5 mean, it's relaxing.

6 Q Okay. You got health problems and you're down there
7 with J.L. tearing up pallets, doing work. Go to sit down
8 and J.L. came to me, sat in my lap. Eighty-one pound J.L. ,
9 or was she less than that then? More or less 81 pounds?

10 A I couldn't tell you.

11 Q She was 81 after the disclosure when she got weighed by
12 Dr. Pritchard. So it was maybe less or maybe more?

13 A I couldn't tell you, sir.

14 Q Two hundred and ten pounds. Eighty-one pound J.L. sat
15 in my lap and started wiggling on my leg and moving around.
16 Was it feeling good?

17 A I mean, not -- not necessarily like --

18 Q Hey, come here. Can you come down? Would you mind
19 stepping off the stand?

20 A What do you -- what do you want me to do?

21 Q I want you to show the jury how she was doing her butt.

22 A I mean, if I turn --

23 Q Yeah, move your seat out. If they can see it, because
24 I want you to show them the dance and the wiggle and the --

25 MR. WISE: Your Honor, I don't -- I don't know if this
26 is a proper demonstration even because it's -- having never

1 heard of it before.

2 MR. SCOTT: I want to see it demonstrated.

3 THE COURT: If he's able to pull it off, then he's able
4 to pull it off. Let's see if he can do it. Go ahead.

5 Q You play J.L. . Okay?

6 A I play J.L. ?

7 Q I want to see how she was wiggling in your lap. Do you
8 want me to sit in the chair and you wiggle on me?

9 A No. You're a man. I'm not --

10 Q All right. Stand up. Pretend there's somebody sitting
11 in the chair. Now wiggle like she was doing.

12 A I mean, she was starting in like on my leg and she was
13 rubbing her butt around in like a circular motion.

14 Q Yeah.

15 A And then she started moving closer to me. And then by
16 the time I'm trying to push her away that's when it -- you
17 know, it happened.

18 Q Okay. So she was just wiggling her butt on you like
19 that?

20 A Yes, sir.

21 Q And it was feeling good?

22 A It wasn't like feeling good. Like I said, I've had
23 problems.

24 Q How long did it take you to ejaculate?

25 A It wasn't long. I mean, I could go back to a time
26 before when I was with my girlfriend before Jennifer and

1 Denise. I couldn't get the condom on quick enough before I
2 ejaculated. I mean, I have a problem.

3 Q You've got a problem?

4 A Well, I mean, like a -- I mean, I mentioned in my
5 statement, and I'm sorry that it -- I feel bad about it.

6 Q Did you ejaculate that quick when you were having sex
7 with Deanie during the better times?

8 A Sometimes.

9 Q Did you have an erection whenever J.L. was doing that
10 dance?

11 A No, sir. I mean, there was -- sometimes I don't even
12 have to have a full erection for it to -- something to
13 happen.

14 Q Let me ask you this. Do you have to be sexually
15 attracted to have an ejaculation, or is it just a stiff
16 breeze that makes you ejaculate?

17 A I mean, it's like the wind could hit it the wrong way.
18 I mean, it's just -- I'm not stating that I could walk out
19 there ejaculate. No. I mean, it's just -- it just
20 happened. And like I said, I'm sorry that it happened. My
21 intentions was not to put her in my lap and make her do
22 that.

23 Q Yeah, that was just her. She took advantage of you,
24 didn't she?

25 A I wouldn't say she like took advantage of me. But, I
26 mean, she was -- she was always like sitting on my knee or

1 something like that. My mom and dad and family has even
2 seen it. But she kind of went a little too far and it just
3 happened.

4 Q What were you saying to her while she was doing that?

5 A I was trying to push her away, and right when I got up
6 that's when it happened.

7 Q Show me how you pushed her. She's backing down on you,
8 rubbing around. What are you doing? Just get off me?

9 A No, I didn't. I didn't. I put one arm and pushed her
10 around and got up.

11 Q How long do you think the grinding, the wiggling
12 lasted?

13 A I mean, it wasn't -- it wasn't long.

14 Q How long?

15 A I mean, probably not even a minute or so.

16 Q A minute?

17 A I mean, probably not even --

18 Q That's a long time.

19 A Well, I mean, she -- she was dancing here on my leg at
20 first and started moving toward me. So you can count that
21 time forward.

22 Q Had you been looking at pornography that day?

23 A No, sir.

24 Q Did you run up there Deanie and say, let me tell you
25 what your daughter just did?

26 A No, sir. I did not. I was ashamed, I was embarrassed

1 and I was shocked.

2 Q You're infatuated with J.L. , aren't you?

3 A No, sir. I am not.

4 Q You always have been.

5 A That is like my step-daughter. That's -- I mean, I
6 treat -- I see where you're going with this. I do not prey
7 on kids. You can -- I've been wearing an ankle monitor ever
8 since I've gotten out on bond. I've been doing right. I've
9 been doing what I'm supposed to be doing, and I have not
10 like doing what any other predator would do. I'm not like
11 -- I try to keep my kids away from people like that.

12 Q Listen, I'm not talking about other kids. I'm talking
13 about J.L. . She held a special place in your heart, did she
14 not?

15 A All my kids have a special place.

16 Q J.L. was put on a pedestal over the other kids,
17 correct?

18 A She was not the only one on the pedestal.

19 Q J.L. was given gifts and showered with attention that
20 the other kids just didn't get.

21 A What gifts was she getting?

22 Q Well, what about the jacket? What about the necklace?
23 What about the lotion? What about the money every day
24 before school that your own blood daughters never got?

25 A Well, I do know this. I don't know if I can even say
26 this. While I was incarcerated in jail the second time

1 there were clothes bought off my account and sent to their
2 house.

3 Q I ain't talking about after you got arrested. I'm
4 talking about when you were doing these things to the girl
5 before, before you got caught. Before you were doing these
6 things. Listen to me. I want to ask you another question.

7 A Go ahead.

8 Q Rauch said was it even possible to do these things with
9 Deanie being in the house and you said absolutely not,
10 impossible without her knowing. Didn't you say that?

11 A I don't understand your question.

12 Q Listen to me. I'll break it down here. What do you
13 call him, Rauch or Mr. Wise?

14 A I call him Rauch.

15 Q Rauch said this could not have possibly happened
16 without Deanie knowing, correct? And you agreed with him,
17 absolutely not. There's no way this stuff could have been
18 happening without Deanie knowing.

19 A It couldn't have happened.

20 Q But it did. We just talked about it.

21 A What do you --

22 Q She sat in your lap.

23 A Yeah, she sat in my lap.

24 Q You let her wiggle on your lap and then you ejaculated
25 in your pants. Did Deanie know about that?

26 A No, she did not.

1 Q How was it impossible for you to be doing these things
2 without her knowing?

3 A It was just that one time.

4 Q So it's possible for you to be doing these things with
5 this little girl without anybody knowing, correct?

6 A It was just that one time down there in the barn.

7 Q You kept that a secret from everybody until you got
8 caught, right?

9 A Kept what a secret?

10 Q This.

11 A I told you I was -- when I wrote this I did not have my
12 medicine. I did not know what was going on. I love my
13 family. I love my kids. And I'm looking you dead in the
14 eyes when I tell you this.

15 Q Okay.

16 A My kids mean everything to me and I have not seen them
17 in over a year. I would never put them in a situation like
18 that.

19 Q But you have; haven't you?

20 A No, I have not.

21 Q Tell me about the time when A.E. and P.E. would be
22 coming over and you'd say, man, did I get paid. We don't
23 have the money for them. We don't have money to --

24 A I'm not -- I did not say that.

25 Q You deny that?

26 A I'm not completely denying it. I know everybody else

1 in that family has said somewhat the same thing. I gave --
2 I paid my child support to that woman right there to help
3 with my kids. Every time A.E. come over with her ball and
4 glove I was the one out there in the yard playing ball with
5 her. Playing catch. I'm the one that took her to her ball
6 practices.

7 Q Did you make her call you after school every day like
8 J.L. ?

9 A That -- that -- I did not make nobody call me. That
10 was something that J.L. wanted to come up with.

11 Q Did you give her money for snacks before school?

12 A I give her a dollar or two. That's honestly --

13 Q A.E. and P.E. ?

14 A A.E. and P.E. wouldn't be there.

15 Q You didn't give them any money for school?

16 A A.E. came to me one day, and Deanie in the same room,
17 and she needed a coat for winter. She said her momma's done
18 spent all the child support. That she was spending that
19 money on her boyfriend to buy her something but wouldn't
20 even buy her own daughter a coat.

21 Q And did you put a tracker on A.E. or P.E. 's phone?

22 A At the time she did not have an iPhone that I knew of.

23 Q You didn't track them on the phone?

24 A You can't -- you can't track -- if it's not on iPhones.

25 Q And you're attracted to younger looking girls?

26 A I'm attracted to young girls, but over the age of 18.

1 Q And fully admit to this statement, giving this
2 statement --

3 A Yes, sir. I admit to this statement that it did
4 happen. It was not my intentions of it happening, and I am
5 sorry about it and I didn't mean for it to happen.

6 Q And that's not all that's happened, is it?

7 A That's all that's happened, what I wrote.

8 Q The first time you got a chance to give a statement you
9 didn't say this. It was only when they kind of had to fool
10 you about the nanny cams and you come forward --

11 A Yes, because the first - The first time I was not all
12 there in my straightforward mind.

13 Q Are you in your straightforward mind today?

14 A Yes, sir. I'm focusing on you.

15 Q Good. Have I confused you at all?

16 A Not to my knowledge.

17 Q Oh, I know what I wanted to -- the provocative looks
18 and the flirtation with J.L. . Right?

19 A Yes, sir. Sometimes.

20 Q And did you tell her mom about that?

21 A I told her once or twice, yes, because we would be in
22 the kitchen and she would do it behind her mother's back.

23 Q Show the jury the kind of provocative looks she would
24 give you.

25 A I mean, she was like this, kind of wink at me and doing
26 like with her tongue and lick the bottom of her lip.

1 Q Show us.

2 A I mean, like -- kind of like that.

3 Q What does that mean?

4 A I don't know.

5 Q Did you tell her mom?

6 A I told her mom not that part, but I told her about all
7 the -- you know, some of the stuff that she had been doing
8 and some of the stuff she was doing on her phone at night
9 from other boys.

10 Q What did you tell her about some of the stuff she'd
11 been doing? Masturbating? You caught her masturbating is
12 what you --

13 A I caught her one time. I told her mom about. And
14 Deanie's talked to her and A.E. both.

15 Q Well, Deanie was up on the stand earlier. You all got
16 to ask her questions. I don't remember her saying anything
17 about catching her masturbating.

18 A She has caught A.E. and P.E. masturbating in the
19 bedroom in the closet.

20 Q A.E. and P.E. ?

21 A Yes, sir.

22 Q But you've said you caught J.L. masturbating. Did you
23 tell Deanie?

24 A I caught J.L. masturbating and I did inform her mother
25 that Deanie needed to have a talk with her.

26 Q Describe catching her masturbating. Where was this?

1 A See, the way the rooms were, she had a -- I think she
2 had a friend over that night, because they come in there and
3 borrowed tee shirts for -- I don't know. And me and Deanie
4 in one room, then there's the bathroom, then there's her
5 room. And when you go into the bathroom you can pretty much
6 see into her room, or mine and Deanie's room. And I caught
7 a glimpse of her what she was doing and then I informed her
8 mother.

9 Q Tell me -- did you open the door and look at her?

10 A The door was already open.

11 Q So your testimony today is she's masturbating with the
12 door wide open, at least to your bedroom?

13 A No. There's a big bathroom --

14 Q I've seen your house.

15 A -- in between.

16 Q That's called a Jack and Jill bathroom, right?

17 A Yeah, Jack and Jill, correct.

18 Q You've got your bedroom, there's a bathroom, and then
19 there's her room.

20 A Yes, sir.

21 Q So it's your testimony this girl is masturbating with
22 the door open?

23 A She's got her door closed, but the bathroom door to her
24 room open, and my door where me and Deanie stayed at would
25 most time be closed because the TV in the living room being
26 real loud.

1 Q So she left her bedroom door open and masturbated for
2 everybody to see?

3 A The one to the bathroom.

4 Q And then there's your room? Does that make sense to
5 you?

6 A Yeah, it makes sense.

7 Q That somebody would masturbate in an adjacent room to
8 their parents with the door open?

9 A Yes.

10 Q Did you ever do that?

11 A Not that I'm aware of. I mean, it's a different age
12 and time. I mean --

13 Q I've been hearing a lot about that today, it's a
14 different age and time. So today people just masturbate
15 with doors open.

16 A I'm not saying just today. I'm saying it could have
17 been prior months or --

18 Q All right. And then she flirted with you and you just
19 didn't know how to take it, did you?

20 A I didn't -- I just didn't know how to take it. I just
21 kind of brushed it off.

22 Q You didn't tell her mom that she's been flirting with
23 you?

24 A Yeah, I told her mom.

25 Q So you told her mom that she was flirting with you and
26 giving you provocative --

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1 A Not really like flirting. But being, you know, in a
2 way that it puts off a weird vibe that makes me
3 uncomfortable.

4 Q What did you do to help yourself feel more comfortable?

5 A What do you mean?

6 Q Well, if you've got a little girl in your house
7 flirting with you and giving you provocative looks and
8 making you uncomfortable, I would think you'd do something
9 about it.

10 A Yeah. I mean, I've talked to her.

11 Q What did you say?

12 A I mean, just basically, you know, I'm your step-father
13 and you're -- you know, you're young and all and you
14 shouldn't be doing these type of things.

15 Q Was that before or after she sat in your lap and
16 wiggled around?

17 A I think it was before.

18 Q Before?

19 A I believe so. I believe it was before.

20 Q So you had that talk. Maybe just hindsight, if the
21 girl's giving provocative looks, flirting with you, was it a
22 good idea to spend so much alone time with her?

23 A Well, I didn't really spend a lot of alone time with
24 her. Like I said, I tried to be with everyone as much as
25 possible. I mean, I worked all day. When I got off I went
26 straight to the Dance Shop. And the days I didn't go to the

1 Dance Shop I would go straight home and they would still be
2 at the Dance Shop.

3 Q Was it a good idea to spend any alone time with this
4 girl if she was this provocative and you didn't know how to
5 deal with the flirtation?

6 A Well, I mean, I tried working with her. I mean, I'm no
7 Dr. Phil or nothing like that but, you know, we've had --
8 parents have talks with their kids, whether it's the mother
9 talking to them or the father.

10 Q I hear you. You tried your best. You tried. I know.
11 But it was too much. That girl did what she did and she
12 victimized you. She sat in your lap. She forced herself on
13 you and made you do that shameful thing. It's all her
14 fault, isn't it? It's all her fault?

15 A It's her fault to the extent where she sat into my lap
16 and started moving around.

17 Q It's that 12-year-old girl's fault?

18 A Yes, sir.

19 MR. SCOTT: Thank you. One second. I might have one
20 more question.

21 Q You know how old she was when this event happened that
22 she's to blame for?

23 A I can't -- let's see, she'll be turning 14. Maybe at
24 11 or something like that. I'm not really sure.

25 Q She was 11?

26 A I don't recall.

1 MR. SCOTT: Okay. Thank you. Nothing further.

2 MR. WISE: A couple of questions.

3 REDIRECT EXAMINATION

4 BY MR. WISE:

5 Q Mr. Eubanks, the first time you went to see Officer
6 Hunnicutt --

7 A Yes, sir.

8 Q -- he told you there was an allegation of improper
9 touching.

10 A I believe so.

11 Q That morning. Your statement was in response to his
12 allegation of improper touching?

13 A Yes, sir. I believe so.

14 Q Did he ask you that morning about anything that went on
15 in the barn?

16 A No, sir. He didn't ask me that, no.

17 Q That was in the afternoon?

18 A Yes, sir. In the afternoon.

19 Q And when you -- he asked you about the barn is when you
20 gave the second statement?

21 A Yes, sir.

22 MR. WISE: Thank you.

23 RECROSS-EXAMINATION

24 BY MR. SCOTT:

25 Q I just don't understand. The first statement, Cliff,
26 there's been some allegations that are sexual in nature made

1 against you and J.L. . Why doesn't that come to mind? I
2 mean, that's pretty dang memorable when an 11-year-old girl
3 takes advantage of you like she did and forces herself on
4 you and makes you do this. Why didn't that come to mind
5 that morning. I mean, that seems pretty relevant in my
6 mind, doesn't it?

7 A It seems pretty relevant to you because --

8 Q Does it not to you?

9 A Well, it seems pretty relevant. But like I said, when
10 I wrote this statement I was going off what he asked. This
11 is what I told, because I did not have my medication. I was
12 not in the right state of mind.

13 Q Well, help me out. So you got to ask a specific
14 question for Cliff Eubanks to get an answer. Are there any
15 more specific questions I should ask you?

16 A Well, I mean, if I had my medication and I'm focused
17 then, yeah, I can answer your questions.

18 Q And heart medicine makes you focus better and --

19 A Because it's lack -- it's lack of oxygen to my brain
20 because I have thick blood. I've been diagnosed with thick
21 blood. Every time they draw blood from me they cannot get
22 it out because it's so thick. I am a negative. I'm not a
23 positive.

24 Q Nobody forced you to give any statements, did they?
25 You're trying to do the right thing. I know.

26 A I'm trying -- I'm trying to do the right thing and, you

1 know, you're asking the questions and I'm trying to answer
2 your questions truthfully and honestly as I can.

3 MR. SCOTT: Thank you. I appreciate that, Cliff.

4 THE WITNESS: Yes, sir.

5 THE COURT: All right, sir. You can step down.

6 THE WITNESS: Thank you. Do I leave these statements?

7 THE COURT: Just leave those -- just leave those there.
8 We'll get them in a moment. Thank you.

9 (Whereupon, the witness stepped down from the witness
10 stand.)

11 THE COURT: All right. Ladies and gentlemen of the
12 jury, I want to thank you for your work today. I want to
13 thank you for your patience today. We're going to go ahead
14 and take a break for the evening because I think we have
15 proven that at least one of out of three of our branches of
16 government works hard. So we're going to break for the
17 evening. That was a joke. If you would, please, do be back
18 in the jury room tomorrow morning. I'm going to ask you to
19 be there at 9:30, and I do anticipate you getting this case
20 for deliberations hopefully sometime mid-morning. Again,
21 please don't talk about the case tonight. Do get some rest.
22 It's raining. Get wet on your way to the car, have a great
23 night. See you in the morning. Okay? Take care. Thank
24 you.

25 (Whereupon, the jury was released for the day at 6:40
26 p.m.)

1 THE COURT: Before we go off the record, I want the
2 record to reflect that I have forwarded to all counsel the
3 proposed jury instructions that my clerk and I have been
4 working on.

5 Mr. Wise, you're Rauch@simplepcl --

6 MR. WISE: No, no, no.

7 THE COURT? I did the other -- I did the two that
8 popped up and I --

9 MR. WISE: Gmail.

10 THE COURT: Okay. Gmail should have gone through. Do
11 you want to check before we leave to see if -- make sure you
12 get it. I assume you guys did receive it.

13 MR. SCOTT: Yeah.

14 THE COURT: If there are any -- if there are any
15 suggestions about those, if you could, just respond and --

16 MR. WISE: Can I get a printed copy?

17 THE COURT: I'm more than happy to print out a hard
18 copy this evening is what I was getting at.

19 MR. WISE: Hold on.

20 THE COURT: My clerk will forward to Ms. Lancaster a
21 hard copy --

22 MR. WISE: Here we go.

23 THE COURT: Okay. You got it? Look at those tonight
24 and just give me feedback.

25 MR. WISE: I'll just give you comment for the Solicitor
26 to think about on criminal sexual conduct third degree, I'm

1 going to request assault and battery second degree be a
2 lesser included. If you go read it, it's basically the same
3 acts without the intent. So it's clearly a lesser included.

4 THE COURT: All right. I actually read one of the
5 cases. I think it may have been an unpublished opinion in
6 the advance sheets this week that addressed that very
7 question that said that on a charge of this nature A&B
8 second would not constitute a lesser included offense.

9 MR. WISE: Criminal sexual conduct first and second,
10 which I agree with. It did not apply to third. The
11 unpublished opinion was the first and -- first and -- not a
12 lesser included first and second which requires the actual
13 penetration, which I agree with. The criminal sexual
14 conduct third degree just requires touching with intent to
15 satisfy lust. Assault and battery second degree requires
16 the touching with no intent to satisfy lust. You look at
17 it.

18 THE COURT: All right. I'll double check that this
19 evening. I thought that that unpublished opinion also dealt
20 with the CSC with minor third, but I may be mistaken. So
21 let me double check that.

22 MR. WISE: Well, let me rephrase that. Okay? I am
23 relying upon an email I got this morning as to somebody else
24 who read it, but I've got a lot of respect for that person's
25 ability to read a case and tell me what it means. So I've
26 not read it, but I know it's -- which unpublished opinion

1 you're talking about. And I'll also add unpublished
2 opinions are not precedent.

3 THE COURT: Of course they're not precedent, but that's
4 the guidance I've got so far. So let's do this. If you
5 have some information you want to convey to me about that
6 particular topic feel free to email me this evening.

7 MR. WISE: I will tell you I've done some research and
8 there's really no case that I can find one way or the other
9 except the older cases that about the common law lewd act.
10 Common law high and aggravated nature being a lesser
11 included because it encompasses --

12 THE COURT: An unlawful touching.

13 MR. WISE: -- the lewd act, yeah.

14 THE COURT: Yeah.

15 MR. WISE: Which criminal -- assault and battery second
16 would not include. So it's like assault and battery second
17 is a portion of the lewd act portion of the old assault and
18 battery high and aggravated nature.

19 THE COURT: Perhaps you could put it in an email and
20 when my brain is just a little bit fresher two hours from
21 now I can digest it a little bit easier, if that's possible.

22 MR. WISE: Let me check and make sure I got it.

23 THE COURT: All right. Mr. Wise, I gave a delayed
24 start this morning so that maybe you call can contact Dr.
25 Brownlee if you choose to go down that road.

26 MR. WISE: We will be in touch with him first thing in

1 the morning -- or her first thing in the morning.

2 THE COURT: If you all could be here at nine o'clock
3 that would be helpful, even though the jury's not coming in
4 until 9:30 and we can do any housekeeping.

5 MR. WISE: Can we make it 9:30, I mean.

6 THE COURT: Okay, 9:30. I'll see you at 9:30.

7 MR. WISE: 9:30 is fine. That 30 minutes is -

8 THE COURT: Crucial.

9 MR. WISE: Yes.

10 THE COURT: I'll be here at 9:00. Don't be later than
11 9:30.

12 MR. WISE: I mean, I'll be here at probably 9:15.

13 That's not --

14 THE COURT: See you all in the morning. Have a good
15 evening everyone.

16 MR. WISE: Well, hold on. Let me see if I got it. I
17 got it.

18 (Whereupon, court was in recess at 6:40 p.m. for the
19 evening.)

20 TRIAL DAY 4: August 3, 2018

21 THE COURT: Let's go back on the record in the State
22 versus Mr. Eubanks. Of course the record will reflect that
23 the Defendant is present with counsel. I did have a meeting
24 with the attorneys in chambers when I came in this morning.
25 I was informed by Ms. Hudson that one of the jurors wished
26 to speak with me, Ms. Blackstock, Juror number 16. She was

1 the one that approached the Bailiff yesterday that we
2 inquired about the fact that one of the witnesses for the
3 Defense worked with her in the lunch room up in Hickory
4 Tavern I think it was. Yesterday she indicated that she
5 would be able to continue on the case. This morning, after
6 further reflection, she's -- I met with her and counsel in
7 chambers and she indicated that she was not comfortable
8 moving forward. She was not sure what the result would be,
9 and because she's working closely with this person it could
10 create a problem for her. So, that extraneous influence
11 might affect her decision in this particular case. I went
12 ahead and let her bow out and everybody agreed that was the
13 appropriate thing to do.

14 I also discussed in chambers jury charges. The State
15 requested an instruction which I am going to decline to
16 give. The Defense also requested instruction on assault and
17 battery second degree as a lesser included offense of
18 criminal sexual conduct third degree. I exchanged emails
19 with the attorneys last night about that particular request.
20 I am going to decline to give the option of A&B second as a
21 lesser included of CSC third for the reasons expressed in
22 the email: namely, that assuming for the moment there was
23 some -- I think it's State's number 2, the statement given
24 by the Defendant the second time around -- assuming that the
25 jury concludes that that is the only contact that took place
26 between the minor and the Defendant, the contact was

1 initiated by the minor and not by the Defendant. So it
2 would not be an assault by the Defendant. It would not be a
3 situation where he attempted an assault or he attempted an
4 unlawful touching. Basically he was sitting there and, if
5 the jury believes that version of events, arguably he never
6 did anything untoward. Therefore, he's not the perpetrator
7 of any assault. That's my reasoning about the A&B second.
8 Of course, subject to the Defendant's objection, if you want
9 to print out that email stream, Mr. Wise, and add it to the
10 record that will be perfectly fine. Or I'll have the clerk
11 do it at some break that we have.

12 Yes, sir. Go ahead.

13 MR. WISE: As related to your -- I'll let you finish,
14 unless you were through.

15 THE COURT: No. Not quite. State's 10, I'm going to
16 redact the last three questions. That was my default
17 setting yesterday. That's what I've decided to do today. I
18 don't see where they are germane to the issues in this case,
19 so questions seven, eight, and nine will be blacked out.
20 We'll make a copy of it so they can't read through the magic
21 marker. So that will become State's 10.

22 MR. WISE: Would it be possible to delete it by making a
23 copy of 10 and covering that up so it doesn't look like it's
24 been blacked out?

25 THE COURT: That's probably not a bad idea. We can do
26 that with a white piece of paper. That's what we'll do

1 then. You wanted to raise another issue, Mr. Wise?

2 MR. WISE: Yes, sir. First of all, I'd like to
3 officially move for a directed verdict on all charges on the
4 grounds that taking the evidence in the light most favorable
5 to the State is not substantial evidence to get to the jury.
6 You know, when you've got completely negative, as I
7 mentioned earlier, physical exams. The PTSD is certainly
8 caused by many, many, many things, as these experts
9 recognized and you're simply relying on the recall of
10 somebody that's -- from six or so years earlier.

11 Also, we would request a directed verdict on the
12 criminal sexual conduct third degree on the grounds that --
13 as I read the statute last night, the assault and battery
14 second degree -- I have trouble distinguishing differences
15 between the two. And if there are no differences between
16 the two, then the rule of lenity is that Mr. Eubanks should
17 be charged only with assault and battery second degree.
18 There is a lot of overlap and it's hard to find a
19 difference, to be frank with you. So, I think under the
20 rule of lenity the Court should send only the assault and
21 battery second degree to the jury in lieu of criminal sexual
22 conduct third degree.

23 Also, if -- get away from his statement. If -- as I
24 mentioned in my email, if you get involved in general and
25 specific intent being the difference, then assault and
26 battery second would also be a lesser included of the

1 allegations other than the one statement that he made. So,
2 I think assault and battery second would come in on -- the
3 statement from the witness about the lewd act on a minor
4 child.

5 THE COURT: Solicitor, do you want to comment on that?

6 MS. KEENEY: Your Honor, with respect to the general
7 directed verdict argument, we will rely on our previous
8 argument. J.L. testified to numerous sexual batteries
9 under the age of eleven, and at the ages of eleven and
10 twelve, and she described numerous touchings of the breasts
11 and vagina, which would be criminal sexual conduct in the
12 third degree. She was under the age of 16. With respect to
13 his rule of lenity argument, I've never, quite frankly,
14 heard of that, but I can think of two differences between
15 CSC with a minor and assault and battery second off the top
16 of my head. Number one, assault and battery second requires
17 an injury. CSC with a minor third degree does not require
18 any type of injury. Not to mention, assault and battery
19 second requires a non-consensual touching. CSC with a minor
20 third degree consent is irrelevant. Minors cannot consent.
21 So, just off the top of my head those are the two
22 differences between CSC with a minor third and assault and
23 battery second.

24 THE COURT: All right. Well, there is not a great deal
25 of law on this particular question to guide the Court. I
26 referenced yesterday an Advance sheet case that came out on

1 Wednesday and it's an unpublished opinion *State v Benjamin*
2 *Hernandez*. It's an appeal from Beaufort County from Judge
3 Hayes. The unpublished opinion number is 2018-UP-343. The
4 file log is 120-18. It discusses this question, and the
5 gist of it is that in light of the sentencing reforms which
6 took place in 2010, clearly the Legislature could have made
7 assault and battery second degree the lesser included
8 offense of criminal sexual conduct with a minor, et cetera,
9 just as they did with assault and battery high and
10 aggravated nature being a lesser included offense of
11 attempted murder. I don't see where it meets the elements
12 test either. I appreciate your position, Mr. Wise. I think
13 it goes to the jury. This is a case where the jury is
14 either going to believe there was touching or there was not
15 touching. There was penetration or there was not
16 penetration. I don't know that it's really a question of
17 whether the jury is going to conclude that it's a matter of
18 degree. The Defendant denied ever doing anything untoward
19 towards the minor. The minor's testimony was the polar
20 opposite. This is a credibility issue one hundred percent,
21 and it's for the jury to make that call.

22 MR. WISE: Could I ask the Court if the Court
23 understands the difference between assault and battery
24 second and lewd act on and assault and criminal sexual
25 conduct third degree?

1 THE COURT: Say again, please?

2 MR. WISE: Does the Court -- can the Court articulate a
3 difference between assault and battery second under the lewd
4 touching portion of it, with criminal sexual conduct third
5 degree, which basically says the same thing.

6 THE COURT: In this case, lewd act involves the non-
7 consensual touching of a minor.

8 MR. WISE: Correct.

9 THE COURT: Assault and battery second degree can be an
10 inappropriate lascivious contact with a female -- let's
11 assume it's a male groping a female inappropriately who's an
12 adult. I don't see any --

13 MR. WISE: A minor would be included in both. I agree
14 with that. An adult is not included in criminal sexual
15 conduct.

16 THE COURT: I can certainly see the South Carolina
17 General Assembly concluding that it would be inappropriate
18 to make A&B second degree a lesser included of criminal
19 sexual conduct with a minor in the third degree out of the
20 public policy -- or because of the public policy reason that
21 there is a greater desire to protect minors. Even if a
22 minor suffers the same lascivious contact that an adult
23 would, the minor is in less of a position to defend
24 themselves. Therefore it could very well be the public
25 policy of the General Assembly not make A&B second a lesser
26 included of what used to be lewd act.

1 MR. WISE: And the General Assembly could have said
2 assault and battery second applies to people 16 and older.
3 And they didn't.

4 THE COURT: I understand fully. Clearly, it's the
5 intent of the General Assembly that A&B second -- it could
6 have been, under the reasoning of Hernandez, it could have
7 been their intent, if they wanted to, to make it a lesser
8 included. I appreciate counsel's argument. I'm comfortable
9 that by codifying lewd act as CSC third degree the General
10 Assembly clearly intended to offer additional protections to
11 minors, that -- both in terms of penalty as well as a
12 different offense with different elements that maybe they
13 did not intend to extend to an adult who suffers the same
14 sort of unwanted contact.

15 Technically, you had not rested before you made your
16 directed verdict motion, but you did indicate in chambers
17 that you did not intend to call additional witnesses.

18 MR. WISE: Now that you mention that, we did contact Dr.
19 Brownlee this morning. Her office is closed. He actually
20 went to Laurens County Hospital to see about if they were
21 online there or something, but nothing had come in on that.
22 In lieu of that, I would actually request the Court continue
23 this case to Monday so that we can have Dr. Brownlee
24 available.

25 THE COURT: I appreciate your request. I've looked at
26 the report that -- Solicitor, you wanted to chime in on

1 that?

2 MR. SCOTT: Your Honor, he is -- he has every right to
3 call the witnesses he thinks are necessary to defend the
4 case. He can provide a witness list with these people's
5 names on it and have them available just like we did. He
6 had that opportunity. This has been on the docket for
7 months, and months, and months. He made a strategic move
8 not to call that witness.

9 MR. WISE: No.

10 MR. SCOTT: Well, where is she?

11 MR. WISE: Finish your argument, please.

12 MR. SCOTT: You're speaking over me.

13 THE COURT: Here's where I am. The jury has been at
14 this for five days. I don't see where the testimony would
15 necessarily add anything else. The Solicitor's point that
16 she could have been placed on a witness list which, again,
17 we've already had one issue with a juror and contact with a
18 witness. We're down to 12. We run the risk of dropping
19 below 11 if we continue this to Monday. We run the
20 additional risk of one of those jurors being a patient of
21 Dr. Brownlee's. Those are risks that the Court is unwilling
22 to take. It could've been addressed, obviously, during voir
23 dire of the panel and most importantly, having reviewed the
24 report from Dr. Brownlee, the Defendant has testified as to
25 his medical condition. That is evidence that has been
26 produced. I didn't see anything in the report indicating

1 that the Defendant was suffering from impotence. As we
2 discussed yesterday, there are varying levels of erectile
3 dysfunction. I don't know that her testimony would
4 necessarily offer anything additional and without more of a
5 proffer, the Court is not inclined to push this back.

6 MR. WISE: I would just like to put one thing on the
7 record. I got that report from Dr. Brownlee back in
8 February of this year. After reviewing with my client and
9 looking at the facts, I had no intention of calling Dr.
10 Brownlee. The only reason it came up is because of
11 testimony of his ex-wife. That was -- you know, when that
12 came up there was then a need to call Dr. Brownlee. She
13 would never have been on a witness list.

14 THE COURT: I understand. We're in the position that we
15 are. I don't see where her testimony would add anything
16 substantial or germane to this case. I don't see where her
17 testimony is absolutely necessary. We'll allow her -- I
18 think it's been marked as Defendant's number 6 just for ID,
19 so that's not a problem. State's 10, if you want to look at
20 it. What my clerk has done is simply make a copy of the
21 final page of the trauma narrative and after question 6
22 everything else is simply a piece of paper placed over it.
23 Everything else has been deleted.

24 MR. WISE: I think to be technically correct on Dr.
25 Brownlee's statement it was admitted and then you sustained
26 the State's objection to withdraw it. I would, of course,

1 object to your unwithdrawing the document. Or withdrawing
2 the document from evidence.

3 THE COURT: Very good. One final housekeeping matter
4 before we move forward with closing arguments, because the
5 State indicated they did not intend to call any reply
6 witnesses. I emailed as it relates to the intent charge I
7 removed some language that was in the stock intent charge.
8 Two portions I removed was the second sentence of the intent
9 charge which reads, "For example, the mental state required
10 to be proven by the State for a particular crime might be
11 purpose, intent, knowledge, recklessness, or criminal
12 negligence." I pulled that just because -- I think it's the
13 Ferguson case that dealt with the standard definition of
14 intent. I think that what they did when they created this
15 stock charge is they just copied and pasted. It talks about
16 that extemporaneously, but I don't see any reason to talk
17 about negligence or recklessness in this particular case.

18 MR. WISE: And I think that I sent an email also to
19 request that you instruct the jury that criminal sexual
20 conduct third degree is a specific intent crime in which the
21 State has to specifically prove that intent.

22 THE COURT: Solicitor, do you have an opinion on that?

23 MS. KEENEY: I think the standard CSC with a minor third
24 degree charge addresses the intent that's required. It says
25 in your charge that I have right here in front of me that
26 they have to have the intent to arouse, appeal to, or

1 gratify the lust, passions, or sexual desires of the
2 Defendant or the child. I think that covers the intent
3 element that he's referring to. I don't think we need to go
4 into anymore detail about that.

5 THE COURT: I would tend to agree. It sounds like the
6 charge does -- In reading what I've got, does cover that he
7 has to have the intention to engage in the conduct for the
8 purposes of arousing himself.

9 The other portion that I deleted from the intent
10 instruction was the last paragraph of the stock instruction
11 which reads, "Criminal intent can arise from action or a
12 failure to act. It may arise from negligence, recklessness,
13 or an indifference of duty, or consequences that is
14 considered by the law to be the equivalent of criminal
15 intent." That's a bunch of gibberish, I think, that doesn't
16 really apply in this particular case. Do you agree with
17 that?

18 MR. SCOTT: Yes, sir.

19 MR. WISE: Say that again.

20 THE COURT: I'm sorry. The very last paragraph of the
21 stock criminal intent charge I eliminated. It reads,
22 "Criminal intent can arise from action or a failure to act.
23 It may arise from negligence, recklessness, or an
24 indifference to duty or to consequences that is considered
25 by the law to be the equivalent of criminal intent."

26 MR. WISE: I agree that certainly is incompatible with

1 criminal sexual conduct third degree, but I think the Court
2 needs to specifically tell the jury that as to criminal
3 sexual conduct third degree it requires a specific intent to
4 do that act for that purpose. It's not an intent to do the
5 act, it's the intent to do it for a specific purpose. And I
6 can give the Court a very very quick example. Every parent
7 touches the private parts of their child intentionally when
8 they change the diapers. That is not a crime. It becomes
9 only a crime when that adult has the specific intent to
10 touch that part for the purpose of satisfying their lewd
11 disposition. And therefore, they need to be told
12 specifically that criminal sexual conduct third degree
13 requires that specific intent.

14 THE COURT: Okay. So you would suggest changing my
15 intent instruction to emphasize that it applies to the CSC
16 third?

17 MR. WISE: No. I think when you charge the law of CSC
18 third you tell the jury that the law requires there be a
19 specific intent to do the act with the intent of satisfying
20 their lewd desires, which is pretty much the way the statute
21 is worded anyway. But I think it needs to be emphasized
22 that that is a specific intent crime.

23 THE COURT: The charge reads, as the Solicitor stated,
24 "Next, the State must prove that the Defendant willfully and
25 lewdly committed or attempted a lewd or lascivious act on,
26 or with the body or its parts of, a child under the age of

1 16 years, with the intent to arouse, appeal to, or gratify
2 the lust, passions", et cetera, et cetera. With the intent.

3 MR. WISE: And then I think you should say under this
4 statute that there has to be this specific intent to
5 satisfy.

6 THE COURT: Well, I say in the next paragraph,
7 "Willfully means voluntarily and intentionally with the
8 specific intent to do something the law forbids."

9 MR. WISE: I missed that part.

10 THE COURT: I think --

11 MR. WISE: I missed that.

12 THE COURT: That's my standard definition of willfully.
13 Incidentally, there is no instruction in the bench book for
14 CSC with a minor third. This is something that we, my clerk
15 and I, created in Chester two or three months ago when we
16 tried another CSC third, so this is what we've got and it's
17 what I'm comfortable with. So, we will proceed with
18 closing.

19 The Court Reporter has marked State's 10. It is in
20 evidence, the redacted portion does not contain the last
21 three questions asked of the minor in her trauma narrative.
22 Just so that the record is clear, we'll let the unredacted
23 portion of the trauma narrative become a State's exhibit for
24 identification.

25 MR. WISE: My position was questions one through seven.

1 THE COURT: I know your position that questions one
2 through seven shouldn't have even come in. I appreciate
3 your position. This will be for identification purposes.
4 I've passed it to my Court Reporter and she will mark the
5 State's exhibit for ID. Let us have the jury, please. When
6 the Jury comes out, Mr. Wise, just rest for the record. I
7 will ask the State if they have any reply and you say no.
8 Then we'll move forward.

9 COURT REPORTER: State's 13.

10 (Whereupon, redacted trauma narrative was marked as
11 State's Exhibit 13 for identification only.)

12 (Whereupon, the jury entered the courtroom at 10:18
13 a.m.)

14 THE COURT: We're going back on the record. The record
15 will reflect that all jurors are present and the Defendant
16 is present with counsel. The first order of business,
17 ladies and gentlemen, one of your fellow jurors, Ms.
18 Blackstock, juror number 16, for various reasons I've
19 relieved her of further obligations on this case. So, now
20 Ms. Lowe, juror 112, you're now a full member of the jury
21 panel. Of course, your vote counts equally as anyone else's
22 and you'll now participate in this case. With that, Mr.
23 Wise, your next witness.

24 MR. WISE: Your Honor, the Defense rests.

25 THE COURT: Any reply from the State?

1 MR. SCOTT: None, Your Honor.

2 THE COURT: Ladies and gentlemen, we've reached that
3 portion in the trial where you've received all of the
4 evidence you're going to get in order to judge this case.
5 Now the attorneys will be given an opportunity to give you
6 their closing arguments or their closing summation. The
7 order that we'll go in is Mr. Scott will go first for the
8 State. Mr. Wise will follow Mr. Scott, and Mr. Scott will
9 then have an opportunity to speak with you in reply.

10 I'll let you know as I said, of course, on Tuesday what
11 the lawyers say -- Wednesday is when I said this.
12 Obviously, just like their opening statements, what the
13 lawyers say in closing is not evidence. You judge the case
14 based on the testimony and the exhibits. Even though their
15 argument is not evidence, you should certainly pay attention
16 to it because it's their contention about what has or has
17 not been proven. So, any time the attorneys make some
18 comment on the facts or the testimony and what their comment
19 -- if their comment differs from what you recall the
20 testimony being, obviously go with your recollection of the
21 testimony because you are the judges of the facts. With
22 that, Mr. Scott, you are acknowledged for your closing, sir.

23 MR. SCOTT: Thank you, Your Honor. May it please the
24 Court.

25 THE COURT: Yes, sir.

1 CLOSING ARGUMENT

2 BY MR. SCOTT:

3 Ladies and gentlemen of the jury, we said Tuesday this
4 case is about betrayal. Do y'all remember that? Julie Kate
5 with the Solicitor's Office stood up and said this case is
6 about betrayal. She and I talked about that, and I've been
7 thinking about this case for a year. I've been dealing with
8 it 24 hours a day for this whole week. It occurs to me,
9 maybe betrayal is too kind a word. Maybe betrayal is too
10 nice to describe a so-called father who says he loves the
11 daughter and turns around and does unspeakable things to
12 her. He says he wants to protect his daughter, then he
13 turns around and abuses her.

14 What is the right word for an adult who turns his
15 relationship with a child into one big mind trick. He does
16 something seemingly kind, shows her attention, he gives her
17 a gift, and then he turns around and does unspeakable things
18 to her behind closed doors. What's the word we use? Is it
19 betrayal? I don't know the right word. Is it evil?
20 Wicked? Insidious? Depraved? What's the word we use for
21 somebody like Cliff Eubanks and what he's done?

22 Power. In these cases, it's all about power. That is a
23 central theme in every one of these sexual assault cases,
24 whether it's an adult victim or a child victim. There's
25 always an imbalance in power. It's those perceived with

1 having the power that victimize those who are perceived as
2 being weaker. It can come from one person being physically
3 bigger than another person. It can come from somebody
4 having perceived authority over those subordinate to them.
5 It can come from those who are held out to be influential in
6 the community over those who are seemingly insignificant.
7 It can come from an adult over a child. It's all about
8 power and it's all about the semblance of power. You know,
9 that smirk on his face that he's had this week, that is his
10 last grasp at trying to show her that he's got power over
11 her. "Her" being J.L. . When she identified him and
12 he smirked at her, that's him trying to tell her I've still
13 got the power and I'm still holding the cards. Because he
14 was from 2010 to 2017. He was the head of the house, right?
15 He held all the cards. He'd tell people what to do. When
16 he sits here smiling, that's him holding on. Trying to.
17 I'm happy to tell you guys the paradigm has shifted. He has
18 no power over her in this courtroom. None. So, when you
19 see that smirk, look past it. She has wiped it off his
20 face. All the power in this courtroom today is held in that
21 little girl right there. You can smile. You've got the
22 power. She's got the power, and it has shifted. And I feel
23 good. I feel energized. I feel her power coming through
24 me. And I'm happy. I'm happy to advocate for that little
25 girl.

1 You know, among all the sadness it occurs to me it
2 could've been so great. In 2010 when he and Deanie got
3 together, it could've been something good. There was a
4 ready-made family for him had he wanted it. He never wanted
5 that. He got J.L. and L.L. . All they ever wanted was a
6 dad. You know, Josh -- we heard about Josh Lyons. I never
7 knew the guy. Never met the guy. Doesn't sound like the
8 best father figure. He isn't the best father figure. He
9 hit the wind while J.L. was still in the womb. Never really
10 knew her. You know, he's Johnny-come-lately when he hears
11 Cliff has been abusing them -- abusing J.L. . He shows up
12 for three days and then he's gone again. They wanted a
13 father and he could've been that father.

14 You know, they had Papa. By all accounts just a great
15 guy. He was the only father figure they knew, but he was an
16 old man. It could've been great. Cliff could've gone in,
17 stepped into that role that the family needed. Could have
18 been that husband. Could've been that boy, L.L. 's father.
19 You know, every boy needs a male figure in his life. He
20 could've been that for L.L. . He had no interest in L.L. .
21 Could've been that strong figure for J.L. . He could have
22 stepped up for those kids he already had, his blood
23 children, A.E. and P.E. . He could have finally been in
24 their life, but he neglected them. That's not the path he
25 took. He didn't want to be the father to all these kids. He

1 didn't take that path. Yesterday he didn't even know the
2 birthdays of those kids. He didn't even know how old A.E.
3 and P.E. were. Does that sound like somebody interested
4 in being a father? Instead of being that positive figure,
5 he bullied L.L. . And J.L. , although from the outside -- and
6 certainly to A.E. , P.E. , and L.L. it looked like she
7 had the greatest thing going. She got whatever she wanted.
8 She got all of the attention. He played with her. He took
9 her on trips. Even something minor like, "I'm going to the
10 store. Come on, J.L. . You're coming with me." While A.E.
11 and P.E. sat there. What about us? Y'all stay there.
12 Even when they did tag along I heard A.E. say that she was
13 made to sit in the car.

14 You know, the signs were there early on, but how good
15 is a sign if you don't speak the language. Do you know what
16 I mean by that? What I'm talking about -- Shauna Galloway
17 Williams. That was the expert on child sexual abuse and the
18 dynamics. I wish every family could somehow just hear her
19 speak for an hour just to hear those signs, because
20 seemingly innocuous things -- you know, he's right.
21 Sometimes they are perfectly innocent. There are perfectly
22 logical reasons for a kid to have recurrent headaches or
23 recurrent nightmares or stomach aches, or drastic loss in
24 weight, insomnia. There's other reasons for that. But
25 taken with all those signs together, sometimes they point to

1 something more serious. Those signs were there. The family
2 saw them, and in retrospect, I think they may have some
3 guilt over not seeing anything. But how can you read the
4 signs if you don't know the language. You know, the
5 touching. L.L. and A.E. saw the touching. He had his hand
6 on J.L. 's butt. The wrestling where his hand accidentally
7 slipped on her crotch or her chest. But they were young and
8 it was confusing. It didn't seem right, but maybe that's
9 just part of their special relationship. They obviously had
10 a special relationship, and maybe that's just something they
11 do.

12 You know, the favoritism was obvious. If L.L. wanted
13 something -- she got the money. If L.L. wanted something it
14 was, "Hey, Buddy, you've got your own money; don't you?"
15 Well, maybe that's just -- he's trying to treat L.L.
16 differently to make him be more responsible with money.
17 There's other reasons for this. That's what makes it sadly
18 ironic. Back then, all of the kids were jealous of J.L. .
19 It's sad to think about now, because she was secretly
20 harboring this terrible secret. She was holding this burden
21 on her shoulders. Those kids thought she had it so great.
22 What price did she pay for that gold necklace, or that five
23 dollars before school. What a heavy toll to pay to be
24 invited on trips to the store. How could they have known
25 those trips down to the barn with Cliff weren't the fun and

1 good times they may have appeared to be on the outside.
2 They longed for that attention that they thought was
3 showered on her. That wonderful life they perceived was
4 just an illusion; wasn't it? Like I say, everyone in the
5 family now feels guilt. They shouldn't. Hindsight is
6 20/20. It's easy, as we sit here today, to look back. And
7 the signs were obvious, especially after hearing an expert
8 like Shauna Galloway Williams talk about that. They say,
9 how could we be so stupid. How could we? But you can't
10 read the signs if you don't know the language.

11 Mom saw it. Deanie saw it. She feels the guilt to a
12 higher degree, clearly. She's the mother. She appreciated
13 Cliff's apparent dedication to J.L. . Who wouldn't?
14 Everyone loves to see people treat their children with
15 affection. Everyone loves when people come up and talk
16 about how cute your child is and they seem to be nice to
17 them. Parents like that and Deanie appreciated that. You
18 know, this man had taken these kids -- in her eyes, that
19 weren't his -- in and seemingly treated them like his own.
20 Her major concern was just, hey, that's great. You're so
21 nice and sweet and kind with J.L. , but how about spreading
22 that affection a little more evenly. Because L.L. , he needs
23 some attention too. And what about your kids, J.L. --
24 excuse me, A.E. and P.E. . They need you too. I
25 appreciate all this attention you're giving my daughter,

1 J.L. , but how about spreading it a little more evenly.
2 She'd had that conversation with him. It was always,
3 "That's not true. You're imagining it." It was always an
4 excuse. That's typical in these situations too. There's
5 always an excuse. That's where those nanny cams came in.
6 That's where that joke came in. She explained it yesterday.
7 Those nanny cams become very relevant later on, as you all
8 well know. But the joke was, "Hey, Cliff. I promise you
9 you're spending more time with J.L. than with the other
10 kids." "It's all in your head, Deanie." "I'm telling you,
11 I see it." "I tell you what. One of these days I'm going
12 to put up a camera and I'm going to show you the footage,
13 and I'm going to prove that you do. You always spend more
14 time with J.L. ." They laugh it up and they kind of chuckle
15 about it. But she did notice the favoritism. She just
16 didn't assign any sinister motive to it. And nobody blames
17 you, Deanie. How could you have known. Nobody wants to
18 believe their husband is capable of doing something like
19 that. After all, they hadn't had sex in years. Maybe that
20 just wasn't his thing. I mean, she didn't know about the
21 enormous collection of pornography he had. She didn't know
22 what he was up to on the internet. He just says, "Hey,
23 Deanie, my testosterone is low these days. You know, it's
24 erectile dysfunction, so I tell you what. I'd love to be
25 with you, but I can't." She knows it's weird now. In all

1 the things it's clear now. It's crystal clear. At the
2 time, though, you know -- school for instance. They have
3 this arrangement where Cliff goes, "I tell you what. I'm
4 going to take J.L. to school." J.L. alone. "And let's get
5 grandma to take L.L. and B.E. . I'll take J.L. . Don't you
6 worry about that." Never mind that he had to go right by
7 the high school to get to work. There was an excuse for
8 that. I mean, why wouldn't he have been able to drop L.L.
9 off? J.L. at Sanders and then L.L. off to the high school
10 and then on his way up to work. There was just always an
11 excuse why he needed to be alone with J.L. .

12 Weird in hindsight, but not so much at the time. You
13 know, she never knew about the gifts or the money. She
14 didn't know about every day before school, you know, him
15 giving her cash even though her lunches were free. Didn't
16 know about making sure, "You call me, J.L. , when you get out
17 of school." Control. Power. He didn't make A.E. do that.
18 He didn't make P.E. do that. He never made L.L. do that.
19 It was J.L. . She didn't know about him tracking their
20 whereabouts on the phone. She didn't have that app.
21 Persistent child abuse is done under cover. It's not
22 something you do in the open. These are unpleasant things
23 to hear. I understand that. But it's done under cover.
24 That's why it's a little ridiculous for them to -- why
25 didn't great grandma see it. Why didn't Deanie see it. You

1 don't do these things in the open. They're done behind
2 closed doors.

3 Wasn't that expert, Shauna Galloway Williams, wasn't
4 her testimony intriguing? That was a woman who studied,
5 lectured, and made it her job, child sexual abuse, for many
6 years now. And the noteworthy thing about her was she
7 doesn't know anything about this case. She's what we call a
8 blind expert. Never spoken with Deanie. Never spoken with
9 J.L. . Never read any incident reports. Hasn't read his
10 statements. We haven't told her anything about the case.
11 She was just here to educate you all on the dynamics of
12 child sexual abuse. But wasn't that interesting though.
13 Some of the things -- y'all had already heard the testimony
14 though, and then to hear her explain the dynamics.

15 Did y'all hear some things that seemed very familiar
16 when linked up with that testimony you had already heard.
17 She spoke of the process of disclosure. How a victim does
18 not fully disclose every detail and every incident of abuse
19 on the first disclosure. That's kind of -- J.L. , you know,
20 there was a little bit of time and then it was a little more
21 and more detailed. She said that's just kind of how it
22 works. Really, for adults too you never come right out
23 after years of abuse and say, "Okay, I'm ready to tell you
24 every time I was abused and every detail about abuse." It's
25 a process, and that's why she talks about that process of

1 disclosure. She talked about how that can be affected by
2 the number of people the child speaks with, the number of
3 times they're asked about the abuse, the specific questions
4 they are asked, their age. All these have affects on
5 disclosure and the information given.

6 She spoke of the reasons kids don't report right off
7 the bat. Why they don't, right when the abuse happens, come
8 running and tell what happened to them. Do y'all remember
9 that part? It could be fear for themselves, fear for the
10 impact on the family. And here's the sad one, fear for the
11 impact on the relationship between the victim and the
12 abuser. It almost doesn't really make sense when we think
13 about it. Why would some victim of abuse be trying to
14 protect the abuser? It is an attempt to keep the family
15 dynamic in place, and the abuser has cultivated the victim.

16 Over time, they have gained the victim's trust through
17 gifts, attention. That's called grooming. Do y'all
18 remember her talking about grooming? That's a process too,
19 and it started when J.L. was six. And he was good at what
20 he did. She spoke about how 90 percent of the time a child
21 is abused by someone they know, trust, and love. She talked
22 about that grooming process and she gave the examples of
23 giving special attention, giving money, introducing the
24 child to sexual activity and making it seem normal. Does
25 that sound familiar? Those were her words. Those were her

1 examples. Knowing nothing about this case, those were her
2 examples of grooming procedures that she sees.

3 She noted that a victim may begin to show physical
4 signs. She talked about gaining weight. She said losing
5 weight. She talked about overeating. She talked about
6 refusing to eat. Those are manifestations that she sees.
7 Not bathing. Having nightmares. She talked about the
8 desire for a lot of them to make themselves unappealing,
9 ugly, dirty, to the abuser. Do y'all remember what J.L. had
10 said before? I stopped eating. I stopped bathing. I just
11 wanted to be dirty. That was just an attempt to keep him
12 away from me. It didn't though. It didn't. And the
13 shower, too, that's just a -- if you're going into the
14 shower and you never know if somebody is going to pick the
15 lock and be sitting there creepily staring at you, maybe a
16 relaxing shower doesn't sound so nice after all.

17 At any rate, she had stopped showering. Deanie noticed
18 it. Again, the signs are there. Girl, you've been dancing.
19 You've been sweating. We've been at practice. You need to
20 shower. Little girls need to shower. Oh, mom, I'm just so
21 tired. I need to go to bed. In Deanie's mind, well, she's
22 just worn out from dance. I don't know. If the signs are
23 there, but you don't know the language, they're not always
24 going to be relevant are they. Poor A.E. . She saw the
25 touching. She saw all that. She saw the cuddling under the

1 blankets. She remembers the trips out where she was either
2 made to stay home. She only got to see her dad every other
3 weekend. Then she'd show up, "Hey, dad. I'm here for the
4 weekend." He'd be off with J.L. somewhere. Poor A.E.
5 remembers the gifts J.L. would receive and the attention she
6 would receive. She remembers being told to sit in the car
7 with the other little children while J.L. and he went into
8 the stores. I wonder if, before this week, she ever knew
9 how he complained just before the weekends when she and
10 P.E. would come to visit. I don't know. I wonder if she
11 knew when I asked her daddy wouldn't know her birthday. I
12 don't know. Maybe that really wouldn't surprise her.

13 L.L. , he saw these things. He talked about the
14 touches. He'd see the wrestling. He'd see him put his
15 hand, you know, go into places where he didn't think that
16 seemed right. But who am I. This is the guy who told me
17 he'd take me outside and let's fight like a man. He was the
18 head of the household. He saw Cliff go into the bathroom
19 with J.L. while Deanie was gone. Even though J.L. could
20 bathe herself. He heard Cliff talk about, "Well, go ahead
21 and take your clothes off while I work on this bathtub for
22 you."

23 He saw the favoritism. He longed for a father, and
24 Cliff proved to be a colossal disappointment. He needed a
25 father, but it wasn't going to be Cliff. He retreated away

1 from the family, and he went to his room a lot. When his
2 Papa died it was almost too much. You know, he needed to
3 talk. Papa was always there for him. That was the only
4 father figure he had. Like I said, Cliff was just a
5 disappointment. A bully. He needed to talk. That boy who
6 aspires to be a pastor, who wants to heal through gospel, he
7 needed some help himself didn't he. So he did. He talked
8 to his mom. I need to talk to somebody. This is important,
9 okay? Follow me on this. L.L. initiated counseling by
10 asking his mom for help. By the grace of God -- I don't
11 know how she found her, but Deanie found Kim Little. Do
12 y'all remember Kim Little, one of the first witnesses we had
13 from the Gilchrist Consultation Group. As luck would have
14 it, she dialed up Kim's number. Kim deserves a lot of
15 credit for breaking this case. You know, I've been thinking
16 a lot about her professionalism, because she is there to
17 talk with L.L. , the boy. She's listening to him. You know,
18 she's not just -- mind drifting everywhere. She's thinking
19 about L.L. 's issues, being bullied, and deaths in his
20 family. She says, "Tell me about your Papa." Papa had
21 passed on. "Well, he was the only man in my life, Miss Kim.
22 I'm kind of lost without him." Here's what Kim asked next.
23 "Well, what about your step-father?" "My step-father, he
24 treats me like I'm not even there." Kim, "What do you
25 mean?" "I'm nothing to him. My sister and he -- that's the

1 relationship. They're always together. It's like I'm not
2 there, but he holds my little sister on a pedestal. Showers
3 her with attention. Does everything with her". Now, Kim
4 Little -- what she could've done right there is say, "Well,
5 L.L. , that's interesting, but it's probably all in your
6 imagination." She didn't do that. Kim Little is a
7 professional. She told Deanie, "Hey, could you bring J.L.
8 in here so I can speak to her?" She didn't have to do that.
9 She was hired to counsel L.L. . And so, when they get up
10 there and tell you that Deanie was driving this train, Kim
11 Little is the one who independently -- you heard the
12 testimony -- asked on her own if she could speak to J.L.
13 , having no idea what J.L. would tell her. I
14 think Kim deserves some recognition for that. I think she's
15 a true professional, and really I think it was just fate
16 that Deanie picked her out of the phone book and went to
17 her. There's probably a lot of counselors who would have
18 just brushed over that and said, "L.L. , that's just in your
19 -- that's not the root of your problem. There's other
20 issues that you need to deal with." But that stuck out to
21 her. She followed up on it, and good for her.

22 She called law enforcement. She is a mandated reporter
23 and she has to, so she calls law enforcement. That's when
24 we have Deputy Richey showing up. He took the report, spoke
25 with J.L. briefly. I think Cliff Eubanks comes up with his

1 Momma. Richey has to tell him the best thing for you right
2 now is to go home. Things begin picking up there.
3 Investigator Hunnicutt comes into the picture. You know, he
4 spoke with J.L. that day and got her initial report. May
5 17, the very next day, he calls Cliff Eubanks into the
6 office. "Mr. Eubanks, there's been a report. Will you come
7 down to the office." Well, what is it. People, your step-
8 daughter, specifically, have alleged that you've been
9 touching her inappropriately. Okay. I'll be right there.
10 He shows up. Give me your name. Give me your social, your
11 date of birth. Can you read and write. Yes, okay. You
12 graduated twelfth grade. Good. Here's your Miranda
13 Warnings that basically tell you that you don't have to
14 speak with us. You can get a lawyer, do whatever you want.
15 You graduated twelfth grade. You're a grown up. Do you
16 care to explain. Well, yeah, let me see what I can do. I
17 came in to speak with Hunnicutt about allegations my
18 daughter, J.L. , said towards me. She says I have
19 touched her, kissed her neck, rubbed her arms across her
20 chest, touched her butt, and put my hand down her pants. As
21 far as I can remember, I have not touched her in any way
22 that I can remember, to make her feel this way. She has
23 fell asleep at times with me and my daughter, B.E. , in the
24 bed. But I have also picked her up and took her to her bed,
25 and I have also fell asleep in my bed watching t.v. with me

1 waking up with her next to me. Listen to this. I have no
2 clue what goes on when I sleep, and I'm not saying that I
3 did or didn't while I was asleep. Puzzling, I know. And I
4 talked to him yesterday. Please explain this to me. What
5 are you saying happened here. Well, I just -- I don't
6 remember. I can't say whether I did or I didn't. Well, you
7 held back didn't you, Cliff. Why didn't you tell more that
8 day. I was confused. I was drowsy. You know, it's all
9 about excuses with this guy. That wasn't the first excuse.
10 Y'all heard a bunch of excuses yesterday, because he's got a
11 bunch. Okay, well, Cliff you're free to go. And he does.
12 Goes back -- Hunnicutt does. It's just good detective work.
13 Speaks with Deanie again. That's when she gives him the
14 idea about the nanny cams. Good detective work, again.
15 Hunnicutt says I think I can use that. They're going to say
16 you lied to him. You lied to him. You know who was lying?
17 Cliff Eubanks. He had an opportunity earlier to tell the
18 whole truth. Go ahead and tell us everything that happened.
19 He chose not to. He chose to come to them with maybe I did,
20 maybe I didn't. I don't know what happens when I'm asleep.
21 I don't know. Maybe I could've been having sex with girls.
22 If I'm asleep, how would I know. So the ruse, trick, the
23 lie that law enforcement did with him was this. Hey, Cliff,
24 we may know more than you think we know. Because at that
25 time they only knew about the barn incident. At that point

1 it was all that J.L. had disclosed to them. So Hunnicutt
2 says we may know more than you think. Do you remember those
3 discussions you had with your wife about nanny cams. We may
4 have some more information about things that happened in the
5 barn than you know of. That's when he goes oh, oh, hold on
6 a minute. I've caught her masturbating and she's always
7 flirting with me. She's a provocative girl. He's spilling
8 the beans now, because he know -- or he thinks he knows that
9 they know something that he doesn't know. She's a
10 provocative little girl. Let me tell you, I think I know
11 what you're talking about. Okay. Oh, Okay. Now I
12 remember. Now I remember. Can I do another statement.
13 Here you go, Cliff. Go ahead. Tell us everything. Okay, I
14 talked to Hunnicutt and as far as what went on in the barn
15 was that myself and J.L. was working tearing apart pallets
16 and cleaning up. I went to sit down and J.L. came to me and
17 set in my lap and started to wiggle on my leg and move
18 around. I knew it wasn't right, but I tried -- I tried to
19 push her away. I tried. Lord, I tried. But she still did
20 it to arouse me and I ended up ejaculating in my pants.
21 That is his statement. Those are his words on the paper.
22 Those are his statements.

23 What did he tell us yesterday? I have low
24 testosterone, Mr. Scott. Do you remember all the excuses?
25 Listen, I've got low testosterone, jury. I've got erectile

1 dysfunction, jury. Don't you worry about that giant green
2 tub of some of the most obscene pornography you've ever
3 heard of. Don't worry about that. I've got low
4 testosterone. It couldn't have been me. Don't worry about
5 me looking at young girls on the internet. I've got
6 erectile dysfunction. I don't get it. How do we reconcile
7 his testimony? Did you hear him yesterday say sometimes the
8 wind will hit it wrong and he'll ejaculate in his pants.
9 This is a man who is hyper-sexualized. If that's what low T
10 is, then they need to bottle it up and give it to other men
11 for medicine, because he has got -- I don't know. That's
12 hyper-sexualism. That's not being low testosterone in my
13 opinion.

14 I asked him about the porn. This was a classic
15 response. Well, Mr. Scott, I just like the articles. I'm
16 kind of a collector. Really, that's why I have them. I said
17 well, what about all those DVDs in there. There's a bunch
18 of them. Listen, I'm not some puritan, okay? I'm not
19 saying there's anything wrong with pornography, but if on
20 one hand you're saying I think hip-hop dancing is vulgar. I
21 think this little girl is provocative. I think these dances
22 are disgusting. How do you reconcile that with his
23 interests? How do you do it? You can't. It makes no
24 sense. Mr. Scott, I like the story lines in those movies.
25 I said tell me about your favorite story lines. Oh, well

1 that's personal.

2 Mr. Eubanks, why would that little girl know about your
3 stash of pornography? You know, because she told her mother
4 that you had shown her where the porn was and told her what
5 was in it, and she's the one that told Deanie. Who had no
6 idea about it. Deanie had to call law enforcement. Oh,
7 well that was necessary that I told J.L. about that. I said
8 why. Oh, well because Deanie couldn't get up there to move
9 it and L.L. couldn't get up there to move it, and I just
10 couldn't get up there to move it, so we had to send J.L. up
11 there to move it around for me. I don't know. Y'all do
12 with that explanation what you want to. I can't explain it.
13 I mean, here is a healthy man. Sometimes he says, well, I'm
14 suffering from health issues, but then he talks about doing
15 a lot of work outside. A lot of work on machinery. Talks
16 about cutting brush with a bushhog. Talks about picking
17 J.L. up and taking her to her bed. Talks about moving a
18 safe around. But then when I talk about when I talk -- he
19 can't push the porn around. I don't know. I hear
20 everything in this courtroom. I can't explain it.

21 It's impossible for any of these things to have
22 happened. That's what he told his lawyer on direct. His
23 lawyer said is it possible when Deanie was in the house, is
24 it possible that any of these things could have happened.
25 He said no, sir. It's impossible. Now, how do we reconcile

1 that with statement number two where he's talking about this
2 encounter. By the way, y'all do understand this is the tip
3 of the iceberg, right? I mean, people are going to tell you
4 as much as they can -- or as little as they can rather. So
5 you just stop asking the questions. Let me explain this.
6 But that's just the tip of the iceberg, and that was his
7 attempt to explain what he thought was the most recent
8 encounter that he assumed they had on video. Which they
9 didn't, but my point is he says it's impossible on the one
10 hand for that to happen, but then he's admitting to doing
11 the thing in the barn with her. So it's quite possible.

12 These encounters -- it only takes five minutes to do
13 some of these things he's talking about doing. He talks
14 about how he ejaculates when he puts a condom on sometimes.
15 How long does it take to pull a girl's pants down and lay on
16 top of her and do some of those things he was talking about?
17 How long does it take to pull down her pants and put his
18 mouth on her like he talked about all those times? Deanie,
19 her testimony yesterday, it was that of a woman who is
20 feeling an immense amount of guilt. I can't change that.
21 All I can tell her is how would you have known. Nobody
22 wants to think their spouse is capable of this stuff. How
23 would she have know. She talked about that they had this
24 great relationship. And that's the thing. I don't know --
25 I'm trying to follow the direct examination questions.

1 We're talking about deposits and Sun Trust accounts, money
2 market accounts, transfers over here, taking out \$40,000
3 deposits there. I don't understand what that has to do with
4 child molestation, but all I can do is try to follow when
5 they start asking questions and they start trying to present
6 their theory of the case. That money has nothing to do with
7 this case, and that's why she was puzzled. She said well,
8 yeah, I got \$89,000 after my wreck. He put his \$1,300 bucks
9 a month in there too, but what does that have to do with
10 anything. I don't know. She talked about money. She
11 talked about the safe. He talked about how he had the code,
12 she didn't. For some weird reason he gave J.L. the code to
13 the safe. I don't understand that. But here is State's
14 number 12, and this is the day -- this is May 16. This is
15 what's puzzling. Because in her mind, they had this great
16 relationship. This is the day of. She sends some country
17 music song to him. Y'all will have this. Florida Georgia
18 Line, the song is called "Holy". I guess it's a love song.
19 He responds, "I love that song." Deanie, having no idea
20 what she was about to experience later that afternoon,
21 because that was the day they were going to Gilchrist, says,
22 "I was trying to be sweet and romantic, but ..." and he
23 said, "What I said. I know you was. I didn't mean to sound
24 rude. I just said I love that song and I love you." That's
25 what he says to her. She gives a heart emoji and says, "I

1 love you." I mean, she, by all accounts, in her mind, they
2 had a good marriage. You know. Yeah, they weren't physical
3 with one another, but she said, "I didn't need that, you
4 know. It would've been nice, but that wasn't something that
5 I had to have."

6 After the disclosure, it's just kind of a whirlwind.
7 J.L. has the emotional disclosure at Gilchrist. That's not
8 fun. See, that initial disclosure she's crying, she's
9 weeping, she's emotional. It only gets worse from there,
10 because then she's got to go meet with Hunnicutt who's a guy
11 and she's got to talk about things that -- you know, to her
12 she's a twelve-year-old girl who still thinks boys have
13 cooties and she's got to talk about these things that no
14 child should really be talking about. White stuff coming
15 out. Him holding a rag. Him putting his mouth on her
16 privates. That's -- that's not something that a twelve-
17 year-old girl wants to talk about with a grown man.

18 Then from there there's a forensic interview. She had
19 to drive to Greenwood, go to Beyond Abuse, and speak with
20 Heather Bennett about an hour and a half. Spill her guts
21 again about what this guy has been doing to her. That
22 wasn't pleasant. Remember Dr. Lyle Pritchard? She had to
23 go to Greenwood again for that. I assure you that was not
24 pleasant. She had to take all her clothes off, lay on a
25 bed, spread her legs. The doctor -- I mean, this is all

1 medical clinical practice, but it's not pleasant. As an
2 adult it's not pleasant. And the doctor, as part of the
3 examination, has to do some pretty intrusive practices. I
4 think we all know what a gynecological exam entails. But,
5 on top of that, she's taking pictures under bright lights.
6 It's not fun. We heard from Samantha Black. That's who
7 counseled J.L. . Fifteen therapy sessions. That's about a
8 45 minute to an hour drive to her office from their home
9 from Beaver Dam Church Road up to Greenwood. Fifteen times,
10 about an hour to an hour and a half per session. I bet
11 there were a lot of other things J.L. would've liked to have
12 done than to have gone to those sessions. Dr. Sharway -- do
13 y'all remember her? That was the doctor who she met with.
14 She's Samantha Black's supervisor, and she met with J.L.
15 once or twice. I can't remember what the exact testimony
16 was, but she met with her, reviewed Samantha's assessment of
17 the girl. Spoke with J.L. and diagnosed her with PTSD.
18 That's Post Traumatic Stress Disorder. That's stuff we see
19 in combat vets. She talked about how it is the after
20 effects of somebody experiencing something traumatic, and
21 she had seen this in this twelve-year-old girl. She's a
22 doctor and her opinion was this girl was exhibiting symptoms
23 of PTSD.

24 I'm winding down. I need to talk with you a little bit
25 about the law. I told you earlier there's three charges;

1 Criminal sexual conduct with a minor first, criminal sexual
2 conduct with a minor second, and criminal sexual conduct
3 with a minor third. Those are those three indictments y'all
4 are going to have. The indictments go a little into what
5 the charges are and what the law is, but those are what you
6 are going to consider. I need to explain to you what those
7 mean and I'm going to do it with this timeline, because
8 timing and the age that J.L. is when a lot of this is
9 happening is important. Can y'all read this from there?
10 Everybody can read it? It goes from J.L. 's sixth birthday,
11 because that's when she talks about the first contact. We
12 know that's when Cliff moved in with her. And then it goes
13 to the disclosure at Gilchrist with Kim Little. So, DOB
14 D , 2010, that's when J.L. turned six. Denise and Cliff get
15 married September 14, 2010. Denise had that wreck November
16 2013. I couldn't remember the exact date so I just put
17 November 2013. That's an important date to me because,
18 really, according to L.L. and I recall J.L. to a certain
19 extent, that's when everything kind of got ramped up a
20 little bit. That's when Cliff really began resenting Deanie
21 for the position that she had put him in. That's when Cliff
22 finds himself alone more often with the children. So that
23 was kind of an important event. J.L. 's eleventh birthday --
24 I'm about to explain to you why that's relevant. Her
25 eleventh birthday was DOB . April 1, 2016 is

1 when they move into the Beaver Dam Church Road house. May
2 16, 2017 is when she disclosed. Hopefully, this was the
3 best way I could think to describe this to you guys.

4 We'll start with CSC with a minor first. I reads, "The
5 Defendant, Michael Cliff Eubanks, did on or between DOB
6 and DOB , in Laurens County, commit the
7 crime of criminal sexual conduct in the first degree by
8 engaging in a sexual battery with a minor." That's J.L.

9 , date of birth DOB . "Who was less than 11 years
10 of age." That's where 11 comes in. CSC with a minor first
11 deals with all the sexual batteries he committed on her
12 before she turns eleven. Is everybody clear? So, if you
13 look at the time line, any time she discussed a sexual
14 battery between the ages of six up to eleven, that is a CSC
15 with a minor first. Do y'all remember that time on the
16 couch at the Teague Road house? Do y'all remember that?
17 That was one of the earliest times she talked about. She
18 said he had used his fingers up to that point a lot. They
19 had gone inside of her. She said that he put his mouth on
20 her before. Remember we did the tissue box? I asked,
21 "Well, did his mouth go - did his tongue go on the top or on
22 the inside?" She said on the inside. Then she talked about
23 he took his boy part out and was rubbing it on her. I said
24 was it on the outside of your private or on the inside. She
25 said inside.

1 I'll explain to you why that's important. But every
2 time there was a sexual battery in that time period it's a
3 CSC with a minor first. Y'all's recollection is going to
4 trump mine, but my recollection is that the Teague Road
5 house started when she was six and there had been multiple
6 times when his mouth was on her private part. Multiple
7 fingers touching her private part. But then she talked
8 about this one morning when her mom had gone to work and he
9 picked her up out of the bed and carried her to the couch
10 and pulled her pants off, began using his hands on her, and
11 then he put his mouth on her. Then he took his pants off
12 and put his private in her private. I said well, tell me
13 about that. She said that's kind of how it would work. He
14 was lubricating her with his mouth. She said that was
15 typically how that would work. He would use his fingers on
16 me and his mouth and then he did the boy part on my girl
17 part thing. So she talked about being eight. She talked
18 about the number times happening at the Teague Road house.
19 All those times are CSC with a minor first. Everybody clear
20 on that?

21 CSC with a minor second. "The Defendant, Michael Cliff
22 Eubanks, did on or about DOB to on or about May
23 16, 2017 in Laurens County commit the crime of criminal
24 sexual conduct with a minor second by engaging in sexual
25 battery with a minor, JJ, who is at least fourteen

1 years old -- she's thirteen now -- or less, but who was at
2 least eleven years of age at the time." I know this is
3 confusing. But the CSC with a minor second, not CSC with a
4 minor first, but second covers everything that happened
5 after her eleventh birthday. Okay? And a good way of
6 determining that, she moved into the Beaver Dam Church Road
7 April 1, 2016. She talked about all of the events there.
8 She talked about the barn. She talked about her bedroom.
9 She talked about his bedroom at the Beaver Dam Church Road
10 house. He still did the same things. It was the hand down
11 the pants. Mouth on the vagina and in the vagina, and
12 ultimately it was putting his penis inside of her. Every
13 one of the times after she was eleven up until the time she
14 disclosed is a CSC with a minor second.

15 CSC with a minor third, that can encapsulate everything
16 that didn't involve the sexual battery. That's just
17 touching her breasts, that's fondling her vagina. Sexual
18 battery, which I'm about to explain, really if you think
19 about penetration or the cunnilingus aspect, that's going to
20 be a sexual battery. The judge is going to tell you all
21 this by the way. I know this is a crash course. CSC with a
22 minor first is the sexual battery when the victim is less
23 than eleven. I think I already explained that. Criminal
24 sexual conduct with a minor second degree is sexual battery,
25 at least eleven but younger than fourteen. This is what I'm

1 trying to get to. What is sexual battery? Sexual battery
2 is only important for the CSC with a minor first and second
3 degrees. Third degree just means he's doing stuff to her to
4 arouse his passions. That can be touching. His statement
5 where he's having her grind on his lap until he ejaculates.
6 There was no penetration in that specific instance, so that
7 would be the CSC with a minor third. Sexual battery applies
8 to CSC with a minor first and second. Sexual battery means
9 sexual intercourse. He talked about that -- or she talked
10 about him putting his penis on the inside of her girl part.
11 Cunnilingus, that's oral sex with the female as the
12 recipient. She talked about that. Talked about him putting
13 his mouth on her girl part. Fellatio, I didn't hear any
14 evidence of fellatio. That would be oral sex when the male
15 is the recipient. Anal intercourse. She talked about him
16 putting it in her butt. Do you remember that? When she
17 talked about -- I'd ask her how did it feel when he put his
18 boy part in your girl part. It hurt. And then talked about
19 him doing it with her butt. I said well how did that feel
20 afterwards. It hurt. Okay. That's important, because that
21 is showing the penetration because sexual battery --
22 cunnilingus is cunnilingus. That's where he's putting his
23 mouth on her, but for the intercourse aspect if there's any
24 intrusion, however slight, of any part of a person's body or
25 any object into the genital or anal openings of another

1 except for when it's done for medical purposes that's a
2 sexual battery. I've thrown a lot at y'all. I'm sorry.
3 That's what sexual battery is, but that's only going to
4 apply to your CSC with a minor first and second charges.
5 The key words are the anal sex he did with her, the vaginal
6 sex he did with her, and the cunnilingus he did with her.
7 Those are sexual batteries. Those establish the CSC with a
8 minor first and CSC with a minor second. Everything else he
9 was doing with her sexual in nature that appealed to his
10 sexual desires and gratification, his lusts, those would be
11 the CSC with a minor thirds.

12 That's just what that is. This is the third degree
13 criminal sexual conduct. You're guilty of it if you engage
14 with a minor in the third degree if the actor, that's
15 Eubanks, is over fourteen years of age. He's in his mid-
16 30's. And the actor willfully and lewdly commits or
17 attempts to commit a lewd or lascivious act upon or with the
18 body or its parts of a child under 16 with the intent of
19 arousing or appealing to or gratifying the lusts, passions,
20 or sexual desires of either he or the victim. So if you're
21 doing this contact with a sexual -- a desire to be sexual in
22 nature, then that's the lewd act aspect. But that's the CSC
23 with a minor third. And that's the law you are to consider.

24 You know, the true father wants nothing more than to
25 protect, to comfort the child, to do whatever it takes to

1 keep the child safe and without pain and suffering. So how
2 do we explain the so called father, Cliff Eubanks? How do
3 we explain somebody like him that does these things? Nature
4 hard wires true parents to nurture, to care for a child. So
5 why does Cliff Eubanks want to do the opposite? I don't
6 really have the answer. I suspect if you're looking at that
7 much pornography and you're making it that much a part of
8 your life, because I think pornography is progressing. If
9 you start off with Playboy it can begin and end there, or
10 you can choose to up it a notch and get into more hardcore
11 stuff. And then you can go into other rabbit holes. Into
12 that genre or that genre. And you can look at all kinds of
13 stuff until it's an unhealthy addiction. And you're looking
14 on the internet and your sexual desires become such that you
15 can't control them. I don't know what makes somebody become
16 like a Cliff Eubanks.

17 I do know there is comfort in knowing that J.L. -- you
18 don't have to pretend anymore. I want you to take comfort
19 in that. You don't have to pretend anymore. You don't have
20 to be afraid anymore. You should take comfort knowing that
21 you're going to do everything from here going forward in
22 your power to heal. I hope J.L. will leave this courtroom.
23 I hope she finishes high school. I hope she goes on to make
24 friends and lead a normal life, move into adulthood,
25 establish friendships, relationships, and have as little

1 bitterness as humanly possible. That's what I hope for you,
2 J.L. . I hope she'll be able to be vigilant against the evil
3 that is out there. But I really do hope that she'll be able
4 to trust. I don't want her past to steer every aspect of
5 her future. I hope she's able to take these horrible things
6 and transform them into a fabric that makes her a strong
7 powerful woman. I hope that for her. You do have the power
8 now, J.L. . He's never going to have any power over you
9 again. You win. You told everybody what he did to you. Do
10 you know that?

11 I'm now going to ask -- you'll hear from me again.
12 He's going to get up here and say some things. I might have
13 some responses to it. I'm going to ask you for verdicts of
14 guilty on these charges. The question is after everything
15 you've heard, after his excuses, after his victim blaming --
16 do you remember his last word yesterday? This is all J.L. 's
17 fault. It's not your fault. You know that. In explaining
18 his statement, this is all J.L. 's fault. Nevermind I'm a
19 210 pound 35-year-old man. She's an 81 pound girl. That
20 girl was provocative. She was flirtatious. After
21 everything J.L. has gone through, after them calling
22 family members to talk about he's a good guy. I got the
23 impression that a lot of them didn't know a lot of the
24 allegations. Remember that little old lady who said she's a
25 flirty little girl. I said did you ever flirt when you were

1 a kid. Yeah, I knew lots of boys. I liked to dance too.
2 Then remember I asked well, you think that's bad. What do
3 you think about a man who has a girl sit in his lap for
4 sexual gratification. She said that's disgusting. I don't
5 think she knew what he'd already admitted to. Do you
6 remember the bully, the hired gun they brought on? Do y'all
7 remember Mitchell twerking Eubanks? He's not here today. I
8 looked for him after his examination yesterday. It was
9 pathetic. I looked for him. I wanted to talk to him but he
10 was out the door. The best he could do was come up with a
11 picture of girls at a dance shop. I said where did you get
12 that. I asked him where did you get that. Off a Facebook
13 page. Who told you to do that? He keeps looking over at
14 the Defense lawyer. Who told you to do that? He was a
15 hired gun. He didn't know anything. He came in to do Cliff
16 Eubank's dirty work, and he got exposed on the stand for it.
17 But the best he could do was show a group of girls at a
18 dance competition having fun. Let's make the innocent pay.
19 Let's shift the blame from the guilty to the innocent, and
20 that's what they tried to do. Let's look at it for what it
21 was. We need to watch out for these little girls, because
22 little girls can be provocative. They can give you
23 flirtatious looks. They can overcome the willpower of a
24 grown man. Y'all remember that, right? Let's see this for
25 what it is. After everything J.L. has gone through.

1 That's why I've gone through all of these counseling
2 sessions, all the interviews, physical examinations. Does
3 that sound like something that you would go through if you
4 just made something up off the bat? And what reason have we
5 been given for her to make this whole thing up? There is
6 none. See this for what it is. Do you believe grinning
7 Cliff or do you believe that strong little girl? I'm asking
8 you to believe that strong little girl and what the evidence
9 showed you this week. I'm asking you to find Cliff smirking
10 smiling Eubanks guilty of criminal sexual conduct first, but
11 not just the first, the second and the third. Find him
12 guilty for everything he's done. Let the truth speak.
13 Thank you.

14 THE COURT: If it's okay with you, Mr. Wise, before we
15 proceed with your closing we're going to take a brief break.
16 By my watch y'all have been out here exactly one hour and
17 three minutes. Most of us have been out here for an hour
18 and twenty plus minutes, so we're going to take a brief
19 comfort break for ourselves and proceed with further closing
20 arguments. Of course, don't talk about the case yet.
21 Adjourn to the back and make yourselves comfortable and
22 we'll have you back out on the record in a few minutes.

23 (Whereupon, the jury exited the courtroom from 11:22
24 a.m. until 11:42 a.m.)

25 THE COURT: One housekeeping matter, the Court has made

1 a Court's Exhibit Court's number 1 the email string from
2 last night about the proposed request to charge, so that's a
3 Court's Exhibit as part of the record in this case. Another
4 housekeeping matter, and I mentioned the time we did the
5 *Jackson v Denno* hearing and forgot to ask about it last
6 evening. I'm assuming, Mr. Wise, that you're not desiring
7 the instruction -- I realize that you're still objecting to
8 the nature of the second statement, but you're not
9 requesting an instruction that the jury has to determine
10 whether the statement is voluntary or not and consider
11 whether --

12 MR. WISE: I hadn't thought about it one way or the
13 other. It's probably appropriate.

14 THE COURT: All right. I'll add it.

15 MR. WISE: It's not that long.

16 THE COURT: I don't mind adding it. It's not that
17 substantial. I'll add it in there and then submit it to
18 you. Let's have the jury, please.

19 (Whereupon, the jury entered the courtroom at 11:43
20 a.m.)

21 THE COURT: The record will reflect that the jury is
22 back and seated. At this time, Mr. Wise, you are
23 recognized, sir, for your closing.

24 CLOSING ARGUMENT BY MR. WISE:

25 Mr. Foreman, ladies and gentlemen of the jury, when you

1 go into your jury room and you start talking among
2 yourselves or even to yourselves and you say to yourself or
3 among the group you know, Michael Cliff Eubanks is probably
4 guilty. He probably did what the State said. What should
5 your verdict be? Your verdict should be not guilty, because
6 when we talk about proof beyond a reasonable doubt we're not
7 talking about what probably happened, what might have
8 happened, what could have happened, or what possibly
9 happened. It is the highest standard known to man short of
10 absolute certainty. So probabilities aren't sufficient to
11 convict. A strong probability is not sufficient to convict.

12 Another way of looking at this is a football analogy
13 that I like, and it's the instant review. When they have a
14 play on the field and the official makes a call and then
15 they will replay that play, and replay it, and replay it.
16 And the announcer doing the replay will say that it has to
17 be irrefutable evidence that the call on the field is wrong.
18 In this courtroom, the call on the field is not guilty. The
19 question is has the State produced irrefutable evidence that
20 the call on the field is wrong, and they haven't. They
21 haven't for many reasons. If you listen to the judge's
22 charge and follow carefully what he says I think the
23 analysis of this case becomes relatively easy.

24 First of all, I want to -- as the Solicitor mentioned,
25 there are three separate and distinct charges in this case.

1 First, second, third degree. I understand in cases of sex
2 abuse and as I said in my opening statement, unfortunately
3 there is sex abuse of children in this country. And,
4 unfortunately, there are false allegations of sex abuse in
5 this country. And juries have to find the difference,
6 unfortunately. I understand that when someone makes a
7 report of sex abuse that the initial report is not going to
8 be complete. And I understand maybe the second report isn't
9 going to be complete. And I understand that an hour
10 interview -- the forensic interview we talked about may not
11 be complete. But you would think after 15 weeks, 15
12 sessions of therapy, it would be pretty complete. But one
13 thing you can consider in this case is the story kept
14 evolving. It kept changing. It kept moving. The truth
15 doesn't.

16 I say that for this reason. You will have in your jury
17 room the trauma narrative that was written. That is State's
18 Exhibit 10. The trauma narrative was developed over those
19 15 weeks of therapy. If you remember, Samantha Black talked
20 about the hardest part is to get out the worst thing that
21 happened. That takes time. The first time is generally not
22 that hard. What is the worst thing that happened to you.
23 Tell me. I need to know. It takes time. And over 15 weeks
24 the worst thing that happened came out. And you can carry
25 it to your jury room and read it. But the worst thing that

1 happened to her at the end of those 15 weeks would only
2 qualify for criminal sexual conduct third degree. There is
3 nothing in the worst thing that happened to her in her
4 trauma narrative that would lead you to convict for first or
5 second degree.

6 That was not the testimony on the stand, so the
7 testimony evolved. What happened after she completed 15
8 weeks of therapy and how the story kept evolving, we simply
9 do not know. And that is something you can consider. Who
10 said to her no you need to say more. Who said to her you
11 need to talk about penetration. We don't know. Just as the
12 Solicitor says, many acts of criminal sexual conduct are
13 conducted in secrecy. So is nefarious planning done in
14 secrecy. Those are done in secrecy. That is something you
15 can consider. After 15 weeks that story should not evolve
16 anymore. After meeting with a professional counselor who is
17 trained to get this information from children, that story
18 shouldn't evolve, but it did. And that should tell you
19 something.

20 It should tell you there is a reason it evolved, and
21 it's not because of things that quote she remembered 8 weeks
22 later, 10 weeks later, six months later. It evolved because
23 someone encouraged it to be evolved. That's the only
24 rational explanation.

25 Now, they talk in this case and the judge will charge

1 you with circumstantial evidence. The Solicitor commented
2 on some of that in his opening statement. The Judge will
3 charge you in circumstantial evidence, if you are to
4 consider it, must point with certainty to the guilt of the
5 accused. No circumstantial evidence in this case points
6 conclusively to the guilt of the accused. None. None.
7 Here's why. Let's go first with the medical examination.
8 It was normal. Granted, Dr. Pritchard stated yes, you can
9 have sexual abuse, it can heal, and you not see anything.
10 Fine. I understand that. Of course, she also said you could
11 not have sexual abuse and the exam is going to be normal.
12 So, how does a normal exam point conclusively to the guilt
13 of the accused. It cannot and does not.

14 Then they talk about the PTSD. Oh, the child has
15 trouble eating. The child has all these problems. Dr.
16 Sharawy testified. So I asked her doctor, if a reasonably
17 honest person lies could they have trouble sleeping? Oh,
18 yes. And if a reasonably honest person lies, would they
19 have trouble eating? Yes. We all know that. We don't need
20 an expert to tell us that. If a reasonably honest person
21 lies, would they have nightmares. All these things that are
22 stressors. And the answer every time was yes. And common
23 sense doesn't even require an expert. Lying creates stress
24 in people. It makes them irritable and all these things.
25 Of course it does. Common sense tells you it does. So, do

1 these factors then point conclusively to the guilt of
2 Michael Cliff Eubanks? They do not. They do not point
3 conclusively to the guilt of Michael Eubanks.

4 Then Dr. Galloway comes in. Fine, children delay
5 reporting. Okay. Fine. Then she starts talking about also
6 the factors and I say Dr. Galloway, do children who are --
7 and she said at first some children who are not abused could
8 not have symptoms. Okay. And then she said children who
9 are not abused have nightmares. Children who are not abused
10 have trouble eating. Eating disorders. Children who are
11 not abused have trouble sleeping. Children who are not
12 abused have all these symptoms. Children who are abused
13 have these symptoms. So, what does it prove. What does it
14 remotely prove. It proves children who are abused or not
15 abused have symptoms and some children who are abused or not
16 abused do not have symptoms. That does not point
17 conclusively to the guilt of Michael Cliff Eubanks. It
18 doesn't do it. It doesn't add anything to this case.

19 So, also you can consider that J.L. went to
20 counseling for some four or five months back in '14 and '15.
21 Never once was there a disclosure in that counseling. Never
22 once. She meets with another counselor one time and there
23 is a disclosure. You can consider that. Those are things
24 that I think show that this is a case of something that's
25 created. The judge will also charge you -- let me tell you

1 something else too. There was an interesting comment, I
2 thought, that J.L. made near the end of her testimony
3 and it was this. She said I have attention. Talking about
4 now. I have attention. I don't doubt that. I don't doubt
5 that once she said she was sexually abused she got all the
6 attention in the world. And for a child that's truly been
7 sexually abused absolutely that should happen. But it was
8 important to her because she said it on the stand. She now
9 has attention.

10 Now, the judge is going to charge to you about
11 reasonable doubt. He's going to tell you in his definition
12 of reasonable doubt if there's a real possibility that the
13 Defendant is not guilty then you are to find him not guilty.
14 So let's look at the facts in this case and talk about
15 whether there is a real possibility. Let's start out with
16 an interesting one, the safe. Remember the testimony about
17 the safe. Is there a real possibility that Michael Cliff
18 Eubanks and Deanie Eubanks bought that safe, carried it
19 home, and put \$40,000 cash in it. Is that a real
20 possibility? It sounds like most probable possibility. She
21 denied she even knew a safe was there. But is there a real
22 possibility she did know? Is there a real possibility that
23 he carried it home and put it in there because she was
24 spending too much money out of the bank. Is that a real
25 possibility? Absolutely.

1 We talked about the negative exam. Is it a real
2 possibility that a normal physical exam means no abuse
3 happened? Yes. That's a real possibility, because a normal
4 exam has to mean, at least a real possibility, that no abuse
5 happened. You can't infer abuse from an exam that says
6 there is nothing to show abuse. So, yes. That is a real
7 possibility.

8 J.L. testified -- let's deal right now with just Beaver
9 Dam Road. They moved in there approximately April 1, 2016.
10 They were there until May -- Cliff Eubanks was there until
11 May 16, 2017, roughly 400 days give or take a little. In
12 that home were Mr. Wilson, up until he passed in January,
13 the Grandmother, and Deanie Eubanks. They were there
14 virtually 24/7. She was recovering from her injury. She
15 didn't go anywhere except basically when she and Cliff went
16 to dancing or something. We had three adults in that home
17 virtually 24 hours a day. Is there a real possibility that
18 had something been going on they would have noticed a lot of
19 strange things over 400 days? Yes, but they didn't. So
20 there is a real possibility that nothing happened.

21 They say it all happens behind closed doors. Yes, but
22 if you observe an 11 or 12-year-old girl going behind closed
23 doors with a step-father and being in there for 30 minutes
24 you are going to be suspicious. And nobody saw that.
25 Nobody saw anything that would indicate anything. So, is

1 there a real possibility that no abuse happened in that home
2 over 400 days? Absolutely, yes.

3 Children today -- and it can be shocking -- know about
4 cell phones more than I probably ever will. J.L. made an
5 interesting statement -- and I said in my opening statement,
6 "Pay attention to the small details, because that is what is
7 important." J.L. made an interesting statement. She saw
8 pornography on Cliff's cell phone on Teague Road. An iphone
9 5. And she saw it when she was 6 or 7 years old. Two
10 things, is there a real possibility that a 6 or 7-year-old
11 girl has no clue what an iphone 5 is -- and I don't think
12 they were even out then, but use your judgement. Is that
13 possible. I'm sure at 12 she knew what an iphone 5 was.
14 Mr. Eubanks testified that the iphone 5 he didn't get it
15 until they moved to the Beaver Dam Road and he started a new
16 job making some money and he got iphone 5's for the kids and
17 had their phones. So is there a real possibility that J.L.
18 made that comment intentionally because she knew it couldn't
19 have happened and is a way of saying something?

20 Also, she admitted in the forensic interview -- the
21 forensic interviewer asked her what I call a throwaway
22 question. The forensic interview was June 1, 2016. It
23 would have been roughly two and a half, two weeks after this
24 all came to the surface. Cliff had been out of her life for
25 those two or three weeks, so she had been at home with her

1 mother. She had been interviewed by the police. She had
2 been talked to by the first counselor that she saw, Ms.
3 Gilchrist. After all this had come out she was seen there.
4 The throwaway question was, "Have you seen Cliff lately?"
5 Her answer was, "No, but I would like to." Is there a real
6 possibility she meant that? Yes, there is. And is there a
7 real possibility she meant that because she knew what she
8 was saying had not happened? Yes, there is. If anything
9 from the time this arose she had been reinforced with the
10 idea that all this is horrible. Horrible.

11 Let's go back to Cliff's birthday in Month 2016. He
12 gets a message on one of the programs -- I don't remember
13 which one it was -- which she admits she sent. A happy
14 birthday wish. A happy birthday wish in which she says, "I
15 love you to the moon and back." Is there a real possibility
16 she meant it? There's a real probability she meant it. A
17 real probability she meant it. You'll have a chance to read
18 that. The reason I say that is this. Now, let's go back
19 and talk about those stress factors. You can only have
20 these stress factors if you realize, understand, and
21 comprehend in your own mind that what is happening to you is
22 bad, horrible, and wrong. Otherwise, there's no stress. So
23 you have to understand it's bad, horrible, and wrong in
24 order to have drastic weight loss. In order to have the
25 nightmares. In order to have the eating disorders. In

1 order to have the trouble sleeping, and a host of other
2 things including not showering and all that. If you don't
3 comprehend that what is happening to you is bad, awful, and
4 wrong you won't have those stress factors.

5 When she sent this message there was no stress in her
6 life, because if she knew those acts were bad, horrible, and
7 wrong, that voluntary message on her part would not have
8 been sent. Would not have been sent. Read it. You saw Mr.
9 Eubanks when he read it.

10 Lastly, a lot of Cliff's relatives and friends
11 testified. Of course, people who don't know him couldn't
12 come testify, because they don't see him. You know, they
13 don't know him. They don't see him with the children. Is
14 there a real possibility that those that know him best in
15 fact know him best. They are behind him. They took the
16 stand in his defense. His attitude with his children, not
17 showing favoritism, how he got along with the kids, and how
18 he treated them. How they had never seen anything improper,
19 or remotely improper.

20 Now, the Solicitor made the comment there was a drastic
21 loss in weight. Quote the signs are there. What proof is
22 there of a drastic loss in weight versus what proof could be
23 there to show a drastic loss in weight. The judge will
24 instruct you that in considering your verdict you consider
25 the evidence and the lack of evidence. It is a simple

1 matter to show a drastic loss in weight on a 12-year-old
2 child if you wanted to. Easy. She was weighed by Dr.
3 Sharway. They were roughly within a month of each other.
4 So to show a drastic loss in weight all you have to do is go
5 back and get a medical check on this child over a period of
6 two to three years and show at her physical exams what she
7 weighed, how the weight dropped, how low it got, and then
8 how it started going back up. That is conclusive proof of a
9 drastic loss in weight. Do we have it? No. The only
10 source for virtually all these symptoms is the woman who
11 said I never saw the safe with the \$40,000 in it. The woman
12 who said shortly before her settlement of some \$89,000 when
13 talking about Cliff, "I know how to get rid of him." That
14 is the same source.

15 The Solicitor made a big argument about Mr. Eubanks
16 saying in his initial statement, "I don't remember."
17 Different people react differently to accusations. I will
18 tell you this. If I saw someone accused of criminal sexual
19 conduct with a minor and they pounded their fists and denied
20 it vehemently, "That's the most stupid thing I've heard. I
21 would never do anything like that." I would think that
22 falls under the category of me think he doth protest too
23 much. But when you get a nice guy in and say your step-
24 daughter has accused you of touching her inappropriately.
25 What have you got to say. It is easy to touch someone

1 inappropriately accidentally. You pick them up and carry
2 them to bed while they're asleep. You could accidentally
3 touch them inappropriately. So, when he says it's told you
4 touched her inappropriately, he says I don't remember. Not
5 saying it's impossible that it happened. Like I said, you
6 can go to sleep next to them as everybody does with their
7 kids. Your hand lands on them. They wake up. Oh, his hand
8 is in the wrong place. Inappropriate touching. So I don't
9 remember is as honest an answer as any human being can give.
10 Nothing wrong with that.

11 Then he says the hip hop dancing can't be reconciled
12 with his viewing pornography. Yes, it can. And it's easy.
13 Hip hop dancing by a 12-year-old or provocative dancing by a
14 12-year-old done in public is totally inappropriate.
15 Totally inappropriate. And if the Solicitor wants to say
16 this is appropriate dancing for a 12-year-old, he may. I'm
17 sorry. That's not my opinion. So, there is a difference.
18 What you do in public is different from what you do in the
19 privacy of your bedroom with your wife or spouse. This is
20 totally inappropriate.

21 Then he makes a big deal about erectile dysfunction.
22 Erectile dysfunction is not intimacy. They are two totally
23 different things.

24 He says Deanie had no idea about the pornography. He
25 said that box was put up there with duct tape. You saw the

1 box. There was residue of duct tape on it. And it had been
2 in their house on Teague Road not in a box. He bought a box
3 to put it in when they moved to put it in storage. Is there
4 a real possibility that he's telling the truth about that
5 and she knew about it and helped him move it? Yes. Yes.
6 Then she's going to get up here and say I didn't know about
7 it. I didn't know about it. Somebody opened it, and it
8 wasn't Cliff Eubanks.

9 Then he made a comment about the witness, Mitchell
10 Allen Eubanks. He wanted to speak to him and he skedaddled
11 out of here or something like that. Well, if you observed
12 Mitchell Allen Eubanks was here until the end of Cliff
13 Eubanks' testimony yesterday.

14 Now, the burden is on the State in this case. Let me
15 back up one second. There is a second statement by Cliff
16 Eubanks and it relates, for all practical circumstances, to
17 criminal sexual conduct third degree. The act, as I said in
18 opening statement, does not make the crime. The intent
19 does. Cliff Eubanks never denied making that statement.
20 What he said in that statement is one hundred percent true,
21 it is just that he never had the child touch him with his
22 intent of arousing his passions or whatever. It was one of
23 those things that just happened. In order for that to be a
24 basis for conviction, you have to believe that he actually
25 got her to sit in his lap for that purpose. For that

1 purpose. It's not there. It's not there. Something he's
2 ashamed of, embarrassed of, having to deal with that in a
3 public courtroom like this is, well, embarrassing.
4 Embarrassing to him.

5 The State has argued in their closing about all the
6 things this child went through after making this allegation.
7 Implying why would someone do it. If you go out to a lake
8 on a calm day and you pick up a rock and you throw it into
9 the lake you create ripples and you can't stop them once you
10 throw that rock. You can't stop those ripples no matter
11 what you do. The same thing applies here. Once the
12 allegations of child sexual abuse is made it starts a whole
13 tsunami almost that can't be stopped. So once it's made
14 you're stuck with it, so to speak, because you're going to
15 be caught up in this through all this counseling, all this
16 support, all this attention, forever.

17 So, it's not like there was a conscious decision to --
18 after the accusation is made, oh, I think I will go to
19 forensic interviewer. She doesn't make a conscious decision
20 to then go to counseling. It's all things that are just
21 about mandated. The ripples go out, and they can't be
22 stopped.

23 All of you had the opportunity to sit here and watch
24 Cliff Eubanks and listen to him. Judge him as a human
25 being. He was not required under the law to take that

1 stand. He wanted to take that stand to defend what has been
2 so badly tarnished, his good name. He told you on that
3 stand I have never been in trouble in my life. If that
4 statement were not true, you would've heard it. Heard about
5 it. It's true. Thirty something years old. He's led a
6 good life. Great family support.

7 Is there real possibility that Cliff Eubanks was
8 telling the truth? Yes. What else you have to understand
9 as you discuss these real possibilities is the burden then
10 is on the State to eliminate these real possibilities and to
11 tell you and convince you that the real possibilities are
12 not possible. Not that they're not probable. Not that they
13 might not be, but they are not possible. Period. It is not
14 possible that she meant this note. That's what the State
15 has to convince you of. It is not possible that this was
16 the worst thing that happened to her. That's what the State
17 has to convince you of. It is not possible for all those.
18 It's not possible that people who know him best know him
19 best. That's what the State has to convince you of before
20 you can come back with a verdict of not guilty.

21 I want to mention the pornography that's been discussed
22 in this case. I don't know, y'all. I'm not passing
23 judgement on anybody. I am just saying this. If any person
24 has any pornography in their home and they happen to catch
25 an allegation of child abuse, the State wants you to believe

1 that is compelling evidence of their guilt. And it simply
2 is not. And it is not for one simple reason. There isn't a
3 scintilla of evidence in this case that any pornography he
4 had was child pornography. None. None. Also, it is indeed
5 interesting from our perspective that they took all these
6 cell phones and computers from Cliff's house. Finally, he
7 turns one in a week or so ago they couldn't analyze because
8 of a cracked screen they never asked him for. They never
9 asked him for it. The cell phone he had in his possession
10 at the time of his arrest, they never asked him for it.
11 They never tried to get a search warrant for it. The one
12 that is probably the most relevant to what his relationship
13 with J.L. is, they never tried to look at it until the week
14 of trial. They didn't try. Why is that significant.
15 Because if he was obsessed with J.L. , as the State
16 would have you to believe, you would've expected to have
17 found suggestive pictures of her, provocative pictures of
18 her, or even a bunch of pictures of her to the exclusion of
19 the other children. They were able to get one cell phone he
20 had that may have been less than a year old at the time of
21 this incident. How many pictures that I just described did
22 they find on that phone? I'll save you the trouble of
23 trying to figure it out. None. None. And because they
24 found no pictures, provocative or otherwise, of J.L.
25 on that phone is there a real possibility that he was not

1 obsessed with her. Yes, it is. And has the State
2 eliminated that real possibility. No, they haven't. No,
3 they haven't. They haven't eliminated any of the real
4 possibilities I talked about. As I said, not real
5 probabilities, but an honest real possibility. Not somebody
6 from Mars came down here and put these ideas in her head.
7 That's a fanciful -- that's not even a possibility. That's
8 just stupid thinking. We're talking about serious things
9 that are real possibilities in this case, and the State has
10 the burden of convincing you they are not even possible.
11 Not even possible. She says in her forensic interview I
12 would like to see him again. I can't do it until I'm
13 eighteen. Is there a real possibility she mentioned that
14 because she knew at what age she can see him again. When
15 she's an adult. Not the comment of someone who has been
16 sexually abused since the age of six. Not even remotely.

17 This story evolved from some touching initially to what
18 they got in the trauma interview that you'll have a chance
19 to read, to conduct filled with penetration and all the
20 other sex acts, of which there is no physical evidence.
21 This case should not have evolved once they got through
22 serious 15 weeks of counseling. If and only if what was
23 initially said was true, because if it's not true and it
24 needs to be made stronger for court, it keeps getting added
25 to by somebody somewhere. This is a 12-year-old, 13-year-

1 old girl. I hold her responsible for nothing. Nothing.
2 And never will. But there are adults in her life that want
3 to get rid of Cliff and want to keep the thirty-something
4 thousand dollars. Is there a real possibility that Cliff
5 bought a safe and put it in there? That Deanie Eubanks knew
6 about it? Yes. Therefore, there's a real possibility that
7 Michael Cliff Eubanks is not guilty, and that should be your
8 verdict in this case. Thank you.

9 THE COURT: Mr. Scott, I assume you have a reply?

10 MR. SCOTT: Yes, sir.

11 THE COURT: Go right ahead, sir.

12 CLOSING ARGUMENT

13 BY MR. SCOTT: Well, there it is. I've been waiting for
14 that. The theory -- the big theory of why she made it up.
15 There it was. Remember how during the direct, what is this
16 safe about. Why are we talking about the safe. Nobody has
17 ever reported to police about a missing safe, because there
18 is no missing safe. Deanie Eubanks was given \$89,000 as
19 part of a settlement. Her money. But what does she do with
20 it? She lets him deposit it into a joint account. He alone
21 makes the decision to withdraw \$40,000. He says for down
22 payment on a home. We never heard about this house he had
23 planned on buying, because he alone made that decision.
24 What is he doing while Deanie is in the hospital with her
25 dying father? He's withdrawing more money and putting it

1 into money market accounts. Where is that money now? If
2 anybody needs to be questioned about missing money, it's Mr.
3 Eubanks. I mean, remember that text yesterday where she's
4 talking to him. He acknowledged it. She's saying hey,
5 maybe we should save some of this money you're out spending.
6 He says I know, but I want to get some tools. Remember what
7 else he did with the money while she was in ICU? He went
8 and bought a car.

9 The money in the safe is what I call a red herring.
10 Are y'all familiar with that term? It is an attempt by them
11 to take your eyes off the relevant issue. What that lawyer
12 and Cliff Eubanks are saying is hey, hey. Don't look at
13 that statement. Don't pay attention to him on the stand
14 yesterday and how crazy all his testimony was. Never mind
15 that. Look way over here at this safe. Let's don't talk
16 about the sex stuff, let's talk about this safe. It has
17 nothing to do with anything. That's what I was waiting for
18 and it makes no sense. Again, who cracked the case? It was
19 Kim Little. It wasn't Deanie. Deanie sat in there while
20 J.L. told the story and the counselor listened and she said
21 J.L. , why are you saying this. She said that in front of
22 the counselor. She was genuinely shocked until J.L. starts
23 talking about the progression. How he kissed her on her
24 neck and her ears. Then he fondled her breasts. Then he
25 moved down below the belt. She said that's his foreplay.

1 That's Cliff Eubank's foreplay 101. So, for them to blame
2 it on Deanie it makes no sense, because it wasn't Deanie who
3 ran down to the Sheriff's Department and said I've got
4 something I've got to report. It was Kim Little, okay.
5 Throw that away. That was mischaracterization number one.

6 Talks about he admits, he agrees, this type of stuff is
7 done behind closed doors. We know this isn't done out in
8 the open. He says nefarious planning is done behind closed
9 doors too. He's wanting you to believe 12-year-old J.L. --
10 y'all had a chance to look at her. The Judge is going to
11 tell you about credibility. That's one of the things that
12 you are going to judge. Listen, y'all are going to be the
13 judges. I want y'all to remember J.L. 's testimony and I
14 want you to remember and compare that to Cliff's yesterday.
15 I remember him reading that sweet note she wrote him and I
16 remember those crocodile tears. I remember him trying his
17 damndest to conjure up a tear. It wasn't working. It
18 wasn't working. Now, here they are taking advantage of this
19 note. They totally discount the expert. The expert on
20 sexual dynamics. Sexual child abuse and dynamics. She said
21 one of the things -- to me, this is just heartwrenching. I
22 mean, it's something that the expert says in the hundreds of
23 patients she sees it's a common thing that the child who has
24 been abused for all these years has sympathy for their
25 abuser. Are y'all familiar with Stockholm Syndrome? It's

1 the same kind of thing. You know, a kidnapper takes someone
2 in, holds them against their will, and over time they start
3 sympathizing with their kidnapper. That's what we have
4 here. She is confusing abuse with love. She is confusing
5 manipulation with caring. Because at the same time she's
6 getting all this attention. That's the thing. Now, he's
7 saying she did it all for the attention. That was never the
8 issue for J.L. . Everybody said J.L. got all the attention.
9 She was put on a pedestal. How has this helped her? That's
10 what I'm trying to figure out. The ripples, he says. You
11 can't stop the ripples. I guarantee you you can. Because
12 after you tell Kim -- which I still don't know why J.L.
13 would've done that spontaneously. He says it was nefarious
14 planning. He says he doesn't blame J.L. , but he says there
15 was nefarious planning, I think is what he is saying,
16 between J.L. and her mom. And they got together and they
17 concocted this plan. They said somehow we're going to
18 convince Kim to call J.L. in. J.L. , when it's your cue
19 you're going to suddenly spontaneously disclose this abuse.
20 Then I'm going to play along with you, J.L. . You and me are
21 going to be a team. All right. So when we go to the
22 Sheriff's Department, I want you to tell that story to the
23 investigator. Can you do that, 12-year-old J.L. ? Are we
24 good? Okay, cool. And then after that, I hate to tell you
25 J.L. , but they're going to have to do a physical exam. The

1 doctor is going to describe antidepressants. But keep
2 playing along, J.L. . Keep playing along. And then, J.L. ,
3 you're going to have to miss dance and fun times with your
4 family and friends, and we're going to do fifteen sessions
5 in Greenwood. Can you do that, J.L. ? Are you still on
6 board with this plan, this nefarious plan we've hatched
7 together. Good. Okay. Then, somehow you're going to have
8 to trick the expert into diagnosing you with PTSD. Can you
9 do that, J.L. . Are we still on the same page? That's the
10 Defense. Does that make any sense? I picked you all
11 because I wanted a logical, reasonable -- I didn't want a
12 gullible jury. I wanted a group of people who represent
13 this county and the values of this county. I hope I got it,
14 because if you believe that I've got some oceanfront
15 property in Kansas I want to sell you. I really do if you
16 believe his story.

17 He talks about -- it's mischaracterization after
18 mischaracterization, what I just heard. What he talked to
19 you about was there was nothing out of the ordinary from her
20 physical exam. Now, I agree Dr. Pritchard said she found no
21 signs of trauma. What she did note was pre-anorexia weight
22 loss. He said there was no evidence of her being
23 underweight, or he said drastic weight loss. That wasn't
24 the testimony. The testimony was she was underweight.
25 Listen to this. She testified to this, Dr. Pritchard. In

1 her report -- he said it was a completely normal exam.

2 Difficulty sleeping, quiet and withdrawn, angry outbursts.

3 MR. WISE: Your Honor, I don't believe that was in
4 evidence.

5 MR. SCOTT: Genital pain. That was testified to, Your
6 Honor.

7 THE COURT: Ladies and gentlemen of the jury, remember
8 the testimony of Dr. Pritchard as it was given. Obviously,
9 again, you are the judges of the facts and if, at any time,
10 the lawyers say something that differs from your
11 recollection go with your recollection, in this case about
12 what Dr. Pritchard testified to. You may continue,
13 Solicitor.

14 MR. SCOTT: Dr. Pritchard testified to genital pain, her
15 having two UTI's in the past year, change in appetite,
16 frequent stomach aches, vaginal discharge. She had a weight
17 of 81 pounds.

18 MR. WISE: Your Honor, I have an objection. He is
19 reading from a report and saying that is what she testified
20 to. That is improper.

21 THE COURT: Again, the jury will recall Dr. Pritchard's
22 testimony as she gave it orally. If what she says differs
23 from what the Solicitor says, go with your recollection of
24 her testimony.

25 MR. SCOTT: I want you to hear these things. I don't

1 want anything to be hidden from you guys. She said the girl
2 was underweight in her exam. He wants you to hear that it
3 was completely normal. I want you to hear it.

4 That trauma narrative, that's an interesting thing.
5 He's wanting this to be the end all be all of everything.
6 He's wanting you to ignore all the testimony and just look
7 at the trauma narrative. I do want you to look at this. I
8 really do, but I want you to remember what Samantha Black
9 testified to. This is not meant for law enforcement. It is
10 not meant to be a piece of evidence in court. This is meant
11 for therapy. This is a therapeutic exercise after they
12 complete their sessions, 15 weeks. She is asked to let's
13 put your thoughts on paper. It is a healing exercise. It's
14 not meant to encapsulate -- she talked about that. Is this
15 supposed to cover everything? No. We talk about first,
16 worst, and last. It's an exercise because when she talks
17 about it with the counselor the counselor asks well, how can
18 you deal with this. What are things we can do moving
19 forward to help you move on and heal from it. He says well,
20 even the worst isn't that bad. Let me read it to you. "My
21 mom, brother, grandma, and great-grandma went to L.L. 's band
22 competition. I had to stay home because my mom thought it
23 would be too late when it would be over. I was sad that I
24 couldn't go to the band competition. My step-dad would
25 watch me and B.E. . He would put B.E. in the bath and tell

1 her to turn off the water when it got to her belly button.
2 I thought that was weird. I was wondering why he was
3 putting her in the bath so late. I thought maybe he would
4 touch me again. I felt awkward being with just him in the
5 same room together because of things he had done in the
6 past. He came back, turned off all the lights, and turned
7 on the lamp. He turned the t.v. on low. It was probably
8 10:30. I looked at him. He was taking off all his
9 clothes." That lawyer doesn't think that sounds too bad.
10 "I was wondering when my mom would be home and I felt
11 scared. I closed my eyes real quick and he started taking
12 off all my clothes. He would get in the bed and cover us
13 up." Sound familiar? "He would put his boy part in my girl
14 part, kiss my neck and my ear. He would move back and
15 forth, try to be inside of me, but it wouldn't. I felt
16 scared the whole time. He had a rag with him. He would
17 push me off and turn to the other side with the rag." Y'all
18 know what that 12-year-old girl is talking about when he's
19 moving back and forth trying to get inside of her. Y'all
20 know what he's doing with the rag when he pushes her off of
21 him. How does that 12-year-old girl know about these
22 things? Her mother was taught sex ed by Song of Solomon.
23 This is a naive girl who is talking about very grown up
24 things. That lawyer says y'all don't worry about that
25 trauma narrative and that worst thing. It's not that bad.

1 This is a nightmare. "I felt scared the whole time."
2 Nevermind that, guys. Look over at the safe. Look at the
3 safe. Don't pay attention to the facts. Look at the safe.
4 "He had a rag, pushed me off, and turned to the other side
5 with the rag. I didn't know why he did this." We know why
6 he did that. He's ejaculating in the rag. "Then he would
7 put his clothes back on and my clothes. I was glad it was
8 over. Then he would go wash B.E. , come back, and go to
9 sleep. I worried that he may do something to B.E. too, but
10 I was too scared to say anything because I thought he might
11 hurt me." That's not that bad to the middle-aged lawyer
12 over there. I don't know what kind of long term effects it
13 will have on a 12-year-old girl.

14 He believes this is a case of something created. This
15 is victim shaming. That's all it is. I mean, we could go
16 to any high school basketball, football game -- I think
17 Deanie called this a straddle hold or something. Isn't it
18 funny though that the same people who find hip hop dancing
19 -- and the lawyer said it was his opinion too that hip hop
20 dancing was offensive. For some reason, they are just
21 unoffended by an enormous collection of pornography. Of all
22 kinds of depraved acts. They are unoffended by internet
23 searches. They're unoffended by a Defendant that admits he
24 is attracted to very young appearing girls.

25 I'm sorry, y'all. I don't mean to -- I've got to cover

1 everything. I'm so scared that something he just said that
2 makes absolutely no sense will gain traction. I hope it
3 doesn't, and maybe I'm just arguing too hard. Some of the
4 things I hear just blow my mind. I mean, we are shaming the
5 victim here. We are talking about a man whose sexual
6 interests and desires are just really out there, and we're
7 blaming a victim. And we're talking about a guy who admits
8 statement number two. He admits to that happening. Tip of
9 the iceberg stuff, but he's admitting to it. At the same
10 time we're saying blame it on the girl. Don't worry about
11 the 35-year-old 210 pound man, blame it on the 81 pound 12-
12 year-old. Because, my God, he cannot fight her off. This
13 girl -- y'all don't understand how provocative she is. How
14 flirtatious. I'm helpless. Kids these days. How many of
15 his witnesses talked about kids these days. His mom did,
16 his dad did, he did, his lawyer just did, who else did. Oh,
17 the lady from the church. Kids these days. You think they
18 all got together and talked about that when they were
19 meeting and getting ready with their testimony. Their
20 testimony sounded very similar to one another. They were
21 even using the same terminology. You saw the concert. You
22 saw how the lawyer was driving the train, because this
23 picture -- remember how Mitchell twerk Eubanks produced
24 that. He said the lawyer told me to go find something. He
25 told me to dig up the dirt, and that's all he could come up

1 with. This is the provocative dancing we're talking about.

2 This is why they want to blame J.L. . It's despicable.

3 Statement number one. Okay, he says the Solicitor

4 makes a lot about statement number one. I stand by that. I

5 stand by that is a weird statement when confronted with

6 allegations of child abuse that as far as I know I haven't.

7 And he thinks it would be odd -- I tell you what. What I

8 would do if somebody said, "Mr. Scott, we have allegations

9 that you've abused a small child." I would. I would slam

10 my fist down and I would say absolutely not. Tell me who

11 said it. I want to talk to them right now. Absolutely not.

12 So, if he thinks that's methinks she doth protest too much,

13 that's what I would do. I believe that's what the normal

14 person would do. I believe that anybody who was innocent

15 would do that. I believe somebody with something to hide

16 would say something like well, you know, I don't know what I

17 do when I'm asleep. Who says that? He thinks that's

18 normal. I disagree.

19 Deanie -- they talk about the tub of porn. Deanie knew

20 about the tub of porn. She says she didn't. He said she

21 did. What I want to know is why does that really matter.

22 The point is that J.L. knew about it. Why did J.L. know

23 about it. He admitted because I showed her where it was. I

24 told her about it, told her what was in it, and told her to

25 move it. So Deanie said she didn't know about it, but

1 really that's not all that relevant. The relevant part is
2 that he told J.L. about it.

3 The iphone. He asked well, why didn't the State try to
4 get it. The State didn't know about it. I don't know what
5 Cliff had done with it over all this time, but strangely he
6 produced it late last week and it was busted to smithereens.
7 He wants to know what was on that phone. I do too. I don't
8 guess we'll ever find out, but he was able to do such a job
9 on it that trained professionals couldn't get into it. He's
10 right. I'd like to know what was on that phone. I mean, we
11 could ask Cliff. I don't remember him talking about it. I
12 guess we'll never know. I guess we'll never know what he's
13 done with it over the past year. I guess we'll never know
14 if he smashed it right before handing it to us.

15 You know, the lawyer says I don't hold the victim
16 responsible for any of this. The Defendant does, though.
17 You heard him yesterday. That was the last thing he said.
18 That was J.L. 's fault. What he admitted to in the barn.
19 That was all her fault.

20 Their defense, the act does not make the crime. It is
21 the intent. By that logic, today I can get just completely
22 drunk, drive home, wreck and kill five people, get out and
23 say eh, that wasn't my intent. I really didn't mean to kill
24 anybody. Nevermind all the dead people. I didn't mean to.
25 It's preposterous, but that's the kind of things they are

1 arguing. If that tells you anything, that's their argument
2 to you guys. I want logical, reasonable jurors. I think
3 I've got them. I think I got twelve people who are going to
4 see through that BS. I'm counting on it. J.L. is counting
5 on it.

6 Beyond a reasonable doubt. Me and this lawyer have a
7 very different understanding of what this means. He says we
8 have to prove that it's impossible that he didn't do what we
9 said he did. That's not it. What I'm going to show you, I
10 want you to listen to what the judge tells you about
11 reasonable doubt. It's going to be what I just told you.
12 It will have nothing to do with what he just told you.
13 Here's what this judge is going to tell you. Reasonable
14 doubt, what does it mean. He's going to give you a little
15 more detail. What I'm telling you will be included in his
16 instructions. Does it mean beyond all doubt. Okay, when
17 you go back there and you're trying to determine what your
18 verdict is can you have some doubt. Can it be well, maybe
19 on that occasion he used his mouth but not his penis. Maybe
20 on this one, you know you can have some doubt about some
21 things. It's one of these things -- who all remembers what
22 all they ate for lunch Friday a week ago. None of us.
23 Maybe one or two of us because it stands out. I certainly
24 don't. So, when we come to court we have this sometimes
25 unreasonable expectation that a victim will remember. You

1 have to remember, this is chronic, systematic abuse for six
2 years, but we're asking her can you kind of give us a date
3 when that happened. Can you give us a date when this
4 happened? Typically, what we see is what we see in J.L. .
5 That is, I know I was about eight when that time on the
6 couch happened. I remember that was the time he did the
7 tongue. So, you can have some doubt. Well, was it when you
8 were eight or when you were seven. There can be some wiggle
9 room, and reasonable doubt allows that. It doesn't mean you
10 can't have any doubt as to any part of the testimony. It
11 means that if you have a doubt that is reasonable and based
12 on logic -- in other words, if you think his excuse is
13 pretty reasonable that he couldn't push J.L. off of him --

14 MR. WISE: Your Honor, under the Beaty case, I object to
15 his Powerpoint in closing. This should have been in his
16 opening statement requiring him to open on the law and the
17 facts, in which I could have responded.

18 MR. SCOTT: He argued reasonable doubt. I'm responding.

19 THE COURT: You did argue reasonable doubt. He is going
20 to --

21 MR. WISE: I know I did. He should have too.

22 MR. SCOTT: I'm replying to his argument.

23 THE COURT: I will charge the jury on reasonable doubt.
24 You can all talk about reasonable doubt. You argued it. He
25 can argue it in both. Go ahead.

1 MR. SCOTT: Thank you, Judge. I want y'all to hear
2 this. It means reasonable and based on logic. So if you
3 guys use your reason and logic and y'all judge his
4 credibility from the stand yesterday as it was and you truly
5 believe J.L. was the aggressor and he was the victim, then
6 you can discount that story. If that's what you think is
7 reasonable and logical. If you have a doubt that is
8 reasonable and based on logic, you should find the Defendant
9 not guilty. But, if your doubt is not reasonable or your
10 doubt is not really logical -- is his version logical to you
11 guys? The 81 pound 12-year-old forcing herself on him. No.
12 Again, do you have to be one hundred percent certain of his
13 guilt? I would submit to you that the evidence proves that
14 with all certainty he is guilty, but reasonable doubt does
15 not even require that. The judge is going to tell you that
16 there are few things that we know in this world with
17 absolute certainty. In criminal cases, the law does not
18 require proof that overcomes every possible doubt. He's
19 going to tell you this okay. If, based on your
20 consideration of the evidence you are firmly convinced --
21 firmly convinced is a term we can all understand. I'm
22 giving you a bunch of legalese. We all understand what
23 firmly convinced means. He's going to tell you that twice.
24 He's going to use the term "firmly convinced" twice when he
25 reads you his reasonable doubt instruction. He's going to

1 say if you are firmly convinced the Defendant is guilty of
2 the crime you must find him guilty. Has not all the
3 evidence, have not all the witnesses convinced you, firmly
4 convinced you, of his guilt. I submit to you that is the
5 only direction the evidence points in. I submit to you that
6 he is guilty of all three charges. I ask you again,
7 respectfully, find him guilty of all three charges. Thank
8 you.

9 THE COURT: Thank you. Ladies and gentlemen, before I
10 begin my remarks to you I know that you're probably getting
11 a little bit hungry. I've already asked the Clerk to place
12 an order for some pizza for you. It was the quickest way to
13 get you food as opposed to breaking for 20 minutes and
14 passing out menus, so pizza is sort of generic thing that
15 most people like. That's what I told her to do. That will
16 kill whatever bug is in your stomach right now, as far as
17 the hunger bug.

18 Now, ladies and gentlemen, I'll let you know at this
19 stage of the trial it is my obligation to instruct you on
20 the law that applies. Please understand that at this point
21 all the testimony and all the evidence has been admitted
22 that you are going to have in order to judge this case.
23 There is no mechanism whereby we can re-open the record and
24 take additional testimony and give you additional factual
25 information, so if you have any factual question about the

1 case and you send a note out asking me about that kind of
2 factual question if it's not on the record odds are that I'm
3 not going to be able to help you with any sort of factual
4 question you have because, again, the record is closed.
5 However, if you have any questions about these instructions,
6 Mr. Foreman, any question about the law that applies I want
7 you just to write me a note. I can help you on the law. I
8 can't help you on the facts.

9 Ladies and gentlemen, when I first started practicing
10 law 25/26 years ago I'll let you know that the way judges
11 traditionally instructed a jury and the way that some judges
12 still do it is they would sit up here and read from you
13 basically 17 pages from the law taken from the law books
14 behind me and the jury was supposed to absorb it and get it
15 all on the first try and understand all of this stuff on the
16 first hearing. I always found that a little unreasonable,
17 and I think this tradition probably came from a time in our
18 state when most people simply couldn't read. Most people
19 were illiterate, and so the judge had to explain the law
20 orally. Long story short, what I'm telling you, Mr.
21 Foreman, I will give you a copy of these instructions in
22 written form. During your deliberations, you may refer to
23 the instructions to guide your decision-making. You must
24 consider the instructions as a whole and not follow some and
25 ignore others. Please return the instructions to the court

1 at the time your verdict is rendered.

2 Ladies and gentlemen, I instruct you that the
3 Defendant in this case is charged with criminal sexual
4 conduct with a minor in the first, second and third degree.
5 I remind you that the fact that Mr. Eubanks was arrested,
6 charged and indicted in this case is not evidence in this
7 case and cannot be considered by you as evidence of guilt in
8 this case, nor does it create any presumption or inference
9 of guilt. These documents are merely the formal written
10 instruments which contains the charges made against the
11 defendant. These are the formal documents by which this
12 case is brought into court.

13 Each indictment and each charge is a separate and
14 distinct offense. You must decide each indictment
15 separately on the evidence and the law applicable to it
16 uninfluenced by your decision as to any other charge. The
17 defendant may be convicted or acquitted on any or all of the
18 offenses charged. You will be asked to write a separate
19 verdict of guilty or not guilty for each of the charges in
20 the indictments.

21 Ladies and gentlemen, the Defendant has pled not guilty
22 to these indictments, and that plea puts the burden on the
23 state to prove the defendant guilty. I instruct you that a
24 person charged with committing a criminal offense in this
25 state is never required to prove himself innocent. I

1 instruct you that it is an important rule of the law that
2 the defendant in a criminal trial, no matter what the
3 seriousness of the charge may be, will always be presumed to
4 be innocent of the crimes for which the indictment was
5 issued unless guilt has been proven by evidence satisfying
6 you of his guilt beyond a reasonable doubt. Ladies and
7 gentlemen, this presumption of innocence does not end when
8 you begin your deliberations, rather it accompanies the
9 defendant throughout the trial until you reach a verdict of
10 guilt based on evidence satisfying you of his guilt beyond a
11 reasonable doubt.

12 The presumption of innocence is often described as
13 being like a robe of righteousness. It's placed about the
14 shoulders of the defendant which remains with him until it
15 has been stripped from him by evidence satisfying you of the
16 defendant's guilt beyond a reasonable doubt. The
17 presumption of innocence is not mere legal theory. It is
18 not just a legal phrase. It is a substantial right to which
19 everyone is entitled unless you, the jury, are satisfied
20 from the evidence of his guilt beyond a reasonable doubt.

21 What is a reasonable doubt in the law? A reasonable
22 doubt is the kind of doubt that would cause a reasonable
23 person to hesitate to act. The state has the burden of
24 proving the defendant guilty beyond a reasonable doubt.
25 Some of you may have served as jurors in civil cases where

1 you were told that it is only necessary to prove that a fact
2 is more likely true than not true, such as by the greater
3 weight or the preponderance of the evidence. In criminal
4 cases, the state's proof must be more powerful than that.
5 It must be proof beyond a reasonable doubt.

6 Proof beyond a reasonable doubt is proof that leaves
7 you firmly convinced of the defendant's guilt. There are
8 very few things in this world that we know with absolute
9 certainty, and in criminal cases the law does not require
10 proof that overcomes every possible doubt. If, based on
11 your consideration of the evidence, you are firmly convinced
12 that the defendant is guilty of the crimes charged, you must
13 find the defendant guilty. If on the other hand, you think
14 there is a real possibility that the defendant is not
15 guilty, you must give him the benefit of the doubt and find
16 him not guilty.

17 I remind you that, during this trial, you and I have
18 certain duties to perform. As the trial judge, it is my
19 responsibility to preside over the trial of this case, and I
20 also have the duty to rule on the admissibility of the
21 evidence offered during this trial. You are to consider
22 only the competent evidence before you. If there was any
23 testimony ordered stricken from the record in this case
24 during this trial, you must disregard that testimony. You
25 are to consider only the testimony which has been presented

1 from this witness stand, any exhibits which have been made a
2 part of the record in this case, and any stipulations of
3 counsel.

4 I have the additional duty to charge you the law
5 applicable to this case. As the presiding judge, I am the
6 sole judge of the law of this case, and it is your duty as
7 jurors to accept and apply the law as I now state it to you.
8 If you already have any idea as to what the law is or what
9 the law should be and this idea does not agree with what I
10 now tell you the law is, you have to abandon this idea
11 because you are sworn to accept the law and apply it as I
12 state it to you.

13 Again, ladies and gentlemen, you are the sole and
14 exclusive judge of the facts in this case. Understand that
15 a trial judge cannot intimate, state, comment on, or make
16 any statement to a trial jury about the facts in a case.
17 Since you, the jury, are the sole judges of the facts in
18 this case, you are not to infer from what I have said during
19 the progress of this trial in ruling upon the admissibility
20 of evidence, or otherwise, or anything that I say to you now
21 during the course of this instructions, that I have any
22 opinion about the facts in this case. Ladies and gentlemen,
23 the law does not permit me to have an opinion about the
24 facts in this case. This is a matter solely for you to
25 determine. As jurors, it is your duty to determine the

1 effect, value, weight, and truth of the evidence presented
2 during trial.

3 Now, in criminal cases, ladies and gentlemen, there are
4 typically two types of evidence which are generally
5 presented, direct evidence and circumstantial evidence.
6 Direct evidence directly proves the existence of a fact and
7 does not require deduction, such as testimony by an eye-
8 witness. Circumstantial evidence is proof of a chain of
9 facts and circumstances which indicate the existence of a
10 fact.

11 I instruct you that crimes may be proven by
12 circumstantial evidence. The law makes no distinction
13 between the weight or value to be given to either direct or
14 to circumstantial evidence, however, to the extent the state
15 relies on circumstantial evidence, all of the circumstances
16 must be consistent with each other and when taken together,
17 point conclusively to the guilt of the accused beyond a
18 reasonable doubt. If these circumstances merely portray the
19 defendant's behavior as suspicious, the proof has failed. I
20 instruct you that the state has the burden of proving the
21 defendant guilty beyond a reasonable doubt. This burden
22 rests with the state regardless of whether the state relies
23 on direct evidence, circumstantial evidence, or some
24 combination of the two.

25 Ladies and gentlemen, in this case a statement alleged

1 to have been made by the Defendant has been admitted into
2 evidence. While the Court has determined that the statement
3 is admissible, I instruct you that you make the ultimate
4 decision whether or not the Defendant, in fact, made the
5 statement. If the Defendant did make the statement, you
6 must determine whether the statement was made by the
7 Defendant voluntarily and of his own free will. This means
8 that the statement was not caused by pressure, force, fear,
9 threats, coercion, or intimidation, or by hope of promise,
10 leniency, or a reward of any kind. In determining whether
11 the statement was voluntary, you should consider both the
12 characteristics of the Defendant and the details of the
13 questioning. Some of the factors that you must consider are
14 the age of the Defendant, the Defendant's education or lack
15 thereof, the Defendant's mental ability or capacity, the
16 Defendant's IQ or intelligence, his background and
17 environment, the place and length of the detention, the
18 nature of the questioning, and the advice or lack thereof to
19 the Defendant regarding his Constitutional rights including
20 but not limited to his right to remain silent, that any
21 statement could be used against him in court. His right to
22 have an attorney present. If he couldn't afford one, one
23 would be appointed to represent him at no cost to him, and
24 that he could stop making the statement at any time. You
25 have to carefully consider all the surrounding circumstances

1 before you give any weight to an alleged statement. The
2 State has the burden of proving beyond a reasonable doubt
3 that the alleged statement was voluntary. If you determine
4 that it was, you may give the statement any further
5 consideration you deem proper. You have to decide what
6 weight, if any, should be given to the alleged statement. If
7 you determine that the alleged statement was not the free
8 and voluntary statement of the Defendant, you should not
9 consider the statement at all.

10 Ladies and gentlemen, in finding the facts in this
11 case, necessarily you have to determine the credibility of
12 witnesses who have testified in this case. Again,
13 credibility simply means believability. It becomes your
14 duty as jurors to analyze and to evaluate the evidence and
15 determine which evidence convinces you of its truth. In
16 determining the believability of witnesses who have
17 testified, you may believe one witness over several
18 witnesses or several witnesses over one witness. You may
19 believe a part of the testimony of a witness and reject the
20 remaining part of the testimony of that same witness. You
21 may believe the testimony of a witness in its entirety or
22 reject it in its entirety. You may consider whether any
23 witness has exhibited to you any interest, bias, prejudice,
24 or other motive in this case. You may also consider the
25 appearance and manner of a witness while they are on the

1 witness stand.

2 Now, as I explained previously with regard to expert
3 witnesses, ladies and gentlemen, the rules of evidence
4 ordinarily do not permit witnesses to testify as to opinions
5 or conclusions. An exception to this rule exists for
6 witnesses who are experts in some art, science, or
7 profession. They may give an opinion as to the subject the
8 witness claims to be an expert in, and they can also give
9 the reasons for those opinions. You should consider any
10 expert opinions given by a witness and, like any other
11 evidence, give it the weight you think it deserves. If you
12 decide that an expert witness' opinion is not based on
13 sufficient education and experience, or if you decide that
14 the reasons given in support of their opinion are not sound,
15 or that the opinion is outweighed by other evidence, you may
16 disregard the opinion in its entirety. An expert witness'
17 testimony is to be given no greater weight than that of
18 other witnesses simply because the witness is an expert, and
19 you do not have to accept an expert's opinion, even though
20 it is uncontradicted.

21 In this case, ladies and gentlemen, you have heard
22 character evidence concerning the defendant. I instruct you
23 that evidence of good character and good reputation may, in
24 and of itself, create a doubt as to the guilt of the accused
25 and should be considered by you, the jury, along with all

1 the other evidence, in determining the guilt or innocence of
2 the defendant. The good reputation of the defendant, if
3 proven, may be taken into consideration by you in
4 determining whether or not the defendant committed the
5 crimes charged.

6 Now, ladies and gentlemen, the defendant is charged
7 with three counts of different degrees of criminal sexual
8 conduct with a minor. I instruct you that when two or more
9 acts of criminal sexual conduct occur at or about the same
10 time, each is a separate crime rather than one continuing
11 crime. We'll address first the charge of criminal sexual
12 conduct with a minor in the first degree. The defendant is
13 charged with first degree criminal sexual conduct with a
14 minor. The State must prove beyond a reasonable doubt that
15 the defendant engaged in a sexual battery with the victim.
16 The state must then prove beyond a reasonable doubt that the
17 victim was less than eleven years old at the time of the
18 sexual battery.

19 Second degree criminal sexual conduct with a minor. In
20 order to prove that, the State must prove beyond a
21 reasonable doubt that the defendant engaged in a sexual
22 battery with the victim. The State must also prove beyond a
23 reasonable doubt that the victim was fourteen years of age
24 or less but at least eleven years of age.

25 Under the law, ladies and gentlemen, as it relates to

1 criminal sexual conduct with a minor in the first and second
2 degree, a sexual battery is defined as sexual intercourse,
3 cunnilingus, fellatio, anal intercourse, or any intrusion,
4 however slight, of any part of a person's body or of any
5 object into the genital or anal openings of another person's
6 body.

7 Finally, ladies and gentlemen, the defendant is charged
8 with committing criminal sexual conduct with a minor third
9 degree. The State must first prove beyond a reasonable
10 doubt that the defendant was over the age of fourteen years
11 of age. Next, the State must prove that the defendant
12 willfully and lewdly committed or attempted a lewd or
13 lascivious act on, or with the body or its parts of, a child
14 under the age of sixteen years of age, with the intent to
15 arouse, appeal to, or gratify the lust, passions, or sexual
16 desires of the defendant or the child.

17 Willfully means voluntarily and intentionally with the
18 specific intent to do something the law forbids. Lewd means
19 obscene, lustful, indecent, or lecherous. Lascivious means
20 tending to incite lust, lewd, indecent, obscene, or tending
21 to deprave the morals in respect to sexual relations.

22 Ladies and gentlemen, with regard to all the above
23 offenses, consent, willingness, indifference, or ignorance
24 on the part of the minor, if any, as to what was taking
25 place, does not in any way affect the charges of criminal

1 sexual conduct with a minor because a person under the age
2 of sixteen cannot legally consent to sexual intercourse.

3 Ladies and gentlemen, in order to establish criminal
4 liability, criminal intent is required. As I explained to
5 you previously, criminal intent must be proven by the State
6 beyond a reasonable doubt. Criminal intent is always a
7 matter that must be determined by the jury from the
8 circumstances surrounding the situation. Understand that
9 here is no way to prove intent to a mathematical certainty.
10 There is no way medical science can dissect a person's brain
11 and determine what the person had in mind, so the law says
12 that criminal intent may be inferred from the circumstances
13 shown to have existed. This is how you make a determination
14 of whether or not the element requiring intent was present.
15 It is not necessary to establish intent by direct and
16 positive evidence, but intent may be established by
17 inference in the same way as any other fact by taking into
18 consideration the acts of the parties and all the facts and
19 circumstances of the case. Criminal intent is a mental
20 state, a conscious wrongdoing. It is up to you to determine
21 what the defendant intended to do based on the circumstances
22 shown to have existed.

23 Now, ladies and gentlemen, in this case there are 6
24 possible verdicts. Mr. Foreman, I've prepared this verdict
25 form that you can use to guide your deliberations and to

1 render your verdict when the jury does agree on the verdict
2 in this case. It basically makes three statements. You're
3 all smart people and you can figure this out, but the law
4 still makes me go over it with you. The first statement is
5 as follows: "We, the jury in the above captioned case, on
6 the charge of first degree criminal sexual conduct with a
7 minor unanimously find Michael Cliff Eubanks," and then
8 there are two mutually exclusive options, either guilty or
9 not guilty. Again, there is no significance in the order of
10 which I state either of those verdicts. If you find that
11 the State has met its burden of proving the Defendant's
12 guilt beyond a reasonable doubt on the charge of criminal
13 sexual conduct with a minor in the first degree, you would
14 simply initial next to guilty and proceed on down. If you
15 find the State has failed to meet its burden of proving the
16 Defendant's guilt beyond a reasonable doubt to the charge of
17 criminal sexual conduct first degree initial not guilty and
18 move to the second question.

19 The second question relates to criminal sexual conduct
20 with a minor second degree, and the final statement relates
21 to criminal sexual conduct with a minor third degree. Exact
22 same question, the only difference is the nature of the
23 charge for each of those statements. If you've got any
24 questions about this ask me, but I don't think you will.

25 As I mentioned a moment ago, ladies and gentlemen, all

1 twelve of you have to agree on the verdict as it relates to
2 all three charges. The verdict must be a unanimous one.
3 That means all twelve of you have to agree. Other states do
4 not require unanimous verdicts. Some states permit a
5 majority verdict. Those states are doing it wrong. In
6 South Carolina there has to be all twelve people agreeing on
7 each and every aspect of this verdict. You all have to be
8 unanimous.

9 I remind you that you have been chosen as fair and
10 impartial individuals. In other words, you have no friends
11 to reward, you have no enemies to punish. Your job is to
12 render a verdict based solely upon the evidence presented
13 and the law as I have instructed. I ask that you now
14 return to your jury room but do not begin deliberations
15 until you are told by the clerk or the bailiff to do so.
16 There are some matters which must be discussed with the
17 attorneys before you begin your deliberations. Your cue to
18 begin deliberations, Mr. Foreman, will be receipt of these
19 instructions, receipt of the verdict form, and receipt of
20 the evidence which was introduced in this case. The pizza
21 has been delivered. Your cue to begin will be receipt of
22 the evidence, instructions, and verdict form. Only if there
23 is some correction I need to make will I bring you back out
24 here and give you further instructions.

25 When you have reached a verdict, Mr. Foreman, just

1 complete the verdict form, knock on the door and let the
2 Bailiff know and we'll get you back in here and assembled.
3 Enjoy your lunch.

4 (Whereupon, the jury exited the courtroom at 1:12 p.m.)

5 THE COURT: With the exception of the Court's failure to
6 instruct what was referenced in Court's 1, any additions or
7 exceptions from the State?

8 MR. SCOTT: No, Your Honor.

9 THE COURT: Same to you, Mr. Wise?

10 MR. WISE: Well, actually I have a point I meant to
11 mention earlier. I would request to charge the jury -- the
12 Court charge the jury -- and I know the law so don't worry
13 about arguing too long. The mandatory minimum on criminal
14 sexual conduct first degree, because while sentencing
15 generally is up to the judge, with a mandatory minimum the
16 jury basically sets the sentence.

17 Secondly, in the criminal sexual conduct third degree,
18 upon listening to it, I think there still needs to be a
19 specific intent to arouse. The specific intent portion of
20 the charge referred to the actual touching, and you can have
21 a specific intent to touch, but I think the jury has to
22 understand there also has to be a specific intent to arouse
23 oneself. If that makes any sense.

24 THE COURT: I appreciate your position. I think that
25 the instructions adequately convey the gravamen of the

1 defense. Of course, the Court is declining the instructions
2 that you requested in Court's number 1 as well. Let us make
3 sure that the evidence is correct as far as what's going
4 back to the jury and we will send it back there.

5 (Whereupon, deliberations began at 1:17 p.m. and
6 concluded when the jury indicated they had a verdict at 3:45
7 p.m.)

8 THE COURT: I'm informed the jury has, in fact, reached
9 a verdict in this case. Anything prior to receiving the
10 jury from the jury room from the State?

11 MR. SCOTT: No, Your Honor.

12 THE COURT: From the Defense?

13 MR. WISE: None from the Defense.

14 THE COURT: Just one quick word of caution before I
15 bring the jury in. Understand that the lawyers and myself
16 do this day in and day out, and so perhaps we've become
17 somewhat desensitized to a lot of the stuff that this jury
18 and you folks were exposed to this week. I know that
19 there's a lot riding on this case. I want to compliment
20 everyone in attendance for the way they've conducted
21 themselves this week maintaining your composure, not causing
22 any outbursts. Understand these twelve people have been
23 exposed to something that most people thankfully don't have
24 to hear about frequently. Whatever their verdict is, and I
25 don't know what it is, whatever it is I cannot have their

1 decision insulted. I cannot have any outbursts. I can't
2 have any cries of jubilation or sorrow, whatever. So, if
3 you find yourself once the verdict is read, unable to
4 control your emotions please feel free simply to quietly
5 stand and leave through the back doors back there. There is
6 not going to be any disruption once this verdict is read,
7 please. That simply cannot happen. Let's have the jury,
8 please.

9 (Whereupon, the jury entered the courtroom at 3:59 p.m.)

10 THE COURT: The record will reflect that all twelve
11 jurors are present and seated. Mr. Foreman, I'm told that
12 the jury has reached a verdict in this case.

13 JURY FOREMAN: Yes, sir.

14 THE COURT: If you would, hand the verdict form, please,
15 to the Bailiff.

16 Madam Clerk, you can publish, please.

17 MADAM CLERK: Your Honor, in the State of South Carolina
18 versus Michael Cliff Eubanks, case number 2017-GS-30-1499,
19 -1294, and 2018-GS-30-1205. We, the jury in the above
20 captioned case on the charge of first degree criminal sexual
21 conduct with a minor, unanimously find Michael Cliff Eubanks
22 guilty. We, the jury in the above captioned case, on the
23 charge of second degree criminal sexual conduct with a
24 minor, unanimously find Michael Cliff Eubanks guilty. We,
25 the jury in the above captioned case, on the charge of third

1 degree criminal sexual conduct with a minor, unanimously
2 find Michael Cliff Eubanks guilty. Signed by the
3 foreperson, Tony E. Bailey, August 3, 2018 in Laurens, South
4 Carolina. Ladies and gentlemen, if that be your verdict,
5 please indicate by raising your right hand.

6 (Whereupon, all jury members raised their right hands.)

7 THE COURT: Let the record reflect that all twelve
8 jurors did, in fact, raise their right hands. Anything
9 further from the jury prior to their discharge from the
10 State?

11 MR. SCOTT: No, Your Honor.

12 THE COURT: From the Defense?

13 MR. WISE: We would request that the jury be polled.

14 THE COURT: Ladies and gentlemen of the jury, in a
15 moment the Clerk of Court is going to call your names
16 individually. When your name is called, just raise your
17 right hand. She'll then ask you a question whether this is
18 your verdict and whether it is still your verdict. She will
19 ask each of you that individually when your name is called.
20 Ms. Lancaster, if you'll call the roll and poll the jury,
21 please.

22 THE CLERK: Ladies and gentlemen, the verdict that I
23 have just published was the verdict you reached in the jury
24 room. I asked you was it your verdict then and is it your
25 verdict now. As I call your name, please answer yes or no.

1 Tony E. Bailey?

2 JUROR: Yes.

3 THE CLERK: Michael W. Tucker?

4 JUROR: Yes.

5 THE CLERK: Kimberly B. Darnell?

6 JUROR: Yes.

7 THE CLERK: Edward A. Kennedy?

8 JUROR: Yes.

9 THE CLERK: Rodriguez Woodruff?

10 JUROR: Yes.

11 THE CLERK: Kevin T. King?

12 JUROR: Yes.

13 THE CLERK: Donna W. Sullivan?

14 JUROR: Yes.

15 THE CLERK: Bess E. Caldwell?

16 JUROR: Yes.

17 THE CLERK: Shawn J. Bush?

18 JUROR: Yes.

19 THE CLERK: Pamela Armstrong Martin?

20 JUROR: Yes.

21 THE CLERK: Teresa D. Kinards?

22 JUROR: Yes.

23 THE CLERK: Danielle J. Lowe?

24 JUROR: Yes.

25 THE COURT: The jury having been polled, Mr. Wise,

1 anything further, sir?

2 MR. WISE: Nothing further.

3 THE COURT: Ladies and gentlemen of the jury, I want to
4 thank you for your jury service here this week. Just a few
5 parting remarks. First of all, the Clerk of Court does have
6 your checks ready for you. She'll pass those out to you in
7 the hallway in just a few moments, okay? One of you had
8 asked if you do, in fact, have to turn it over to your
9 employer. Yes, if your employer reimburses you for jury
10 service and pays you in any way you have to give it to them.
11 You can't avoid that. Second thing I wanted to mention to
12 you is that you will receive a letter in the mail from me
13 which will be mailed shortly. You might get them tomorrow
14 or Monday. The letter's purpose is to formally thank you
15 for your work here this week. I realize that most of you
16 aren't exposed to the kinds of things we were talking about
17 on a regular basis. For those of us who do this day in and
18 day out, judges, lawyers, and everyone, we appreciate that
19 maybe how we've become desensitized to some of this
20 information. Maybe what you've heard this week you've found
21 shocking or unpleasant. I'm sorry to put you through that,
22 and that's why I want to formally thank you with the letter
23 that you'll get in the coming days. I have an ulterior
24 motive in sending those letters out. It has my contact
25 information. If there's anything that you liked about jury

1 service, I'm happy to hear from you. If there's anything
2 you didn't like about it or thought we could do better, I
3 definitely want to hear about it. The written copy of the
4 jury instructions to the jury room, that idea came from a
5 juror when I first started working in this job about eight
6 or nine years ago. If there's anything that you didn't like
7 or anything that you think could make your experience better
8 or more helpful, I want you to let me know and don't be shy.
9 I have a thick skin. I can take it, whatever the criticism
10 may be. With that, I'm not going to keep you any longer.
11 If you want to stay for sentencing, what will happen in the
12 coming minutes the Solicitor will prepare some sentencing
13 sheets and we'll take a brief break. I'll then hear from
14 the victim and any members of her family, and certainly from
15 Mr. Eubanks and any members of his family. If you wish to
16 remain for sentencing that's perfectly fine. For security
17 reasons, what I'll need you to do is there's a couple of
18 benches on the back row. You see the deputy who is standing
19 there? If you want to stay for sentencing we'll make a few
20 of those rows available for you. For security reasons, we
21 need you to be out there though as opposed to over here. So
22 if you want to stick around that's fine. If you don't want
23 to stick around that's fine too. Take your check and you're
24 free to go. You're free to stay, whatever the case may be.
25 Do remember that if you're summoned for jury duty in the

1 next three years you can tell the Clerk of Court that you
2 served on the jury here in July and August and she'll
3 automatically exempt you. You won't even have to show up on
4 Monday. So, with that I'll bid you adieu. You have my
5 thanks, my appreciation, and if there's anything you want to
6 tell me you'll have my contact information either in the
7 mailbox tomorrow or some time on Monday. Have a lovely
8 weekend. You are excused, except for the Foreman who I need
9 your signature on the actual indictments. The rest of you
10 can step outside.

11 (Whereupon, the jury was excused from service.)

12 THE COURT: We'll be back on the record in about five
13 minutes.

14 (Whereupon, there was a brief recess until 4:11 p.m.)

15 THE COURT: I believe the Defense, Mr. Wise, will be
16 moving for a new trial and renewing all previous motions?

17 MR. WISE: I would like to reserve the ten days for
18 that.

19 THE COURT: Certainly. Very good. You have ten days.
20 Obviously, any appeal in this matter also has to be filed
21 within ten days of the Court ruling on any motions and any
22 action post-conviction relief needs to be filed either one
23 year from now or one year from any exhaustion of any
24 appellate action taken in this case.

25 Solicitor, in pre-trial you had informed me that Mr.

1 Eubanks does not have any prior criminal history. Is that
2 correct?

3 MR. SCOTT: That is correct.

4 THE COURT: Before I turn to the Defense, I am more than
5 happy to hear from the victim in this case if she wants to
6 address me. J.L. is more than welcome to come up here and
7 stand or wherever she is comfortable. If she wants to stay
8 there that's fine too. And anyone on her behalf I am more
9 than happy to hear from them as well.

10 J.L. : All I wanted was a dad. I figured that
11 he would be that dad. Even though you -- even though he did
12 do terrible things to me, I thought that he would actually
13 care about me and my feelings. But, after I confessed, you
14 told me that it was all my fault and I made -- and it made
15 myself feel so bad in a way that I shouldn't feel. I
16 realized that you never cared about me and all the things
17 that you said was just a lie. The only thing that I have to
18 say is that I do miss the good memories and the fun times,
19 but I will never forget the pain that you left.

20 THE COURT: Thank you, J.L. .

21 DENISE EUBANKS: J.L. is a beautiful, talented child
22 with a beautiful heart, but Cliff took away something that
23 she could never get back and replaced it with fear and anger
24 and hurt. No child should ever have to feel that. I just
25 ask the Court to please take that into consideration, that

1 not one time during these last years that she had to go
2 through this abuse did he take her feelings into
3 consideration one time. It's hard. I'm sorry.

4 THE COURT: Take your time.

5 DENISE EUBANKS: Just please take that into
6 consideration when sentencing.

7 THE COURT: Thank you. Solicitor, anything further from
8 the State?

9 MR. SCOTT: As far as sentencing, Your Honor, first of
10 all I want to thank the jury. I really want to thank you on
11 behalf of the State, on behalf of J.L. and her family.
12 Thank you very much for your attentiveness and thank you for
13 your decision after listening to the evidence. We
14 appreciate that. This is a big victory for the County of
15 Laurens. I get too many of these cases, and I'm tired of
16 them. This man is being held accountable. I'm going to ask
17 you something, Judge. You hear a lot of cases from me, so
18 I'm not saying this without thought behind it. You have
19 seen me convict drug dealers who get 25 years for dealing
20 drugs. This man has stolen a piece of that girl's soul. I
21 mean that. I don't mean that lightly. I mean that. I've
22 gotten to know J.L. , and I think she'll be able to move past
23 this to some degree, but it will haunt her the rest of her
24 life. I think there should be some consecutive sentence
25 here. The jury has found him guilty on all three counts,

1 which span a time period of over six years of chronic,
2 persistent abuse. I think this type of crime deserves some
3 kind of consecutive sentence, Your Honor, and that's what
4 the State would be asking.

5 THE COURT: Thank you, sir. I appreciate your position.
6 Mr. Wise, I'm certainly happy to hear from you, Mr. Eubanks,
7 and any member of his family who may want to speak on his
8 behalf.

9 MR. WISE: Your Honor, the family understands that for
10 all practical purposes your hands are kind of tied with a
11 mandatory minimum sentence. You had a chance to see the
12 caliber of his family when they testified. I don't know
13 what they can add to that.

14 I would like to tell the Court that over the time I've
15 been representing Mr. Eubanks since his arrest on the first
16 charge I met with he and his family in my office. If we've
17 met once, I know we've met a half a dozen times if not more.
18 Probably the shortest visit we've ever had was two hours. I
19 have talked to them at length. I have always liked Cliff
20 Eubanks. I have always admired his family and how he was
21 raised and the caliber of people they are frankly. I would
22 like frankly to say for the record that I trust one day, I
23 don't know when, but one day the truth of this matter will
24 come out. I don't think it did in the courtroom today. I'm
25 sorry to say that, but I don't think it did. I know His

1 Honor's hands are tied. I don't know more what I can say
2 more about him than he said on the stand and what his family
3 said on the stand.

4 THE COURT: I understand. Mr. Eubanks anything you want
5 to say? Your father is standing. I'll be more than happy
6 to hear from him first if he wishes to address me.

7 MR. EUBANKS: I'll go first. First of all, I just want
8 to thank Rauch for all of his dedication and hard work he
9 has done for me. I also, for the record, I love my kids. I
10 will still plead not guilty til this day. I do love A.E. ,
11 J.L. , L.L. , P.E. , and B.E. . They are my kids. I would
12 never harm them in any way. I think the decisions that were
13 made here today were -- I'm not blaming the jury for their
14 -- you know, what they've been through. They've been here
15 all week and it's just -- I mean, it's just a hard decision
16 to make. Also, I would like to tell my family that -- thank
17 them for all their support and standing behind me and that I
18 love them. They mean to the world to me, as much as my kids
19 do. I am a family man. I've never been in trouble. I
20 never would hurt anyone. I just got caught up in the wrong
21 time.

22 THE COURT: I understand your position, Mr. Eubanks.
23 Sir, happy to hear anything you want to say on behalf of
24 your son.

25 MR. EUBANKS (Defendant's father): I'll try. First, let

1 me say I'm sorry. I just hate for everybody this week. The
2 kind of man this is, he's a good man. I seen and I
3 understand the State. They had to do their job. I didn't
4 see a lot of the facts come out. But he's a good man.
5 Again, I just want to say I'm sorry. We've been going
6 through a lot. I'm trying to hold back. I haven't seen
7 these kids in a long time. And I know it's hard on him. He
8 done a lot a stuff around the house for me and I see in his
9 eyes he misses these kids. It's just a mistake, Your Honor.
10 It's just something that happened. I know he probably is
11 ashamed. I know he is. It's just something that happened.
12 We just -- the only person that's not the -- no disrespect
13 to you or the jury, they did their jobs. But there is one
14 man that's going to judge him in the end and that's the one
15 above. I thank you for letting me speak.

16 THE COURT: Thank you, Mr. Eubanks. Ma'am, anything
17 that you -- Mrs. Eubanks, anything that you want to tell me,
18 ma'am?

19 MS. EUBANKS: I just want to say that listening all week
20 how the Solicitor -- I understand too how he had to do his
21 job, but we know in our heart. We know what was told here
22 this week and we know some stuff didn't actually come out to
23 prove that things on the other side weren't true. But I
24 will say that we love our son and we still feel he's
25 innocent. We love all of our grandchildren. There's a big

1 hole in our heart. (UNINTELLIGIBLE) family members because
2 of (UNINTELLIGIBLE) and he's got the same thing.
3 (UNINTELLIGIBLE).

4 THE COURT: Thank you, ma'am. Mr. Wise, anything
5 further?

6 MR. WISE: Nothing further.

7 THE COURT: Mr. Eubanks, anything further, sir?

8 MR. EUBANKS: No.

9 THE COURT: Mr. Wise, what kind of time is he entitled
10 to by way of credit for time served?

11 MR. WISE: About 45 days. He's been on an ankle
12 monitor, but it hasn't been a formal house arrest.

13 THE COURT: The first thing that I do want to note, and
14 I do want to note it for the record because I don't think it
15 is reflected on the record except for perhaps a comment I
16 made before we received the case in earnest. Obviously,
17 there were plea discussions on this case as recently as
18 Tuesday. They were what they were, and for whatever reason,
19 Mr. Eubanks, you elected not to accept any responsibility
20 for this as is your right. I would never ever ever, I will
21 not and I do not punish anyone for taking a jury trial,
22 especially in cases of this nature. So, I simply mentioned
23 that first as a notation for any future post-conviction
24 relief action and secondly as a lead in to what I'm about to
25 say now.

1 Mr. Eubanks, I try a lot of cases, sir. I try a lot of
2 cases. I have tried a lot of these cases. In my
3 professional experience, Mr. Eubanks, we put twelve people
4 in the box. They all had to agree. If you can get twelve
5 people to agree on something -- if even one of them had said
6 I don't agree with that, there could not have been a
7 verdict. If you get twelve people to agree on something
8 then that is a proper result. That is why unanimity in a
9 jury in this state is required and that is why this result
10 is an appropriate one. In other words, Mr. Eubanks, in my
11 opinion, in my estimation, and in my experience, the jury
12 got it right. I'm sorry that you find yourself now
13 acknowledged as a pedophile. If the bitterness of that
14 leaves a bad taste in your mouth, then so be it.

15 I'd like to say that I don't judge the person, I judge
16 the crime. The sentence that I've imposed in this case is a
17 sentence that judges the crime. I believe that you probably
18 do possess many redeeming qualities, sir, but there is a
19 reason in the eyes of the law that a crime like this carries
20 the penalty that it does. It is eighty-five percent. It is
21 a minimum 25 and maximum 30. There is a reason it carries
22 this penalty, and that's because we have to protect the most
23 innocent and the most vulnerable among us. Sir, you were
24 J.L. 's last line of defense and you failed miserably in your
25 obligation as a parent. That is the truth of this case.

1 That is the truth of what happened.

2 J.L. , I want to thank you for having the courage to
3 come forward. You are a very very brave young lady. I will
4 tell you, a lot of people think bravery is something like a
5 cop confronting a robber or a thief, or a fireman running
6 into a burning building. That is certainly one measure of
7 bravery, one kind of bravery, but when it comes right down
8 to it bravery is doing something and seeing it through even
9 though you would rather not do it. That's what you have
10 done. If more kids came forward who have suffered the kind
11 of abuse you have suffered, perhaps this would not happen as
12 frequently as unfortunately it does. I want to thank you
13 for your courage. I'll tell you that yeah, this is going to
14 follow you. Bad things happen to everyone in everyone's
15 lives. You can either let it define you or you can grow
16 stronger from it. I'm glad to see that you're growing
17 stronger from it. You're going to meet a man one day who
18 truly loves you and knows how to treat you right, so don't
19 worry so much about the future. You're going to be fine. A
20 great girl like you, you're going to be perfectly fine.

21 Mr. Eubanks, on the charge of criminal sexual conduct
22 with a minor first degree, the sentence of the court is that
23 you be committed to the Department of Corrections for
24 twenty-five years. You will receive credit for 45 days that
25 you have served in jail. By law you will be placed on the

1 Sex Offender Registry and the Child Abuse and Neglect
2 Registry. On the charge of criminal sexual conduct with a
3 minor third degree, the sentence on that charge is fifteen
4 years in the Department of Corrections. It will be served
5 concurrently with the offense of CSC with a minor first
6 degree. You do get credit for 45 days in jail on that
7 charge as well. On the criminal sexual conduct with a minor
8 in the second degree, Solicitor, I appreciate your request
9 for consecutive time. I am doing something similar, because
10 quite honestly I want him to be supervised when he is
11 released. If this kind of thing were to happen again I want
12 the Court to have the option of putting him back in prison.
13 I do feel like perhaps consecutive sentences would be
14 appropriate for somebody who has a criminal history. He has
15 none, and I have to take that into consideration. That's
16 why I am doing it this way. On the CSC with a minor second,
17 I've sentenced you to fifteen years. That will run
18 consecutive to the twenty-five year sentence on the CSC with
19 a minor first charge, however, the fifteen years on the CSC
20 with a minor second degree will be suspended on the time
21 that you have already served. Once you're done serving the
22 twenty-five years you'll be on probation for five years with
23 fifteen years hanging over your head on indictment -1205.
24 Again, this charge is consecutive -- this sentence is
25 consecutive to the twenty-five years on the CSC first, but

1 it is suspended. Sex Offender Registry, sex offender
2 counseling upon your release will be an additional condition
3 as well as the standard conditions of probation. Mr.
4 Eubanks, you have twenty-five years to serve. You'll have
5 to do eighty-five percent of that. Again, you have ten days
6 to file any notice of intent to appeal and one year to file
7 any action for post-conviction relief. I hate to meet all
8 you people under these circumstances. I wish you all the
9 best of luck. The record is closed on this.

10 (END OF REQUESTED TRANSCRIPT OF RECORD.)

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1 Q Okay. Well, tell us about that because we just talked
2 about, before the wreck, he could get an erection and you
3 all would have sex regularly --

4 A Yes.

5 Q -- early on in the relationship --

6 A Yes.

7 Q -- and now, you're saying he couldn't get an erection.
8 Why did you come to believe that?

9 A Because he started having high blood pressure issues.

10 Q Okay.

11 A One of his testicles had separated --

12 Q Okay.

13 A -- and whenever -- if anybody's been to Dr. Brownlee's
14 office, whenever a patient goes back, only the patient can
15 go back. She won't let the family go back with them. So
16 whenever he would go to Dr. Brownlee's office to see her, he
17 would say that he did blood work and that his testosterone
18 level came back at zero and that he couldn't get an erection
19 and I'd say, well, I don't care, I love you. You know, I'd
20 say, it's really okay, you know, and I could live the rest
21 of my life without sex as long as we're together, you know,
22 as long as we love each other and this is what we both want.
23 And then, he would say, well, we're going to work on that,
24 but I've got to get my blood pressure down before I could
25 have any medications given to me for my sex drive, which

1 MR. SCOTT: Right. And these are multiple cookies,
2 Your Honor. They're all the same type. He can say, I don't
3 know what you're talking about, I don't know how they got on
4 my phone, just like your wife did. But the content matter,
5 the multiple sites, the multiple days.

6 THE COURT: I understand. But if I'd gone in my wife's
7 computer without that explanation, and then saw some of the
8 stuff which was popping up, I would -- I would sincerely
9 suspect --

10 MR. SCOTT: It might be --

11 THE COURT: -- that she was into -- that she was into
12 some stuff that being married to me maybe she shouldn't have
13 been into, if you understand what I'm saying. If you want
14 to question him about searching online for porn, I feel like
15 -- I think he's -- I think he's opened that door, but I
16 don't know about specific instances.

17 MR. WISE: Your Honor, he hasn't open that door because
18 he answered the question truthfully, I look at -- no -- at
19 girls over 18 -- 18 and over. That has opened the door no
20 more than the green box did. I mean, he really hasn't -- it
21 gets too collateral and it's too prejudice. Under the 404(b)
22 analysis, it clearly is more prejudicial than probative.

23 MR. SCOTT: If you look at *State v. Miller*, that's the
24 Lexington case he keeps talking about, it cites a case out
25 of Oregon and that is -- or *State v. Nelson* is the one out

VOLUNTARY STATEMENT

#17005015

STATE OF SOUTH CAROLINA

COUNTY OF Laurens

PERSONALLY appeared before me

"My name is Michael Cliff Eubanks My address is [REDACTED]

Date of Birth: [REDACTED] Social Security Number: [REDACTED] Phone Number: [REDACTED]

I completed the 12th grade in school, and I can cannot read and write".

Before answering any questions or making any statements,

a person who identified himself as

J. Hunnicutt
Investigator w/ LCSO
 duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law for the offense or offenses concerning which the following statement is hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already answered some questions or make some statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

Came in to speak with Hunnicutt about the allegations my daughter
J.L.
has said towards me. She says I have kissed her
neck rub my arms across her chest touched her butt and put
my hand down her pants. As far as I can remember I have not
touched her ~~sex~~ in any way that I can remember to
make her feel this way. She has feel asleep at times with
me and my daughter B.E. in the bed but I have also picked
her up and took her to her bed and I have also fell asleep
in my bed watching tv with me waking up with her
next to me. I have no clue what goes on when I
sleep and I'm not saying that I did or didn't while I
was asleep.

End of Statement

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 10:45 A.M. on the 17th day of May, 20 17.

SWORN TO AND SUBSCRIBED TO BEFORE

ME THIS _____ DAY OF _____, 20____

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____

Signature of person giving voluntary statement

WITNESS: _____

WITNESS: _____

PENGLAD 800-631-6989

STATE'S
EXHIBIT

008

VOLUNTARY STATEMENT

#17005015

STATE OF SOUTH CAROLINA

COUNTY OF Laurens

PERSONALLY appeared before me

"My name is Michael Clifford address is [REDACTED] who states:

Date of Birth: [REDACTED] Social Security Number [REDACTED] Phone Number: [REDACTED]

I completed the 12th grade in school, and I can cannot read and write".

Before answering any questions or making any statements,

a person who identified himself as Investigator w/ LCSD

duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law for the offense or offenses concerning which the following statement is hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already answered some questions or make some statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

talked with her cut and As far as what went on in the barn was that myself and J.L. was working tearing apart pallets and cleaning up I went to sit down and Jack came to me and set in my lap and started to wiggle on my leg and move around, I knew it wasn't right but I tried to push her away but she still did it to arouse me and I ended up ejaculating in my pants.

End

8

Statement

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

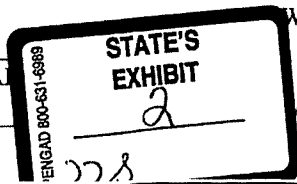
This statement was completed at 5:52 p .M. on the 17 day of May, 20 17.

SWORN TO AND SUBSCRIBED TO BEFORE

ME THIS _____ DAY OF _____, 20 _____

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____



Signature of person giving voluntary statement

WITNESS:

WITNESS:

Chapter 1: All About Me

My name is J.L. and I am 12 years old. I like to dance and play volleyball. I like to color. I live with my mom, grandma, great grandma, my brother, and sister. I get along with my brother and sister mostly but they annoy me sometimes. My great grandma likes to cook and watch TV shows and her and my grandma like to garden. I will be starting a new school at Laurens Middle. I like that I will have a new start. My dad doesn't come around anymore starting about a month ago. Mom said he turned himself in to some house for drugs. I think that's good. I am kind of mad that he never came around or call on my birthdays until after I told about the abuse then he wanted to be in my life.

Chapter 2: Before the Abuse vs. Now

Before the abuse I was happy. I never really worried about anything. I felt free. He and I always did stuff together. He always bought me candy and we would do stuff outside together. He showed me more attention than the other kids and my brother would get mad at me for that and we would fight about it. I liked the attention at first but then I thought it was unfair to my brother and sister. After the abuse I was angry at everyone. I felt like I had to compete with my sister for attention. I was confused about everything and didn't know if the abuse was good or bad or what I should do. I wasn't allowed to show any attention to my mom and that upset me.

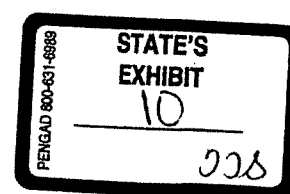
Chapter 3: The Abuse

The First Time

I was 6 or 7 and I was at my old house in the living room on the couch. It was early in the morning and he picked me up from my bed while I was half way asleep and brought me to the couch. I thought "what is he doing?" "What time is it?" I was scared or worried that something bad happened. He pulled my pants down to my knees and took my underwear off. I was thinking "What is he about to do?" I was shocked. He would take his boy part and put it on my girl part. I felt scared. I was wondering what was going on and why he was doing this. I don't know why he was doing this. I wanted to know where my mom was. He tried to put it in me but he couldn't. I would try to move away and act like I was still asleep. He would breathe really loudly. I was too scared to say anything. About 3 minutes later he would push me away from him and go to the bathroom. I was wondering what I should do next. I would pull my pants back up. Then he would come back and take me back to my room. I felt scared because I didn't know if he would do it again in my bedroom.

The Worst Time

My mom, brother, grandma, and great grandma went to L.L.'s band competition. I had to stay home because my mom thought it would be too late when it would be over. I was sad that I couldn't go to the band competition. My step dad would watch me and bella. He would put B.E. in the bath and told her to turn off the water when it got to her belly button. I thought that was weird. I was wondering why he was putting her in the bath so late. I thought maybe he would touch me again. I felt awkward being with just him in the same room together because of things he had done in the past. He came back, turn off



all the lights, and turn on a lamp by the light. He turned the TV on low. It was probably 10:30. I looked at him and he was taking off all his clothes. I was wondering when my mom would be home and felt scared. I closed my eyes real quick and he started taking off all my clothes. He would get in the bed and cover us up. He would put his boy part on my girl part and kiss my neck and my ear. He would move back and forth and try to be inside of me but he wouldn't. I felt scared the whole time. He had a rag with him and he would push me off and turn to the other side with the rag. I didn't know why he did this. Then he would put his clothes back on and my clothes. I was glad it was over. Then he would go wash B.E. and come back to go to sleep. I worried that he may do something to B.E. too but I was too scared to say anything because I thought he might hurt me.

The Last Time

I remember it was sunny out because me and B.E. were in the middle of finding worms outside. He called me and B.E. down to the barn. I didn't know what he wanted. He told B.E. to go to the house. B.E. asked why and he said he needed her to stay up there until I came back up to get her. I wondered why she needed to go up to the house and thought he may try to touch me again. Then I would sit down in the chair. I tried to tell him no, that I didn't want to sit down. He would tell me "I thought you liked it." I would feel bad that I'm not showing him any attention and would sit down. My mind was telling me not to sit down but my heart felt bad and told me to sit down to make him happy. He would put up the big piece of wood behind Bella's doll house that he hid behind so no one could see what he was doing. He would rub my back until I fell asleep. Then when I woke up he was pulling up my pants. I was wondering what just happened. I was worried that he did something to me. I was wondering if he put his boy part on my girl part. He told me to go to the house to get B.E. and I would avoid him the rest of the day. The next day he would be mad and not talk to me. I felt sad that he didn't talk to me. I thought maybe I did something wrong. Maybe he thought I told on him. He would stay in the room and be mad at everybody. Mom would send me into his room to get him but he would tell me not to worry about it and that it was mom's problem if she needed him. I would ask him what was wrong and he just told me not to worry about it.

A.E.

I was maybe 8 or 9 years old. We would mainly be in a closet or a closed area. She would ask me if I wanted to play the "girlfriend and boyfriend game." I didn't know it was bad so I would play along. She told me not to tell anyone about it. She explained that one of us would be a girl and the other would be a boy. I remember wondering if this actually happened in real life relationships. She would make me be the girl. I felt weird. We would pretend to get each other stuff. The girl would go in the living room and she would be picking out stuff and giving it to me as a gift. I didn't like that she was going through my stuff. It usually happened at night. She would call me in the closet, telling me she wanted to show me something in the closet or telling me my present was in the closet. I felt weird about going in the closet and wondered why she wanted me to go into the closet. I don't know why she would want to do this. We would go in the closet and keep the light off with the door shut. She would try to kiss me and put her girl part on my butt. I felt awkward because we were both girls and she was my sister. She would do things kinda like what Cliff would do to me. I wondered if I should go tell someone or leave and not go

in the closet. I was scared not to listen to her. I was scared she would tell an adult and blame it on me. Now she blames a lot of stuff on my because she does things in my room so I get in trouble for it.

Now I am more cautious around her and the things that she does. Cliff had already started touching me when A.E. started doing this. I wondered if it was all a game. I wondered if Michael did similar things to his daughter. I wondered if it was something all fathers and daughters and sisters did. I thought it was weird if it was something they all did, but if it was normal then I wouldn't have felt like such an odd ball. At the same time, I didn't want to ask other people because then I really would be an odd ball if I was the only one experiencing it.

1. Why did this happen to me?

I don't know why it happened to me. Maybe since I didn't tell anyone the first time he thought he could keep doing it and get away with it. Now I think I should have stepped up to him, but I didn't because I was worried. I was worried that he would be rough with me and hurt me. I also didn't want to make him mad. If he was mad at me that would mean I was a bad person because it was my job to provide for everyone. I was the only one that was happy on the outside. Now, I know it's not my job to make other people happy because it's just the way they feel and I have no control over it.

2. Who is responsible for this happening?

Cliff is responsible because he made the choices to do it. My mom thinks it is her fault because she knew something was going on and he was acting weird but she never addressed it. She said he treated me more like a wife than her and she didn't like that. I didn't see that he was doing that, but now I can see that he did come to me for things when he should have gone to mom. He would ask me to give him things while he was in the shower and not tell my mom. I don't think it was my mom's fault because she was probably scared to say anything to him because he may have hurt her. I think she knew something was going on because of the way she acted, but I don't think she knew what was going on. She pulled me aside a lot and asked if I was okay. She told the old therapist that she knew something was going on but didn't know what. It wasn't her choice that he would do it. I know she stayed with him because Luke and I really wanted a dad. There were times when he was nice to everyone.

3. How will this affect my future?

I think it will help me out and make me stronger. I think it makes me a leader to people this has happened to. It makes me a better person because I am not able to stop bad things from happening instead of letting them go on. Now that I am in a relationship I am more cautious and making sure nothing bad happens.

4. How has this affected my family?

We are happier and I feel more loved. My brothers and sisters used to be mad at me because I got more attention from him, but that's not happening anymore. I feel free now. I'm not scared

to do what I want. I used to second guess what I would wear, say, act, or do but I don't have to do that anymore. I don't have to do that anymore because he is gone.

5. My view of the world has changed in these ways:

I learned not to judge a book by it's cover. If someone is mean than there is probably something else going on and I shouldn't jump to conclusions. There is always a bigger story or more meaning behind what people are trying to say. I learned this because there were times when I was mean to others and when my sisters were mean to me, but really there were other things going on. I learned that if something like this happens again I should tell somebody.

6. How has this affected the way I view myself?

I used to feel ashamed, but now I feel like I should be respected and be respectful. I feel like a nicer person.

C. Joanne Brownlee, MD

R. 814

DEA: BB7335133 NPI: 1528099942

209 Lucus Avenue Laurens, SC 29360

Phone: (864) 984-7561 Fax: (864) 984-1195

Patient Name	MICHAEL CLIFF EUBANKS	Address/Phone	[REDACTED]
Date of Birth	[REDACTED]		MOUNTVILLE, LAURENS
Gender	Male		SC 29370
Patient Id	[REDACTED]		[REDACTED]

Notes

[REDACTED]

History CC:

Follow-up after hospital discharge. Went to ER last week with chest pains, headache & elevated blood pressure. Denies chest pains or headache today.

Duration:

The patient has had the problem for 1 - 3 weeks

History ROS:

Constitutional symptoms:

The patient denies fever, chills, weight loss or lack of appetite.

Ears, Nose, Mouth, Throat:

The patient denies sore throat, hearing loss or nose bleed.

Cardiovascular:

The patient denies chest pain, palpitations, shortness of breath on exertion, orthopnea or syncope.

Respiratory:

The patient denies wheezing, shortness of breath, sputum production or blood in sputum.

Gastrointestinal:

The patient denies nausea, vomiting, constipation, diarrhea or blood in stools.

Genitourinary:

The patient denies hematuria, polyuria, dysuria. No Incontinence. No urinary retention.

Integumentary:

The patient has no complaints.

Endocrine:

The patient denies weight loss, weight gain or cold sensitivity.

Neurological:

Nonfocal

Examination:

BP-Rt Arm : 140/80, BP-Lt Arm : 130/80, HR : 94, RR : -, Temp : -, Pulse Ox : 98, Wt : 225, Ht : 69, BMI : 33.7, Pain : -

HEENT:

pupils are equal, round, reactive to light

HEENT: oro clear; nares patent; TM's clear

NECK:

No deformities, No JVD, No Carotid Bruits

NECK: supple

HEART:

Regular rhythm, no murmurs

LUNGS:

Clear bilaterally

ABDOMEN:

Soft, non-tender, no rebound signs, no masses

EXTREMITIES:

No Cyanosis, no clubbing, no edema. No deformities noted.

NEUROLOGIC / PAIN EXAMINATION:

- affect good

- alert and ox3

- gait normal

Medical Decision Making:

Medications:

hydrochlorothiazide 25 mg tablet qd with 2 oz OJ, atorvastatin 40 mg tablet qd

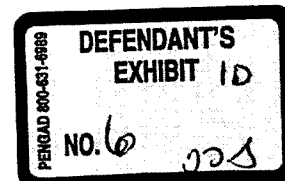
ASSESSMENT:

Presents with:

Hypertension; med change in hospital back to what I had initially given him in 2015 (hydrochlorothiazide).
Leg cramps

PLAN:

Dietary Measures discussed, Discussed the care and plan with the patient and they are in full agreement. Follow-up visit depending on test results.



R. 815

C. Joanne Brownlee, MD

DEA: BB7335133 NPI: 1528099942

209 Lucas Avenue Laurens, SC 29360

Phone: (864) 984-7561 Fax: (864) 984-1195

Patient Name	MICHAEL CLIFF EUBANKS	Address/Phone	[REDACTED]
Date of Birth	[REDACTED]		MOUNTVILLE, LAURENS
Gender	Male		SC 29370
Patient Id	[REDACTED]		[REDACTED]

Other:

Lab to recheck potassium and magnesium.
Will schedule arterial studies lower extremities to check for blockages.
Monitor blood pressure and goal is

History CC:

Check up - patient presents with complaints of BP elevation with headaches, dizziness & chest pains. Checked bp at home and elevated. Chest pain twice and only lasted a few seconds.
Previously took hctz; had leg cramps.
Has some erectile dysfx.
Testosterone low x 2.

Duration:

The patient has had the problem for 1 - 3 weeks

History ROS:**Constitutional symptoms:**

The patient denies fever, chills, weight loss or lack of appetite.

Ears, Nose, Mouth, Throat:

The patient denies sore throat, hearing loss or nose bleed.

Cardiovascular:

chest pain

Respiratory:

The patient denies wheezing, shortness of breath, sputum production or blood in sputum.

Gastrointestinal:

The patient denies nausea, vomiting, constipation, diarrhea or blood in stools.

Genitourinary:

ED; maintaining

Integumentary:

The patient has no complaints.

Endocrine:

The patient denies weight loss, weight gain or cold sensitivity.

Neurological:

Headaches, Vertigo

Examination :

BP-Rt Arm : -, BP-Lt Arm : 165/100, HR : 91, RR : -, Temp : -, Pulse O₂ : 98, Wt : 229, Ht : 69, BMI : 33.8, Pain : -

HEENT:

pupils are equal, round, reactive to light

HEENT: oro clear, nares patent; Tm's clear

NECK:

No deformities, No JVD, No Carotid Bruits

NECK: supple

HEART:

Regular rhythm, no murmurs

LUNGS:

Clear bilaterally

ABDOMEN:

Soft, non-tender, no rebound signs, no masses

EXTREMITIES:

No Cyanosis, no clubbing, no edema. No deformities noted.

NEUROLOGIC / PAIN EXAMINATION:

- affect ok

- alert and ox3

- gait normal

ASSESSMENT :

Presents with:

- hypertension; uncontrolled

PLAN :

Dietary Measures discussed, Educational Materials Provided; DASH DIET., Exercise Encouraged, Discussed the care and plan with the patient and they are in full agreement. Follow-up visit for fasting labs; check blood pressure daily at home and bring values; goal is < 140/90., Other:
- amlodipine 5 mg daily for blood pressure control

R. 816

C. Joanne Brownlee, MD

DEA: BB7335133 NPI: 1528099942

209 Lucas Avenue Laurens, SC 29360

Phone: (864) 984-7561 Fax: (864) 984-1195

Patient Name	MICHAEL CLIFF EUBANKS	Address/Phone	[REDACTED]
Date of Birth	[REDACTED]		
Gender	Male		MOUNTVILLE, LAURENS
Patient Id	[REDACTED]		SC 29370

MAIL.CO.LAURENS.SC.US - LYNN LANCASTER <LLANCASTER@CO.LAURENS.SC.US>

FW: DELETED LANGUAGE FROM THE STOCK INTENT INSTRUCTION

**Addy, Frank R.**

Lancaster, Lynn W. ...

8/3/2018 10:37 AM

From Addy, Frank R. 
faddyj@sccourts.org

To Lancaster, Lynn W.; Lancaster, Lynn W.

 ~WRD000.jpg (1 KB)

Lynn,

This is the email string where we were discussing the instructions last night. Please print this off during a break, and I'll have Tara make it a court's exhibit since it was discussed this morning.

Thanks.

Frank R. Addy, Jr.

Resident Judge, 8th Judicial Circuit

Greenwood County Courthouse

528 Monument Street, Ste. 210

Greenwood, South Carolina 29646

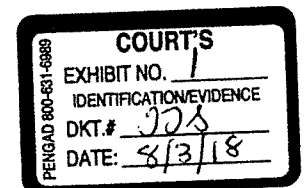
Office: (864) 943-8020

Fax: (864) 942-8581

Email: faddyj@sccourts.org

Secretary: Freda Sartin (faddysc@sccourts.org)

Law Clerk: Daenayia Hudson (faddylc@sccourts.org)

From: Dale Scott [mailto:dscott@greenwoodsc.gov]**Sent:** Friday, August 3, 2018 8:52 AM**To:** Addy, Frank R. <faddyj@sccourts.org>**Cc:** Rauch Wise <rauchwise@gmail.com>; Wise, C R. <rauch@simplepc.net>; Julie Keeney <jkeeney@greenwoodsc.gov>; Addy, Frank R. Law Clerk (Daenayia Hudson) <faddylc@sccourts.org>**Subject:** Re: Deleted Language from the Stock Intent Instruction

"No witness's testimony must be corroborated in order to be believed." In the alternative: "No witness's testimony must be corroborated in order to be believed. At the same time, a witness's testimony can be disbelieved even when corroborated." Either of those proposed instructions conveys the exact same sentiment as the instruction on believing one over many or many over one, they do not improperly single out the testimony of the victim since they are directed at all witnesses equally, and, since they're just a general statement of law that is neutral to both sides, they cannot reasonably be characterized as comment on the facts. I would ask to give this instruction it right after the "one over many" language,.

This instruction would not run afoul of Stukes and it would also be fully consistent with the beliefs of the dissent in Rayfield, which effectively became the majority in Stukes. See State v. Rayfield, 369 S.C. 106, 120, 631 S.E.2d 244, 251 (2006) (Pleicones, J., dissenting) ("No witness's testimony need be corroborated."), overruled by State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016).

On Thu, Aug 2, 2018 at 9:59 PM, Addy, Frank R. <faddyj@sccourts.org> wrote:

Thought about this on the way home, and I still am.

Here's my problem. Assuming there is an unlawful touching, or an assault, the Defendant's case is that it was he who was assaulted. His case is that he engaged in no touching which would constitute a lewd act. If he's not the one doing the touching, how can he be guilty of CSC 3rd. In other words, he's just sitting there, minding his own business, when

We can discuss more in the morning, but will likely be up for another 30 min or so in case anyone wants to chime in.

Frank R. Addy, Jr.
Resident Judge, 8th Judicial Circuit
Greenwood County Courthouse
528 Monument Street, Ste. 210
Greenwood, South Carolina 29646
Office: (864) 943-8020
Fax: (864) 942-8581
Email: faddyj@sccourts.org
Secretary: Freda Sartin (faddysc@sccourts.org)
Law Clerk: Daenayia Hudson (faddylc@sccourts.org)

From: Dale Scott [mailto:dscott@greenwoodsc.gov]

Sent: Thursday, August 2, 2018 9:54 PM

To: Rauch Wise <rauchwise@gmail.com>

Cc: Addy, Frank R. <faddyj@sccourts.org>; Wise, C R. <rauch@simplepc.net>; Julie Keeney <jkeeney@greenwoodsc.gov>; Addy, Frank R. Law Clerk (Daenayia Hudson) <faddylc@sccourts.org>

Subject: Re: Deleted Language from the Stock Intent Instruction

I've never heard of the rule of linity but does it pass The elements test? Does csc w/minor 3rd have all the elements of A&B 2nd? No it doesn't...gotta have an injury (or attempted) for A&B 2nd but not for CSC with minor 3rd. I'm pretty sure there is law out there on this. I'll get it to you tomorrow. Good night

Sent from my iPhone

On Aug 2, 2018, at 9:36 PM, Rauch Wise <rauchwise@gmail.com> wrote:

I take the position that CSC 3rd degree is a specific intent crime. The suggested charge is a general intent charge. I say specific because that is what the statute says and the indictment.

I believe A&B 2nd is a lesser included of CSC 3rd. This is based upon the fact that A&B 2nd provides "involves non-consensual touching of the private parts of a person, either under or above clothing, with lewd and lascivious intent." very similar to CSC 3rd but slightly different. To the extent that the court perceives no difference between the two, then the rule of lity would require the court to charge only A&B 2nd. My personal opinion is that CSC3rd requires specific intent and A&B 2nd only requires a general intent and therefore would be a lesser included.

Rauch

On 8/2/2018 5:39 PM, Addy, Frank R. wrote:

Attached are the portions of the Intent charge which I think are not necessary or are confusing.

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

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NOTE: This e-mail is a public record which may be subject to disclosure pursuant to the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.*, to a person or party requesting the same.

Find Greenwood County on social media:



[REDACTED]

NOTE: This e-mail is a public record which may be subject to disclosure pursuant to the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.*, to a person or party requesting the same.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LAURENS COUNTY  
Court of General Sessions  
Frank R. Addy, Jr., Circuit Court Judge

RECEIVED  
JAN 08 2020  
SC Court of Appeals

Appellate Case No. 2018-001684

The State,..... Respondent,

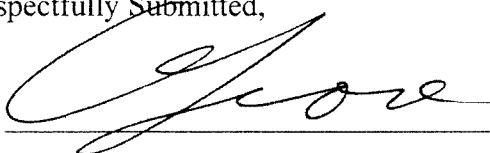
v.

Michael Cliff Eubanks, ..... Appellant.

**Rule 210, SCRCP Certification**

The Record on Appeal contains all material proposed to be included by any  
of the parties and not any other material.

Respectfully Submitted,

By 

E. Charles Grose, Jr.  
S.C. Bar Number 66063  
The Grose Law Firm, LLC  
404 Main Street  
Greenwood, SC 29646  
(864) 538-4466  
(864) 538-4405 (fax)  
Email: charles@groselawfirm.com

*Attorney for Michael Cliff Eubanks*

December 30, 2019  
Greenwood, South Carolina