ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Perry H Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID SCOTT BAGWELL,

APPELLANT

APPELLATE CASE NO 2017-001844

RECORD ON APPEAL

JAMES K FALK
FALK LAW FIRM
PO BOX 1058
CHARLESTON SC, 29402
(843) 606-6007

ROBERT DUDEK
Chief Appellate Defender
South Carolina Commission on Indigent Defense
PO BOX 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEYS FOR APPELLANT

ALAN WILSON
Attorney General

WILLIAM F SCHUMACHER, IV
Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-0368

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street
Suite 325
Greeneville Courthouse
Greenville, SC 29601
(864) 467-8282

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRIAL TRANSCRIPT DATED August 28-30, 2017 1

OPENING REMARKS BY THE COURT 5

MOTION FOR MISTRIAL 25/105/306

RULING BY THE COURT 27

PRETRIAL MOTIONS 28

OPENING STATEMENTS:

Solicitor 59
Defense Counsel 63

J.B. KELLEY

Direct 69
Cross 78

MINOR CHILD

Direct 109
Cross 119
Redirect 133

PAM DARBY (Proffer)

Direct 140
Cross 144

PAM DARBY

Direct 163

REBECCA MOSLEY

Direct 168
Cross 175
Redirect 181

MARY FRAN CROSSWELL

Direct 183
Cross 195

SHAUNA GALLOWAY

Direct 213
Cross 235
Redirect

DEFENSE MOTION FOR DIRECTED VERDICT 252

EXAMINATION OF DEFENDANT 259

LONNIE NETTLES (Proffer)
Direct 266

DAVID BAGWELL
Direct 271
Cross 291

DEFENSE RESTS 304

CLOSING ARGUMENTS
Solicitor 307
Defense Counsel 319

Solicitor-Reply 344

CHARGE BY THE COURT 351

VERDICT 374

SENTENCE 381

INDICTMENT AND SENTENCING SHEETS 383

CERTIFICATE OF COUNSEL 386

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF PICKENS	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 15-GS-39-0102
	)	
David Scott Bagwell,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within JURY TRIAL in the above-captioned matter was held August 28-30, 2017, before The Honorable Perry H. Gravely in Courtroom 4 of the Pickens County Courthouse in Pickens, South Carolina; attended by counsel as follows:

APPEARANCES:

Chris Jones, Assistant Solicitor
13TH CIRCUIT SOLICITOR'S OFFICE
...Appearing for State of South Carolina

John DeJong, Public Defender
PICKENS COUNTY PUBLIC DEFENDER
.....Appearing for Defendant

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616
dgarrison@sccourts.org

INDEX

Index of Testimony	3
Index of State's Exhibits	4
Index of Defendant's Exhibits	4
Index of Court's Exhibits	4
Qualification & Selection of the Jury	5
Defense Motion for Mistrial	49/129/330
Pretrial Motions	49
Jury Sworn	74
Welcome by The Court	74
Opening Statements:	
Solicitor	83
Mr. Dejong	87
Defense Motion for Directed Verdict	276
Examination of Defendant	283
Charge Conference	In Chambers
Closing Arguments:	
Solicitor	331
Mr. Dejong	343
Reply by Solicitor	368
Charge by The Court	375
Verdict	399
Sentence	401
Certificate of Court Reporter	407

INDEX OF TESTIMONY

Witness	Direct	Cross	Recross	Redirect
J.B. Kelley	93	102		
Minor Child	133	143	157	
Pam Darby (Proffer)	164	168		
Pam Darby	187			
Rebecca Mosely	192	199	205	
Mary Fran Croswell	207	219		
Shauna Galloway	237	259	272	
Lonnie Nettles (Proffer)	290			
David Bagwell	295	314		

INDEX OF STATE'S EXHIBITS

No.	Description	Reference
1	Photograph	97
2	DVD of Defendant Interview	189

INDEX OF DEFENDANT'S EXHIBITS

No.	Description	Reference

-None Entered-

INDEX OF COURT'S EXHIBITS

1	Jury Note #1	114
2	Jury Note #2	394
3	Jury Note #3	396

1 COURT REPORTER: I can't hear you,
2 Your Honor.
3 THE COURT: That's okay.
4 (SIDEBAR CONCLUDED)
5 THE COURT: How many do we have left?
6 COURT REPORTER: Excused two,
7 transferred three, protected one for surgery
8 on Thursday and one for a dental appointment
9 on Wednesday morning.
10 THE COURT: Okay. All right, ladies
11 and gentlemen. We are trying to figure out
12 our schedule this morning as far as trials
13 go. So we're going to give y'all about a
14 fifteen-minute break.
15 Be back in your seats at 10:30 and then
16 we will start the process for our first
17 trial. Fifteen minutes and be back in your
18 seats at 10:30.
19 (BRIEF RECESS)
20 (DEFENDANT PRESENT)
21 THE COURT: Ladies and gentlemen, we
22 are able to start the trial of the State
23 versus David Scott Bagwell.
24 I'm going to read you just very brief
25 facts (sic) from the indictment. I always

1 make sure to say before I ever mention an
2 indictment that an indictment does not mean
3 that a person is guilty.
4 In fact, the Defendant has pled Not
5 Guilty in this matter.
6 This is merely the formal paper that
7 brings the charges before the court.
8 This is a matter that happened in Pickens
9 County on August 28th, 2013 -- I'm sorry,
10 between the dates of August 28th, 2013 and
11 October 30th, 2013, regarding a sexual battery
12 on a minor.
13 So I'm going to ask you very specific
14 questions about this -- I guess that we need
15 to put them under oath for this particular
16 case.
17 (WHEREUPON JURY PANEL SWORN)
18 THE COURT: First of all, Mr. Bagwell,
19 please stand.
20 DEFENDANT: (Complies).
21 THE COURT: Is anyone related by blood
22 or marriage, have a close personal,
23 professional or social relationship or
24 business relationship with David Scott
25 Bagwell? If so, please stand.

JUROR NUMBER 36: Your Honor, ---

THE COURT: Yes? First of all, state your name and your number.

JUROR NUMBER 36: My name is Jill Ellenburg, Juror Number 36.

THE COURT: Okay.

JUROR NUMBER 36: I know David Bagwell, and I -- I don't know if they were married or not, but his ex-wife. I think I know something about the child and I don't feel like I could be any part of it.

THE COURT: You are Jill Ellenburg, right?

JUROR NUMBER 36: Yes, sir.

THE COURT: And based on what you've indicated, do you believe that you could give a fair and impartial trial to both the State and the Defendant?

JUROR NUMBER 36: No.

THE COURT: Okay. Well, I will excuse you from this trial then. Thank you for responding. Just keep a seat there.

(JUROR NUMBER 36 EXCUSED)

THE COURT: All right, anyone else? (No response).

1 I would also ask that the attorneys stand
2 and introduce themselves.
3 SOLICITOR JONES: My name is Chris
4 Jones. I'm an assistant solicitor here in
5 Pickens County.
6 JOHN DEJONG: I am John Dejong. I
7 practice law here in Pickens County.
8 THE COURT: Is there anyone that is
9 related by blood or marriage, who has any
10 close, personal or social relationship with
11 either of these attorneys? If so, please
12 stand. Okay, there is no response.
13 Has anyone been represented by these
14 attorneys or been involved in a matter where
15 these attorneys were on the other side of a
16 case which you were a party to? Yes, sir,
17 your name and number?
18 JUROR NUMBER 84: Jay Lee, Juror 84.
19 THE COURT: Okay, Mr. Lee.
20 JUROR NUMBER 84: I was a former officer
21 on the Liberty City Police Department and I
22 had cases with John Dejong.
23 THE COURT: All right. The fact that
24 you're a former police officer involved in
25 cases with Mr. Dejong, do you think that you

1 could still be fair and impartial in the
2 trial of this case?
3 JUROR NUMBER 84: I do.
4 THE COURT: Thank you. You can be
5 seated.
6 Ladies and gentlemen, this is a list of
7 possible witnesses in the case. Listen
8 carefully and if you know any of these
9 witnesses -- again, we're looking for the
10 answer to the same question. If you're
11 related by blood or marriage, if you have a
12 close social or personal relationship or some
13 business relationship with any of these
14 witnesses stand, and then I will ask you
15 further questions:
16 Jan Kelley, Pickens County
17 Sheriff's Office
18 Minor Child
19 Toni Durnil
20 Pam Darby
21 Meghan Owens
22 Rebecca Mosely, with the
23 Department of Social Services
24 Dr. Mary Fran Croswell
25 Shauna Galloway-Williams

1 Lindsie Keith
2 Nancy Vasburgh
3 Margaret Durnil
4 David S. Bagwell
5 Toni Bagwell
6 Sergeant Loni Nettles of the
7 Colleton County Sheriff's Office
8 David Cantrell, Attorney in
9 Easley
10 Meghan Owens Bagwell
11 If you know any of these individuals or
12 if you are related by blood or marriage,
13 please stand.
14 JUROR: I am related to Lindsie Keith.
15 THE COURT: Right and we have excused
16 you from this trial but thank you for
17 standing. I don't mean to cut off but that
18 -- so, uh, -- your name and number?
19 JUROR NUMBER 14: William Blair, Number
20 14. I used to work with Jan Kelley.
21 THE COURT: And would the fact that you
22 used to work with Officer Kelley, could you
23 still be fair and impartial in the trial of
24 this case if he were a witness?
25 JUROR NUMBER 14: I, uh, -- I think so.

1 THE COURT: Well, I can't take an I-
2 think-so. Can you be fair and impartial?
3 JUROR NUMBER 14: No.
4 THE COURT: You don't think you can?
5 JUROR NUMBER 14: (Negative gesture).
6 THE COURT: And what kind of taxes do
7 you work with?
8 JUROR NUMBER 14: I work Easley Baptist
9 as security and on weekend I work taxes.
10 THE COURT: Well, if you don't think
11 that you can be fair, then I'm going to have
12 to excuse you from this case. Thank you, you
13 can be seated.
14 (JUROR NUMBER 14 EXCUED)
15 THE COURT: We will start over here
16 with you. Yes, sir?
17 JUROR NUMBER 74: Christian Jones, Juror
18 Number 74. David Cantrell is my stepfather.
19 THE COURT: Okay. And is he -- I guess
20 he is a witness in this?
21 JOHN DEJONG: I'm sorry, Your Honor?
22 THE COURT: David is going to be a
23 witness in this case?
24 JOHN DEJONG: May we approach?
25 THE COURT: Yeah.

1 (OFF RECORD SIDEBAR)
2 THE COURT: Mr. Jones, if Mr. Cantrell
3 is a witness, do you think that you can be
4 fair and impartial?
5 JUROR NUMBER 74: No.
6 THE COURT: It would be kind of tough,
7 I know. So we will excuse you.
8 (JUROR NUMBER 74 EXCUSED)
9 THE COURT: Yes?
10 JUROR NUMBER 40: Timothy Elrod, Juror
11 Number 40. Mr. Cantrell has represented my
12 son when they were in DJJ.
13 THE COURT: Do you think that because
14 of your connection with Mr. Cantrell there
15 that you could be fair and impartial if he
16 were a witness in this case?
17 JUROR NUMBER 40: Yes, sir.
18 THE COURT: All right, I will allow you
19 to stay on. Yes, your name and number?
20 JUROR NUMBER 85: Sherie Lesley, Juror
21 Number 85.
22 THE COURT: Okay.
23 JUROR NUMBER 85: Candy Kelley is a
24 personal friend, though we don't ever discuss
25 any of the business that ---

1 THE COURT: So you are friends with Mr.
2 Kelley's wife?
3 JUROR NUMBER 85: Yes, sir.
4 THE COURT: Do you think because of
5 that relationship that you could be fair and
6 impartial if Officer Kelley was a witness in
7 this case?
8 JUROR NUMBER 85: I can.
9 THE COURT: All right. I will allow
10 you to stay on the panel.
11 Ladies and gentlemen, I've got some
12 questions here. Some of these questions are
13 very personal in nature and some of these
14 responses. If you need to respond, stand.
15 If there is something that you want to talk
16 about to me more privately, I would ask that
17 you come up here. The attorneys and the
18 court reporter will also have to be a part of
19 that conversation. But I realize that the
20 response to some of these questions may be a
21 little bit more sensitive than you want to
22 say before the panel. I will protect your
23 answer as much as possible.
24 This question is not particularly
25 sensitive, but is there any member of the

1 jury panel or a member of their immediate
2 family associated with or related by blood or
3 marriage to anyone who is employed by the
4 Pickens County Sheriff's Office? If so,
5 please stand. All right, no response.
6 Is any member of the jury panel a member
7 of or contributes to any group or
8 organization which promotes alleged victim
9 rights or law enforcement; such as MADD, SADD
10 or any other advocacy group which promotes
11 the interests of law enforcement and/or
12 victim rights. If so, please stand. No
13 response.
14 I realize that you've only been given
15 very brief information about this case but
16 it's important for us to know as much
17 information as we can if you know anything
18 about this case. So has any member of the
19 jury panel read any newspaper articles,
20 whether hard copy or on computer, magazine
21 articles, seen any news stories, whether
22 hardcopy or on computer, heard any radio
23 broadcasts, seen or read anything on social
24 media on the computer such as FaceBook or
25 Twitter, or blogs on the computer concerning

1 this defendant or this case; or if you have
2 any information from any source alleging the
3 facts of this case, please stand. All right,
4 no response.
5 Has any member of the jury panel or
6 member of their immediate family ever been a
7 member of a law enforcement agency or worked
8 for a law enforcement agency. Your name and
9 number, the first lady here?
10 JUROR NUMBER 157: Anna Willis, 157.
11 My grandfather retired from the Pickens
12 County Sheriff's Office and retired from
13 SLED.
14 THE COURT: What was his name?
15 JUROR NUMBER 157: Randall Stewart.
16 THE COURT: The fact of your
17 relationship with your grandfather, could you
18 still be fair and impartial in the trial of
19 this case?
20 JUROR NUMBER 157: Yes.
21 THE COURT: Yes, ma'am?
22 JUROR NUMBER 142: Virginia Shelton,
23 Number 142. My father was a retired law
24 enforcement officer, a State trooper.
25 THE COURT: Here locally?

1 JUROR NUMBER 142: South Carolina
2 State Trooper. When he retired he was out of
3 Greenwood and Laurens County.
4 THE COURT: Do you think you could
5 still be fair and impartial in this case?
6 JUROR NUMBER 142: (Affirmative nod). I
7 would.
8 THE COURT: Thank you. I'm going to
9 let you stay in. Yes?
10 JUROR NUMBER 84: Jay Lee, Number 84.
11 As I stated earlier, I was with the Liberty
12 City Police Department.
13 THE COURT: Do you think that you could
14 still be fair and impartial in the trial of
15 this case?
16 JUROR NUMBER 84: Yes.
17 THE COURT: Thank you. Anyone else?
18 (No response).
19 Is any member of the jury panel a member
20 of a political, religious, social,
21 industrial, fraternal, law enforcement or
22 other organization whose beliefs or teachings
23 would prejudice him or her against either
24 party in this case? If so, please stand.
25 All right, no response.

1 Is any member of the jury panel aware of
2 any physical, mental or emotional condition
3 which would prevent them from giving the
4 defendant and the State a fair and impartial
5 trial in this matter? If so, please stand.
6 All right, no response.
7 Does any member of the jury panel or
8 member of their immediate family, now or in
9 the past, ever worked for any organization,
10 agency or business which investigated and/or
11 counseled victims, or victim's families, who
12 have been sexually molested. If so, please
13 stand. All right, your name and number?
14 JUROR NUMBER 129: Jessica Rivera, Number
15 129.
16 THE COURT: And how do you respond to
17 that question?
18 JUROR NUMBER 129: I am a nurse, work
19 with the SANE nurses and take care of that
20 type of patient.
21 THE COURT: What hospital do you work
22 for?
23 JUROR NUMBER 129: Baptist Easley. I'm
24 in primary care.
25 THE COURT: The fact of that role, do

1 you feel that you can still be fair and
2 impartial in the trial of this case?
3 JUROR NUMBER 129: Yes.
4 THE COURT: I will allow you to stay on
5 the panel.
6 Again, this is one of those questions
7 that I will be glad to take up up here, if
8 needed. Has any member of the jury panel or
9 member of their immediate family been the
10 victim of a sexual assault or molestation.
11 If so, please stand. Your name and number?
12 JUROR NUMBER 98: I'm fine. Marjorie
13 Moon, Number 98. My son was sexually abused
14 by my ex-husband, who is currently serving
15 time in prison.
16 THE COURT: Due to that fact, do you
17 feel you could still be fair and impartial in
18 this case?
19 JUROR NUMBER 98: I feel I can.
20 THE COURT: Is there anyone else who
21 needs to come up for anything like that? No
22 response.
23 At the end of this matter, I will also
24 give an opportunity if you would like to come
25 up and address the court.

1 Is there any member of the jury panel,
2 their spouse, or any member of their
3 immediate family now employed by, or ever
4 been employed by, the South Carolina
5 Department of Social Services, Pickens County
6 or any other county in South Carolina? If
7 so, please stand. All right, no response.
8 Has any juror or member of their
9 immediate family ever been a complainant to
10 law information or other agency with
11 reference to sexual assault or molestation?
12 If so, please stand. Okay, no response.
13 Is any member of the jury panel or a
14 member of their immediate family related by
15 blood or marriage to anyone employed by the
16 Solicitor's Office for the 13th Judicial
17 Circuit. If so, please stand. All right, no
18 response.
19 Does any member of the jury panel
20 currently work for or volunteer or have
21 worked for or volunteered in the past for the
22 South Carolina Lay Guardian *ad litem* program?
23 All right, no response.
24 JUROR NUMBER 141: I'm sorry.
25 THE COURT: Yes?

1 JUROR NUMBER 141: I have not but my
2 husband is a guardian *ad litem*.
3 THE COURT: Your name and number?
4 JUROR NUMBER 141: Michelle Shaw.
5 THE COURT: You say that your husband
6 is a volunteer guardian *ad litem*?
7 JUROR NUMBER 141: Yes, he is.
8 THE COURT: Based on that fact, could
9 you still be fair and impartial in this
10 matter?
11 JUROR NUMBER 141: I believe so. He
12 doesn't discuss any of that with me.
13 THE COURT: But you could still be fair
14 and impartial and hear the facts of this
15 case?
16 JUROR NUMBER 141: Yes, sir.
17 THE COURT: Has any member of the jury
18 panel formed or expressed an opinion about
19 any issue or matter involved in this case?
20 All right, no response.
21 Is any member of the jury panel aware of
22 any bias or prejudice towards either the
23 State or the defendant in this case? If so,
24 please stand. All right, no response.
25 Is there any member of the jury panel --

1 do you know of any reason whatsoever that you
2 could not give a fair and impartial trial to
3 both the State and the Defendant in this
4 matter? If so, please stand. (No response).
5 Is there any juror that would like to
6 respond to any of the questions that I have
7 asked to this point but would like to do so
8 up here at the front? If so, please stand.
9 Yes, ma'am, your name and number?
10 JUROR NUMBER 29: Mitzi Dawkins.
11 SIDEBAR:
12 THE COURT: Yes, ma'am?
13 COURT REPORTER: Number 29, Your
14 Honor.
15 THE COURT: Yes, ma'am?
16 JUROR NUMBER 29: I had a family
17 member that was involved in something like
18 this once.
19 THE COURT: Do you think that you
20 could be fair and impartial in ---
21 JUROR NUMBER 29: I have to say not.
22 THE COURT: All right, we will
23 excuse me. Thank you.
24 (SIDEBAR CONCLUDED)
25 THE COURT: We have excused Ms. Dawkins

1 from the trial of this case.
2 (JUROR NUMBER 29 EXCUSED)
3 THE COURT: All right. Any additional
4 questions from the State?
5 SOLICITOR JONES: None from the State.
6 THE COURT: Any additional questions
7 from the Defendant?
8 JOHN DEJONG: No additional questions
9 on behalf of Mr. Bagwell, Your Honor.
10 THE COURT: Then we will create our
11 list.
12 JOHN DEJONG: Just to clarify the
13 strikes, Your Honor, five and ten?
14 THE COURT: Five for the State, ten for
15 the Defense, and we will have two alternates.
16 Ladies and Gentlemen that is the extent
17 of the questions that we need to ask you.
18 What the Clerk will do now is to come up with
19 a list that we will striking from. So we
20 will be with you in just a minute.
21 (CLERK DISTRIBUTES LIST FOR REVIEW)
22 THE COURT: Is the State ready?
23 SOLICITOR JONES: Yes, Your Honor.
24 THE COURT: Is the defense ready?
25 JOHN DEJONG: Ready for the defense,

1 SOLICITOR JONES: Please present Mr.
2 Nicholson.
3 CLERK: And the Defense?
4 JOHN DEJONG: Please swear the juror.
5 CLERK: Please come forward and take a
6 seat in the jury box.
7 (JUROR NUMBER 105 SEATED AS ALTERNATE #2)
8 CLERK: The jury is seated, Your Honor.
9 (JURY SEATED @ 11:30 A.M.)
10 THE COURT: Any objections or
11 exceptions to the selection process, on
12 behalf of the State?
13 SOLICITOR JONES: None from the State,
14 Your Honor.
15 THE COURT: Anything from the Defense?
16 JOHN DEJONG: Nothing as to the
17 selection process.
18 THE COURT: All right, I've got two
19 panels here. Let me talk to this panel
20 first. At this time y'all have been selected
21 for this case but we've got some matters that
22 we have to go over before we can start the
23 trial of this case. So not only are we going
24 to take an early lunch break but we're going
25 to give you a longer one.

1 I ask that y'all be back in your jury
2 room upstairs, and the bailiff will be giving
3 you instructions on where to return. We will
4 be trying this case on the third floor.
5 So we have quite a bit to go over and
6 then for the staff here to take a lunch break
7 as well. So be back in your jury room, on
8 the third floor, at 2:00 o'clock.
9 Let me just kind of tell you now, and
10 every time that we take a break I'll give you
11 about four different warnings:
12 It is not permissible -- I know that you
13 don't know anything about the case but it's
14 not permissible to discuss the case in any
15 way, shape or form, amongst yourselves or
16 with anyone else.
17 It is not permissible for you to do any
18 type of research about the parties, about the
19 law, anything like that whatsoever.
20 You're not to pay attention to any social
21 media, to any news coverage -- I am not aware
22 of news coverage -- or anything like that.
23 And, finally, if you're contacted by
24 anybody other than someone from the Clerk's
25 office, let the bailiff know and they will

1 get that information to me.
2 Have a very nice lunch. We'll see you
3 back at 2:00 o'clock.
4 (JURY OUT @ 11:36 a.m.)
5 (JURY PANEL DISMISSED FOR DAY)
6 (MOVED TO COURTROOM NUMBER 4)
7 (IN CHAMBERS MEEETING - NOT ON RECORD)
8 (DEFENDANT PRESENT)
9 THE COURT: I believe the defense has a
10 Motion, or a couple of Motions?
11 JOHN DEJONG: I do, Your Honor, and I
12 think that Mr. Jones has some as well.
13 I'd like to make one before we get too far
14 down the road.
15 THE COURT: All right.
16 JOHN DEJONG: At this point in time, Your
17 Honor, I would respectfully move for a
18 mistrial in this case. That Motion is based
19 on pretty much the very opening remarks to
20 the jury panel on this case that was made by
21 Your Honor.
22 I mean no disrespect. But as I recall
23 what Your Honor said to the jury was, 'I
24 would like to give you a brief statement of
25 the facts of this case...'-- I take issue with

1 the court making a statement as to facts in
2 the case.
3 My position is that there are no facts
4 that have been presented in this case as of
5 this point in time. There are certainly
6 allegations.
7 And, again, Your Honor, I think -- again
8 with no disrespect intended to the Court, --
9 but for you as the judge, wearing a black
10 robe, telling the jury that you wanted to
11 give them a brief statement of facts as to
12 this case is highly prejudicial to my client.
13 I don't think that it can be cured by a
14 curative instruction. The bell has been
15 rung. Now, to try to unring that bell, I
16 would submit to the court, is an
17 impossibility.
18 They heard Your Honor say a "brief of
19 statement of facts." As I recall, you did
20 not read the indictment after having made
21 that statement. It was kind of a pick-and-
22 choose, if you will, out of the indictment.
23 I think that you gave some dates and what I'd
24 consider allegations, but certainly were not
25 facts of the case, Your Honor.

1 Having said that, I think it is highly
2 prejudical. It was in the presence of the
3 entire jury panel, not just a few or not just
4 in the presence of the jury we have just
5 selected but in the presence of the entire
6 venire. Based on that, Your Honor, I would
7 respectfully move for a mistrial.
8 THE COURT: Well, I think that I also
9 said that I was -- I don't know how I -- I
10 referred to the indictment and said that
11 these were merely charges and that they could
12 find him guilty or not guilty.
13 I think in the context of the way that it
14 was presented, and also I usually talk about
15 that in kind of my opening charge to the
16 jury. I will stress that. I believe that a
17 further curative instruction could eliminate
18 any problems. I respectfully deny your
19 Motion.
20 JOHN DEJONG: And I'm not arguing with
21 Your Honor but just so that the record is
22 clear, certainly there is not a curative
23 instruction that I am coming up with or one
24 that I am agreeing to, Your Honor.
25 THE COURT: No, I understand.

1 JOHN DEJONG: So even though you may do,
2 I just want to make sure that my Motion is on
3 the record. I don't know that I need to
4 remake my Motion but ---
5 THE COURT: I understand your position
6 and there is no offense taken, but I deny
7 your Motion.
8 JOHN DEJONG: Thank you, Your Honor.
9 THE COURT: All right. I believe that
10 you had also indicated at the roster meeting
11 that there was a Motion for continuance.
12 JOHN DEJONG: Your Honor, in light of
13 what has transpired, and Mr. Jones shared
14 with me about that witness being here, that
15 I said that I could not find. I have a
16 subpoena prepared and I am going to talk to
17 law enforcement when we break for lunch, Your
18 Honor, to see if they will serve that
19 subpoena for me.
20 I don't think that the Solicitor's office
21 will let me break the doors down to serve
22 that witness, Your Honor, but I will talk to
23 law enforcement.
24 THE COURT: All right.
25 JOHN DEJONG: Informally I said that

1 there would be a Motion for continuance but,
2 just for the record, I am not making that
3 Motion for a continuance at this point in
4 time.
5 THE COURT: Anything else?
6 JOHN DEJONG: Yes, sir, two more things
7 actually. Since you've asked, I will go
8 first. They kind of tie in with a couple of
9 Motions that Mr. Jones has filed.
10 I understand the Code section, Your
11 Honor, on the admissibility of what we now
12 commonly refer to as forensic videos. I
13 think that the court still serves as the
14 gatekeeper as far as those being introduced.
15 I believe that there are three or four
16 different criteria, though I can't remember
17 them off the top of my head right now.
18 The problem that I've got with this
19 video, Your Honor, ---
20 THE COURT: What is the statue?
21 JOHN DEJONG: I would have to look it up.
22 SOLICITOR JONES: 17-23-175.
23 THE COURT: (Upon review), all right.
24 JOHN DEJONG: Thank you, Your Honor.
25 The problem that I have in this case -- and I

1 don't think Your Honor has had the privilege
2 of viewing the video yet. We talked about
3 that briefly before going on the record in
4 this case.
5 The interviewer in this case, every time
6 the young person being interviewed responds
7 to one of her questions, she repeats the
8 question. Well, I have a problem with that
9 because I think that is nothing more than a
10 subtle way of attempting to bolster the
11 alleged victim's testimony in this case. She
12 doesn't do it once, she does it repeatedly
13 throughout the interview.
14 Not only that, Your Honor, but during the
15 course of the interview the young person will
16 say something and interviewer repeats it and
17 then maybe three minutes, or five minutes
18 later the interviewer against repeats what
19 the young person says; not as a question,
20 just as a statement. Then comes back and
21 tries to form -- in the frame of a question;
22 which, in my opinion, Your Honor, makes it a
23 tremendously leading situation. She does
24 that repeatedly, the interviewer does. She
25 does that repeatedly throughout the

1 interview.
2 Based on those two arguments, Your Honor,
3 I would respectfully request that the court
4 not allow the forensic interview video to
5 come into evidence.
6 THE COURT: It is my understanding that
7 would be presented in the morning?
8 SOLICITOR JONES: Yes, Your Honor. I
9 believe ---
10 THE COURT: So I'll have the
11 opportunity to review this ---
12 SOLICITOR JONES: Yes, Your Honor. I
13 think this Motion may be a little bit
14 premature.
15 THE COURT: Well, I'd asked him to go
16 ahead and tell me what he ---
17 SOLICITOR JONES: I'd ask that Your
18 Honor watch the video.
19 THE COURT: Right.
20 SOLICITOR JONES: But, yes, the
21 interviewer is from Orangeburg. She is
22 coming up tomorrow and she's be available to
23 testify tomorrow morning. I do have the
24 video available for Your Honor to watch
25 whenever you so choose.

1 But a brief response to the defense
2 counsel's argument, you'd have to watch the
3 video for yourself to see but essentially the
4 interviewer clarifies what the victims says
5 after the interviewer asks the questions. So
6 it is not leading, she is repeating the
7 answer of the child to clarify that she
8 understands the child correctly. She's
9 talking to a nine-year-old on the video.
10 A leading question or leading evidence
11 would be if the interviewer began the
12 conversation with information that the child
13 had not said previously.
14 Again, you're going to watch the video
15 for yourself. I don't believe that it is
16 leading. It does comply with 17-23-175. The
17 statement was given in response to question-
18 ing during an investigative interview. The
19 interview was audio and visually recorded.
20 The child will testify at trial, be present
21 for the examination and cross-examination.
22 Of course you can watch the video for
23 yourself to determine if there were any
24 leading questions. The interviewer will be
25 here to testify tomorrow, to discuss her

1 qualifications and specific training.
2 The other aspects are just something you
3 have to decide after you've had a chance to
4 watch the video: whether or not it has
5 internal coherence or contains a detailed
6 account.
7 THE COURT: All right. It's my
8 understanding that because of our scheduling
9 today that we're going to quit a little bit
10 early today, and I'll use that as an
11 opportunity to review the video. Then if you
12 have specific parts you want me to review at
13 that time regarding the forensic interview.
14 So I'll hold this Motion in abeyance until
15 I've had a chance to review the video.
16 JOHN DEJONG: So my understanding is that
17 Your Honor is taking that ---
18 THE COURT: --- under advisement.
19 JOHN DEJONG: Thank you. Finally, Your
20 Honor, I have asked -- by way of Motion, and
21 I have the Motion if Your Honor would like to
22 see it, to basically allow testimony that
23 would normally not be allowed under Section
24 16-3-659.1, which is commonly referred to as
25 the rape shield statute.

1 Mr. Jones, do you mind if I hand that up
2 to the judge, (tendering).
3 Just very briefly, Your Honor, I am not
4 asking that we cut out of the rape shield in
5 any way to try to impugn the character of the
6 alleged victim in this case. A little
7 history, Your Honor, back in 2009-2010, this
8 alleged victim was -- I guess we would have
9 to say victim now, because the perpetrator in
10 that case was convicted. But she has been a
11 victim before this case and, as a result of
12 that, I would submit to the Court that I
13 should be allowed to go into that to some
14 degree simply as to credibility, also as to
15 prior sexual knowledge, Your Honor.
16 I would submit that she had been through
17 the forensic interviewing process before.
18 She has been interviewed, interviewed, and
19 re-interviewed. I think as a result that I
20 should be allowed to go into that. I would
21 not care if Mr. Jones wants some sort of
22 quasi-protective charge from Your Honor on
23 that. That could get a little tricky, I will
24 be the first to admit. But it is certainly
25 not to try to impugn her character, more to

1 her prior sexual knowledge and to the fact
2 that she has been through this system before.
3 Number one.
4 Number two, Your Honor, you will notice
5 that I have one Sergeant Lonnie Nettles on
6 the witness list, from the Colleton County
7 Sheriff's Office. On December 30th, 2013, the
8 mother of the alleged victim went to the
9 Colleton County Sheriff's Office and reported
10 that the alleged victim in this case had been
11 inappropriately touched by my client, Mr.
12 Bagwell.
13 As a result, I will say that that
14 investigation did not get very far. I would
15 readily admit that I don't know that the
16 alleged victim in this case was ever
17 interviewed by Colleton County. I don't
18 think that she was. I don't think that there
19 was ever a forensic interview done, because
20 it was not necessary.
21 I want to say that the report was made to
22 Colleton County Sheriff's Office on December
23 30th, 2013. Within a matter of days, Your
24 Honor, the mother of the alleged victim in
25 this case, and she was also the alleged

1 victim in that case, went back to the
2 Colleton County Sheriff's Office and, in
3 essence, said the alleged victim in this case
4 had lied about the inappropriate touching.
5 She had reported the inappropriate touching,
6 as I understand, the Colleton County report,
7 because she was angry -- "she" being the
8 alleged victim in this case -- with Mr.
9 Bagwell because, as a matter of disciplining,
10 he had taken away her X-Box or whatever kids
11 play with nowadays. But she was mad at him
12 for that reason and she made -- well, there
13 is no way around it, she made a false
14 accusation at that point in time.
15 I think, Your Honor, that I should
16 certainly be allowed to go into that with the
17 alleged victim in this case on cross-
18 examination. I don't know, obviously, what
19 her response is going to be. I don't know if
20 I am going to have to try to get in prior
21 inconsistent statements. But be that as it
22 may, I think I should be allowed to get into
23 that area as to the December 30th, 2013
24 allegations and the prior abuse.
25 I would point out that interestingly

1 enough, Your Honor, Your Honor actually
2 mentioned this to the jury, the alleged
3 offense dates of what allegedly transpired
4 here in Pickens County was August 28th of 2013
5 to October 30th of 2013. Those allegations,
6 if you use the end date, were less or right
7 at sixty days prior to the time that the
8 false allegations were made. So for that
9 reason, Your Honor, along with other reasons
10 stated, I think that I should be allowed to
11 go into that.
12 THE COURT: Mr. Jones?
13 SOLICITOR JONES: Your Honor, I think
14 that he is talking about two different
15 things. First I'd like to limit our
16 discussions to separate those.
17 First, I'd like to talk about the 2009
18 allegations where the victim alleged abuse.
19 That case went to trial and the defendant was
20 convicted.
21 I made a Motion and defense counsel has a
22 Motion to ensure compliance with South
23 Carolina Code 16-3-695, which is commonly
24 called the rape shield statute.
25 There are two cases, Your Honor, that I

1 found that I think highlight our case:
2 *State v. Grovenstein* and *State v. Williams*.
3 In State v. Grovenstein, *what* ---
4 THE COURT: What is the cite on
5 *Grovenstien*?
6 SOLICITOR JONES: It's 340 S.C. 210 --
7 (sic)
8 THE COURT: Three-four?
9 SOLICITOR JONES: Three-four-zero. 340
10 S.C. 210.
11 THE COURT: Okay.
12 SOLICITOR JONES: And *Williams* is 409
13 S.C. 455. *State v. Grovenstein* is a case
14 where the Court actually let in prior sexual
15 abuse. In that case the victims were
16 accusing the defendant of inserting objects
17 into their anal cavity, specifically rolled
18 up pieces of paper. What the defense at
19 trial wanted to get is that previously those
20 victims were accused of doing exactly the
21 same thing. Those victims/children were
22 accused of inserting objects into another
23 child's anal cavity. The court found that
24 because the activity, the sexual abuse was
25 the exact same and because what the children

1 would have to recount as witnesses -- it was
2 not the typical case where the child would
3 have to talk about the details of themselves,
4 but the cases that they would have to talk
5 about were ones where they were the actual
6 perpetrators. The Court found that that
7 prior sexual abuse could come in.
8 However, *State v. Williams* is a newer
9 case, 2014, and they discussed *Grovenstein*.
10 In *State v. Williams*, the court found that
11 the prior sexual abuse could not come in.
12 It differentiated *Williams* with *Grovenstein*.
13 It said that in the *Williams* case the sexual
14 abuse occurred -- let's see, that the sexual
15 abuse was not similar to the case that the
16 defense counsel wanted to bring in because
17 the prior abuse was oral sex and the alleged
18 abuse was digital penetration the evidence
19 would confuse the jury, confuse the issues.
20 Most importantly in Grovenstein, the
21 State made the argument 'how else...' -- the
22 solicitor said in closing, "How else would
23 this child know about sexual abuse if it
24 wasn't for this particular event?" So the
25 court reasoned that it was not fair for the

1 State to make that implication, because the
2 children had been accused themselves of the
3 exact same sexual activity/abuse. So it was
4 probative value outweighed by the prejudicial
5 effect.
6 This case is more like *State v. Williams*
7 where the prior sexual abuse is not exactly
8 the same, where the victim is going to have
9 to recount herself being sexually abused.
10 That is exactly why the rape shield statute
11 was enacted, to prevent a child victim, or
12 any sexual abuse victim, from having to get
13 on the stand and recount -- defend them-
14 selves, essentially -- in detail about a
15 prior sexual abuse.
16 For those reasons I think the prior abuse
17 involving -- the defendant in that case, the
18 perpetrator, his name was Bobby McCann. The
19 allegations against Bobby McCann, I think
20 should not be admitted into evidence in this
21 case, Your Honor.
22 THE COURT: And then the second part?
23 SOLICITOR JONES: As far as the child
24 recanting?
25 THE COURT: Yes.

1 SOLICITOR JONES: Your Honor, I don't
2 really think that falls under the rape
3 shield, so I would not argue that that is
4 something that I could keep out, Your Honor.
5 I understand that is admissible.
6 THE COURT: Let me make sure that I've
7 got the facts straight. These are not
8 statements that the child made. These are
9 statements that the mother made. Is that
10 correct?
11 JOHN DEJONG: Are you talking about the
12 Colleton County incident?
13 THE COURT: Right.
14 JOHN DEJONG: I understand that the child
15 reported to the mother or grandmother that
16 she had been inappropriately touched and the
17 mother, as I understand, called the county;
18 then took the child to the Sheriff's Office
19 and reported it. They initiated a report,
20 followed up on it. Then shortly after that,
21 the mother came back and said, 'no, don't
22 proceed.'
23 We are looking at that in sort of a
24 vacuum. I don't want to get too far afield.
25 There were a lot of issues going on in this

1 family. That's part of the reason that I am
2 asking -- again, I am not trying to impugn
3 the character of the alleged victim in this
4 case. That's what *Grovenstein*, it
5 specifically says that.
6 And, I'm sorry. I want to answer Your
7 Honor's question. I don't want to get too
8 far afield.
9 THE COURT: Yeah.
10 JOHN DEJONG: I don't know if I did
11 answer your question.
12 THE COURT: Well, I guess my question
13 is, are we talking about a retraction of a
14 statement by a mother or the actual victim.
15 We don't know if the victim recanted her
16 statement or not from what you're telling me.
17 SOLICITOR JONES: Your Honor, I think
18 that something the defense counsel can --
19 when the victim testifies can ask, 'Have you
20 ever recanted' or 'have you said that this
21 never happened?'
22 THE COURT: Well, and ---
23 SOLICITOR JONES: Then if he wants to
24 try to impeach her with the previous
25 statement, then -- it depends on whether he

1 has the statement or not.
2 JOHN DEJONG: I don't disagree with that,
3 necessarily. I think -- but -- since you
4 agree that it is not covered by the rape
5 shield, then I don't think that there is
6 anything preventing me from going into that.
7 But I would certainly be interested in
8 knowing what allegation she made on December
9 30th, 2013, or prior thereto; what she told
10 her mother, both at the time that she made
11 the allegation(s) of the inappropriate
12 touching and then later on when she told her
13 mother, when she said that it was not true.
14 THE COURT: I guess we will have to
15 address that at -- what I'd like to do is
16 read these to cases and mull over the cases
17 over lunchtime.
18 JOHN DEJONG: If I could just respond
19 rather briefly.
20 THE COURT: Yes.
21 JOHN DEJONG: On the *Williams* case, I
22 realize that Court distinguishes *State v*
23 *Williams* from *Grovenstein*. However, I think
24 that they distinguished is more on that the
25 allegations were vastly different. If you

1 read the trial transcript of the alleged
2 victims testimony in the *McCann* case, a lot
3 of the indications that she gave in the
4 McCann trial are very similar to the
5 allegations in this case; not so much the
6 place, the places were different. The
7 allegations in this case were that it
8 happened within the home, in a bedroom. In
9 the McCann case, -- but in terms of the
10 touching itself, the touching of private
11 parts, in the McCann case the "yellow stuff"
12 came out Mr. McCann, and in this case it was
13 "white stuff." I think that there are a lot
14 of similarities in the allegations between
15 the two cases. Again, not necessarily as to
16 location but certainly as to the allegations
17 themselves.
18 I do have a copy of the trial transcript
19 that I got late Friday afternoon, which I
20 will be happy to share with the solicitor.
21 I'll be happy to share it with Your Honor.
22 THE COURT: That is -- you've got a
23 trial transcript on, I guess, the Bobby
24 McCann matter?
25 JOHN DEJONG: Yes, sir.

1 THE COURT: All right.

2 SOLICITOR JONES: Your Honor, I have the
3 two cases that I can hand up to you. I think
4 *Grovenstein*, I just want to emphasize that
5 the court really found the defense can bring
6 in the prior sexual knowledge as a rebuttal
7 to the State's implication of 'how else could
8 this child know about these' -- know about
9 sexual abuse or know about sex in general but
10 for this defendant? So at that point it was
11 a matter of fairness to the defense to allow
12 them to bring up the prior knowledge of the
13 children and the exact act, not just -- the
14 children weren't just saying that they were
15 touched or sexually abused generally, it was
16 a very specific act of rolling up paper and
17 inserting it into the annual cavity of the
18 children, that those children had been
19 accused of doing previously. So I think
20 *Grovenstein* is an extremely unique case and
21 the case goes to great lengths to say that
22 this type of conduct does not necessarily
23 always come in, that *Grovenstein* is a very
24 unique situation.

25 Your Honor, if I may approach, I'll ---

1 THE COURT: Do you have *Williams* and
2 *Grovenstein*?
3 SOLICITOR JONES: Yes, sir,
4 (tendering).
5 THE COURT: Thank you. Let me look at
6 these and I will let you all know when we get
7 back from lunch, before we start. All right,
8 anything else pretrial?
9 JOHN DEJONG: I can't think of anything
10 at the moment. I don't know what I will
11 think of over lunch. That's all that I can
12 think of right now.
13 THE COURT: All right. Anything else
14 from the State?
15 SOLICITOR JONES: No, sir, Your Honor.
16 THE COURT: I'll look at this.
17 On the Motion for a mistrial, I ruled on
18 that.
19 The Motion for a continuance, I ruled.
20 The Motion relating to the forensic
21 interview and videotape, I took that under
22 advisement and will revisit that after I've
23 reviewed the video. I'll let you all know in
24 the morning, which will give you sufficient
25 time to prepare accordingly.

1 Then the Motions regarding the rape
2 shield and retractions previously, I will
3 review these matters and let you all know
4 after lunch.
5 SOLICITOR JONES: Thank you, Your Honor.
6 THE COURT: We will be at-ease until
7 just a few minutes before 2:00, in case we
8 need to discuss any other issues.
9 (LUNCH RECESS)
10 (DEFENDANT PRESENT)
11 THE COURT: All right, back on the
12 record here in the State v. Bagwell.
13 The only thing, really, that I was going
14 to let y'all know after lunch was -- it's a
15 little unusual to figure out exactly how -- I
16 know that Mr. Dejong had filed a Motion to
17 allow -- basically saying that that evidence
18 did fall within the rape shield statute, and
19 I guess yours was a Motion to, like, suppress
20 the same information, that it wasn't within.
21 My problem right now is that I don't know
22 that I have a sufficient grasp of the actual
23 extent of the testimony. So I'm going to
24 deny your Motion to allow the testimony, but
25 with the understanding that I want to review

1 that as we get into it further.
2 JOHN DEJONG: Just so that I am clear, as
3 to both, Your Honor?
4 THE COURT: Yes, as to both.
5 SOLICITOR JONES: Your Honor, ---
6 THE COURT: I think that one of them
7 you said wasn't within the ---
8 SOLICITOR JONES: Well, and the fact
9 that she recanted ---
10 THE COURT: Yeah.
11 SOLICITOR JONES: I do believe that
12 defense counsel is allowed to ask the victim
13 'have you ever recanted this?' I believe he
14 is allowed to ask that.
15 THE COURT: Right, he indicated that on
16 the previous ---
17 SOLICITOR JONES: But I do want to be
18 clear that as to the prior sexual abuse, does
19 this mean -- that as I called the child
20 witness, is defense counsel going to be able
21 to ask her, 'In 2009, is it true that you
22 alleged someone else sexually abused you as
23 well?' Or how are we going to ---
24 THE COURT: I deny his ability to do
25 that.

1 SOLICITOR JONES: Oh, okay. Okay.
2 JOHN DEJONG: Well, now I'm more confused
3 than I was. Am I still being denied on both,
4 after the Solicitor has made his statement to
5 the court?
6 I thought he said that he thought that I
7 could go into it? The recantation?
8 THE COURT: The recantation, (affirma-
9 tive nod). Well, ---
10 SOLICITOR JONES: Sorry, I thought you
11 were saying that you'd hold it in abeyance
12 until you get more information.
13 THE COURT: I tell you -- I want to
14 review the video. I know you said that but
15 I've just got -- I need to review the video.
16 SOLICITOR JONES: Well, the video does
17 not ---
18 THE COURT: I know, but I've got to
19 have a better idea.
20 JOHN DEJONG: That puts me in a real
21 bind, Your Honor. I'm not trying to be
22 disrespectful. But if she testifies ---
23 THE COURT: That is what I am saying, I
24 am going to look at the video before I make a
25 ruling. You said that you could call her in

1 the morning, if needed.
2 SOLICITOR JONES: If that's what Your
3 Honor wants ---
4 THE COURT: All right, that's what I
5 need to do. I want to review the video. I
6 want to go carefully through these landmines.
7 Are we ready for the jury? Anything from
8 the -- anything before we bring the jury in,
9 from the State?
10 SOLICITOR JONES: Nothing from the
11 State?
12 THE COURT: From the ---
13 JOHN DEJONG: Ready for the Defense.
14 THE COURT: All right, bring the jury
15 in.
16 (JURY IN @ 2:09 P.M.)
17 THE COURT: All right, ladies and
18 gentlemen. I hope that everybody had a good
19 lunch. We are now ready to begin the trial
20 of this case. First off, I am going to ask
21 Mr. Welborn, who is our Clerk of Court, to
22 swear you in.
23 (WHEREUPON JURY SWORN)
24 THE COURT: All right. First I want to
25 give you some preliminary information, sort

1 of some ground rules and then you will hear
2 from the attorneys.
3 First of all, as we get into this case,
4 I want to -- as indicated, this is a criminal
5 matter. The defendant comes to this case
6 with a presumption of innocence, which is
7 completely appropriate because he has pled
8 not guilty to these charges.
9 That puts the burden of proof on the
10 State. They must prove to you each element
11 of the charge beyond a reasonable doubt.
12 At the conclusion of the trial I will
13 give you the law that applies to this case
14 and the various elements that you must
15 consider. Again, I just remind you that the
16 burden is on the State to prove their case
17 beyond a reasonable doubt.
18 I always like to tell jurors a little bit
19 about who all is in the courtroom because I
20 know you may not be familiar with the court
21 personnel:
22 Mr. Welborn is the Clerk of Court for
23 Pickens County. He is the person in charge
24 of all the records, not only for this trial
25 but for all matters before the court, both

1 civil and criminal.
2 Seated to my right is our court reporter,
3 Ms. Garrison. She is taking down all of the
4 evidence, making a verbatim record of what is
5 said. She keeps up with the evidence. She
6 provides a record, and that is what makes
7 this a court of record.
8 To my left is my law clerk who assists
9 with research, and he will help me throughout
10 this trial.
11 The most important forks for y'all are
12 the bailiffs, these gentlemen with the
13 blazers on and a badge. The reason they are
14 the most important to you is because they are
15 the ones that look after you throughout the
16 trial. They are also the ones that if you
17 have any questions, you may present those to
18 them. If you do have a question which is
19 something that they need to bring to the
20 court's attention, they will and then I can
21 respond.
22 Once you take a break, you'll pick a
23 foreperson and it's up to the -- it is the
24 foreperson's duty to communicate, write any
25 notes about things you need or questions that

1 you have. The foreman will present those
2 notes to the bailiff, who will present them
3 to us.
4 Your role as jurors is to pay very close
5 attention to all the evidence that is
6 presented. Evidence will be in basically two
7 forms, it will be by way of witnesses that
8 you will hear on the witness stand and also
9 evidence that comes in via documents or
10 statements, written or video statements.
11 There are various kinds of exhibits or
12 evidence that you will have before you.
13 You are only to consider evidence that is
14 presented in this courtroom, which has been
15 properly admitted as evidence. As I
16 indicated before, it is not proper for you to
17 do type of your own research as to the law,
18 the location or parties or anything like
19 that. When you begin deliberating on the
20 evidence in this case, after the law has been
21 presented, you are only to consider that
22 evidence which has been presented in this
23 courtroom. That is very, very important.
24 Now, we have different roles in this
25 trial. You are the sole judge of the facts.

1 If there anything that I've said throughout
2 this trial, it -- the law does not allow me
3 to have an opinion as to the facts or state
4 any facts in the case. Anything up to this
5 point is merely allegations. We had a
6 reference to an indictment. An indictment
7 has been presented to the court and the
8 defendant has pled not guilty to those
9 allegations and, therefore, the burden is on
10 the State to prove each and every element of
11 the charge beyond a reasonable doubt.
12 If I make any statement or make any
13 inference that would cause you to think that
14 I may have an opinion on the facts, or state
15 anything that you think I present as a fact,
16 please disregard that. That is not -- it's
17 your place to determine what the facts are.
18 Anything referenced in the indictment,
19 again those are merely allegations. An
20 indictment is also something that you're not
21 to consider in any way when you begin
22 deliberations because the indictment is
23 merely the paper that brings -- just like an
24 arrest warrant -- the charges. An indictment
25 merely brings a case before this court and is

1 not to be considered evidence in any way.
2 I am going to ask that you not take notes
3 because I think a lot of times when jurors
4 take notes that they sometimes are not paying
5 attention to witnesses as closely as they
6 need to. A lot of what you're going to be
7 determining is the credibility of the
8 witnesses. That is something that you have
9 to do by observation.
10 Then I think sometimes jurors when they
11 get back in the jury room -- you know, some
12 people are better note takers than others.
13 So I ask that you not take notes during the
14 trial of the case.
15 Just to give you a little idea about the
16 procedure of the trial, we start off with
17 opening statements by the attorneys. These
18 opening statements are not evidence, but
19 merely a summary that the attorneys will be
20 presenting about the case.
21 After opening statements, then it will be
22 the evidentiary stage where evidence will be
23 presented.
24 After all the evidence is presented, then
25 we will have closing arguments by the

1 attorneys.
2 Then I will charge you on the law, which
3 is the law that applies to this particular
4 case.
5 It is my understanding that this case
6 will last into Wednesday. So for planning
7 purposes, that's what is expected.
8 Now let me tell you a little bit about
9 the timing. Usually we try to take breaks
10 every hour to an hour and a half. That's
11 what we shoot for. Sometimes it may be
12 shorter than that, sometimes longer. A lot
13 of that sometimes depends on where we are
14 with a witness. We may have a short witness
15 and then we get into a longer witness and
16 that, by necessity, means we might go a bit
17 longer without a recess. But if anybody
18 needs to take a break at any point, just let
19 the bailiffs know. We realize that this is
20 an inconvenience to you, so if you need to
21 take a break just indicate to the bailiff or
22 to me and we will take a break as soon as we
23 possibly can.
24 The same as far as when we take breaks
25 for lunch. We try to shoot as close to 12:00

1 or 12:30 as we can, but again that kind of
2 depends on where we are in the trial.
3 As well, when we close and open for the
4 day a lot of times we have to work around
5 witnesses, especially witnesses who may be
6 coming out of town. That's one of the
7 reasons I tell you right up front that today
8 may be a shorter day is because some of the
9 witness issues that we have. We try to work
10 with the witnesses as much as possible.
11 That's kind of the ground rules as far as
12 timing. I wish that I could have something a
13 little bit more specific but you never know
14 until you get into a trial how it is going to
15 play out.
16 As I mentioned to you previously, and I
17 will tell you this every time that you take a
18 break, it is not appropriate to discuss the
19 case amongst yourselves or with anybody else,
20 such as when you go home in the evenings.
21 The reason for that is that you need to keep
22 an open mind until all the evidence has been
23 presented and you've received the law. You
24 need to keep an open mind until everything is
25 properly before you.

1 Then when you begin deliberations, you
2 may discuss the case among the twelve of you,
3 the regular jurors.
4 You know, if you run into -- this
5 courthouse is a bit smaller than some. We
6 all use the same elevator. If you run into
7 one of the attorney, so if you happen to be
8 in an elevator or bump into one of the
9 attorneys in the hallway and they do not
10 speak to you, please don't think that they
11 are being rude. They've been instructed not
12 to speak to you, so please keep that in mind
13 should you run into them of a morning.
14 Again, I don't expect any media coverage
15 for this, I am not aware of any media
16 coverage -- TV, radio, newspaper or social
17 media. It would not be proper for you to
18 consider anything that you might see on
19 media. In fact, if you should see anything
20 or hear anything, please turn it off,
21 disregard it, pay no attention to it
22 whatsoever because it is not evidence
23 admitted in this courtroom. Again, don't do
24 any of your own individual research.
25 Also when you take a break -- and I don't

1 expect anybody to be contacting you or
2 anything like that, but if you're contacted
3 by anyone other than the clerk's office,
4 please let me know and -- get all the
5 information that you can and pass it along
6 to the bailiffs, who will let me know.
7 One of the things again that you need to
8 know, that is important to your deliberations
9 is that there are no rules that you need to
10 apply. You use your common sense as twelve
11 jurors. You'll be weighing all the evidence
12 that you deem appropriate. Part of that is
13 determining the credibility of each of the
14 witnesses, based on your own experience,
15 based on your own knowledge and based on what
16 weight that you feel is appropriate.
17 So those are kinda of my opening remarks
18 and at this time I will let you hear from the
19 attorneys, who will give you their opening
20 statement. Mr. Jones.
21 SOLICITOR JONES: Thank you, Your Honor,
22 may it please the court, Mr. Dejong, Mr.
23 Bagwell.
24 Minor Child lived on Cleo Chapman
25 Highway in Pickens in 2013. She lived there

1 with her mother, her brother, and David
2 Bagwell. At the time, David Bagwell was her
3 stepfather.
4 Now, MINOR CHILD and her family moved around
5 a lot. They lived in Branchville in
6 Orangeburg, in a town called Smoaks near
7 Walterboro, and for a time they lived in
8 Florida as well.
9 When they were living in Branchville, DSS
10 came to her home, to MINOR CHILD s home, spoke to
11 MINOR CHILD and MINOR CHILD told the DSS worker that
12 David Bagwell sexually abused her. From
13 there an investigation ensued and Mr. Bagwell
14 was arrested.
15 Child sexual abuse is truly unique.
16 There are a lot of unique aspects that
17 differentiate sexual abuse from other crimes.
18 Typically you might have surveillance
19 video of a crime taking place or fingerprints
20 or a third-party witness that saw the crime
21 take place. But sexual abuse occurs behind
22 closed doors with just a child, typically,
23 and the perpetrator.
24 Children are vulnerable for several
25 reasons. One, they are smaller and weaker

1 than adults, which makes them easy targets.
2 Their cognitive abilities are not fully
3 developed, meaning that they cannot think
4 through problems logically or use judgment.
5 Oftentimes they simply lack the vocabulary
6 to tell someone in authority what happens.
7 All of those things can cause child
8 sexual abuse to be a unique crime. Because
9 of the uniqueness, the State uses an expert
10 in child sexual abuse to tell you and explain
11 things to you that are not common knowledge.
12 Here the defendant is charged with
13 criminal sexual conduct with a minor in the
14 first degree. I want to go over the elements
15 of that, which I must prove beyond a
16 reasonable doubt.
17 I have to show that the defendant
18 committed a sexual battery on the victim and
19 that at the time the victim was under the age
20 of eleven years old.
21 The statute goes on to define sexual
22 battery as sexual intercourse, anal
23 intercourse, cunnilingus, fellatio, or any
24 intrusion, however slight, of a person's body
25 into the genital or anal opening of another

1 person's body. That sounds really big and
2 complicated and at the end of the trial the
3 judge is going to go over it with you in
4 detail. In my closing, I'm going to go over
5 it with you as well. But just keep that in
6 mind as I introduce the evidence.
7 You're going to hear from several people
8 throughout the trial. MINOR CHILD, the
9 victim that I mentioned, is going to testify
10 and she's going to tell you exactly what
11 happened.
12 J.B. Kelley, who was the detective on the
13 case, will testify and he will tell you how
14 he got involved with this.
15 Rebecca Mosely is the DSS agent that I
16 mentioned. She works in Branchville, South
17 Carolina, and she is going to tell you about
18 when she visited the home, why she visited
19 the home and when she spoke with MINOR CHIL
20 Pam Darby will also testify and tell you
21 about the time that she spoke to MINOR CHILD about
22 the sexual abuse.
23 Dr. Croswell is going to testify about
24 the physical examination that she conducted
25 on MINOR CHIL. She also will explain a few

1 aspects of child sexual abuse.
2 Finally, Shauna Galloway Williams will
3 testify. Ms. Galloway-Williams will tell you
4 aspects of child sexual abuse that are
5 uncommonly known.
6 Finally, I want you to remember something
7 throughout the trial. Child sexual abuse
8 crimes are unique because they require a
9 general knowledge of child sexual abuse to
10 really understand them. Please keep that in
11 mind as the victim testifies and as you hear
12 the evidence.
13 Thank you for your time. I look forward
14 to receiving your verdict.
15 THE COURT: Mr. Dejong.
16 JOHN DEJONG: Thank you, Your Honor,
17 may it please the Court; Mister Prosecutor,
18 Ladies and Gentlemen of the jury.
19 Ladies and gentlemen, five or ten minutes
20 ago our esteemed Clerk administered to you an
21 oath. I am going to ask you throughout this
22 trial, all the way through your delibera-
23 tions, to remember that oath. That oath --
24 I don't think you need to be reminded, but
25 I'm going to share it with you anyway, says

1 that you will well and truly try this issue
2 on the law and the evidence presented to you.
3 His Honor gave you some brief information
4 this morning about the case. The solicitor
5 has now talked to you about the law on
6 criminal sexual conduct on a minor --
7 horrible allegations. However, that's not
8 why I ask you to remember your oath.
9 Allegations like this can cloud your judgment
10 by passion, by prejudice, by bias. I ask
11 each of you to lay aside any passion,
12 prejudice or bias that you might have, for no
13 other reason than just because of the very
14 nature of the allegations. Bias, prejudice
15 and passion can cloud your judgment in
16 arriving at an ultimate decision in this
17 case, and to allow that to happen would be a
18 violation of your oath. Again, I ask you to
19 remember that oath and lay aside everything
20 else.
21 In this case, ladies and gentlemen, you
22 have no friends to reward, no enemies to
23 punish. We're here as the triers of the
24 facts and I believe His Honor said -- there
25 is a fan back here that roars and my hearing

1 isn't always true, I don't always hear
2 everything, but he told you that you're the
3 trier of the facts. You're not -- you are
4 only here ultimately to determine whether or
5 not the State has carried its burden of proof
6 beyond a reasonable doubt.
7 Now, you may have already heard from the
8 solicitor, the prosecutor the use of the word
9 "victim." There are no victims in the case,
10 there is no guilty party in this case until
11 and unless you find the State has carried its
12 burden of proof beyond a reasonable doubt.
13 In saying that, let me share with you
14 that I don't know at this point in time who
15 will testify in this case, I don't know what
16 they may allege against Mr. Bagwell. But I
17 share with you right now, ladies and
18 gentlemen, that Mr. Bagwell has nothing to
19 come into this courtroom today to prove to
20 you.
21 Why? Because of one very fundamental
22 principle in our judicial system, as we dig
23 into the realm of the criminal justice
24 system. What is that right? That right is
25 known as the right of presumption of

1 innocence. Mr. Bagwell comes into this
2 courtroom today and under that very
3 substantial right that he has in our system,
4 he is presumed to be innocent. The fact that
5 he was arrested for these charges, the fact
6 that he was indicted by the Pickens County
7 grand jury for these charges is a means to --
8 and but for the fact that in this digital age
9 we have to maintain some paper trail, we
10 could tear up the arrest warrant, we could
11 tear up the indictment, because all of that
12 is meaningless to you as the trier of facts
13 at this point in time.
14 Sometimes that presumption of innocence
15 is likened to a cloak of righteousness. As a
16 bit of explanation what goes on with that, I
17 will give you mine. Look over there at Mr.
18 Bagwell. He would have something on like a
19 robe, that presumption of innocence, wrapped
20 around him from the top of his head to the
21 soles of his feet and everything inbetween.
22 That, ladies and gentlemen, is the
23 presumption of innocence. That presumption
24 of innocence does not leave after the first
25 witness's testimony, nor the second witness's

1 testimony or however many witnesses testify,
2 that presumption of innocence does not leave
3 Mr. Bagwell. It is still there. He is still
4 wrapped in that cling wrap from the top of
5 his head to the soles of his feet. It does
6 not leave when we do, ultimately, closing
7 arguments in this case. In fact, it does not
8 leave when His Honor charges you on the law
9 at the end of this case. It does not leave,
10 ladies and gentlemen, unless you find that
11 the State has stripped that cling wrap
12 totally off of him and proven their case
13 beyond a reasonable doubt. That is what you
14 are here for, to hold the State to their
15 burden of proof and determine if the State
16 can prove their case beyond a reasonable
17 doubt.
18 You have no friends to reward, no enemies
19 to punish. So I ask you to remember that.
20 Reasonable doubt. Proof beyond a
21 reasonable doubt is the burden that the State
22 has to meet. I'm not going to talk a lot
23 about reasonable doubt now but we can address
24 that a little more when we get to the close
25 of the case. That is the burden of proof.

1 Ladies and gentlemen, tomorrow, right
2 here, the State -- the State -- with all of
3 its power and all of its resources versus
4 David Bagwell, they have the burden of
5 proving to you that they can prove these
6 allegations beyond a reasonable doubt.
7 I believe that a great statesman once
8 said that our rights are not sacred unless we
9 guarantee them. Our judicial system is the
10 cornerstone of ensuring that our rights as
11 citizens are preserved.
12 On behalf of Mr. Bagwell, I thank you so
13 very much for being here. This is his day in
14 court. It's a beautiful day outside. There
15 are thousand and a one more places that each
16 and every one of you would rather be at this
17 point in time.
18 I give credit to the great late Winston
19 Churchill, though people have taken issue
20 that it was he who one time said that jury
21 duty is the highest service that you can
22 render to the service of your country in
23 peacetime. We can paraphrase Mr. Churchill
24 just a little bit and say that jury service
25 is the greatest service you can provide for

1 your community, your country as
2 noncombatants. Why? Because, ladies and
3 gentlemen, if you were not sitting in the
4 jury box this afternoon, August 28th, 2017,
5 there would be no need for me, no need for
6 His Honor to be here. Why? Because you are
7 the foundation of our entire judicial system.
8 Without you, we couldn't function. The
9 entire system would collapse. So, yes, thank
10 you. Thank you for your attention. I know
11 that you will be attentive throughout this
12 trial and will hold the State to its burden
13 of proving all elements of the crime charged
14 against Mr. Bagwell beyond a reasonable
15 doubt. At this time, he still has the cling
16 wrap on him. Please bring back a verdict of
17 Not Guilty. Thank you so very much.
18 THE COURT: Mr. Jones, you may call
19 your first witness.
20 SOLICITOR JONES: The State calls
21 Officer Jan Kelley.
22 (WITNESS TAKES STAND)
23 JAN B. KELLEY, having been sworn to
24 tell the truth, and nothing but the truth,
25 testified as follows:

1 DIRECT EXAMINATION
2 BY SOLICITOR JONES:
3 Q. Mr. Kelley, where do you work?
4 A. Pickens County Sheriff's Office.
5 Q. In 2014, what was your position?
6 A. Lieutenant over the Special Victims
7 Unit.
8 Q. What were your responsibilities in
9 that position?
10 A. I would investigate all allegations
11 of sexual assaults against adults and
12 children.
13 Q. Do you respond first to the scene or
14 do you follow up or -- can you elaborate on
15 your responsibilities?
16 A. Well, if it was something that had
17 just occurred, I'd usually be notified and
18 respond to the scene.
19 Oftentimes it's delayed reporting and
20 there is not a scene to respond to. You have
21 to initiate your investigation from where you
22 best can.
23 Q. Were you involved in the
24 investigation of David Bagwell?
25 A. (Affirmative nod), I was.

1 Q. Tell the jury how you became
2 involved, please?
3 A. Our office received a call. Officer
4 Elisah Chapman is the desk officer and he
5 received a call from Rebecca Mosely, who
6 worked for the Orangeburg County Department
7 of Social Services. She made a report to our
8 office through Officer Chapman that the
9 victim, MINOR CHILD, was in counseling and that
10 she had revealed that she had been ---
11 JOHN DEJONG: I would object to what she
12 said. He can say what he did as a result of
13 the call, but I am going to object to
14 anything else as hearsay.
15 THE COURT: Sustained.
16 SOLICITOR JONES: Okay.
17 DIRECT EXAMINATION CONTINUED
18 BY SOLICITOR JONES:
19 Q. So the Sheriff's Office got a call
20 from Orangeburg DSS, is that correct?
21 A. That's correct.
22 Q. Okay. So at the time that you found
23 out about the investigation or the
24 allegations, where was MINOR CHILD living?
25 A. Orangeburg County, South Carolina.

1 Q. According to the allegations, where
2 did the assault take place?
3 A. [redacted] Cleo Chapman Highway in Pickens
4 County, South Carolina. They reported that
5 it occurred in 2013, between August and
6 September of 2013.
7 SOLICITOR JONES: May I approach the
8 witness, Your Honor?
9 THE COURT: Yes.
10 DIRECT EXAMINATION CONTINUED
11 BY SOLICITOR JONES:
12 Q. Showing you State's Exhibit 1, would
13 you take a look at that for me, please, sir?
14 A. (Complies).
15 Q. Do you recognize that?
16 A. Yes. That's ---
17 Q. What is it?
18 A. That is [redacted] Cleo Chapman Highway
19 where the alleged sexual offense occurred.
20 Q. Is that a true and accurate
21 depiction of that residence?
22 A. It is.
23 SOLICITOR JONES: Your Honor, State
24 would move State's Exhibit 1 into evidence.
25 JOHN DEJONG: No objection.

1 THE COURT: Did you say State's Exhibit
2 1?
3 SOLICITOR JONES: Yes, sir.
4 THE COURT: State's Exhibit 1 is so
5 entered without objection.
6 (SO ENTERED AS STATE'S EXHIBIT 1)
7 DIRECT EXAMINATION CONTINUED
8 BY SOLICITOR JONES:
9 Q. Mr. Kelley, what date was the
10 Pickens County Sheriff's Office informed or
11 contacted about this case?
12 A. May 19th, 2014.
13 Q. What day did you start working on
14 the case?
15 A. I got the report on May 20th, I
16 believe.
17 Q. And you may have already mentioned
18 this, but who was your point of contact?
19 A. Rebecca Mosely with the Orangeburg
20 County Department of Social Services.
21 Q. And who made the allegations?
22 A. MINOR CHILD is the child. She was
23 around eight years old at the time that she
24 had made the allegations that she had been
25 sexually abused by David Bagwell, who was her

1 stepfather.
2 Q. Did MINOR CHILD participate in what is
3 called a forensic interview?
4 A. Yes, I was ---
5 Q. And was that interview video and
6 audio recorded?
7 A. Yes, it was.
8 Q. Do you know the date that MINOR CHILD
9 participated in that interview?
10 A. I believe the date of the forensic
11 interview was conducted was June 5th, 2014, at
12 the ---
13 Q. Where did that take place?
14 A. --- Edisto Children's Clinic in
15 Edisto.
16 Q. Where is the Edisto Children's
17 Clinic?
18 A. Down in Orangeburg.
19 Q. Okay.
20 A. I had requested, after I got the
21 report I talked to Ms. Mosely and asked her
22 about the forensic interview. She said that
23 she would be scheduling one ---
24 JOHN DEJONG: Objection, Your Honor.
25 THE COURT: Sustained.

1 DIRECT EXAMINATION CONTINUED
2 BY SOLICITOR JONES:
3 Q. Did you have the opportunity to
4 watch those video recordings?
5 A. I did.
6 Q. What date did you first make contact
7 with the victim's mother?
8 A. June 20th, 2014, I believe it was.
9 Q. Was that the first time that you
10 tried to contact her?
11 A. No. The first time I tried -- the
12 phone number that I was given on the report
13 when it was recorded, when given to Officer
14 Chapman, was an incorrect number. I tried
15 locating her at several different residences
16 through contacting and talking back and forth
17 to Orangeburg, previous residences that she
18 may be at. I was finally able to locate her
19 at Mile Creek County Park, here in Pickens
20 County, on the lake, with the children.
21 Q. What date was that?
22 A. June 20th, 2014.
23 Q. So about how long did it take you to
24 contact the child and mother?
25 A. Well, from May the 20th until June

1 the 20th, as far as being able to locate and
2 finally find her. She lived in Orangeburg at
3 the beginning but they had moved back,
4 because I was trying to find out where I
5 could go in Orangeburg. Then I received a
6 call saying they were no longer living in
7 Orangeburg, that they have moved back to
8 Pickens County somewhere.
9 Q. And when you made contact with the
10 mother, was David Bagwell still living there?
11 A. No, he was still living in
12 Branchville.
13 Q. What was your purpose of meeting
14 with Toni and MINOR CHILD?
15 A. I needed to gather information as to
16 the facts alleged as to who had sexually
17 assaulted the child.
18 Q. How did you determine the dates of
19 the sexual abuse?
20 A. Based on reviewing the records that
21 I was provided by the forensic interviewer
22 and also the medical examination dates that
23 were given. That is how I determined the
24 time period in which the sexual assault
25 occurred, as far as watching the child when

she did the forensic and reading the medical records from the medical doctor, Dr. Croswell.

Q. And what were the dates that you determined the sexual abuse occurred?

A. Between June and September, 2013. There were alleged numerous occasions that it occurred.

Q. Did you try to contact David Bagwell?

A. I did. The number that I was given for him was not good either. Then I think when -- when they finally brought him into detention, through the detention officers, but, uh, -- I was unable to talk with him.

Q. Did you ever leave messages for him to call you back?

A. The first number that I was given for him, I did, which was in Branchville. But I never got a response from him.

Q. What was MINOR CHIL's date of birth?

A. MINOR CHILD's date of birth?

Q. (Affirmative nod).

A. She was eight years old, so -- give me one moment. [redacted], 2004.

1 Q. And what is David Bagwell's date of
2 birth?
3 A. 10-29-1981.
4 Q. Thank you.
5 SOLICITOR JONES: No further questions.
6 THE COURT: Cross-examination?
7 JOHN DEJONG: Thank you, Your Honor, may
8 it please the Court.
9 CROSS EXAMINATION
10 BY JOHN DEJONG:
11 Q. So, Mr. Kelley, in this case were
12 there only allegations as to MINOR CHILD
13 SOLICITOR JONES: Objection, Your Honor.
14 Completely irrelevant.
15 JOHN DEJONG: I don't think it is, Your
16 Honor.
17 THE COURT: Y'all approach.
18 (OFF RECORD BENCH CONFERENCE)
19 THE COURT: I am going to sustain the
20 objection.
21 CROSS EXAMINATION CONTINUED
22 BY JOHN DEJONG:
23 Q. So you started your investigation
24 on -- or you got the report on May 20th,
25 right? 2014?

A. That is when the report was assigned out to me, I believe it was.

Q. Okay. And then -- well, you never went to Orangeburg, I gather. Right?

A. No, I did not. I was trying to make arrangements to go there and I was informed that they had moved back to Pickens County.

Q. And from what I gather, you never spoke to Mr. Bagwell?

A. No, I did not. Through detention, once he was brought in -- but I was informed that he didn't wish to speak to me.

Q. Right. And so -- I'm trying to figure out. You said that your job is to gather information. I am not asking you what anybody said, but what information did you gather?

A. The information that I gathered from reviewing the medical reports and the forensic interviews as to the sexual assault that happened to [redacted] MINOR CHILD ---

Q. Other than that ---

A. --- to [redacted] MINOR CHILD. I'm sorry.

Q. I'm sorry, I didn't mean to interrupt you. Other than that, you didn't

1 gather anything.
2 A. Are you saying ---
3 Q. Any forensic evidence?
4 A. As I previously stated, the time
5 element in which the offense occurred, it
6 previously -- it was delayed reporting.
7 Q. Well, what's been introduced as
8 State's Exhibit 1, did you ever go out to
9 that residence?
10 A. I did.
11 Q. Did you find anything unusual about
12 that residence?
13 A. There was someone else living there
14 from ---
15 Q. Did you go inside?
16 A. --- from what I could tell on the
17 mailbox.
18 Q. Did you go inside that residence?
19 A. I did not.
20 Q. Did you ever interview the alleged
21 victim in the case?
22 A. No, because in cases like this, with
23 a child that young, you don't want to keep
24 recreating the traumatic experience that they
25 went through. That's why we rely on forensic

1 interviews and medical reports, because they
2 are very detailed.
3 Q. The -- give me the dates again if
4 you would, please, sir?
5 A. The date of the forensic interview?
6 Q. No, the dates of when this alleged
7 assaults supposedly took place?
8 A. Basically the information provided
9 to me was between the dates of June and
10 September, 2013; in that time span.
11 Q. All right.
12 A. And that is the time span that also
13 that Toni Durnil, the mother of the child,
14 indicated that they lived ---
15 JOHN DEJONG: Your Honor, I am going to
16 move to strike that. That was not responsive
17 to my question.
18 SOLICITOR JONES: He's asked him the
19 dates.
20 THE COURT: I am going to overrule.
21 JOHN DEJONG: One moment, please.
22 Nothing further.
23 THE COURT: Redirect?
24 SOLICITOR JONES: Nothing further, Your
25 Honor.

1 THE COURT: You may step down.
2 (WITNESS STEPS DOWN)
3 THE COURT: All right, ladies and
4 gentlemen. I think that I need to talk to
5 the attorneys about a matter before we move
6 forward, so I am going to ask that you go
7 back to the jury room.
8 Do not discuss the case. I will ask that
9 you go ahead and select a foreperson from the
10 original twelve. The Alternates cannot be --
11 y'all are not qualified. You play an
12 important role in this and I don't want to
13 diminish that, but the foreperson's role is
14 to merely communicate with the court if
15 needed and to lead discussions once you begin
16 deliberations. You don't get a pay raise.
17 You can put it on your resume. Just select
18 one from the first twelve and give me a note
19 with the name of the person you select.
20 We will be with you shortly.
21 (JURY OUT @ 2:52 P.M.)
22 THE COURT: I definitely want to review
23 the forensic interview before we go any
24 further on this.
25 JOHN DEJONG: Sir?

1 THE COURT: I said I want to see -- do
2 I need to get a little horn?
3 JOHN DEJONG: I'd appreciate it.
4 THE COURT: I definitely want to
5 review the video before we go any further.
6 I think there are two issues here, and I
7 think we might have gotten them confused with
8 the jury.
9 There's a 2009 incident where this
10 victim, through her mother, made an
11 allegation to the Colleton County -- no, no.
12 JOHN DEJONG: That was the one the
13 defendant was convicted on. That was the
14 Bobby McCann case.
15 The other allegations were in December of
16 2010.
17 THE COURT: That was Colleton County?
18 JOHN DEJONG: Yes, sir.
19 THE COURT: Okay, that's where I got
20 Colleton County.
21 JOHN DEJONG: Yes, sir.
22 THE COURT: And then ---
23 SOLICITOR JONES: Your Honor, in
24 December of 2013 the victim made these
25 allegations, then a week later she recanted.

1 Then six months later is when the DSS agent
2 came to the house and she disclosed to the
3 DSS agent, then this investigation took
4 place.
5 THE COURT: All right.
6 SOLICITOR JONES: That was my point
7 about that I don't think the recantation has
8 anything -- it's not a different sexual
9 abuse, it's the same sexual abuse.
10 THE COURT: All right. I was thinking
11 it was a different matter.
12 SOLICITOR JONES: That was my confusion
13 as to what defense counsel was making the
14 argument -- I mean, if you want to keep that
15 out, that's fine with me.
16 THE COURT: Well, I want to make sure
17 that I am clear on this before me -- what's
18 exactly what. I thought that it was a
19 totally different incident here.
20 SOLICITOR JONES: No, the ---
21 THE COURT: The 2009, which is totally
22 unrelated to this, ---
23 SOLICITOR JONES: Yes, sir.
24 THE COURT: --- against Bobby McCann.
25 SOLICITOR JONES: Yes, sir.

1 THE COURT: I think he was convicted of
2 that?
3 SOLICITOR JONES: That's correct, and
4 the child testified that he went -- he went
5 to trial and the child testified.
6 THE COURT: Then I definitely need to
7 review this. Okay? I was confused as to --
8 okay. I think I want to review that before
9 we continue this. It's almost 3:00 o'clock
10 now, I don't know that we could -- how long
11 is this?
12 SOLICITOR JONES: It's about an hour and
13 a half.
14 THE COURT: That would be tough to do
15 that and have any additional testimony for
16 them to know -- okay, so I am going to review
17 this and -- I think we're just going to start
18 back in the morning.
19 Has this -- I know that it has been
20 marked. Is this the original, unredacted
21 one?
22 SOLICITOR JONES: Yes, sir, and we're
23 not going to have a redacted version, just
24 the original. I have the minutes and second
25 markers where defense counsel and I have

1 agreed that those portions need to be
2 redacted?
3 THE COURT: All right. Do y'all have
4 another copy of this video?
5 JOHN DEJONG: I've got mine, Judge.
6 SOLICITOR JONES: Yes, sir, we do have
7 other copies as well.
8 THE COURT: All right.
9 SOLICITOR JONES: And, Your Honor, I am
10 going to go ahead and put on the record the
11 portions that defense counsel and I have
12 agreed to be redacted.
13 THE COURT: All right, and that is
14 written on there?
15 SOLICITOR JONES: Yes, sir, there is a
16 stickie note:
17 22 minutes, 19 seconds to 25
18 minutes, 33 seconds.
19 33 minutes, 28 seconds to 36
20 minutes, 28 seconds.
21 54 minutes, 20 seconds to 54
22 minutes, 55 seconds.
23 THE COURT: All right. The times you
24 are indicating, are those on whatever player
25 you are doing it on or is that actually on

1 the video itself?
2 SOLICITOR JONES: It's not on the video
3 itself, so it's on the player.
4 THE COURT: Okay. I know that some
5 videos actually have the time ---
6 SOLICITOR JONES: No, sir, there is no
7 times on the actually video, so it would just
8 be the player, so:
9 22 minutes, 19 seconds to 25
10 minutes, 33 seconds.
11 33 minutes, 28 seconds to 36
12 minutes, 28 seconds.
13 54 minutes, 20 seconds to 54
14 minutes, 55 seconds.
15 THE COURT: And I understand -- based
16 on your previous, do you object to the video?
17 JOHN DEJONG: I still object, but I
18 concur ---
19 THE COURT: But you consent to those
20 portions being ---
21 JOHN DEJONG: I concur with the solicitor
22 that that is what we agreed to take out but I
23 still object to ---
24 THE COURT: Right.
25 JOHN DEJONG: --- the entire video.

1 THE COURT: Without waiving your right
2 to object?
3 JOHN DEJONG: Yes.
4 THE COURT: Okay. Like I said, I'd
5 like to review this before we got further.
6 SOLICITOR JONES: Your Honor, to satisfy
7 the issue of the prior sexual abuse being
8 admissible, it might be necessary that we
9 have the victim proffer testimony outside the
10 presence of the jury.
11 THE COURT: You want to do that this
12 afternoon?
13 SOLICITOR JONES: Well, we've already
14 told the victim to leave, but that is
15 available to us.
16 THE COURT: All right. Okay. Let me
17 have the video. I'll just bring the jury out
18 and tell them that we will start back in the
19 morning at 9:00.
20 JOHN DEJONG: 9:30 works a lot better,
21 but 9:00 is fine.
22 THE COURT: You're here at 7:00.
23 JOHN DEJONG: Your Honor, I hesitate to
24 bring this up because you haven't, nor has
25 the Solicitor, but sometimes I get into an

1 argument with law enforcement. That is,
2 obviously the jury has been sworn. Mr.
3 Bagwell does not have a bond any longer but
4 I am going to ask you not to take him into
5 custody. He has kept every appointment with
6 me that I've asked him to. He's never failed
7 to appear for court and I think if he were
8 going to run -- this case is what? Three
9 years old? I think he would be speaking
10 Spanish by now if he was going to run.
11 THE COURT: Well, these are pretty
12 serious allegations and a pretty serious
13 sentence, so I'm going to deny your request.
14 JOHN DEJONG: Thank you, Your Honor.
15 THE COURT: I am going to bring the
16 jury back out just briefly. Anything before
17 we bring the jury in?
18 SOLICITOR JONES: No, sir.
19 COURT REPORTER: If you need to hear
20 the victim, do we want to do that first thing
21 in the morning before the jury reports?
22 THE COURT: Yes. Good idea. Yes, do
23 we need to proffer the testimony first thing
24 in the morning?
25 SOLICITOR JONES: We can, Your Honor.

1 That way you will have watched the video and
2 you'll have her testimony to tell you about
3 the prior -- in reading those cases, I think
4 it matters exactly what the prior sexual
5 abuse was.
6 THE COURT: With that being the case,
7 -- how long do you think that would take?
8 SOLICITOR JONES: Again, Your Honor, I
9 don't anticipate her testimony being lengthy.
10 She is fairly reserved.
11 THE COURT: How about if we allow
12 thirty minutes for the proffer?
13 SOLICITOR JONES: I think so, Your
14 Honor.
15 THE COURT: I'll have us come back at
16 9:00 o'clock and then have the jury report
17 back at 9:30.
18 Juror Number 45, Edward Field is the
19 foreman.
20 COURT REPORTER: Court's Exhibit 1.
21 (SO ENTERED AS COURT'S EXHIBIT 1)
22 (JURY IN @ 3:02 P.M.)
23 THE COURT: I understand that Mr. Field
24 has been selected as the foreman of the jury.
25 So thank you for serving in that capacity.

1 Ladies and gentlemen, there are some
2 matters that we still need to go over, things
3 that I need to work on this afternoon.
4 Unfortunately sometimes this happens on
5 Mondays.
6 So even though it is only 3:00 o'clock,
7 we're going to have to let y'all go home.
8 We will start back at 9:30 in the
9 morning, so make sure that you are in your
10 jury room at 9:30, ready to go.
11 Again, don't discuss the case with
12 anybody in the family or your friends, or
13 amongst yourselves. Don't do any
14 investigation. Don't pay any attention to
15 any media. If anybody should contact you,
16 please let the bailiff know.
17 Other than that, have a good evening.
18 We will see you in the morning at 9:30.
19 Thank you.
20 (JURY OUT @ 3:10 P.M.)
21 THE COURT: All right, anything before
22 we adjourn? From the State?
23 SOLICITOR JONES: Nothing from the
24 State, Your Honor.
25 JOHN DEJONG: Nothing on behalf of Mr.

1 Bagwell.
2 THE COURT: All right. We will see
3 everybody in the morning at 9:00 o'clock.
4 (DEFENDANT INTO CUSTODY)
5 (TRANSCRIPT CONTINUED NEXT PAGE)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2 AUGUST 29, 2017 9:00 a.m.
3
4 (DEFENDANT PRESENT)
5 THE COURT: I need to put on the record
6 that apparently Juror Number 117 has
7 indicated that her husband broke his ankle
8 and is having some issue there. She did come
9 in but we may have to -- that is a situation
10 that we'll have to address some point, we'll
11 just have to wait and see how it goes.
12 Just for scheduling purposes, Mr. Jones,
13 have you heard anything from your witnesses.
14 Are they on the way? Are they for the
15 afternoon?
16 SOLICITOR JONES: My afternoon witnesses
17 are Shauna Galloway and Dr. Croswell.
18 The two individuals coming from
19 Orangeburg, I called them this morning and
20 did not get an answer. However, I talked to
21 them yesterday and they said, 'Yes, we are
22 going to leave about 7:30.' I just asked my
23 paralegal to go call them again.
24 THE COURT: Okay. I guess that we can
25 address -- I think the only thing that we

1 have pending at this time -- the video,
2 State's Exhibit 2, to make a ruling on that
3 we'd have to have the forensic lady here, so
4 that's still holding up -- I mean, we are
5 still waiting to make a decision on that.
6 The other thing is the Motion to allow
7 evidence and testimony pursuant to Mr.
8 Dejong's Motion -- I'll be glad to hear you
9 on your Motion.
10 Now that I have reviewed the video, I
11 think that I am clear. We have two incidents
12 that you want to cross-examine on. One is
13 the prior incident in 2008 with Mr. McCann
14 and the second one deals with a retraction
15 made December 2013 in Colleton County.
16 JOHN DEJONG: That is correct, Your
17 Honor.
18 THE COURT: Let's talk about the first
19 one, the prior abuse dealing with Mr. McCann.
20 What were the general allegations? You can
21 correct me -- do you know anything about the
22 previous one, with Mr. McCann? I know that
23 you said that you have a transcript.
24 JOHN DEJONG: I can run down and get it
25 if Your Honor ---

1 THE COURT: Well, what is the general
2 allegations on that one?
3 JOHN DEJONG: The general allegations,
4 Your Honor, as I recall, were that he -- that
5 the child's grandmother was living with or
6 that Mr. McCann was her boyfriend. The child
7 was in that home a great deal. There was
8 vaginal touching. I don't really recall any
9 anal touching. That he took her behind
10 several stores, a Dollar Store, Dollar
11 General Store being one of them where the
12 fondling -- I don't know if there was any
13 penile penetration that was alleged.
14 Now you're asking me, and I really --
15 I don't want to mislead the court.
16 THE COURT: I guess what I'm really --
17 what was the extent of any kind of cross-
18 examination that you would be doing?
19 JOHN DEJONG: I'm sorry, Your Honor?
20 THE COURT: What is the extent of any
21 kind of cross-examination, I guess is the
22 question.
23 JOHN DEJONG: My cross-examination, I
24 don't want to retry that case. The extent of
25 my cross-examination would be that there was

1 an incident back in 2009, that she testified,
2 that she went through a forensic interview,
3 which I believe that she did, though I am not
4 a hundred percent sure, and that throughout
5 all that she learned a lot of things,
6 basically about the system, basically how to
7 send somebody to jail.
8 But the center of where I'm going is, if
9 you watched the video, and I'm not trying to
10 run astray here but if you watched the video,
11 there were a lot of things going on in this
12 household; allegations of domestic violence
13 and all of that stuff. My thing is that --
14 with regard to that, she knew how to get
15 David Bagwell out of the house.
16 She had this prior knowledge. She had
17 prior sexual knowledge based on everything
18 that she went through in the McCann case.
19 That same thing -- the recantation, I
20 think that's what we are going to call it,
21 was the same thing there. Even then she said
22 -- and Your Honor was not privy to that
23 report but when she initially, roughly on
24 December 30th, 2013, went to her mother and
25 said that David been touching her -- I'm not

1 sure what those allegations were, that is not
2 in the report. But the point of that is that
3 then later on she says, 'No, that didn't
4 happen. I was mad at David because he took
5 our X-box away.' I think it was an X-Box or
6 whatever the children play with.
7 THE COURT: Mr. Jones, what do you have
8 to say about that?
9 SOLICITOR JONES: Your Honor, as to the
10 2009 incident, it's my understanding -- and I
11 do think *Williams* and *Grovenstein*, that in
12 both cases the Courts based their decisions
13 in large part on what type of abuse occurred
14 in each instance.
15 In this particular case -- or in those
16 cases I think that it is clear that the court
17 wants to admit that evidence, to admit that
18 prior sexual abuse, that the abuse needs to
19 be very, very similar. In *Grovenstein* it
20 was, down to the detail of what type of
21 object was inserted into the anal cavity,
22 that type of closeness in similarity.
23 But I think in this particular case the
24 prior sexual abuse was by a maternal
25 grandmother's boyfriend. It was digital

1 penetration on a playground, on a swing set
2 and, uh, at one point the child was sitting
3 in his lap and there was digital penetration.
4 What the child alleges here is that the
5 defendant held her down, tied her down to a
6 bed and essentially performed oral sex on the
7 child. I think that she also said that he
8 attempted to put his penis inside the child.
9 I think that there is a difference in the
10 sexual abuse. What the defense is trying to
11 do is to say, 'hey, this kid's willy-nilly
12 accusing people of sexual abuse' when in fact
13 the sexual abuse was different. She gave
14 details on both cases. Because it is
15 different, I believe that it should not be
16 admitted to evidence.
17 THE COURT: I realize that they make a
18 reported distinction on the facts, but I read
19 *Grovenstein* much more generally, especially
20 when they through and it cites all the cases
21 from basically around the country.
22 In fact, I highlighted one section that
23 cites to a South Carolina case, *Finley Lane*.
24 It says, (reading): *"In light of other*
25 *cases, we hold that evidence of a child*

1 *victim's prior sexual experience is relevant*
2 *to demonstrate that the defendant is not*
3 *necessarily the source of the victim's*
4 *ability to testify about alleged sexual*
5 *conduct."*
6 I know that this is in light of the rape
7 statute -- the rape shield statute -- but,
8 uh, -- and I think -- and I mentioned this to
9 you back in our conference, in general I
10 think the rape shield statute's purpose is
11 not for a victim with previous experience
12 like this. It's for somebody that is more
13 sexually active.
14 I think in light -- again, in reading
15 *Williams*, I believe that *Williams* -- it looks
16 like to me that the Court of Appeals is
17 trying very seriously to make a distinction
18 so -- because they don't like that factual
19 pattern.
20 But I think under *Grovenstein*, I think
21 -- especially with the limited kind of cross-
22 examination that he's talking about, I think
23 that -- and then I get to the point of where
24 I've got to weigh the prejudice versus
25 probative. I believe that can be the -- if

1 there is any to the State, that that could be
2 an appropriate charge. I will allow him to
3 cross-examine on that issue.
4 SOLICITOR JONES: Your Honor, I have a
5 follow up to that.
6 THE COURT: Yeah.
7 SOLICITOR JONES: If you are going to
8 allow the prior sexual abuse as far as Bobby
9 McCann, I think in reading *Grovenstein* that a
10 final point that *Grovenstein* made is that it
11 is important to note that -- that the court,
12 after they say that they are going to let
13 this in, to let the prior sexual abuse in,
14 the court goes to great length to say this is
15 not in all cases, you still have to the 403
16 analysis of prejudicial effect versus
17 probative value. It goes on to say,
18 (reading): *"Furthermore, initially we know*
19 *that this is not a typical case in which a*
20 *child victim would have to recount in detail*
21 *incidents where he was subjected to sexual*
22 *abuse. Instead this case involves*
23 *allegations of where the victim had*
24 *previously been the perpetrators of the*
25 *sexual abuse."*

1 So in this particular case, the child
2 victim had to get on the stand and say, 'yes,
3 I did accuse someone else of sexually abusing
4 me.' As I said previously, the defense
5 counsel is going to try to imply to the jury
6 that this child accused people willy-nilly.
7 Given that, I think it is important as a
8 follow-up question for her to be able to say,
9 'Yes, I did accuse him; yes, I did testify;
10 yes, he was convicted of that sexual abuse.'
11 THE COURT: All right.
12 JOHN DEJONG: I don't have any problem
13 with that.
14 THE COURT: I agree with him, that he
15 has to go into that. That still gives both
16 of you the arguments that you need in
17 closing.
18 JOHN DEJONG: Of course, I don't know how
19 this young person is going to testify but --
20 I understand what you're saying about cross-
21 examination, but are you going to allow me to
22 put up any independent evidence of that?
23 THE COURT: We'll cross that bridge
24 when we get there.
25 JOHN DEJONG: Okay. Very good.

1 SOLICITOR JONES: How specific are you
2 going to allow defense counsel to get with
3 the prior sexual abuse?
4 THE COURT: I mean, it sounds like he
5 doesn't have a lot of details on it anyway.
6 I was going by the fact that he couldn't give
7 any specifics.
8 JOHN DEJONG: I don't want to retry the
9 Bobby McCann case. I want the systemic part
10 of what she went through in the Bobby McCann
11 case, not what happened.
12 THE COURT: Okay. Is there an issue on
13 the recanting?
14 SOLICITOR JONES: That's ---
15 THE COURT: I think that covers Bobby
16 McCann. What about the other?
17 SOLICITOR JONES: My issue on the
18 recantation is that we have this report from
19 Colleton County, and I believe that Mr.
20 Dejong has sent a subpoena to one of the
21 officers involved in that case. I think --
22 I haven't had an opportunity to speak with
23 the officer(s). I called them, they have not
24 returned my calls. What I want to know --
25 the information that they put in the report,

1 I think that is the mother telling the
2 officers the allegations, and that it is the
3 mother telling the officers, 'hey, my child
4 can't..' -- so I think that there is an issue
5 of, one, hearsay. I think that he can ask
6 the victim, 'hey, have you ever recanted?'
7 Depending on what she says, I don't think any
8 extrinsic evidence can be used to prove that
9 particular point.
10 THE COURT: I think I tend to agree
11 with that. You can ask her about that but
12 you're stuck with her answer, I think. I
13 don't know that you can apply any collateral
14 source.
15 JOHN DEJONG: Your Honor, I don't mean to
16 interrupt you but I've been told -- I'm being
17 told that she actually talked to the officer.
18 If she talked to the officer and recanted and
19 denied that she did, I think that is a prior
20 inconsistent statement.
21 SOLICITOR JONES: But how is he going to
22 prove that she talked to the officer?
23 JOHN DEJONG: Well, I reckon the officer
24 can testify to whether he talked to her or
25 not.

1 SOLICITOR JONES: But at this point, in
2 questioning the witness, the only thing that
3 he would be able to get into is 'did you
4 recant' ---
5 THE COURT: Right. I think with this
6 witness -- I mean, if you don't have any
7 statement from her that she has signed, that
8 she has read, recorded, -- I think with this
9 witness that you can ask her that, but I am
10 not going to allow -- that you can put
11 anything in through this witness.
12 If we have to address in your case where
13 you try to put in an additional something, I
14 will review that at that time.
15 In other words, you're stuck with her
16 answer for now. I am not going to let you
17 put the report ---
18 JOHN DEJONG: I might ask her if she
19 remembers talking to the officer.
20 THE COURT: I think that's appropriate.
21 JOHN DEJONG: If I am going to argue, I
22 have to argue prior inconsistent statements,
23 I think that I have to at least lay the
24 foundation.
25 THE COURT: Right, and I just need to

1 determine if that is collateral or not.
2 Anything else?
3 JOHN DEJONG: I have one thing, Your
4 Honor. I meant to do it yesterday and that's
5 why I was bobbing up and down like an apple.
6 Just for the record, Your Honor, I want to
7 renew my Motion for a mistrial.
8 THE COURT: Okay.
9 JOHN DEJONG: Based on your opening
10 remarks to the jury, you did tell them that
11 the indictment was merely allegations, but my
12 point being -- going back to the very
13 beginning, you did not read the indictment,
14 you just said something along the lines of "a
15 brief statement of facts" and then you kinda
16 highlighted some things out of the
17 indictment. So for the record, I renew my
18 Motion.
19 THE COURT: I respectfully deny your
20 Motion. I am not sure that rises to the
21 level of a mistrial, and I am sure that the
22 subsequent instructions would have cleared
23 any issues about that up then.
24 How are we doing on time? Are we ready
25 to go? Do we have all the jurors?

1 BAILIFF: Yes, sir.
2 THE COURT: Are we ready to roll?
3 SOLICITOR JONES: Yes, sir, Your Honor.
4 THE COURT: All right. The jury is
5 ready, so we can start right on -- are you
6 ready?
7 JOHN DEJONG: I'm just curious. Are you
8 going to address the issue with Ms. Patterson
9 (Juror Number 117).
10 THE COURT: Yes, let me go talk to her.
11 I'll just step out and ask her what her
12 situation is.
13 (BRIEF RECESS)
14 (DEFENDANT PRESENT)
15 THE COURT: I talked to Ms. Patterson.
16 She said that she meant to tell us yesterday
17 -- she is the lady that stood up and said 'I
18 am a caregiver' but she didn't come back up
19 afterwards. I just spoke with her and she is
20 really frantic because her husband needs to
21 see a doctor today. He broke his leg and
22 they are unable to operate on it. She's got
23 her father or his father possibly coming from
24 Seneca to look after him because he can't get
25 out of bed. She seems real distracted. She

1 said that she is willing, that she doesn't
2 want to cause any trouble, that was her
3 words. Do you have an problem if I excuse
4 her and seat one of the alternates? We have
5 two alternates. Any objection to that?
6 SOLICITOR JONES: I'll go with your
7 discretion, Your Honor.
8 THE COURT: This lady is pretty
9 frantic. All she is going to be doing is to
10 be worrying about -- she couldn't get the
11 doctor and ---
12 JOHN DEJONG: In all candor, as I said
13 off the record a few minutes ago, I don't
14 want a distracted juror sitting there. So
15 no objection from the defense, Your Honor.
16 THE COURT: All right, I'm going to go
17 ahead and release her. We will draw from the
18 among the alternates.
19 (JUROR NUMBER 117 EXCUSED)
20 THE COURT: And Mr. Welborn had her
21 draw from the names for her replacement.
22 Juror Number 105, Scott Nicholson. Okay, Mr.
23 Nicholson will be moved to the jury panel.
24 Bring in the jury.
25 SOLICITOR JONES: Your Honor, I don't

1 know how long MINOR CHILD's testimony will
2 be but we might have a slight delay in the
3 Orangeburg people getting here, just to let
4 you know.
5 THE COURT: All right. Any objection
6 to the selection process to our alternate
7 process, from the State?
8 SOLICITOR JONES: No, sir
9 THE COURT: From the defense?
10 JOHN DEJONG: None on behalf of Mr.
11 Bagwell, Your Honor.
12 THE COURT: You (bailiff) may tell Mr.
13 Nicholson that he has been promoted. Please
14 bring in the jury if they are ready.
15 (JURY IN @ 9:40 A.M.)
16 THE COURT: All right, ladies and
17 gentlemen. I just want to kind of let you
18 know what's been happening. I talked to Ms.
19 Patterson. She had a lot going on this
20 morning with her husband, so we felt like it
21 was appropriate to have her excused.
22 Therefore, Mr. Nicholson you are not longer
23 an alternate. You've been promoted to a
24 regular juror. Thank you for your service.
25 (JUROR NUMBER 105 SEATED AS ALTERNATE)

1 THE COURT: We will now continue with
2 the State's case. Mr. Jones, please call
3 your next witness.
4 SOLICITOR JONES: Thank you, Your Honor.
5 The State calls MINOR CHILD
6 (WITNESS TAKES STAND)
7 MINOR CHILD having been sworn to
8 tell the truth, and nothing but the truth,
9 testified as follows:
10 DIRECT EXAMINATION
11 BY SOLICITOR JONES:
12 Q. Speak up for me, MINOR CHILD. MINOR CHILD,
13 what is your birthday?
14 A. [redacted], 2004.
15 Q. That makes you how old now?
16 A. Twelve.
17 Q. What grade are you in?
18 A. Seventh.
19 Q. The seventh grade?
20 A. (Affirmative nod).
21 Q. Who do you live with now?
22 A. My mom.
23 Q. What is her name?
24 A. Toni.
25 Q. Have you ever lived on Cleo Chapman

1 Highway?
2 A. Yes, sir.
3 Q. Let me show you something ---
4 SOLICITOR JONES: May I approach the
5 witness, Your Honor?
6 THE COURT: Yes, sir.
7 SOLICITOR JONES: Mr. Dejong (showing
8 photograph to counsel).
9 JOHN DEJONG: No objection.
10 DIRECT EXAMINATION CONTINUED
11 BY SOLICITOR JONES:
12 Q. Do you recognize that?
13 A. Yes, sir.
14 Q. Did you ever live there?
15 A. (Affirmative nod).
16 Q. Is that the house on # Cleo
17 Chapman Highway?
18 A. (Affirmative nod).
19 COURT REPORTER: You need to answer out
20 loud. Was that a "yes"?
21 WITNESS: Yes, ma'am.
22 DIRECT EXAMINATION CONTINUED
23 BY SOLICITOR JONES:
24 Q. When you lived in this house, who
25 lived there with you?

A. My mom, my brother, me and David.

Q. David who?

A. Bagwell.

Q. David Bagwell?

A. (Affirmative nod).

Q. Did you live on Cleo Chapman Highway, in that particular house, in 2013?

A. Yes, sir.

Q. When you lived in that house, were you sexually abused?

A. Yes, sir.

Q. Who sexually abused you?

A. David Bagwell.

Q. Can you tell the jury -- and I know that this is difficult -- can you tell the jury, describe what he did to you when you said that he sexually abused you.

A. In detail?

Q. No, no, just as much as you can, tell the jury what happened.

A. He put his hands on me, in parts that he wasn't supposed to.

Q. Okay. Did -- he touched you with his hands?

A. (Affirmative nod).

1 Q. Did he touch you with anything else?
2 A. (Affirmative nod).
3 Q. Did he ever put his mouth on you?
4 A. (Affirmative nod).
5 COURT REPORTER: Please answer out
6 loud. Was that a "yes"?
7 WITNESS: Yes, ma'am.
8 DIRECT EXAMINATION CONTINUED
9 BY SOLICITOR JONES:
10 Q. Did David Bagwell put his mouth on
11 your vagina?
12 A. Yes.
13 Q. And when he did that, did he do
14 anything in particular? Where were you in
15 the house?
16 A. In his bedroom.
17 Q. His bedroom?
18 A. (Affirmative nod).
19 Q. Were in his bedroom were you?
20 A. On the bed.
21 Q. On the bed?
22 A. (Affirmative nod).
23 Q. Was there anything different about
24 the bed? Can you describe the bed? What was
25 it sitting on?

1 A. It was sitting on the cement blocks
2 with ropes.
3 Q. It was siting on cinderblocks?
4 A. Uh-huh, (affirmative nod).
5 Q. Okay. What did -- when you say a
6 rope, what -- why do you bring up the rope?
7 A. Because it was tied to the cinder
8 blocks.
9 Q. Okay. What was normally on the
10 rope?
11 A. (No verbal response).
12 Q. Was the rope used for anything?
13 A. One was used for the dog's leash.
14 Q. One was used for the dog's leash?
15 A. (Affirmative nod).
16 Q. Do you remember what color that
17 was?
18 A. I think it was red.
19 Q. You think it was red?
20 A. (No verbal response).
21 Q. But maybe you don't remember?
22 A. (No verbal response).
23 Q. It's fine if you don't.
24 A. (Negative gesture).
25 Q. And what did he do with the ropes

1 and the leash when you were on the bed?
2 A. He tied my hands to it.
3 Q. He tied your hands with the rope and
4 the leash?
5 A. Um-humm, (affirmative nod).
6 Q. Is that a "yes"?
7 A. Yes.
8 Q. Do you remember if David ever made
9 you touch him?
10 A. Not that I remember.
11 Q. Not that you remember?
12 A. (Negative gesture).
13 Q. Okay. After David touched you, did
14 he ever say anything to you that you
15 remember?
16 A. Not to tell anyone.
17 Q. He said not to tell anyone?
18 A. (Affirmative nod).
19 Q. Did he say what he would do if you
20 did tell anyone?
21 A. Kill my family.
22 Q. He said that he would kill your
23 family?
24 A. (Affirmative nod).
25 Q. Did he say that one time or more

1 than one time?
2 A. More than once.
3 Q. Did you believe him?
4 A. Yes, sir.
5 Q. When he sexually abused you and tied
6 you up, where was your mother?
7 A. She was at work.
8 Q. Do you remember what time of day
9 that it occurred, that the sexual abuse
10 occurred?
11 A. After school but before mom got off.
12 Q. After school but before your mom got
13 off?
14 A. (Affirmative nod).
15 Q. Do you know what pornography is?
16 A. It's, uh, bad videos that's R-rated
17 and stuff.
18 Q. Okay. Did David ever show you
19 pornography?
20 A. Once.
21 Q. Once?
22 A. (Affirmative nod).
23 Q. So after you told the police about
24 this, about David sexually abusing you, did
25 you go anywhere to live?

1 A. After it all happened, (affirmative
2 nod).
3 Q. After it all happened?
4 A. To Tomassee.
5 Q. Tomassee?
6 A. (Affirmative nod).
7 Q. What is Tomassee?
8 A. It's kind of like a foster care but
9 it's a home where kids live in houses.
10 Q. Did your mother live with you there?
11 A. No.
12 Q. How long did you stay at Tomassee?
13 A. For two years.
14 Q. Has anyone ever told you what to say
15 in regards to David Bagwell touching you?
16 A. No, sir. Does that mean not to say
17 it or to say it?
18 Q. Well, either one. Did anybody ever
19 tell you not to say?
20 A. Yes, sir.
21 Q. Who did that?
22 A. David.
23 Q. Did anybody ever tell you what to
24 say? In other words, did anybody ever tell
25 you to say that David Bagwell touched you?

A. No, sir.

Q. Do you remember when you lived in Orangeburg, or was it called Branchville?

A. (Affirmative nod), Branchville.

Q. Branchville. And do you remember when you lived in town called Smoaks near Walterboro?

A. I don't know the names of places.

Q. You don't know the names of places?

A. (Negative gesture).

Q. That's fine. Before the incident happened with David Bagwell, before that, around 2009 or so, did someone else touch you as well?

A. It was before that. His name was Bobby.

Q. You think that it was before 2009?

A. Yeah.

Q. And his name was Bobby?

A. (Affirmative nod).

Q. But it was -- you can't remember his last name?

A. (Negative gesture).

Q. Did you tell the police about that too?

1 A. Yes.
2 Q. Was Bobby arrested?
3 A. Yes, sir.
4 Q. Did you testify about that as well,
5 come in here and do what you're doing today?
6 A. Yes, sir.
7 Q. Was Bobby found guilty or not
8 guilty?
9 A. Guilty.
10 SOLICITOR JONES: Beg the court's
11 indulgence.
12 THE COURT: Yes, sir.
13 DIRECT EXAMINATION CONTINUED
14 BY SOLICITOR JONES:
15 Q. When we were talking about David,
16 how many times would you say that David
17 touched you, sexually abused you?
18 A. (No verbal response).
19 Q. One time or more than one time?
20 A. More than once.
21 Q. More than once?
22 A. (Affirmative nod).
23 Q. Every time it happened, did he tie
24 you up or did sometimes he not tie you up?
25 A. He tied me up.

1 Q. He tied you up?
2 A. (Affirmative nod).
3 Q. Did you ever see his penis?
4 A. Yes, sir.
5 Q. Did anything ever come out of his
6 penis?
7 A. White-yellow stuff.
8 Q. White-yellow stuff?
9 A. (Affirmative nod).
10 SOLICITOR JONES: No further questions,
11 Your Honor.
12 THE COURT: Cross-examination?
13 JOHN DEJONG: Thank you, Your Honor, may
14 it please the Court.
15 CROSS EXAMINATION
16 BY JOHN DEJONG:
17 Q. So, MINOR CHILD back in 2009 or before,
18 Mr. Jones was asking you about Bobby McCann.
19 Did you go through an interview at that point
20 in time?
21 A. I talked to the officers.
22 Q. Did they take you someplace and tell
23 you that you were about to be videoed and all
24 that good stuff?
25 A. Yes, sir.

Q. All right. And during the course of that, did you talk to police officers?

A. Yes, sir.

Q. All right. And did the police officers talk to you?

A. Yes, sir.

Q. That was a real learning experience, wasn't it?

A. (No verbal response).

Q. You learned a lot?

A. Yes, sir.

Q. Okay. And Mr. Jones asked you if Bobby McCann was -- I think convicted.

A. (Affirmative nod).

Q. Do you understand that word?

A. Yes, sir.

Q. Did he go to jail?

A. Yeah.

Q. So let's now back up a little bit, MINOR CHILD When you made -- when you said that David was touching you, do you remember what town that you lived in?

A. I remember one was in Pickens and the other was in Branchville.

Q. One was where? I'm sorry, dear.

1 A. One was in Pickens, one was in
2 Branchville.
3 Q. I'm sorry?
4 A. One was in Pickens and the other one
5 was in Branchville.
6 THE COURT: See if you can adjust her
7 microphone so that we can hear her.
8 COURT REPORTER: (Adjusts microphone).
9 CROSS EXAMINATION CONTINUED
10 BY JOHN DEJONG:
11 Q. The house that you lived in before
12 the one where you told the lady that David
13 had been touching you, the house before, do
14 you remember telling your mom that David had
15 been touching you?
16 A. Yes.
17 Q. All right. And to your knowledge,
18 if you know, did your mom go to the police?
19 A. Yes, sir.
20 Q. After that, after your mom went to
21 the police, do you remember what you told
22 your mother?
23 A. I'm sorry?
24 Q. Did you tell her it wasn't true?
25 A. (No verbal response).

1 Q. Did you tell her that it wasn't
2 true, that you'd said it because you were mad
3 at David because he'd taken your X-Box away
4 from you?
5 A. I don't remember having an X-Box.
6 Q. A PlayStation or anything that,
7 anything else?
8 A. No, sir.
9 Q. You just don't remember?
10 A. No, sir.
11 Q. Okay. All right. So -- well, when
12 you say that David was doing these things to
13 you, where was your brother?
14 A. He was either in the living room
15 watching cartoons or outside playing.
16 Q. This is kind of an old house,
17 wouldn't you say?
18 A. Yes, sir.
19 Q. Pardon me?
20 A. Yes, sir.
21 Q. And the inside doors were all just
22 like normal inside doors; right?
23 A. Yes, sir.
24 Q. There was nothing special about any
25 of them, was there?

1 A. Not really. They were thicker.
2 Q. I didn't hear you.
3 A. They were thicker.
4 Q. Okay. Well, let me back up again.
5 The house that you lived in before you told
6 the ladies that David was touching you, when
7 you told your mom in that house, did you tell
8 your mom the same thing?
9 A. The same thing as what?
10 Q. What you've told us today, did you
11 tell your mom that in the house that you
12 lived before?
13 A. Yes, sir.
14 Q. The very same thing?
15 A. Yes, sir.
16 Q. All right. And -- well, let me ask
17 you this, MINOR CHILD If you know, after you
18 told your mom all of that, do you know if
19 anybody was arrested?
20 A. No, sir.
21 Q. You don't know or no one was
22 arrested?
23 A. I don't know.
24 Q. But after you told you mom that, and
25 that was in the house before, nothing

1 happened with that one; did it?
2 A. Nothing happened with what?
3 Q. When you went to your mom before
4 this time, before you talked to the lady down
5 in Orangeburg, the house that you lived in
6 before, you said that you told your mom that
7 he was touching you. Right?
8 A. Yes, sir.
9 Q. And I believe that you just shared
10 with us that you told your mom that he did
11 what you've shared with us today. Is that
12 correct?
13 A. Yes, sir.
14 Q. All right. Then -- do you remember
15 when that would have been? Could that
16 possibly have been around Christmas?
17 A. I don't remember, sir.
18 Q. Well, let's talk a little bit about
19 what was going on in your house. Did David
20 and your mom get along?
21 A. Not really.
22 Q. Were there ever any fights in the
23 house?
24 A. Yes, sir.
25 Q. And just so that we're all sure,

1 David is not your real dad; is that correct?
2 A. Yes, sir.
3 Q. Okay. I believe -- let me back up
4 here. Do you remember now when you made --
5 when you said that David was touching you,
6 that was in the house in Orangeburg. Can we
7 agree that was in Orangeburg
8 A. Yes, sir.
9 Q. Let me ask you this, what we're here
10 for today, who did you tell that to?
11 A. To my mom.
12 Q. Anybody else?
13 A. My brother.
14 Q. Your mom and your brother?
15 A. (Affirmative nod).
16 Q. All right, so let's come back to
17 where we were. So your mom and your dad did
18 a lot of fighting?
19 A. Yes, sir.
20 Q. You didn't particularly like David,
21 did you?
22 A. No, sir.
23 Q. And indeed you -- because you
24 thought David had hurt your mom, you wanted
25 him out of the house, didn't you?

1 A. Yes, sir.
2 Q. More than that, you wanted David to
3 go to jail; didn't you?
4 A. Yes, sir.
5 Q. He even went to jail for a little
6 bit one time; isn't that right?
7 A. Yes, sir.
8 Q. And then when you -- do you remember
9 talking to this lady -- not on the Bobby
10 McCann case, but do you remember talking to
11 the lady in the little room where they said
12 you were -- that there was a camera, do you
13 remember that?
14 A. No, sir.
15 Q. Do you remember her name?
16 A. No, sir.
17 Q. You do or don't? I'm having a hard
18 time hearing you.
19 A. No, sir.
20 Q. You don't remember that?
21 A. No, sir.
22 Q. So you don't remember telling her
23 that you had pictures on your tablet and you
24 were going to take them to court with you and
25 show the judge?

1 A. (No verbal response).
2 Q. You don't remember that?
3 A. No, sir.
4 SOLICITOR JONES: I would object to
5 that question. He is intentionally trying to
6 confuse the witness. He knows that she was
7 not talking about this particular case when
8 she talked about those photographs.
9 THE COURT: All right.
10 JOHN DEJONG: I think I was talking about
11 a video, not photographs but -- okay.
12 CROSS EXAMINATION CONTINUED
13 BY JOHN DEJONG:
14 Q. You just don't remember talking to
15 this lady at all is what you're telling me?
16 A. (Affirmative nod), no, sir.
17 Q. Now, so you had told your mom before
18 that David had been touching you, but nothing
19 happened; right?
20 A. Yes, sir.
21 Q. Then David didn't go to jail then,
22 did he?
23 A. No, sir.
24 Q. Did that make you angry?
25 A. I guess so.

1 Q. Because you wanted David to go to
2 jail, didn't you?
3 A. Yes, sir.
4 Q. The -- what color was that rope?
5 A. What color was the rope?
6 Q. Yes, ma'am.
7 A. I think it was red.
8 Q. Do you like to draw cartoons?
9 A. Yes, sir.
10 Q. I understand that you do. That
11 you're pretty good at it. Do you make up
12 stories to go along with your cartoons?
13 A. No, sir, I just draw.
14 Q. Where do you get the ideas to draw
15 your cartoons?
16 SOLICITOR JONES: I would objection to
17 relevance, Your Honor.
18 THE COURT: Overruled.
19 CROSS EXAMINATION CONTINUED
20 BY JOHN DEJONG:
21 Q. Where do you get the ideas for your
22 cartoons?
23 A. I don't know. Books and stuff.
24 Q. You said that David tied you up.
25 How did he tie you up?

1 A. With the rope that was tied to the
2 cement blocks and with the leash that was
3 also tied to my hands.
4 Q. It was what?
5 A. It was tied to my hands.
6 Q. Tied to your hands?
7 A. (Affirmative nod).
8 Q. Were your hands down by your side?
9 A. (No verbal response).
10 Q. Up in the air? Where were they?
11 A. Laying outside me.
12 Q. All right. And so at some point in
13 time you told your mother what you're telling
14 us today; is that right?
15 A. Yes, sir.
16 Q. Did you talk to your mother since
17 then about what we're talking about today?
18 A. Since I told her?
19 Q. I'm sorry?
20 A. Can you repeat that, please?
21 Q. Surely. You told your mother that
22 this had happened.
23 A. (Affirmative nod).
24 Q. Since then have you talked to your
25 mother about this?

1 A. Since it happened?
2 Q. Yes, ma'am.
3 A. I don't like talking about it, so I
4 don't.
5 Q. Has your mother ever tried talking
6 to you about it?
7 A. No.
8 Q. Is your mother angry with David?
9 A. Yes.
10 Q. How did it come about that you told
11 your mother about this?
12 A. Because I, uh, eventually got tired
13 of him saying he was going to kill my family
14 and eventually I started not to believe him.
15 Q. Had he told you that when you told
16 your mom before that he was touching you?
17 A. Yes, sir.
18 Q. Okay. So -- was there anyone else
19 in the house when you told your mother other
20 than your mother and your brother?
21 A. I don't remember, sir. I don't even
22 remember my mother -- my brother being there.
23 Q. Okay. You said that this was
24 David's bedroom. Did your mom and David
25 share the same bedroom?

1 A. Yes, sir.
2 Q. So it wasn't just David's bedroom.
3 It was your mom's and David's bedroom?
4 A. Yes, sir, but she normally didn't
5 sleep there. She sleeps on the couch most of
6 the couch.
7 Q. Did she sleep on the couch back
8 then?
9 A. Yes, sir.
10 Q. Mr. Jones asked you about
11 pornography. I understood you to say that
12 David showed you pornography one time.
13 Right?
14 A. Yes, sir.
15 Q. Had you seen pornography before
16 then?
17 A. No, sir.
18 Q. Do you remember a friend that you
19 had some time back and you and she talked
20 about a lot of this stuff?
21 A. No, sir.
22 Q. You don't remember that?
23 A. (Negative gesture).
24 Q. You said that David tied you up more
25 than once?

1 A. Yes, sir.
2 Q. Did he always use the same rope?
3 A. No, sir, not always.
4 Q. And you said that it was a red rope?
5 A red rope or a red leash?
6 A. He didn't always use the red leash
7 but he always used the rope.
8 Q. Was it the red rope?
9 A. Red rope or red leash?
10 Q. I didn't hear the last part?
11 A. It was a red leash.
12 Q. So now you're saying that it was red
13 leash, not a red rope.
14 A. It was rope and a leash.
15 Q. I see. All right. Were they both
16 red?
17 A. (No verbal response).
18 Q. What color was it?
19 A. One was red and I think -- I think
20 the rope was a tan color.
21 Q. A tan color?
22 A. (Affirmative nod).
23 Q. I think I asked you this and that
24 you answered but I just want to make sure,
25 you don't remember talking to a Ms. Darby at

1 all?
2 A. No, sir.
3 JOHN DEJONG: Thank you, MINOR CHILD.
4 THE COURT: Redirect?
5 SOLICITOR JONES: Briefly
6 REDIRECT EXAMINATION
7 BY SOLICITOR JONES:
8 Q. Hey, MINOR CHILD The defense attorney,
9 Mr. Dejong, he talked to you a little bit
10 about your mom and David fighting. Do you
11 remember that?
12 A. Yes, sir.
13 Q. You saw them fighting?
14 A. Yes.
15 Q. Did you ever see David hit your mom?
16 A. Yes, sir.
17 Q. Did you ever see him cause holes to
18 be in walls?
19 A. Yes, sir.
20 Q. Did you ever take pictures of that?
21 A. I didn't, but I have the pictures.
22 Q. You have the pictures?
23 A. (Affirmative nod).
24 Q. Is that what you meant before if
25 you'd ever said that you have pictures on a

1 tablet?
2 A. Yes, sir.
3 Q. So you saw David hit your mom. Was
4 that once or more than once?
5 A. It was more than once.
6 Q. Was it a lot?
7 A. Yes, sir.
8 Q. Were you scared of David because of
9 that?
10 A. Yes, sir.
11 Q. Did he ever hit you?
12 A. He'd not really hit me but he did
13 drag me around and stuff.
14 Q. And you told the defense attorney
15 that you did want David to go to jail, didn't
16 you?
17 A. Yes, sir.
18 Q. Why did you want David to go to
19 jail?
20 A. Because he did bad things.
21 Q. Because he did bad things to you?
22 A. Yes, sir.
23 Q. MINOR CHILD you're only twelve now;
24 right?
25 A. Yes, sir.

1 Q. You've moved around a lot, haven't
2 you?
3 A. Yes, sir.
4 Q. How many times have you moved?
5 A. (No verbal response).
6 Q. More than four?
7 A. Four times.
8 Q. Do you remember the address for each
9 particular house?
10 A. No.
11 Q. Do you remember each particular
12 town?
13 A. No, sir.
14 Q. When the defense attorney was
15 talking to you, did you get confused -- were
16 you confused by some of the stuff that he
17 asked you?
18 A. Yes, sir.
19 Q. Are you nervous?
20 A. Yes, sir.
21 Q. And you said that you don't like
22 talking about David touching you, right?
23 A. Yes, sir.
24 Q. So some of the details -- have you
25 forgotten some of the details, maybe?

A. Yes, sir.

Q. You may have forgotten the details but State's Exhibit 1, is that the house that David Bagwell sexually abused you at?

A. Yes.

Q. How many dogs did you have when you lived in that house, do you know? How many dogs lived in the house as well?

A. I only had one dog and I think I had a cat too.

Q. Did David have any dogs?

A. Well, that was -- it was his dog but it was in the house.

Q. So there was just the one dog?

A. Um-humm, -- yes, sir.

SOLICITOR JONES: No further questions, Your Honor.

THE COURT: You may step down.

JOHN DEJONG: I just have one on re-cross, Your Honor.

THE COURT: No. I'm going to ask her to step down.

JOHN DEJONG: Thank you, Your Honor.

(WITNESS STEPS DOWN)

THE COURT: Is this where you said that

1 you need to take ---
2 SOLICITOR JONES: Yes, sir, Your Honor.
3 THE COURT: We need to take a brief
4 recess because the next witness is coming in
5 and is running a little bit late. When she
6 gets here, we will bring you back out.
7 Once again, don't discuss the case. We
8 will let you know as soon as we can get you
9 back out. Thank you
10 (JURY OUT @ 10:15 A.M.)
11 THE COURT: Let me know when they get
12 here. I guess we'll have to have the in-
13 camera first.
14 SOLICITOR JONES: We can do it however
15 you want to do it. The one witness is Pam
16 Darby and the other is Rebecca Mosely. So we
17 can do Rebecca first or do the in-camera with
18 Pam Darby for the forensic interview.
19 However you want to do it.
20 THE COURT: Okay. Sounds like that
21 would be the best way to do it.
22 (BRIEF RECESS)
23 (DEFENDANT PRESENT)
24 THE COURT: Are they here?
25 SOLICITOR JONES: Yes, sir. If we can

1 do the proffer on Pam Darby first. She is
2 the forensic interviewer.
3 THE COURT: Okay. Do whatever you need
4 to do but the least amount of breaks that we
5 have to take for the jury -- what is the most
6 efficient way?
7 SOLICITOR JONES: That's fine, Your
8 Honor. Do we need to discuss possible
9 redactions first or bring her in here to
10 proffer her testimony?
11 THE COURT: Y'all have agreed to the
12 redactions, haven't you?
13 JOHN DEJONG: As far as I know.
14 THE COURT: Y'all agreed to the
15 redactions and you put those on the record.
16 SOLICITOR JONES: Yes, sir.
17 THE COURT: I guess you need to
18 establish the admissibility pursuant to the
19 statute.
20 SOLICITOR JONES: Yes, sir, the State
21 would call Pam Darby to the stand to proffer
22 her testimony.
23 THE COURT: Before we get started, it's
24 my understanding that this proffer is merely
25 to establish the elements under South

1 Carolina 17-20-175?

2 SOLICITOR JONES: That's correct, Your

3 Honor. The State's understanding per *State*

4 *v. Anderson*, a recent Supreme Court case

5 where they basically stated the proper

6 procedure for establishing where the State

7 complies with the forensic interview or the

8 child hearsay statute, uh, we intend to offer

9 Miss Pam Darby for those purposes.

10 THE COURT: All right.

11 JOHN DEJONG: Your Honor, I am familiar

12 with *Anderson* but I want to make sure that we

13 are clear that there are certain things that

14 we can get into in this in-camera hearing but

15 which would not be admissible before the

16 jury.

17 SOLICITOR JONES: That's correct.

18 JOHN DEJONG: I think Your Honor kind of

19 limited it to that, but I wanted to make

20 sure; such as framing, background and all

21 that kind of stuff ---

22 SOLICITOR JONES: Correct.

23 JOHN DEJONG: --- would be admissible for

24 purposes of the in-camera but not in front of

25 the jury.

1 SOLICITOR JONES: Well, I think her
2 training and background, her education, are
3 admissible.
4 JOHN DEJONG: We will have to argue
5 that when the time comes, will we not?
6 SOLICITOR JONES: Okay.
7 JOHN DEJONG: I don't think it is.
8 THE COURT: You may proceed.
9 (WITNESS TAKES STAND)
10 PROFFERED TESTIMONY OF PAM DARBY
11 PAM DARBY, having been sworn to tell the
12 truth, and nothing but the truth, testified
13 as follows:
14 DIRECT EXAMINATION
15 BY SOLICITOR JONES:
16 Q. Please state your name, ma'am.
17 A. Pamela Darby.
18 Q. Ms. Darby, tell the court about your
19 educational background, please ma'am?
20 A. Yes, I am a licensed master social
21 worker and I have a bachelor of arts in
22 liberal arts from Stony Brook University and
23 a Master in social work from Fordham
24 University.
25 Q. I understand that you are not

1 working currently, but in 2014 what was your
2 position?
3 A. I was the program manager with Casa
4 Family Systems and subsequently the manager
5 of Victims Services with Casa Family Systems
6 in Orangeburg, South Carolina.
7 Q. Prior to that position, what did you
8 do?
9 A. Prior to that, prior to Casa Family
10 Systems, I was, uh, a social worker, a
11 hospital social worker at Montclair
12 (phonetic) Medical Center.
13 Q. What were your responsibilities
14 while you worked at Casa?
15 A. With Casa Family Systems, I provided
16 counseling for victims of sexual assault and
17 abuse, and I also conducted forensic
18 interviews for children regarding allegations
19 of abuse.
20 Q. Tell the Court, please, what is a
21 forensic interview.
22 A. A forensic interview is a neutral
23 fact-finding interview for children who may
24 have been exposed to or experienced sexual
25 assault or physical abuse.

1 Q. If you had to guess, how many
2 forensic interviews did you conduct
3 throughout your career?
4 A. Over fifty. I don't recall the
5 exact number but well over fifty.
6 Q. What do you do in a forensic
7 interview to ensure that the child's answers
8 are not influenced by your questions?
9 A. Well, a forensic interview is,
10 again, a neutral fact-finding interview in
11 which a child is questioned in
12 developmentally nonsuggestive, appropriate
13 manner regarding specific allegations in the
14 investigative process. It is also to focus
15 on building rapport with the child in which
16 the interview guidelines are reviewed with
17 the child along with the promise to tell the
18 truth. It is objective nonleading questions
19 and it gives the child opportunities to
20 disclose about the abuse.
21 Q. On June 5th, 2014, did you interview
22 MINOR CHILD ?
23 A. Yes.
24 Q. Was that interview video and audio
25 recorded?

1 A. Yes.
2 Q. I hand you what has been marked as
3 State's Exhibit 2. Do you recognize that?
4 A. Yes.
5 Q. What is it?
6 A. It's my forensic interview with
7 MINOR CHILD on June 5th, 2014.
8 Q. Is that a true and accurate copy of
9 the interview?
10 A. Yes.
11 Q. In that interview, was MINOR CHILD's
12 statement elicited by any leading questions?
13 A. No, nonleading questions.
14 Q. As the interviewer, have you been
15 trained outside of your education to conduct
16 investigative interviews with children?
17 A. Yes. For forensic interviewing, I
18 participated in basic intensive forensic
19 interviewing along with advanced forensic
20 interviewing. Also updated interview model
21 training. I've participated in various
22 courses and peer reviews from the Children's
23 Law Center. I also participated in a multi-
24 disciplinary team meetings to review physical
25 abuse and sexual abuse cases.

1 Q. Okay. Was this statement made by
2 MINOR CHILD during the course of the interview
3 with a detailed account of the offense?
4 A. Yes.
5 Q. And did the statement have internal
6 coherence?
7 A. We talked about the need to tell the
8 truth during the interview with anything and
9 everything that she disclosed.
10 Q. But did her conversation with you,
11 did it make sense in the interview that she
12 could articulate what was on her mind?
13 A. She verbalized things very
14 accurately, very coherently.
15 Q. Thank you.
16 SOLICITOR JONES: I don't have any
17 further questions.
18 THE COURT: Cross-examination?
19 JOHN DEJONG: Thank you, Your Honor,
20 may it please the Court.
21 CROSS EXAMINATION
22 BY JOHN DEJONG:
23 Q. Ms. Darby, as part of the
24 interviewing process, are you trained to
25 repeat everything that the child says?

1 A. Part of the process is that you do
2 repeat if you, uh, to make sure that you
3 heard the child correctly as to what they
4 stated. Or you do that to give the child an
5 opportunity to self-correct.
6 Q. So you ask a question, the child
7 answers and then you repeat ---
8 A. I repeat the questions, uh, the
9 responses that the child has given.
10 Q. Also as part of your training is to
11 take this answer, you repeat it and then
12 later on in the interview you bring up that
13 same information and say, 'you told me awhile
14 ago' this, that and the other. Right?
15 A. As part of the interview guidelines,
16 if a child says something you repeat
17 information; or if you need clarification of
18 what they said or information that they
19 shared as this opportunity to disclose, then
20 yes, you review what they said.
21 Q. I understand what you're saying.
22 You're saying that is for clarity.
23 A. Um-humm, (affirmative nod).
24 Q. But what I'm saying is that you put
25 that in the form of question, basically. 'A

1 while ago you told me this, that and the
2 other' and then you ask a question following
3 that. That is not to clarify, is it?
4 A. Well, you are basically referring or
5 restating a question. If I want to say 'is
6 this what you said' for clarification purpose
7 or if I am stating a question for just the
8 first time, I will ask 'from what you've
9 shared' -- I go back to what the child has
10 disclosed.
11 Q. Right. But in this particular
12 interview, not only do you repeat what the
13 child answered your questions, quite often
14 throughout the interview you went back to
15 what she had said earlier. Did you not?
16 A. If anything needed to be restated or
17 anything needs additional follow up from any
18 questions that the child shares, then they
19 would be reviewed (sic) back to what a child
20 previously stated for either clarification
21 or, uh, to continue on with the information
22 that they are disclosing about.
23 Q. Well, why would it have to be
24 restated?
25 A. Uh, the -- in a setting when you're

1 doing a forensic interview, you're recording
2 it. You also have the -- not only the video
3 but you also have the audio, so you do want
4 to make sure that what the child is saying is
5 being heard.
6 Q. Yes, ma'am, I understand that.
7 Maybe I didn't understand what you just said.
8 Initially we talked about -- you said
9 that you restated it, number one, to make
10 sure it's what the child said. And then you
11 restated it to make sure that's what you
12 heard. Right?
13 A. Okay.
14 Q. That's the initial. Right?
15 A. Um-humm, (affirmative nod).
16 Q. Then we come back forward and I
17 asked you about you take something that was
18 said three minutes ago and you said if it
19 needs to be restated.
20 A. Um-humm, (affirmative nod).
21 Q. What needs to be restated? Give me
22 an example.
23 A. Well, like if you're -- to say what
24 you're saying, three minutes. Either the
25 child said something more and then the

1 question is either re-asked or restated, if
2 it not just for clarification it might also
3 be trying to just ascertain -- giving them
4 more opportunity to share about the details
5 of the abuse.
6 Q. By doing that, you steer the whole
7 interview.
8 A. No, the questions are based on the
9 responses of the child. So it's based on,
10 'Well, if -- when you said that you were in
11 the house, can you tell me or share, uh,
12 where in the house or what happened?' So
13 you're just asking the child based on what
14 they've already shared.
15 Q. Well, if a child says 'I don't
16 know.'
17 A. If a child says that they don't
18 know, then they have that opportunity to say
19 that they don't know. And that's part of the
20 interview guidelines, to let them know that
21 they have the ability to say that they don't
22 know.
23 Q. Yes, ma'am. But in this particular
24 interview, there were a couple of occasions
25 when the child said that she didn't know but

1 you pursued it.
2 SOLICITOR JONES: Your Honor, I am going
3 to object. I think that he's made his point.
4 At this stage it's argument and I think the
5 argument needs to be directed to Your Honor.
6 Your Honor has watched the video.
7 Mr. Dejong has watched the video.
8 I don't see how questioning and
9 challenging Ms. Darby any further could
10 further his argument.
11 THE COURT: I will let him go a little
12 father.
13 CROSS EXAMINATION CONTINUED
14 BY JOHN DEJONG:
15 Q. There were a couple of occasions
16 where she said 'I don't know' or 'I don't
17 remember.' Do you recall that?
18 A. Not at this particular moment, but
19 -- okay.
20 Q. Okay. One particular point was when
21 there was some discussion of a DVD or a
22 video, you asked her what was on it.
23 A. Okay.
24 Q. And she said that she didn't know.
25 A. Okay.

1 Q. Do you recall that?
2 A. I recall talking about the DVD.
3 What was probably exploring what was maybe
4 the content or what she saw. It's about
5 giving the child the opportunity to share any
6 of the details that they may not recall.
7 Q. My point is, when they say that they
8 don't know, you don't accept that, do you?
9 A. If it is based on information on
10 other details that probably were shared again
11 or at another time, uh, it's just allowing
12 again an opportunity for the child to have --
13 to share information and bring that to recall
14 that information.
15 JOHN DEJONG: No further questions.
16 THE COURT: Any redirect?
17 SOLICITOR JONES: No, sir, Your Honor.
18 THE COURT: Anything else from this
19 witness?
20 SOLICITOR JONES: Nothing else from this
21 witness, Your Honor.
22 THE COURT: All right. Thank you. You
23 may step down.
24 (WITNESS STEPS DOWN)
25 THE COURT: Anything else?

1 SOLICITOR JONES: Your Honor, I would
2 ask that Your Honor find that the video did
3 meet the requirements set forth in 17-23-175,
4 that this statement was given in response to
5 questions in an investigative interview; that
6 the interview was audio and video recorded.
7 The child testified in this proceeding
8 was subject to cross-examination. Ms. Darby,
9 who conducted the interview is here to
10 testify as well.
11 From watching the video and the questions
12 posed, Ms. Darby, uh, there were no leading
13 questions. She was trained in conducting
14 investigative interviews. The child did give
15 a detailed account of the offense. The
16 overall interview did have internal
17 coherence. Of course, again Ms. Darby was
18 here to testify.
19 I know that Mr. Dejong did have some
20 problems with the manner in which Ms. Darby
21 asked questions, where she would repeat the
22 answer of the child and then ask follow up
23 questions. I think she testified that she
24 was clarifying what the child said, that it
25 was of benefit to everybody involved that Ms.

1 Darby would clarify what the child says,
2 certainly a benefit to the fact finder. So
3 certainly I don't think that it was an
4 incidence of leading.
5 Ms. Darby was speaking to a child who, as
6 Your Honor has seen when she testified, is
7 very soft-spoken. I think defense counsel,
8 even though it is hard to hear the child in
9 the forensic interview, so any time that Ms.
10 Darby repeated what she said it wasn't
11 necessarily to emphasize the child's account
12 but to clarify what the child was saying.
13 For all those reasons, I would ask you
14 find that this video does meet the standards
15 set forth in 17-23-175. Thank you.
16 THE COURT: Mr. Dejong?
17 JOHN DEJONG: Thank you, Your Honor, may
18 it please the Court. Your Honor, I don't
19 particularly have a problem with her
20 repeating everything once a question is
21 posed, the child responses and she repeats
22 it.
23 The problem that I have is that the child
24 says this at this point in time -- she says
25 A-B-C and then there is a whole change in the

1 interview, then the interviewer comes back
2 and says, 'A while ago you said A-B-C' and
3 then asks another question.
4 I submit, Your Honor, that there are many
5 ways to lead. I believe that's a leading
6 question, Your Honor. It's not just a
7 question and answer type thing. I think
8 nothing could be further from the truth.
9 If it is a question-and-answer, once a
10 question is asked and it's answered, it is
11 answered.
12 I think it goes even a little further
13 than that. I think that by the interviewer
14 doing that, in the interview they are subtly
15 conveying that they believe what this child
16 is saying. It is an internal bolstering, if
17 you will, of the child's testimony on the
18 video. Obviously we can no longer do that in
19 the courtroom. But I submit that's exactly
20 what it is and that it is also leading.
21 As I said I think there are many forms of
22 leading. Looking at this video as a whole, I
23 would submit that it should not be
24 introduced, Your Honor.
25 THE COURT: I thinking looking at the

1 statute, 17-23-175, clearly .1, .2 and .3
2 have been met. We had an in-camera hearing
3 and my threshold is to determine whether
4 there is a guaranty of trustworthiness.
5 One of the elements is that you may
6 consider leading questions. I think even if
7 there may have been leading questions at some
8 point, overall I think that the statement --
9 and, again, I have also reviewed the video,
10 State's Exhibit 2, I think the actual basis
11 -- the basis of the statements were not to
12 elicit leading questions (sic), and I think
13 that it meets the trustworthiness require-
14 ments. I find that the elements of 17-23-175
15 have been met and I am going to allow it's
16 admissibility generally.
17 Now, if we want to talk about -- okay.
18 With that being said, it is my understanding
19 that subject to your objection that y'all
20 have agreed on the parts that will be
21 redacted.
22 JOHN DEJONG: That's correct, Your
23 Honor.
24 THE COURT: And there's no other issues
25 on what needs to be redacted?

1 SOLICITOR JONES: No, sir.
2 THE COURT: And in looking at it
3 yesterday, too, the redactions were -- do you
4 want to put those back on the record now?
5 SOLICITOR JONES: Yes, sir.
6 THE COURT: They actually matched up.
7 I could tell where you were right at where
8 the questions started. It looks like the
9 redactions matched, at least when I looked
10 at them. So if you will announce the
11 redactions.
12 SOLICITOR JONES: Yes, sir, the first
13 redaction begins at 22 minutes, 19 seconds to
14 25 minutes, 33 seconds.
15 The second redactions is at 33 minutes,
16 28 seconds to 36 minutes, 28 seconds.
17 The third and final reactions begins at
18 54 minutes, 20 seconds to 54 minutes, 55
19 seconds.
20 THE COURT: All right. Do you agree
21 with those redactions, subject to your
22 objection, Mr. Dejong?
23 JOHN DEJONG: As best I can recall,
24 Your Honor, (affirmative nod). I believe
25 that's what we agreed to. I know more as to

1 the content than I do the actual times.
2 THE COURT: Okay.
3 JOHN DEJONG: I did give ---
4 SOLICITOR JONES: For the record, Your
5 Honor, Mr. Dejong actually -- the time stamps
6 that he wanted redacted were actually
7 narrower than what was redacted. He told me
8 the time stamps and the content of what was
9 being discussed, and as I watched the video
10 the content was actually several seconds
11 longer than what Mr. Dejong had ---
12 THE COURT: Sounds like y'all are
13 pretty much on the same page.
14 JOHN DEJONG: Yes, sir, I ---
15 SOLICITOR JONES: Yes, sir, Your Honor.
16 JOHN DEJONG: --- agree.
17 THE COURT: And I don't know what y'all
18 have set up here but I had a very difficult
19 time hearing it on my computer, so -- I have
20 a feeling the jury is going to have a
21 difficult time hearing it as well.
22 SOLICITOR JONES: Yes, sir, Your Honor.
23 I have speakers that I can move up as close
24 as ---
25 THE COURT: It doesn't help that this

1 fan is going on up here.
2 SOLICITOR JONES: Perhaps we could ask
3 that the fan be turned off.
4 THE COURT: Is there anything that you
5 can do? I know it gets hot up here.
6 CLERK: Yes, it does.
7 SOLICITOR JONES: Perhaps if we could
8 cut it off for the hour and then at lunch cut
9 it back on so that it will cool off.
10 THE COURT: That's a good idea. I
11 really think that with the fan going that
12 they are not going to be able to hear a thing
13 that she says.
14 SOLICITOR JONES: Mr. Clerk, can we cut
15 the fan off?
16 CLERK: I can turn it off.
17 JOHN DEJONG: That would be great.
18 THE COURT: I'll let them know. If it
19 gets too hot and we have to take a break,
20 we'll just have to take a break. I think it
21 is important that they be able to hear.
22 The other issue, and let's just address
23 this now, I read the *Anderson* case here, so
24 do y'all want to talk about -- what are you
25 -- are you going to put her up next?

1 SOLICITOR JONES: Yes, Your Honor, I am
2 going to put Ms. Darby up next. I intend to
3 ask her about her occupation in 2014, though
4 she is no longer in that current role, her
5 education and training and, uh, prior
6 experience. And, 'did you conduct a forensic
7 interview with MINOR CHILD on this
8 particular date' and then play the video.
9 THE COURT: You are not going to
10 qualify her as an expert?
11 SOLICITOR JONES: No.
12 THE COURT: John, do you have any
13 objection to him ---
14 JOHN DEJONG: Just under *State v.*
15 *Anderson*, Your Honor. I don't have the cite.
16 THE COURT: I have it.
17 JOHN DEJONG: What I am looking at is
18 -- before it goes into the in-camera
19 testimony, an interviewer must testify and
20 establish the types of facts set forward such
21 as their training, background, and other --
22 etc. Then of course there is -- (female
23 coughing in courtroom) -- I apologize, I'm
24 sorry, ma'am, but could you (female) leave
25 the courtroom?

1 (UNIDENTIFIED FEMALE EXITS COURTROOM)
2 JOHN DEJONG: Sorry, Your Honor. The
3 sole purpose of her jury testimony is to lay
4 the foundation for the introduction of the
5 video, and the questioning must be limited to
6 that subject. There is to be no testimony to
7 such things as techniques and instructions of
8 the interviewed subject to the effects of
9 telling the truth. The purpose of the
10 interview is to allow law enforcement to
11 conduct an investigation.
12 So I think the only thing that she can
13 testify to is that on June the 6th, 2014,
14 whatever the date was, she can testify as to
15 where she did the interview. She can
16 describe the room if she wants to, I don't
17 care about that. But I think the only thing
18 that she can do is to say that she was the
19 interviewer, that she did the interview and
20 that -- whatever Mr. Jones shows her as a
21 copy of that video, done over my objection,
22 Your Honor is going to let it in and for it
23 to be played for the jury.
24 THE COURT: From what he just said, I
25 think he is fully aware of *Anderson*. I don't

1 think that asking for background -- I think
2 that he needs to lay some foundation for who
3 she is and why she is the one doing the
4 interview. I am not going to qualify her as
5 an expert.
6 JOHN DEJONG: She can say that she is a
7 forensic interviewer. But if she is going to
8 get into ---
9 THE COURT: My understanding of what he
10 is doing is saying that 'this isn't just some
11 woman they pulled from the sidewalk and said,
12 can you interview this woman.' 'This is why
13 she was interviewing her.'
14 JOHN DEJONG: That -- to say she is a
15 trained interviewer, I don't object to that.
16 Anything beyond that, I do object.
17 SOLICITOR JONES: I just want to be
18 clear that I am going to ask her her
19 education, her training, where she worked in
20 2014, did she interview the child.
21 THE COURT: I am going to allow that.
22 I am not sure that you object to that, I
23 couldn't really tell. We had distractions
24 with the lady coughing.
25 JOHN DEJONG: Well, -- yes, sir, we did.

1 When he rephrased what you said, it expanded
2 in my mind. So just an ounce of prevention
3 being worth ten pounds of cure, I will
4 objected.
5 THE COURT: All right. Okay. Are we
6 ready?
7 SOLICITOR JONES: Yes, sir, Your Honor.
8 Well, one more thing. As far as redactions,
9 I am going to have to sit up there and mute
10 the redactions. Would Your Honor tell the
11 jury that the State and defense have agreed
12 upon certain content of the video that is
13 irrelevant to their discussion?
14 THE COURT: I am always a little
15 hesitant about saying irrelevant. I think
16 I'm just going to say that this is the
17 portion that you've agreed to play. I don't
18 -- I always wonder -- you don't want to say
19 too much, just that for their purposes this
20 is the evidence that y'all have agreed to.
21 SOLICITOR JONES: Okay.
22 JOHN DEJONG: And I gather that we are
23 going into Ms. Darby in the video now?
24 SOLICITOR JONES: Yes, sir.
25 JOHN DEJONG: Okay. I don't think that I

1 need to object again.
2 THE COURT: No. Turn the air off.
3 CLERK: (Complies).
4 THE COURT: Bring in the jury.
5 (JURY IN @ 11:25 a.m.)
6 THE COURT: All right, ladies and
7 gentlemen. Thank you for your patience. In
8 this room you cannot have both quietness and
9 coolness. We are getting ready to hear a
10 video, so we have turned the HVAC fan off so
11 that you can hear the video. We may get
12 warm, but it is something that we needed to
13 do so that everybody can hear. If we need to
14 take a break at some point, we can do so.
15 Also, the video that is going to be
16 introduced, the parties have agreed to
17 portions that will be presented to you.
18 That's why you will see the attorneys muting
19 certain parts which they have agreed are not
20 to be presented to you.
21 With that being said, Mr. Jones, you may
22 proceed.
23 SOLICITOR JONES: Thank you, Your Honor.
24 The State calls Pam Darby.
25 (WITNESS TAKES STAND)

PAM DARBY, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR JONES:

Q. Ms. Darby, in 2014 where were you employed?

A. Casa Family Systems in Orangeburg, South Carolina. Casa stands for Citizens Against Sexual Assault.

Q. What was your position there?

A. I was Director of Victim Services, having moved from Program Manager of Victim Services.

Q. Tell the jury, please, about your educational background?

A. Yes. I am a licensed master social worker, I have a BA in literal arts from Stony Brook University and a master's in social work from Fordham University.

Q. Do you have any particular training that was important for your job?

A. Yes. Victim services provided training as an victim advocate, being in that position as a victim advocate. But also

1 having been a forensic interviewer, having
2 participated in basic interview training, uh,
3 intensive training, advanced forensic
4 interview training and interviewing training
5 for the updated protocol model, uh, as long
6 as -- again, as well as some courses in
7 training in peer review through the
8 Children's Law Center and participated in
9 multidisciplinary team meetings that reviewed
10 cases on sexual assault and physical abuse.
11 Q. Thank you. On June 5th, 2014, did
12 you interview MINOR CHILD?
13 A. Yes.
14 Q. I hand you State's Exhibit 2. Do
15 you recognize that?
16 A. Yes.
17 Q. Please tell the jury what this is.
18 A. That is the forensic interview that
19 I conducted with MINOR CHILD on June 5th,
20 2014.
21 Q. Is it a true and accurate copy of
22 that interview?
23 A. Yes.
24 Q. Okay.
25 SOLICITOR JONES: Your Honor, at this

1 time the State would move State's Exhibit 2
2 into evidence.
3 JOHN DEJONG: Subject to my previous
4 objection.
5 (SO ENTERED AS STATE'S EXHIBIT 2)
6 THE COURT: And y'all have previously
7 agreed to the portions that will be
8 presented.
9 SOLICITOR JONES: Yes, sir.
10 THE COURT: Ladies and gentlemen, like
11 I said, there will be times when the audio
12 may be difficult to hear and that's why we
13 had the HVAC fan turned off.
14 Move the speaker as close as you can to
15 the jurors.
16 SOLICITOR JONES: Yes, sir.
17 THE COURT: Also, just to let you know,
18 the video is approximately an hour and a
19 half, is that about right?
20 SOLICITOR JONES: Yes, sir.
21 (WHEREUPON STATE'S EXHIBIT 2 PUBLISHED)
22 SOLICITOR JONES: Anything else from
23 this witness?
24 SOLICITOR JONES: No, Your Honor.
25 THE COURT: From the defense?

1 JOHN DEJONG: None on behalf of Mr.
2 Bagwell, Your Honor. No objection to her
3 being excused, Your Honor.
4 THE COURT: You may step down.
5 (WITNESS STEPS DOWN)
6 THE COURT: Ladies and gentlemen, it is
7 time for lunch. I will give you to 2:20, so
8 please be back in your jury room at 2:20. It
9 is 1:00 o'clock now.
10 Please do not discuss the case while you
11 are. Do not do any research. Do not pay any
12 attention to any media coverage of this. If
13 anybody should contact you, please let the
14 bailiffs know. Other than that, have a good
15 lunch.
16 See you at 2:20.
17 (JURY OUT @ 1:00 P.M.)
18 THE COURT: For the record, -- again
19 subject to your objection, are both parties
20 in agreement with the redactions which were
21 made on the presentation of the video?
22 SOLICITOR JONES: Yes, sir.
23 THE COURT: Did that comply with your
24 understanding of what the redactions were?
25 JOHN DEJONG: There was one little bit

1 but I am not going to argue about it, Your
2 Honor. I will say yeah, it was redacted.
3 THE COURT: And to make sure -- I know
4 that you moved it in, but I did grant your
5 Motion that it be introduced over your
6 objection.
7 SOLICITOR JONES: Yes, sir, Your Honor.
8 The video did comply with the statute.
9 THE COURT: All right, we will be at-
10 ease until 2:15.
11 (OFF RECORD DISCUSSION RE SCHEDULEING)
12 JOHN DEJONG: Before we leave this
13 afternoon, Your Honor, I need to take back up
14 with you whether or not you're going to allow
15 me to put up any extrinsic evidence on the
16 recantation.
17 THE COURT: All right.
18 THE COURT: See everybody back at 2:20.
19 (LUNCH RECESS)
20 (DEFENDANT PRESENT)
21 THE COURT: Bring the jury in.
22 (JURY IN @ 2:33 P.M.)
23 THE COURT: All right, ladies and
24 gentlemen, I hope everybody had a good lunch.
25 The State is still in their case. So,

1 Mr. Jones, you may call your next witness.
2 SOLICITOR JONES: Thank you, Your Honor.
3 The State calls Rebecca Mosely.
4 (WITNESS TAKES STAND)
5 REBECCA MOSELY, having been sworn to
6 tell the truth, and nothing but the truth,
7 testified as follows:
8 DIRECT EXAMINATION
9 BY SOLICITOR JONES:
10 Q. Ms. Mosely, where are you currently
11 employed?
12 A. The South Carolina Department of
13 Social Services in Orangeburg County.
14 Q. Orangeburg County?
15 A. (Affirmative nod).
16 Q. And what is your position?
17 A. Currently?
18 Q. Currently, (affirmative nod).
19 A. I'm the Region Intake Hub
20 supervisor.
21 Q. The supervisor.
22 A. Right.
23 Q. So tell us, what are some of your
24 responsibilities currently?
25 A. I screen reports of child abuse and

1 neglect. Calls are called into a centralized
2 hub. We process that info. It is forwarded
3 to me and I make a determination as to
4 whether we should accept it or refer it to
5 other agencies.
6 Q. In May of 2014 what was your
7 position?
8 A. I was as assessment manager.
9 Q. And what were some of your response-
10 bilities in that role?
11 A. To investigate allegations of child
12 abuse and neglect.
13 Q. And when you say you investigate
14 allegations, what did you do to investigate
15 the allegations?
16 A. I would make home visits and have
17 conversations with household members, do
18 walk-throughs of the home to assess the
19 allegations. Touch on just about all areas
20 of concerns to the agency, not just what the
21 allegations were.
22 Q. So you went to the actual home?
23 A. Right. Yes.
24 Q. On May 15th, 2014, did you respond to
25 [redacted] Neeses Highway in Orangeburg.

A. I did.

Q. What was the purpose of that visit?

A. To assess allegations of physical neglect.

Q. All right. And who were the children living in that home?

A. [redacted] and [redacted] Durnil.

Q. Do you know who contacted your agency and told you to go visit the home?

A. I do, but I would have to double check my records.

Q. That's fine. When you go to check the home, what is the process? Do you call the parents and say, 'Hey, do you mind if we come over at this time?' What is the process?

A. Once we receive the report, it is processed. You have a time frame for a response. The response for this particular report was twenty-four hours, so I made contact with this place within twenty-four hours of the time that the report was accepted.

We do not announce our visits. They are pop up visits, so people are not expecting

1 us, at least at not for the initial contact.
2 Q. So on this particular time that you
3 went out to visit with MINOR CHILD and her
4 brother, did you call Toni Durnil and tell
5 her that you were coming?
6 A. I didn't even have a number for her
7 on the lead.
8 Q. Did anyone from your office call
9 Toni and tell her that you were coming?
10 A. No.
11 Q. Tell the jury, please, what your
12 standard procedure is once you get to a home
13 to investigate neglect. Who do you call to
14 and what do you do?
15 A. I arrive at the home, knock on the
16 door of course and introduce myself. I try
17 to find out who the adult in charge is,
18 preferably the parent or grandparents. Any
19 adult in the home. I don't speak with anyone
20 about the allegations who are not a part of
21 the household initially.
22 Then I try to speak to the children
23 individually, separate from any adults in the
24 home. So that means that I've got to go into
25 a different part of the household, or they

1 do, or we go outside to speak with them. I
2 take them someplace outside or in the house
3 where the adults who may have an influence on
4 their responses to me, I try to make sure
5 that we are not in the same room anyone else
6 -- not even other siblings.
7 Then for whatever the allegations are, I
8 ask questions specific to the allegations but
9 we also ask questions concerning drug use,
10 sexual abuse, physical abuse, things of that
11 nature, along that line.
12 Q. Can you go into a little more detail
13 as to what questions you would normally ask
14 and what questions you did ask Ericka Durnil?
15 A. I ask, like, if they eat every day,
16 do they go to school every day, do they eat
17 every day, uh, I walk around and look at the
18 environment to make sure that their needs are
19 met, that there is running water,
20 electricity, working appliances, that the
21 physical building or household that they are
22 living in is safe.
23 Then I will ask questions about are they
24 afraid of anybody in the home.
25 Is there someone in the home -- general

1 type questions such as, 'have you ever been
2 touched in a way that makes you feel
3 inappropriate', 'have you ever been
4 inappropriately touched by someone by someone
5 who lives in your home, or not in your home,
6 who makes you feel inappropriate?'
7 I ask questions about the parents, drug
8 use by the parents, I ask questions about
9 domestic abuse, do the people in your home
10 become physical with each other, have you
11 ever seen them get angry and hit each other?
12 I ask questions in relationship of -- if
13 they haven't lived where they are living
14 long, 'how long have you lived where you are
15 living?' 'Do you move a lot?' 'Why do you
16 move?' Probing questions to see what the
17 responses are.
18 Q. So when you arrived at the home, did
19 Toni or any of the adults have the
20 opportunity to be with MINOR CHILD alone while you
21 were there?
22 A. Not prior to me speaking to her, no.
23 Q In speaking with MINOR CHILD, did she
24 disclose anything as far as time and place of
25 sexual abuse?

1 A. She did. She didn't give me a
2 specific time but she did say that it
3 happened at Cleo Chapman Highway.
4 Q. Did you know what Cleo Chapman
5 Highway was?
6 A. No, it was an address that was
7 given, because once we -- it was an address
8 that was given to law enforcement.
9 Q. Right. Okay. So after MINOR CHILD
10 disclosed to you sexual abuse, what was your
11 next step? What did you do?
12 A. I immediately contacted law
13 enforcement and notified them of the
14 allegations.
15 Q. Do you know, did officers responded
16 that day?
17 A. That day while I was there officers,
18 Lt. Walton from the Orangeburg County
19 Sheriff's Department, (affirmative nod).
20 Q. Can you describe the condition of
21 the house as you remember?
22 A. The home was cluttered. There was
23 not a lot of food in the home and we went
24 into regarding the circumstances
25 behind that.

1 It looked like they had just moved in.
2 you know, there were a lot of things in
3 boxes.
4 It was junky, for lack of a better
5 terminology.
6 Q. Are you aware if David Bagwell was
7 living in the home the day that you visited?
8 A. He had been arrested prior to me
9 arriving at the home.
10 SOLICITOR JONES: Thank you, no further
11 questions.
12 THE COURT: Cross-examination.
13 JOHN DEJONG: Thank you, Your Honor,
14 may it please the court.
15 CROSS EXAMINATION
16 BY JOHN DEJONG:
17 Q. So actually you went out there in
18 May 2014 to investigate abuse and neglect?
19 A. Neglect, yes.
20 Q. And that was reported by someone --
21 we didn't necessarily get into that, but that
22 was a report made to Orangeburg DSS?
23 A. Correct.
24 Q. All right. Of course, at that point
25 in time there was no indication at the time

1 that report came in of any kind of sexual
2 abuse, was there?
3 A. No.
4 Q. It was purely physical abuse?
5 A. (Affirmative nod).
6 Q. Now, how many people go out there
7 when you do that?
8 A. Just me.
9 Q. Just you?
10 A. Yes, sir.
11 Q. How many -- how many people were in
12 the home?
13 A. When I arrived or when I left?
14 Q. When you arrived? Let's do that
15 first.
16 A. Just three people when I arrived.
17 Q. And that was?
18 A. The grandmother and the two
19 children.
20 Q. So Toni Bagwell or Toni Durnil was
21 not there at the time?
22 A. She agreed later during my visit.
23 Q. Okay. What was the grandmother's
24 name, do you recall?
25 A. The grandmother's name was Margaret,

1 Ms. Margaret Durnil.
2 Q. So you go through this litany of
3 questions. If conditions are such -- forget
4 about sexual abuse for a moment. If
5 conditions were such, you could remove a
6 child from the home, right?
7 A. I did not remove the child. Law
8 enforcement removed the child from the home.
9 Q. But the same thing, you would
10 contact law enforcement and they would remove
11 the child from the home?
12 A. Absolutely.
13 Q. We're kinda playing a word game
14 here, but that's okay. I understand what
15 you're saying.
16 A. (No verbal response).
17 Q. Certainly you would be the trigger,
18 so to speak, to get the child removed from
19 the home?
20 A. (No verbal response).
21 Q. You would report to law enforcement
22 and then law enforcement, based on that, ---
23 A. Would make the final decision.
24 Q. Right. I understand that. Yes,
25 ma'am. So did you share with MINOR CHILD or the

1 grandmother that you were there for an abuse
2 and neglect checkup or whatever?
3 A. I spoke with them in reference to
4 the allegation, yes, sir.
5 Q. Both MINOR CHILD and the grandmother?
6 A. Yes.
7 Q. Did DSS have an open case on this
8 family at that point in time?
9 A. Once we initiated an investigation,
10 that's an open case. I was initiating the
11 investigation.
12 Q. But prior to this report, did DSS
13 have an open investigation?
14 A. Not prior to the report.
15 Q. Do you know how long they had lived
16 in Orangeburg County at that point in time?
17 A. I never got a specific answer, just
18 "not long." The children hadn't been
19 enrolled in school, so it couldn't have been
20 that long.
21 Q. This was in May, correct?
22 A. Yeah, (laughing).
23 Q. I'm sorry?
24 A. (Laughing).
25 Q. Okay. So did -- I gather that you

1 were asking questions that MINOR CHILD just
2 gratuitously volunteered this information
3 about sexual abuse?
4 A. I asked her, you know, my model
5 questions and she responded/disclosed.
6 Q. You said that David was not there
7 because he was in jail. Do you know what he
8 was in jail for?
9 A. Domestic violence.
10 Q. Do you know when he went to jail?
11 A. On May 7th, 2014.
12 Q. And when did you do your visit?
13 A. On May 15th.
14 Q. So roughly a week after he'd gone to
15 jail?
16 A. (Affirmative nod).
17 Q. Who shared that information with
18 you?
19 A. That he had gone to jail?
20 Q. (Affirmative nod).
21 A. Ms. Margaret.
22 Q. Did MINOR CHILD talk about that at all?
23 A. She did, (affirmative nod).
24 Q. So you're saying that MINOR CHILD told
25 you that it was Cleo Chapman Highway?

1 A. She told law enforcement and law
2 enforcement -- I was there when law enforce-
3 ment got that information.
4 Q. So she gave an address?
5 A. She gave an address.
6 Q. How old was she at the time?
7 A. She was, uh, eleven.
8 Q. Were there any animals in the home?
9 A. I don't recall.
10 Q. Were there any allegations of drug
11 use?
12 A. I don't recall.
13 Q. Any other allegations other than
14 what you've already shared as to domestic
15 violence in the home?
16 A. I don't recall.
17 Q. Pardon me?
18 A. I said that I don't recall any
19 allegations of domestic violence in the home
20 other than what we have already talked about.
21 Q. There may have been, you just don't
22 remember?
23 A. What's what I mean, I don't recall.
24 Q. So the only thing that you do
25 remember is the disclosure, as you put it, of

1 sexual abuse?
2 A. That's not the only thing I
3 remember.
4 Q. What else?
5 A. I remember that there were concerns
6 about the condition of the home, the lack of
7 food in the home, and that's the reason why I
8 was out there.
9 Q. Yes, ma'am, I understand that. But
10 what you're sharing with me today, basically
11 what you remember is the allegations of a
12 sexual assault.
13 A. Among other things, yes, sir.
14 Q. Okay. Was there any allegations as
15 to sexual assault of any other individual?
16 A. I'm sorry?
17 Q. Was there an allegation of sexual
18 assault against any other individual in ---
19 SOLICITOR JONES: I object, Your Honor.
20 THE COURT: Sustained.
21 JOHN DEJONG: Thank you, ma'am.
22 THE COURT: Redirect?
23 SOLICITOR JONES: Briefly, Your Honor.
24 REDIRECT EXAMINATION
25 BY SOLICITOR JONES:

1 Q. Ms. Mosely, are you aware of where
2 MINOR CHILD lived after she disclosed sexual abuse
3 to you and law enforcement got involved?
4 After that event where MINOR CHILD resided?
5 JOHN DEJONG: I don't think that's
6 appropriate redirect. Redirect is something
7 that I bring up in my cross that ---
8 THE COURT: I am aware of what redirect
9 is.
10 JOHN DEJONG: Sorry?
11 THE COURT: I am aware of what redirect
12 is?
13 JOHN DEJONG: Well, I'm saying that I
14 didn't raise any of that in ---
15 THE COURT: I think you kinda did, so I
16 am going to allow it.
17 REDIRECT EXAMINATION CONTINUED
18 BY SOLICITOR JONES:
19 Q. Ms. Mosely, are you aware of where
20 MINOR CHILD lived after she disclosed sexual
21 abuse?
22 A. After she disclosed to me?
23 Q. Right.
24 A. The family moved to Pickens County.
25 Q. Are you aware of MINOR CHILD being taken

1 away from the family?
2 A. That would be beyond my
3 investigation.
4 SOLICITOR JONES: No further questions,
5 Your Honor.
6 THE COURT: You may step down.
7 SOLICITOR JONES: Your Honor, I asked
8 that Ms. Moseley and Ms. Darby be released
9 from their subpoenas.
10 JOHN DEJONG: No objection.
11 THE COURT: And you are free to go.
12 Thank you for being here.
13 (WITNESS STEPS DOWN)
14 THE COURT: Call your next witness.
15 SOLICITOR JONES: The State would call
16 Dr. Mary Frances Croswell.
17 (WITNESS TAKES STAND)
18 MARY FRAN CROSWELL, having been sworn to
19 tell the truth, and nothing but the truth,
20 testified as follows:
21 DIRECT EXAMINATION
22 BY SOLICITOR JONES:
23 Q. Dr. Croswell, will you tell the
24 jury, please, where you are currently
25 employed?

1 A. I am employed by the Greenville
2 Health System in the Division of Child Abuse
3 and Neglect.
4 Q. What is your occupation?
5 A. I am a child abuse pediatrician. I
6 see children referred when there are concerns
7 of some form of child maltreatment.
8 Q. Please tell the jury about your
9 education?
10 A. I received my undergraduate degree
11 from Wake Forest University.
12 I received my medical degree from the
13 University of Louisville School of Medicine.
14 I completed my Pediatric residency
15 program in Greenville.
16 Q. How long have you been in practice?
17 A. I've been in practice since 2003.
18 I've been in my current position since 2006.
19 Q. Do you have any specific training as
20 to your current position?
21 A. Yes, I have done numerous courses,
22 continuing medical education courses in the
23 field of child abuse and neglect.
24 In 2011, I was eligible to sit for the
25 boards in -- subspecialty board certification

1 for child abuse and neglect. So currently,
2 I'm double Board-certified in General
3 Pediatrics and Child Abuse and Neglect.
4 Q. If you had to estimate, how many
5 child sexual assault exams have you
6 performed?
7 A. At a minimum probably a hundred and
8 fifty a year, so probably fifteen hundred as
9 a rough estimate of exams that I have
10 performed.
11 Q. Have you ever been qualified as an
12 expert in the field of child sexual assault
13 exams?
14 A. Yes, I have.
15 Q. About how many times?
16 A. I don't know in that specific
17 qualification versus child abuse and neglect,
18 so I would have to estimate fifteen to twenty
19 times in child sexual assault.
20 Q. What about in total?
21 A. In total, I've testified at least
22 forty times.
23 Q. At least forty?
24 A. (Affirmative nod)
25 Q. And each time, was that in General

1 Sessions Court or a different ---
2 A. General Session or Family Court in
3 South Carolina.
4 SOLICITOR JONES: Your Honor, at this
5 time I would offer Dr. Croswell as an expert
6 in the fields of child sexual assault
7 examinations.
8 JOHN DEJONG: No *voir dire*, Your Honor.
9 THE COURT: Any objections?
10 JOHN DEJONG: No, sir.
11 THE COURT: All right. I so qualify
12 her. Ladies and gentlemen, normally a person
13 cannot testify outside of what they have
14 observed with their senses: seeing, hearing,
15 things of that nature. If someone is
16 qualified as an expert, then they can testify
17 about their opinions within their field of
18 expertise.
19 In this case this witness has been
20 qualified as an expert in the field of child
21 sexual assault examination.
22 That does not mean that you have to
23 accept her testimony as is, but that y'all
24 are to consider it and give it the weight
25 that you feel is appropriate during your

1 deliberations.
2 You may proceed.
3 SOLICITOR JONES: Thank you, Your Honor.
4 DIRECT EXAMINATION CONTINUED
5 BY SOLICITOR JONES:
6 Q. Dr. Croswell, please tell the jury
7 what you do in a child sexual assault
8 examination?
9 A. So the, uh, child comes to our
10 office at -- currently at the Julie Valentine
11 Center, which is a child advocacy center. Is
12 greeted by a child life specialist who brings
13 them back to our exam room, allows the child
14 to go through the entire medical procedure,
15 medical examination, with an anatomically
16 correct doll, so that they understand what to
17 expect from my examination.
18 Next, I will get a medical history from
19 the caregiver who brings the child to the
20 appointment. If the child has the verbal
21 ability, I try to take the history directly
22 from my patient independently.
23 Then I perform a head to toe medical
24 exam. The final portion of that exam is a
25 genital exam, in which I use a colposcope. A

1 colposcope for my purposes is a bright light
2 source, a way to magnify the areas that I am
3 observing and has the ability to photo-
4 document any findings that I may have.
5 Next I will determine any appropriate
6 laboratory treatment that is needed and make
7 any recommendations to the caregiver at that
8 time.
9 Q. In the examinations, is there
10 anything in particular that you're looking
11 for?
12 A. Sometimes children who are referred
13 to for one reason may also have experienced
14 other forms of child maltreatment.
15 Specifically for child sexual examination, I
16 get a detailed history; one, to know their
17 risk for having contracted a sexually-
18 transmitted infections and, two, to
19 understand what type of injuries, if any,
20 that they may have experienced as a result of
21 the abuse.
22 Q. Are there always physical symptoms
23 of sexual abuse?
24 A. There are not always physical
25 symptoms of physical abuse -- excuse me, no

1 always physical symptoms of sexual abuse.
2 The symptoms can actually vary. There's a
3 wide range of symptoms.
4 There are rarely physical signs of sexual
5 abuse as well. Current studies indicate that
6 anywhere from five to fifteen percent of
7 physical exams will have physical findings.
8 Most often children of sexual abuse do not
9 have physical findings on their exam.
10 Q. Why is that?
11 A. One is that the nature of abuse may
12 not cause an injury that is visible to the
13 eye.
14 Two, sometimes the injuries can be very
15 superficial and can heal in a matter of days.
16 Three, sometimes deeper injuries, because
17 of the nature of the tissue that they are
18 located in may heal without leaving scarring
19 behind.
20 Q. Can you elaborate a little more,
21 please, on the nature of the tissue?
22 A. So the -- the genital area is made
23 up of mucous tissue, which is very vascular,
24 meaning it has a good blood supply to it,
25 which allows for very quick and rapid healing

1 of those areas.
2 Q. When you say that it is very
3 vascular, what does that mean?
4 A. Means good blood flow, good blood
5 supply to that area.
6 Q. Can you compare the vascular area of
7 the genitalia to another body part?
8 A. I often compare it to the inside of
9 your mouth. When you think about you bite
10 the inside of your mouth, the bite may be
11 gone within a day or two as long as it is not
12 re-traumatized. You might not necessarily
13 see any scarring between because of the
14 nature of that tissue.
15 Q. So could a normal exam be consistent
16 with the victim's medical history of sexual
17 assault?
18 A. Yes, it could.
19 Q. Please tell the jury what the hymen
20 is.
21 A. The hymen is a very thin layer of
22 tissue that partially covers the entrance
23 into the vagina.
24 Q. Would it help you explain in a
25 little more detail if you could draw and

1 label the different parts?
2 A. Sure.
3 Q. I think that there is a large pad
4 and a marker there for you to drop with.
5 A. (Moves to easel and sketches). When
6 you've first looking at the genital exam of a
7 female, you're going to come to two fatty
8 layers of tissue, the first of which is
9 called the *labia majora*. When you separate
10 those, you see another layer of tissue called
11 the *labia minora*.
12 We have the clitoris here.
13 Then it circles around and deeper to that
14 you have the opening to the vagina.
15 Then there is -- in a pre-pubertal girl
16 that is often tissue that covers that
17 entrance and that is the hymen.
18 Q. Thank you.
19 A. (Resumes witness stand).
20 Q. Can you help explain whether it
21 would be difficult or not for a female child,
22 when they were explaining whether someone
23 touched on their vagina or in the vagina, can
24 you explain the difficulty in that coming
25 from a child, and what your distinction

1 medically would be?
2 A. For a child to know exactly where
3 the vagina begins and ends is very difficult.
4 It is a very complex piece of anatomy.
5 For me if there is any genital to genital
6 contact, any penis contact with the genital
7 area, there is a risk for sexually-
8 transmitted infection. For me, trying to
9 distinguish exactly where that contact begins
10 and ends is -- it is extremely difficult and
11 really not necessary for what I need to do to
12 diagnose and treat their abuse.
13 Q. Did you have the opportunity to
14 examine MINOR CHILD ?
15 A. Yes, I did.
16 Q. Do you know the date of that exam?
17 A. It was July 31st, 2914.
18 Q. And what type of exam was performed?
19 A. So we -- a child can have an acute
20 sexual exam, which is within seventy-two
21 hours, or what we call a chronic exam.
22 An acute examination, it's recommended
23 that it be done in the emergency room. That
24 is for the purpose of evidence collection
25 directly from that exam.

1 The chronic exam, we feel is more
2 appropriate to do in a child advocacy center
3 that is more child friendly for the purpose
4 and for treatment of their abuse.
5 Q. What type of exam was performed on
6 Ericka?
7 A. It was a chronic exam.
8 Q. And what areas of the anatomy was
9 examined?
10 A. Again, it was a head to toe physical
11 exam. So all parts of her body were
12 examined.
13 Q. What were your specific findings?
14 A. She had a normal exam.
15 Q. And in speaking with MINOR CHILDas to
16 sexual abuse, did she tell you anything about
17 the time and place that the sexual abuse
18 occurred?
19 A. Yes, she did. She told me that she
20 was eight the first and the last time that it
21 happened. That it happened before they moved
22 to Walterboro, when they were living at Cleo
23 Chapman.
24 Q. Did she give you a number of the
25 road or just Cleo Chapman?

1 A. Just Cleo Chapman.
2 Q. Was anybody else in the room with
3 you when you examined her?
4 A. Just the child life -- oh, when I
5 talked to her or when I examined her?
6 Q. When you examined her?
7 A. When I examined her, the child life
8 specialist and her mother were in the room.
9 When I talked to her, it was the child life
10 specialist that was in the room.
11 Q. So when she told you it happened on
12 Cleo Chapman, who was in the room?
13 A. Just the child life specialist.
14 Q. Did you know what Cleo Chapman
15 meant?
16 A. I did not.
17 Q. Also in speaking with MINOR CHILD, did it
18 appear that she had moved around quite a bit
19 for someone her age?
20 A. In speaking with her mother and in
21 getting her background period it did appear
22 that she had moved around quite a bit.
23 SOLICITOR JONES: Thank you, Your Honor.
24 I have no further questions.
25 THE COURT: Cross-examination?

1 JOHN DEJONG: Thank you, Your Honor, may
2 it please the Court.
3 CROSS EXAMINATION
4 BY JOHN DEJONG:
5 Q. Dr. Croswell, at the time that you
6 talked to [MINOR CHILD], whatever date that you just
7 gave us, do you know who she was living with?
8 A. I do. [MINOR CHILD] told me that she was
9 living with her Uncle James, her Aunt
10 Melissa, her Nana, her mom, [BROTHER] and
11 Michael.
12 Q. In that whole litany of people, she
13 was still living with her mother? That's
14 what I am trying to get at?
15 A. Yes, she was.
16 Q. Okay. Now, as part of this, you
17 took basically a history as you would do for
18 treatment purposes; is that correct?
19 A. That's right.
20 Q. Now, in getting that history, did
21 Ericka share with you that when this happened
22 it was normally that she would be asleep,
23 then wake up in her mother's and dad's bed?
24 SOLICITOR JONES: Your Honor, I would
25 object to the hearsay.

1 JOHN DEJONG: We've already established
2 that she is doing this for treatment
3 purposes, Your Honor. I think I certainly am
4 allowed to go into it.
5 THE COURT: I will allow it.
6 CROSS EXAMINATION CONTINUED
7 BY JOHN DEJONG:
8 Q. That when this happened she would
9 wake up in her mother's and David's bed?
10 A. Uh, she said that she didn't know
11 how many times he had touched her. She said
12 that usually he would get her out of bed
13 while she was asleep and that then she would
14 wake up in his -- should I just keep going to
15 the end of the sentence?
16 SOLICITOR JONES: Your Honor, I would
17 object. She's having to read from the
18 report. It's clearly hearsay.
19 THE COURT: I'll give it a limited ---
20 CROSS EXAMINATION CONTINUED
21 BY JOHN DEJONG:
22 Q. I think you've answered my
23 questions. But I think when you were talking
24 about that in your report you said that she
25 spontaneously offered that; did you not?

1 A. Yes, I did.
2 Q. It wasn't as a result of any
3 questioning. She just said that it was
4 getting out of her bed and waking up in
5 mama's and David's bed, or something like
6 that?
7 A. Can I give a limited response of why
8 she spontaneously -- I just don't know what I
9 am able to say and not say.
10 SOLICITOR JONES: I am going to ask
11 that she not ---
12 THE COURT: Let's take this up outside
13 the jury here. I ask that you all step out
14 and do not discuss the case.
15 (JURY OUT @ 3:05 P.M.)
16 SOLICITOR JONES: Your Honor, I think he
17 wanted to impeach the victim that he should
18 have asked the victim while she was on the
19 stand, 'did you ever make these other
20 statements?' Instead he is trying to back
21 door and ask the doctor what the child told
22 her, not for purposes of medical treatment
23 but he is essentially trying to backdoor
24 impeach the victim without the victim being
25 on the stand. Now the victim is not going to

1 be able to testify, to clarify what she
2 meant. I think at this point that the victim
3 might have to get back up there to clarify
4 some of the stuff that he's already brought
5 out in front of the jury.
6 THE COURT: Response?
7 JOHN DEJONG: The response is, Your
8 Honor, that any time that we get into these
9 scenarios, the doctor, the expert takes a
10 history. And that is, as I understand it,
11 that they take a history for treatment
12 purposes.
13 The Solicitor went into what part that he
14 wanted for basically treatment purposes.
15 SOLICITOR JONES: No, Your Honor, I went
16 into time and place exception.
17 JOHN DEJONG: I didn't interrupt you, so
18 please hush. Now I've lost my train of
19 thought.
20 I think it was more than time and place,
21 Your Honor, that he went into.
22 But if she is the expert and she does
23 something for treatment purposes, then I'm
24 entitled to go into it.
25 THE COURT: I think that this goes

1 beyond the scope of what her treatment was
2 for, one, a child sexual assault examination.
3 I'll let you have a little leeway but ---
4 JOHN DEJONG: I'm through with it.
5 THE COURT: At this point you are
6 through with it.
7 SOLICITOR JONES: At this point he's
8 already gotten out what he wanted to get out,
9 where some of the sexual abuse occurred that
10 the victim didn't speak about when she
11 testified.
12 I am going to think about it but I might
13 have to recall the victim. I specifically
14 asked Dr. Croswell as to time and place. I
15 did not get out who the child disclosed, what
16 person, who was the perpetrator or anything
17 else, because I wanted to stay away from
18 that.
19 JOHN DEJONG: I'm done with it.
20 THE COURT: If it appears that you need
21 to bring her back, I'll be glad to consider
22 that when you make that decision. I sustain
23 his objection to any further ---
24 JOHN DEJONG: Well, then I do have
25 another question or two to ask, so let's see

1 where we go with that.
2 SOLICITOR JONES: Your Honor, I would
3 ask that he go ahead and ask the questions
4 now so we can determine whether it is
5 relevant, instead of just blurting it out in
6 front of the jury.
7 JOHN DEJONG: Did she say Cleo Chapman
8 Highway?
9 DR. CROSWELL: I documented that she
10 told me "Cleo Chapman." I didn't know what
11 Cleo Chapman was.
12 JOHN DEJONG: Just Cleo Chapman?
13 DR. CROSWELL: Correct.
14 JOHN DEJONG: She'd told you other
15 places that she lived, by name?
16 DR. CROSWELL: She told me
17 Walterboro.
18 JOHN DEJONG: She mentioned Smoaks,
19 didn't she?
20 DR. CROSWELL: Uh, -- yes. I'm
21 sorry. She did mention Smoaks as well.
22 JOHN DEJONG: That would be the extent of
23 that, as well, Your Honor.
24 THE COURT: All right. Anything else
25 before we bring the jury back in?

1 SOLICITOR JONES: No, sir, Your Honor.
2 THE COURT: Bring them in if they are
3 ready.
4 (JURY IN @ 3:10 P.M.)
5 THE COURT: You may proceed.
6 JOHN DEJONG: We are missing a juror,
7 Your Honor.
8 THE COURT: Okay, thank you -- we now
9 have all the jurors. You may proceed.
10 CROSS EXAMINATION RESUMED
11 BY JOHN DEJONG:
12 Q. Did MINOR CHILD specifically tell you
13 Cleo Chapman?
14 A. Yes, sir, she did.
15 Q. Did she mention by name any other
16 places that she had lived?
17 A. Yes, sir, she did.
18 Q. What were they?
19 A. Walterboro and Smoaks.
20 Q. Now, we talk about these exams and
21 we -- we don't -- but we've gone to great
22 lengths to explain that it is normal not to
23 find anything on a sexual assault case;
24 right?
25 A. In many cases that is normal.

1 Q. That could also mean that there was
2 no sexual assault?
3 A. A medical exam depends not only on
4 the physical exam but the history that I
5 obtain as well.
6 Q. I understand that, but in this case
7 you found nothing.
8 A. Her physical exam was normal.
9 Q. Yes, ma'am.
10 A. That doesn't mean that I found
11 nothing.
12 Q. So being normal, that would indicate
13 that there hadn't been any physical ---
14 A. A normal exam does not exclude or
15 include abuse.
16 Q. That is the whole point that I am
17 trying to make. You can't go to these great
18 lengths and say it is normal in a sex case
19 not to find anything, because it can include
20 or exclude ---
21 A. But a medical diagnosis does not
22 rely on a physical exam alone.
23 Q. That's what you do, is it not?
24 A. That's correct.
25 Q. That's your function, right?

1 A. That's correct.
2 Q. As a pediatric ---
3 A. Child abuse pediatrician.
4 Q. That is for physical findings,
5 right?
6 A. I'm sorry?
7 Q. That's for physical findings,
8 medical findings?
9 A. It is for medical evaluation.
10 Q. Right. That is your expertise,
11 medical evaluation?
12 A. That's correct.
13 Q. When Mr. Jones was talking to you,
14 he had you do this drawing and he asked you
15 about the hymen, I believe; is that correct?
16 A. That's correct.
17 Q. I think sometimes that is referred
18 to as the hymeneal ring, is that correct?
19 A. That can be used interchangeably.
20 Q. Was her hymen intact?
21 A. Her hymen did not have any -- we
22 don't use the term "intact", that's not a
23 medical terminology. She did not have any
24 tears of her hymeneal tissue.
25 Q. Okay. I'm not a doctor. But there

1 was nothing unusual about her hymen?
2 A. That's correct.
3 Q. Had their been digital penetration
4 or penile penetration to the depth of the
5 hymen, there would have been some indication;
6 would there not?
7 A. Not necessarily.
8 Q. But there would have been a greater
9 chance of ---
10 A. No, the -- the degree -- the level
11 of penetration is beyond the labia and that
12 is not even necessarily reaching the vaginal
13 opening. It just depends on your definition
14 of penetration.
15 Q. Okay, I'm with you. So you're
16 saying that there could be penetration with
17 no damage to the hymen?
18 A. That's correct.
19 Q. Or there could be no damage to the
20 hymen and no penetration?
21 A. That's correct.
22 JOHN DEJONG: Thank you.
23 THE COURT: Redirect?
24 SOLICITOR JONES: Briefly, Your Honor.
25 REDIRECT EXAMINATION

1 BY SOLICITOR JONES:
2 Q. Dr. Croswell, as you were examining
3 MINOR CHILD did she tell you that David Bagwell
4 sexually abused her once or more than once?
5 A. More than once.
6 Q. Did she say that the abuse occurred
7 while her mother was at work?
8 A. (Upon review of notes), yes.
9 Q. Did she mention anything to you
10 about being tied to a bed?
11 A. Yes, she did.
12 Q. And do you recall that MINOR CHILD
13 mentioned anything to you about Mr. Bagwell
14 showing her pornography?
15 A. Yes, she did.
16 Q. Did she tell you anything about what
17 he would do to her eyes as he showed her the
18 pornography?
19 A. Yes. I had asked her if she had saw
20 anything that made her think that she was
21 hurt, and she said no but that he tried to
22 hold her eyes open when he wanted her to see
23 a movie in a pink case that has all kinds of
24 people's bad parts. She would try to keep
25 her eyes closed and he would hold them open.

1 Q. Was your interview or discussion
2 with her videotaped?
3 A. No, it was not.
4 Q. So it was not video recorded?
5 A. No.
6 Q. Did you ever show any type of report
7 or anything to MINOR CHILD?
8 A. No.
9 Q. Did you ever show any report to
10 Toni?
11 A. No, I did not. Unless she requested
12 medical records, then she would have seen
13 that without my knowledge.
14 SOLICITOR JONES: No further questions.
15 JOHN DEJONG: Your Honor, based on
16 that, I think he opened the door. I can go
17 into the whole report.
18 SOLICITOR JONES: Your Honor, he opened
19 the door.
20 JOHN DEJONG: But I got the door closed
21 on me. You opened it ---
22 THE COURT: I am going to have to send
23 you out, ladies and gentlemen, so that we can
24 discuss this further. I thought that we had,
25 but -- please do not discuss the case.

1 (JURY OUT @ 3:17 P.M.)
2 JOHN DEJONG: Your Honor gave me some
3 latitude. I don't think that I went beyond
4 that latitude and I don't think I opened the
5 door. When he got up on redirect, he opened
6 the door on a whole big bunch of stuff. Now
7 I think -- if I opened the door, I may have
8 opened it a crack. But he's flung that
9 sucker wide open.
10 THE COURT: What else is in the report
11 that y'all are -- what are we getting into?
12 That's what I want to know.
13 JOHN DEJONG: Well, she talks about when
14 they moved to Walterboro, moved to Smoaks.
15 The main part that I got out was that she --
16 about her being in the bedroom, waking up in
17 David's bed.
18 THE COURT: So you got into that. What
19 else do you ---
20 JOHN DEJONG: Yeah, I understand. I
21 understand. But there are some things that
22 are not in the report that I would like to
23 ask her about, but that's neither here nor
24 there. I will let it go.
25 THE COURT: So you just wanted to stand

1 up and holler.
2 JOHN DEJONG: I love to, Your Honor.
3 THE COURT: So what are you asking, so
4 I get it ---
5 JOHN DEJONG: Nothing.
6 SOLICITOR JONES: I'm finished with
7 redirect, so we're finished with this
8 witness.
9 THE COURT: We are. You may step down.
10 JOHN DEJONG: No objection to her being
11 excused, Your Honor.
12 (WITNESS STEPS DOWN)
13 THE COURT: Are you ready for your next
14 witness?
15 SOLICITOR JONES: Yes, Your Honor.
16 Before we bring the jury back in, maybe I
17 need to check and make sure that she is here.
18 THE COURT: That would be good. Every
19 time we call one, they've disappeared on us.
20 SOLICITOR JONES: She is here. So we're
21 good.
22 THE COURT: Good. Okay, bring in the
23 jury.
24 JOHN DEJONG: Before we bring them back
25 in, ---

1 THE COURT: What?
2 JOHN DEJONG: I am not sure but I think
3 that the Solicitor's next witness and
4 possibly the last witness is Shauna Galloway-
5 Williams. Is that correct?
6 SOLICITOR JONES: That's correct.
7 JOHN DEJONG: The -- I gather that is
8 going to try to offer her as an expert. I am
9 not quite sure and why. But be that as it
10 may ---
11 THE COURT: I'm sure he is closely
12 following *State* v. *Brown*, the transcript that
13 our Supreme Court has given us for going
14 through these.
15 JOHN DEJONG: The problem that I have in
16 this case, looking at Rule 702, I am trying
17 to figure out what "technical or other
18 specialized knowledge in this case will
19 assist the trier of facts." I can't think of
20 any. The forensic video was in. What
21 specialized knowledge?
22 And here is my whole problem with that.
23 I understand *Brown*. But, Your Honor,
24 bringing these people, and I am speaking
25 specifically of Shauna Galloway-Williams.

1 As my learned friend said awhile ago that I
2 was trying to backdoor, well, that's exactly
3 what the State tries to do. An interviewer
4 can't bolster testimony any more, so they
5 bring this supposed expert, which is nothing
6 more than back-dooring bolstering an alleged
7 victim's testimony. They talk about delayed
8 reporting and all that. When we talk about
9 delayed reporting, we're saying 'okay, it was
10 delayed reporting, that's normal' but that's
11 simply bolstering alleged victim's testimony.
12 In this case, again, there was maybe some
13 brief delayed reporting but it was not like
14 two years, three years. It may have been
15 some months. And if you get into December,
16 it would be less than that.
17 I am simply questioning what it is that
18 the State intends to show that is going to
19 help the trier of facts in this case. I
20 don't understand.
21 THE COURT: Mr. Jones?
22 SOLICITOR JONES: Your Honor, *State v.*
23 *Brown* and even some of the *State v. Anderson*
24 case that I have sent to you, but *State v*
25 *Brown* the court explained that parties can

1 present testimony of scientific testing or
2 other specialized knowledge that will assist
3 the triers of facts to understand evidence or
4 determine facts in issue.
5 The Court discussed the three-prong test
6 in *Watson v. Ford Motor Company*, and the
7 Court held that child abuse dynamics and
8 disclosure is a subject beyond the ordinary
9 knowledge of a jury, so the expert testimony
10 is permissible.
11 I know that is a broad term, encompasses
12 a lot. However, Miss Galloway in particular,
13 as well as some other experts in child sexual
14 abuse dynamics have testified many times over
15 the last ten years or so and the Supreme
16 Court has upheld their testimony.
17 Mr. Dejong knows very well what she is
18 going to testify to: delayed disclosure,
19 coaching, why a child that was sexually
20 abused may or may not recant; factors that
21 make a child more or less vulnerable to be
22 abused. There are a number of -- give me one
23 second, Your Honor.
24 THE COURT: That's fine. Mr. Dejong is
25 fully aware of -- *State v. Brown*, the Court

1 of Appeals has addressed this issue. At some
2 point there may be a change in that but as of
3 now, *State v. Brown* has identified those
4 issues.
5 JOHN DEJONG: I appreciate Your Honor's
6 comments but if we don't continue to object,
7 the Court of Appeals won't ever change it.
8 THE COURT: I understand.
9 JOHN DEJONG: I simply suggest to you,
10 Your Honor, with no disrespect to the Court
11 of Appeals, that they are wrong. It's --
12 that is just my humble opinion.
13 I understand Your Honor's ruling, but
14 just so that the record is clear and so that
15 I don't appear overly litigious in front of
16 this jury, I object to the entire line of
17 this testimony.
18 THE COURT: Your objection is noted.
19 JOHN DEJONG: Thank you.
20 THE COURT: Based on *State v. Brown*, I
21 am going to allow her to testify. Is there
22 anything else before we bring in the jury?
23 JOHN DEJONG: I can't think of
24 anything. Thank you, Your Honor.
25 SOLICITOR JONES: Nothing from the

1 State.
2 THE COURT: Bring in the jury.
3 (JURY IN @ 3:25 P.M.)
4 THE COURT: Sometimes it makes things
5 more efficient if we take things up out of
6 your presence.
7 That was the end of the last witness, so
8 we appreciate your patience. Mr. Jones will
9 now call his next witness.
10 SOLICITOR JONES: Thank you, Your Honor.
11 The State will call Shauna Galloway-Williams.
12 (WITNESS TAKES STAND)
13 SHAUNA GALLOWAY-WILLIAMS, having been
14 sworn to tell the truth, and nothing but the
15 truth, testified as follows:
16 DIRECT EXAMINATION
17 BY SOLICITOR JONES:
18 Q. Ms. Galloway-Williams, what is your
19 occupation?
20 A. I am the executive director of the
21 Julie Valentine Center.
22 Q. What are your responsibilities in
23 that role?
24 A. As Executive Director, I am
25 responsible for the day to day administration

1 of the agency, I oversee the day to day
2 operations: staffing, program management,
3 and oversee the leadership team that leads
4 the remainder of the team for the agency.
5 Q. What services do you provide or does
6 your organization provide?
7 A. We are the child sexual assault and
8 abuse and recovery center that serves
9 Greenville and Pickens counties.
10 We provide prevention and education
11 services as well as intervention and
12 treatment services for children and adults
13 who may have been impacted by child abuse
14 and/or sexual assault.
15 Q. Can you tell the jury about your
16 educational background, please?
17 A. Sure. I have a Bachelor's degree
18 in Psychology from Winthrop University and
19 a Master's degree in counseling from Clemson
20 University.
21 Q. Have you had any specialized
22 training beyond that education?
23 A. I do. In addition to that I'm
24 licensed as a professional counselor in the
25 state of South Carolina.

1 I also have many hours of training
2 specifically related to the areas of child
3 abuse and sexual assault.
4 I have over a hundred and fifty skills-
5 based training hours directly related to the
6 assessment of children who may have been
7 abused or neglected.
8 I also am required by my licensure to
9 attend trainings annually which are required,
10 at least forty hours every two years for our
11 license.
12 Q. Have you ever, or do you currently,
13 taught courses related to this field?
14 A. I do. I am an adjunct faculty
15 member of USC-Upstate in their Child Advocacy
16 Studies Program. I teach two courses there.
17 I teach one course on child maltreatment
18 as an introduction to child maltreatment.
19 I also teach gender-based violence.
20 Q. Can you tell the jury about any
21 current licenses that you hold?
22 A. Yes, I am licensed as a professional
23 counselor in the state of South Carolina.
24 Q. How many years have you been in your
25 current position?

1 A. I've been the executive director now
2 for nine years.
3 Q. Prior to your current position, what
4 was your occupation or what did you do?
5 A. I've been in the area of counseling
6 and mental health treatment for twenty years
7 now.
8 I have specialized specifically in the
9 area of working with children and families
10 since 2001.
11 I formerly had a private practice where I
12 worked with children and family who had been
13 impacted by child abuse and sexual assault.
14 I formerly worked at the Julie Valentine
15 Center as the Clinical Director before
16 becoming the Executive Director.
17 Q. Have you ever been qualified as an
18 expert in child sexual abuse dynamics and
19 disclosure?
20 A. I have.
21 Q. Approximately how many times?
22 A. Forty times now.
23 Q. Is that in General Sessions court or
24 other courts?
25 A. General Sessions.

1 SOLICITOR JONES: Your Honor, I would
2 move Ms. Shauna Galloway-Williams as an
3 expert in the field of child sexual abuse
4 dynamics and disclosure.
5 THE COURT: Any *voir dire*?
6 JOHN DEJONG: None, Your Honor.
7 THE COURT: I qualify her subject to
8 the defendant's objection previously put on
9 the record.
10 Ladies and gentlemen, as I told you
11 before, when somebody is qualified as an
12 expert, then they can go beyond what they
13 observed, smelled, tasted, general stuff that
14 a lay witness would be allowed to testify
15 about. They can testify about their opinion
16 in their particular field in which they've
17 been qualified.
18 Again, this is not something that you
19 have to accept but it is something that you
20 can use, give it the weight which you feel is
21 appropriate when you enter your
22 deliberations.
23 You may proceed.
24 DIRECT EXAMINATION CONTINUED
25 BY SOLICITOR JONES:

1 Q. How is your position and your
2 organization funded?
3 A. We are a 501(c)(3), so we're a
4 nonprofit organization. My position is
5 funded through the general operating funds.
6 Most of our funding comes in through either
7 Federal funding, through the Victims of Crime
8 Act, the Violence Against Women Act, uh, --
9 we also have two primary fundraisers. We
10 receive United Way funding, and do a lot of
11 additional fundraising.
12 Q. Is your payment contingent upon what
13 you say here today?
14 A. It is not.
15 Q. Have you ever met with MINOR
16 CHILD ?
17 A. I have not.
18 Q. Do you know anything about the case
19 here at trial today?
20 A. No, other than what you and I have
21 spoken about.
22 Q. Would you please tell the jury what
23 is meant by delayed disclosure?
24 A. Delayed disclosure refers to when a
25 child or an adult does not disclose or make a

1 statement regarding abuse right after it
2 happens. There may be a delay of hours,
3 days, months, years. Often someone may be an
4 adult before they might disclose or share
5 that information.
6 Q. How common is delayed disclosure in
7 sexual abuse?
8 A. Delayed disclosure is very common in
9 sexual abuse. Most of the research -- in my
10 experience, it's far more common than not.
11 Q. Do you have any particular articles
12 that you are aware of that are not -- maybe
13 an article that is very important in your
14 field, that you rely on?
15 A. Sure, there are a number of
16 articles, articles that have been cited
17 repeatedly in the literature.
18 Goodman-Brown is an article that looks
19 directly at delayed disclosure.
20 Sas and Cunningham.
21 Breaire (phonetic).
22 There are a number of articles.
23 It is so common in our field that it is
24 something that has been replicated over and
25 over again.

1 Q. From your experience and from your
2 training and education, why do victims
3 disclose at a later date? Why does it take
4 them time sometimes to disclose?
5 A. There are a number of reasons why
6 someone might delay disclosing.
7 Particularly with a child, one of the
8 reasons is that they might fear what the
9 consequences are of telling. They may fear
10 what is going to happen to themselves or the
11 person that did this to them.
12 Many times children are abused by someone
13 that they know, they love or they trust or by
14 someone that is known, loved and trusted by
15 their family or their community. Those
16 relationship dynamics make it very difficult
17 for children to disclose.
18 They may have a relationship with this
19 person that is both positive and negative.
20 They may have a very close relationship to
21 this person and the abuse is a part of it
22 that they don't like, so they may have a
23 difficult time sharing that information.
24 Depending on the age of the child, they
25 may not have the language or the words to

1 disclose. They may not know how to share
2 that information.
3 Children may have been threatened.
4 Threats could be direct or indirect threats,
5 meaning that they could have been told that
6 should they tell that something would happen
7 to them or to someone that they know. Or it
8 may be indirect threats, for instance if
9 they'd witnessed the person who did this
10 commit violence acts or be violent against
11 others. They may internalize that if they
12 tell that something like that may happen to
13 them as well.
14 Q. What is meant by the term "process
15 of disclosure".
16 A. We use that to refer to disclosure
17 because disclosure is a process. What we
18 mean by that is that a child may not tell
19 every single detail about the abuse the first
20 time that they disclose or the first time
21 that they ask about it.
22 There are different ways that we describe
23 disclosure.
24 Children may accidentally disclose. That
25 means that a child may demonstrate behavior

1 or may make a statement that someone then
2 questions them about and that leads them to
3 disclosing.
4 It may mean an accidental disclosure in
5 that they may have written a letter or had a
6 journal entry that then led someone to ask
7 them questions about it, rather than it being
8 a purposeful disclosure where the child has
9 made a conscious and deliberate effort to
10 tell someone, where they decided that they
11 were going to tell someone what's happened to
12 them.
13 We also know that children may not tell
14 every single detail about what's happened.
15 They may tell a little bit to sort of test
16 the water, to see what the response of others
17 is going to be.
18 What they tell may be determined based on
19 questions.
20 So the process piece of it is that
21 children over time may begin to tell more
22 information based on their comfort level, it
23 could be based on who is asking the
24 questions, could be based on the proximity
25 that they have to the person that committed

1 the acts.
2 Q. I think you really just touched on a
3 lot of this, but why is disclosure a process
4 for some victims?
5 A. Again, you know, many times victims
6 are not making a conscious effort to tell,
7 not making a deliberate effort to tell. So
8 many times it's an accidental disclosure and
9 they are not really prepared for what they
10 are going to say.
11 Many times it is really dependent on who
12 is asking the questions and the type of
13 information that they are seeking. You
14 know, a family member asking questions may
15 have different questions that they are asking
16 and the child may share different information
17 with them than, say, a law enforcement
18 investigator who is asking for different
19 types of information or a counselor or
20 medical provider.
21 Q. Are there any articles -- you
22 mentioned a few earlier -- but any articles
23 that talk about the process of disclosure,
24 that you're aware of?
25 A. Off the top of my head, Sorenson

1 Snow is one of the article that we reference
2 very often, where they looked at a large
3 sample size of abuse survivors, and looked at
4 how they disclosed abuse. They specifically
5 reference the tentative and accidental
6 disclosure, looking at actual cases of abuse.
7 Q. In that Sorenson and Snow, are you
8 aware or do you know how the researchers
9 confirmed that sexual abuse occurred?
10 A. These were cases that had come
11 through -- if I remember correctly, these
12 were cases that had come through the District
13 Attorney's Office. They were confirmed cases
14 of abuse.
15 Q. In your field, what does the term
16 "grooming" mean?
17 A. Grooming is really a way of
18 developing a trusting relationship with a
19 child and also sort of testing the waters
20 with a child.
21 Developing a trusting relationship in the
22 sense that this person may give the child
23 special attention, special affection. They
24 may offer them treats or gifts. They may
25 also be introducing the child to sexual

1 material as an introduction to other types
2 of sexual behavior. So in our field,
3 introducing a child to sexual cartoons,
4 videos, jokes, magazines, uh, to see how they
5 might respond to that before introducing them
6 to additional types of material. It's
7 developing that trusting type relationship
8 through those behaviors that we consider
9 grooming.
10 Q. What about exposure to pornography?
11 A. Yes, that would be included in that
12 exposure to sexual materials, whether that be
13 magazines, books, videos, uh, any type of
14 sexual materials.
15 It sometimes may be introducing or
16 getting a child comfortable to touch. You
17 know, constantly introducing a child to touch
18 that might be confused for normal versus
19 inappropriate touch. For example, putting a
20 hand on top of the child's butt to see how
21 the child reacts, does the child tell; then
22 taking that hand a little bit farther under
23 the clothing or something else. Testing the
24 water in that way could also be considered
25 grooming.

1 Q. Any of those things that you just
2 mentioned about grooming, is there an
3 importance or a focus on normalizing sex for
4 the victim?
5 A. It's that whole idea of whether it
6 creates confusion about whether this is
7 normal or appropriate, inappropriate, uh, --
8 that's where the trust in that relationship
9 dynamic comes into play as well.
10 If this person is introducing this
11 behavior to me, and this is someone that I
12 trust and my family trusts, then there is a
13 question of whether this is okay or not. It
14 causes just some sort of a confusion there.
15 Q. Why does that cause a confusion for
16 the child?
17 A. Well, again, a lot of it has to do
18 with the relationship with the person who is
19 introducing that information to them. You
20 know, children generally believe that adults
21 have their best interests in mind, they
22 believe -- children are pretty egocentric and
23 they believe that adults know what they are
24 thinking and what is best for them, so they
25 just give us this trust. They give adults

1 trust. So when adults introduce that type of
2 material of behavior to them, that causes a
3 confusion to them. They may wonder, you
4 know, is this okay -- question whether or not
5 this is okay or not because of the person
6 that is introducing it.
7 Q. Are you aware from your training or
8 experience of any common factors that you've
9 seen or that you're aware of amongst sexual
10 abuse victims with regard to their family
11 life? That was kind of a convoluted
12 questions, maybe I should restate that.
13 A. Are you asking if there are risk
14 factors for children that make them more at
15 risk for abuse?
16 Q. Yes. That's correct.
17 A. There are some factors that put
18 children at a higher risk for abuse.
19 One of the risk factors is their age.
20 The younger a child is, the higher their
21 dependency on adults. The higher the risk
22 factor for them being abused. They are more
23 dependent on adults, they rely on us for more
24 care, and a lot of times a lot of more hands
25 on care if they are younger.

1 Children who have disabilities or special
2 needs, they are high risk as well.
3 Particularly children who are not yet
4 verbal. They can't articulate. They can't
5 tell us if something has happened to them, so
6 they are more vulnerable to abuse.
7 Children who are in single family
8 households are at higher risks at times.
9 They are more vulnerable, the family is more
10 vulnerable at times because there are more
11 opportunities to other caregivers to be a
12 part of their life. There are risk factors
13 associated with that. Not to say that single
14 parents are putting their children at-risk,
15 but there is a higher risk for that and the
16 literature shows that.
17 Households where there is substance
18 abuse, the children are at higher risk
19 because they are -- a lot of times families
20 are not paying as close attention. Substance
21 abuse itself creates a higher vulnerability
22 within the household.
23 Children that tend to be more isolated,
24 who may not have as many friends or who may
25 not be as socially involved with others may

1 be at a higher risk. They are more
2 vulnerable to those who want to pay them
3 special attention and they may fall victim
4 more easily to the grooming that we talked
5 about earlier.
6 Q. What about other abuse, other types
7 of abuse?
8 A. We do often see in child mal-
9 treatment that when a child is the victim of
10 one type of abuse, they may also be at risk
11 for other types of abuse.
12 When a child has been victimized once,
13 they are at higher risk of being re-
14 victimized, particularly if they have not
15 received treatment, if the family has not
16 received treatment and if the family has not
17 been supportive in following up with
18 treatments and protections to keep the child
19 safe. Oftentimes that is related to a child
20 just -- possibly once they've been exposed to
21 sexual behavior, they are at higher risk of
22 understanding what sexual inappropriate
23 behavior is. They may have poor boundaries
24 and are at much higher risk for re-
25 victimization.

1 Q. You mentioned other abuse, what
2 about violence in general? Violence in the
3 house?
4 A. As a risk factor for ---
5 Q. As a risk factor for sexual abuse?
6 A. Well, violence in the home is a risk
7 factor for maltreatment in general. You
8 know, children witnessing violence in the
9 home is neglect in and of itself. It's a
10 form of maltreatment. Exposing children to
11 inappropriate relationships and behaviors is
12 not showing them healthy relationship
13 dynamics and puts them at a higher risk for
14 abuse.
15 Q. What does the term coaching mean in
16 your field?
17 A. Influencing a child to make a
18 statement, influencing what the child reports
19 to someone.
20 Q. And do you look for specific signs
21 of whether a child has been influenced?
22 A. When we are looking at children's
23 disclosure, we are typically looking to see
24 if the child can provide core and contextual
25 details. Those core details would be who,

1 what, when, where.
2 Contextual details would be those sensory
3 details that would help you to see or
4 understand that the child is reporting
5 something that they've experienced themselves
6 rather than something that someone else has
7 told them that they have experienced. Can
8 they say how something felt, how something
9 smelled, how something tasted. Contextual
10 details that they wouldn't necessarily know
11 about unless they had been part of an
12 experience.
13 Q. Can you talk a little about the
14 difficulty of influencing a child's sexual
15 abuse disclosure. Is it relatively easy or
16 relatively difficult?
17 A. To coach a child?
18 Q. Yes.
19 A. Well, I relate this to my own
20 experience with my own children and children
21 that I have worked with. I equate this to
22 thinking about children in school plays or
23 telling your child not to repeat something
24 that you've said, or that you want them to
25 repeat and think back in your experience how

1 hard or difficult that was when you think
2 about an abuse scenario, then equate that to
3 an abuse scenario where you're trying to
4 influence a child to talk about something
5 that they really don't have any knowledge
6 about most of the time -- talking about a
7 young child who has no sexual knowledge.
8 Trying to get a child to repeat what you said
9 and not only to repeat that but to repeat
10 that to law enforcement, to the Department of
11 Social Services and possibly to a forensic
12 interviwer, and to many other people that
13 might ask them questions, it can be really
14 challenging to do. When I think about own
15 experiences, working with my children on just
16 memorizing lines for a school play, thinking
17 about how challenging that is for them, I
18 think it is pretty difficult to coach a child
19 to be able to repeat details to multiple
20 interviewers across time and maintain those
21 contextual core details that they are
22 sharing.
23 Q. I think you mentioned this earlier,
24 but can you explain a little more about what
25 you mean by core and contextual details.

1 What are core and contextual details versus
2 noncore and contextual details?
3 A. Core details would be who -- who is
4 the person that did this? What happened?
5 Can the child identify what the disclosure
6 is? What is the act that is being
7 investigated? Who, what, when.
8 We know that children have a really hard
9 time with time. So when I say when, I don't
10 necessarily mean that a child can tell me the
11 exact time, the exact, the exact year.
12 Because really until about thirteen or
13 fourteen years old, time is really still a
14 very abstract concept and it's very difficult
15 for children to be able to remember the exact
16 dates and times.
17 So when I say "when", we mean associating
18 that with maybe a grade that they were in in
19 school, a season that it might have happened
20 in, which house they were living in if it is
21 a child that lived in multiple homes.
22 Something so we can have details that will
23 confirm that time period.
24 So who, what, when, where.
25 If they can talk about where the incident

1 occurred. Did it happen in a house, in a
2 car, which house, which car?
3 Those are the core details, the general
4 details.
5 The contextual details are details as to
6 how something felt, what something smelled
7 like, where other people were if they can
8 remember there were other people around --
9 you know, was anyone else in the room? Was
10 anyone else in the house? What was on the
11 television if this happened when they were in
12 a room and the television was on. You know,
13 what did they see in a room, did they see
14 things on the walls. Those sensory details,
15 things that they saw, felt, smelt, things
16 that typically if someone were going to couch
17 a child to say something are probably not the
18 kinds of things that they would think about
19 to tell a child.
20 Q. Thank you.
21 SOLICITOR JONES: No further questions,
22 Your Honor.
23 THE COURT: Cross-examination.
24 JOHN DEJONG: Thank you, Your Honor,
25 may it please the Court.

1 CROSS EXAMINATION
2 BY JOHN DEJONG:
3 Q. Not all disclosure are true, are
4 they Ms. Galloway?
5 A. No, not all disclosure are true.
6 Q. And there can certainly be false
7 disclosures?
8 A. Yes, there can be.
9 Q. And you would agree with me that
10 children lie?
11 A. Children do lie. They tend to lie
12 about things to keep themselves out of
13 trouble, they tend to lie -- they are not
14 very sophisticated liars, I will say that.
15 Q. Or they lie to get someone out of
16 trouble?
17 A. Ahh, -- they typically lie to keep
18 themselves out of trouble. They are not very
19 sophisticated liars, meaning that they often
20 get caught in a lie.
21 Q. And children have imaginative minds?
22 In other words, they have great imaginations?
23 A. Children do have great imaginations,
24 yes.
25 Q. And they like to pretend?

1 A. They do.
2 Q. And they get angry?
3 A. Children do get angry.
4 Q. At someone in their home, a friend
5 or whoever; correct?
6 A. Children can be angry at anyone,
7 yes.
8 Q. And you were talking about children
9 -- about people that children trust. There
10 may be people in the home that the children
11 are very angry with?
12 A. Yes.
13 Q. If a child didn't like someone in
14 the home, was angry at that someone, they
15 could make up something about that person?
16 A. From my experience, most children
17 don't make up sexual abuse disclosures
18 because they are angry at someone in their
19 home.
20 Q. But you also said that -- I think --
21 I forget which context it was in but maybe in
22 the context of coaching a child who had no
23 previous sexual knowledge, it would be more
24 difficult to coach them?
25 A. It might be difficult -- yes. If a

1 child had not sexual experience or knowledge,
2 then by virtue of coaching them you are
3 exposing them to sexual behavior and
4 knowledge.
5 Q. Right. So I guess the reverse is
6 true, if there has been prior sexual
7 knowledge then a child would not be as hard
8 to coach?
9 A. I don't think I'd say that they
10 wouldn't be as hard to coach. I think that
11 you would have other challenges in attempting
12 to coach a child that had already been
13 sexually abused previously.
14 Q. You do know a little bit about this
15 case, obviously, correct?
16 A. Yes.
17 Q. You had some conversation with the
18 Solicitor?
19 A. I know that it involved sexual
20 abuse.
21 Q. Okay.
22 A. And I know the general dynamic
23 topics that I would be testifying to today.
24 Q. Okay. Would you agree with me that
25 children, by and large, like to please

1 adults?
2 A. Children are -- yes, they do tend to
3 like to please us, particularly at younger
4 ages they do even moreso.
5 Q. Yes, ma'am. So in wanting to please
6 an adult, if you ask them a question and they
7 respond and you continue to ask the same
8 question, will they change that answer to try
9 to please that adult?
10 A. It would depend. They could, which
11 is one of the reasons why when questioning
12 children we use different types of questions
13 when questioning them.
14 Q. I get a little confused when you
15 talk about the process of disclosure and then
16 you talk about core and conceptual details.
17 The process of disclosure, you say 'well, we
18 don't -- that it is not necessarily unusual
19 that we get details.' But then when you talk
20 about conceptual details, you're getting into
21 much more detail. So which one are you
22 looking for?
23 A. When you're talking about the
24 process of disclosure, in an initial
25 disclosure a child may not give all the

1 details. What I'm talking about is --
2 disclosure is a process and the investigation
3 is a process as well.
4 So that initial disclosure, whether or
5 not it is an accidental disclosure or a
6 purposeful disclosure, may be made to
7 caregiver, a teacher, someone else, whomever
8 that person is. So the disclosure that they
9 make then is their initial disclosure.
10 So that initial disclosure, they only
11 give the details or who and what. That
12 disclosure then is likely reported to an
13 investigative agency. Those individuals may
14 contact interviews and ask questions of the
15 child. That would elicit or it might lead to
16 different details being shared, because they
17 might ask different questions than the person
18 who received the initial disclosure did, the
19 mandated reporter.
20 If a forensic interviewer is involved,
21 then they might ask additional questions and
22 additional information may arise.
23 So that process is not only the process
24 of the child but it is also the process of
25 the system as well.

1 So those initial details are likely the
2 core details. There may also be some
3 contextual details as well.
4 But when the person is actually inter-
5 viewing the child and those more narrative
6 interviews that take place is where you would
7 expect more core and contextual details to
8 come out.
9 Does that clear things up?
10 Q. Assume for the moment that there is
11 only one interview, which is a forensic
12 interview.
13 A. Okay.
14 Q. Then there are inconsistencies in
15 that interview. Can you explain that?
16 A. Well, I guess I would -- I would
17 want more information about what you mean by
18 inconsistencies.
19 Are those inconsistencies between what
20 the child has reported across multiple
21 interviews or are there inconsistencies
22 between what the child is reporting and what
23 the adults are reporting?
24 Are those inconsistencies related to time
25 or sequence?

1 I think I would need more information to
2 be able to answer that questions fully.
3 Q. Well, on grooming, I believe you
4 talked a little bit about pornography, right?
5 A. Yes, that could be used as a
6 grooming tool.
7 Q. Grooming, though, by the very term
8 would be over a period of time, would it not?
9 A. I mean, it could be over a period of
10 time. It could be part of a relationship and
11 be a one-time incident that occurred as part
12 of that great relationship. So the grooming
13 itself may not be just that one exposure to
14 pornography. The grooming might be the
15 development of this relationship with this
16 child, exposure to multiple things across
17 time. So it is really more about a
18 relationship building and not just a one time
19 exposure.
20 Q. Multiple events?
21 A. It could be. It could be a single,
22 uh, -- it's the relationship that is the
23 grooming. So it could be that this child was
24 exposed to pornographic material, it could be
25 that this child is offered treats and special

1 attention as part of grooming, it could be
2 that this child is given additional time to
3 do things that the child enjoys doing. It
4 could be multiple things that could be going
5 on.
6 Q. Basically what we're talking about
7 is that it could have been many things?
8 A. Grooming is not just one thing.
9 Yes.
10 Q. You speak in large generalities,
11 don't you?
12 A. (No verbal response).
13 Q. What you're talking are large
14 generalities?
15 A. With grooming, or with the dynamics
16 of abuse?
17 Q. With the dynamics of abuse.
18 A. So when I'm speaking about the
19 dynamics of abuse, these are things that are
20 common among abuse -- these are things that
21 are common in the research and experience of
22 child sexual abuse and child maltreatment.
23 These are things that have been cited
24 repeatedly in multiple peer-reviewed articles
25 and journals and based on actual

1 survivors/victims of child abuse and sexual
2 assault.
3 Q. I understand that you say time is
4 for a young child pretty much outerspace.
5 They don't remember time, do they?
6 A. Yeah, it's pretty much an abstract
7 concept, hard for them to understand.
8 Q. When you get into those conceptual
9 -- if that's the word -- or contextual, I
10 think, details, sequencing of events, would
11 a young child normally remember that?
12 A. The details of?
13 Q. The sequencing of events that they
14 say happened: 'this happened, this happened
15 and then this happened.' Do you agree with
16 that?
17 A. Again, I guess it would depend on
18 the event that they're reporting. Are you
19 asking me if a child is sexually abused, are
20 they able to say what happened before, during
21 and after a sexual abuse incident?
22 Q. During a sexual abuse incident?
23 A. Ask me the question again. I just
24 need to make sure that I understand what
25 you're asking me.

1 Q. Sure. When you get to that
2 contextual detail, a child sequencing an
3 event -- for examples, 'he touched me on my
4 chest, he touched me on my private part, he
5 touched me on my bottom part', would you not
6 expect in that series of events that a child
7 would know the sequence of events? Which
8 happened first? Which happened next? Which
9 happened last?
10 A. Not necessarily. It would depend on
11 the age of the child, it would depend on
12 whether or not this was a one-time incident
13 or multiple incidents and even in a single
14 incident they may not be able to remember the
15 sequence of those events.
16 Even an adult engaged in a sexual act may
17 not remember if their partner kissed them,
18 touched them, here, there, in sequence. So I
19 don't always expect a child to be able to do
20 that as well, particularly if they're not
21 paying attention to those type things.
22 Q. Certainly children learn from
23 example?
24 A. Children learn from examples, they
25 certainly do.

1 Q. And certainly children learn from
2 their experiences.
3 A. They do, (affirmative nod).
4 Q. Whether those are good experiences
5 or bad experiences, they learn?
6 A. Yes.
7 Q. And they had to learn systems and
8 how things operate? Not to a complex degree
9 but they -- they know where our buttons are,
10 don't they?
11 A. I am not sure I know exactly what
12 you mean when you say 'our buttons'.
13 Q. In life's learning experiences, they
14 learn buttons. In that learning process,
15 they learn how to push our buttons?
16 A. By our, do you mean as parents? As
17 adults in general?
18 Q. Adults in general.
19 A. (No verbal response).
20 Q. Adults in general. They know how to
21 push buttons, based on life's experiences?
22 A. Let me make sure that I understand
23 what you're asking me. Are you asking me if
24 children learn how to manipulate adults and
25 do they do that?

1 Q. Yes. I like your word better than
2 mine. Manipulate. They learn how to
3 manipulate, don't they?
4 A. Well, I would say that children
5 learn through experiences. I would say that
6 children do learn how to ask for things that
7 they need and how to seek those things out.
8 If you're -- do I think that children
9 intentionally manipulate these types of
10 situations, in general 'no.'
11 Q. Well, then a child that makes a
12 false allegations, they're not manipulating?
13 A. Well, the vast majority of false
14 allegations in the research and statistics
15 are false denials. We see far more reports
16 of children denying abuse when abuse has
17 actually occurred than children false
18 reporting, or having false disclosures.
19 Of the false disclosures that are not
20 false denials, uh, those fall in the
21 categories oftentimes when it is more about
22 the adult's manipulation of the child and
23 their needs and not about a child making a
24 conscious decision to manipulate an adult or
25 an adult system. What I mean by that is

1 adult coaching a child to do this for their
2 own gratification, not the child wanting to
3 tell other people that they have had a sexual
4 relationship with an adult to get their way.
5 It's not typically how children think to meet
6 their needs.
7 Q. Some adults manipulate children to
8 meet the adult's needs. Right?
9 A. Yes, we do see that.
10 Q. And that could certainly come into
11 the area of sexual molestation, too; couldn't
12 it?
13 A. Where adults are manipulating
14 children?
15 Q. Yes, ma'am.
16 A. Yes, there's a lot of manipulation
17 in sexual abuse.
18 Q. Well, what I'm saying is an adult
19 can get a child in the posture of reporting
20 sexual abuse to manipulate them -- for this
21 adult who is manipulating them, to get what
22 they want.
23 A. So that's when you're talking about
24 coaching a child? Is that ---
25 Q. Well, you call it coaching. I call

1 it manipulation.
2 A. Yes. So that is why when we're
3 looking at children's disclosures we are
4 looking for those types of indicators.
5 Is this a situation where there might
6 have been an adult who would have coached
7 this child?
8 Is what the child saying something that
9 sounds coached, or does it sound like
10 something that the child has actually
11 experienced?
12 All those things are taken into context
13 when looking at a particular case.
14 JOHN DEJONG: Thank you, Ms. Galloway-
15 Williams. It is always a pleasure.
16 THE COURT: Redirect?
17 SOLICITOR JONES: Just briefly.
18 REDIRECT EXAMINATION
19 BY SOLICITOR JONES:
20 Q. Ms. Galloway-Williams, defense
21 counsel asked a little bit about coaching.
22 In your experience and in your training, when
23 trying to detect coaching, do you look at the
24 particular words that the child uses as they
25 described a particular event?

1 A. Yes.
2 Q. And why is that important?
3 A. That would be something else that is
4 included in those contextual details, is the
5 child using words that are appropriate to
6 their development and the way that they speak
7 about other things? Or are they using words
8 that sound more adult-like.
9 Certainly when children describe
10 disclosures, are they using child-like
11 language, are they describing it the way that
12 we as adults describe it, or are they
13 describing it the way that a child who might
14 have limited sexual knowledge would describe
15 it?
16 We also look at the type of incidents
17 that they are describing. Some of the types
18 of abuse that we see with children are not
19 typical types of sexual behavior that adults
20 engage in. So if the child is describing a
21 sexual interaction, you know, an adult who is
22 coaching them might not even think of to tell
23 them. So, you know, is this the type of
24 touching that is happening a certain way,
25 that may not be a typical type of intimate

1 sexual interaction that an adult would have.
2 Is that -- does that make sense?
3 Q. You mean that an adult coaching a
4 child would describe, uh, an adult sexual
5 experience, is that what you're saying?
6 A. Yeah. Saying that, you know, some-
7 times when adults are led to coach children
8 they may not be -- they might use adult
9 language to describe that rather than
10 describing it to the child in the way that a
11 child would describe it happening to them.
12 Q. So is it important when being
13 interviewed, when the therapist or
14 interviewer asks the child what they call a
15 particular private part?
16 A. Yes.
17 Q. Is that important?
18 A. Yes. In a lot of interviews,
19 anatomy identification is used just to make
20 sure that the interviewer or assessor is
21 using the same language that the child is.
22 So it's important to know what they call
23 their body parts and to ask them for that
24 information rather than giving that
25 information to them.

1 SOLICITOR JONES: Thank you, Your Honor.
2 No further questions.
3 THE COURT: Recross?
4 JOHN DEJONG: No, Your Honor, no recross.
5 THE COURT: You may step down.
6 JOHN DEJONG: No objection to her being
7 excused.
8 THE COURT: And you are excused.
9 (WITNESS STEPS DOWN)
10 SOLICITOR JONES: Your Honor, at this
11 time the State rests.
12 THE COURT: Ladies and gentlemen, the
13 State has rested, so that is the extent of
14 the evidence that they will be presenting in
15 their case in chief.
16 There are some matters that we need to go
17 over, so I'll ask you to go back to your jury
18 room again and we will be with you shortly.
19 Do not discuss the case.
20 (JURY OUT @ 4:13 P.M.)
21 THE COURT: The State has rested. Any
22 Motions?
23 JOHN DEJONG: If it please the court, at
24 this point in time on behalf of Mr. Bagwell,
25 I would make a Motion for directed verdict.

1 I understand the standard but in this case I
2 would submit that there was no substantial
3 credible evidence from which a jury could
4 find guilt.
5 I think substantial and credible go
6 together. If you look at the interview as a
7 whole, if you look at the other testimony,
8 the inconsistencies, even in the video not to
9 mention the other inconsistencies when Dr.
10 Croswell was testifying, that none of this
11 made sense. I would submit that at this
12 point in time to allow the case to go to the
13 jury is only going to allow them to speculate
14 or use conjecture to arrive at a verdict. In
15 order to arrive at a verdict of guilty would
16 require pure speculation.
17 THE COURT: I think there was evidence
18 in the video and from the victim on the stand
19 that rises to the level that would allow it
20 to go to the jury to make that decision, so I
21 respectfully deny your Motion
22 JOHN DEJONG: Thank you, Your Honor.
23 THE COURT: Any other Motion?
24 JOHN DEJONG: No, sir, but I would like
25 a minute to go to the bathroom.

1 THE COURT: Are you ready to go
2 forward on any of yours?
3 JOHN DEJONG: No, sir, I've got the one
4 witness that we discussed.
5 THE COURT: Okay. Well, why don't you
6 go to the restroom and then we will discuss
7 it.
8 (BRIEF RECESS)
9 (DEFENDANT PRESENT)
10 THE COURT: You anticipate calling the
11 Colleton County ---
12 JOHN DEJONG: That is the plan, Your
13 Honor. What I would like to do is, I've been
14 over with Mr. Bagwell his right to testify,
15 his right not to testify. As I tell all of
16 my clients, they can wait until the State
17 rests to make that decision. We did start
18 talking about that -- "we" being me and my
19 client and his wife -- a little bit shortly
20 after lunch. I don't think he's confused
21 about his rights. He is confused about what
22 he wants to do. I understand that has got to
23 be his decision.
24 THE COURT: I am going to give you
25 time. We are not going to start him this

1 afternoon.

2 JOHN DEJONG: Thank you, Your Honor.

3 THE COURT: I guess one of the

4 questions that you want to know from me,

5 though, is how much I will let, if any, this

6 guy from Colleton County testify?

7 JOHN DEJONG: Yes, sir.

8 THE COURT: I guess I don't have

9 sufficient information to know that. I've

10 actually reviewed the case law and my

11 question is going to be is that collateral or

12 not.

13 JOHN DEJONG: Well, --

14 THE COURT: Without giving me more

15 information as to what that information is,

16 I don't know that I can make that decision.

17 SOLICITOR JONES: Another problem, Your

18 Honor, is that defense counsel, when he had

19 the victim on the stand, he did not show her

20 the statement, give her an opportunity to say

21 'yes, I said that', 'no, I didn't say that.'

22 He just wants to bring a third party to

23 testify to hearsay in front of the jury, that

24 another witness said something different

25 previously.

1 THE COURT: You know, I think my
2 analysis is whether it is collateral or not.
3 That's what I have got to figure out. I know
4 that there was some recanting. I know that
5 there is somebody from Colleton County ---
6 JOHN DEJONG: I will be very candid with
7 the court because I have been with my client,
8 I may have the wrong officer under subpoena.
9 I don't know if I can correct that tonight or
10 not. I'm working on it as we speak but I
11 don't know. Frankly, I haven't really talked
12 to the officer that I have under subpoena
13 from Colleton County. I'm kind of in a
14 quandary here myself.
15 THE COURT: I don't want to complicate
16 your quandary, but I don't know how I can
17 make a informed decision on that without
18 proffered testimony.
19 JOHN DEJONG: I understand that, Your
20 Honor, but I won't have anybody here until
21 tomorrow morning.
22 THE COURT: I don't have any problem
23 with that. It sounds like if -- if you do
24 proceed with your case, it's not going to be
25 very long. I don't know if you plan on -- I

1 am trying to figure out if we could get this
2 case to the jury by lunchtime tomorrow.
3 SOLICITOR JONES: Yes, sir, Your Honor,
4 absolutely -- but I don't know how many
5 witnesses he is going to call.
6 THE COURT: Sounds like there is a
7 possibility of two, one or none.
8 SOLICITOR JONES: He says he doesn't
9 know what the officer is going to say. He
10 wrote a report that is about ten sentences
11 long. He's going to say that the child
12 recanted to him, said that it didn't happen.
13 But, again, without defense counsel -- the
14 proper procedure is for him to confront the
15 victim first with that statement and give her
16 an opportunity to say 'yes, I said that' or
17 'no, I didn't say that.'
18 But he said, 'did you ever recant, did
19 you ever tell somebody that this didn't
20 happen' and she said, 'I don't remember.'
21 In my mind -- from my understanding of the
22 Rules, that's where it -- where the issue
23 ends. He has to live with that answer.
24 THE COURT: If it's collateral. Isn't
25 that the *Wiggins* case? It is collateral if

1 it has to do with that answer. It is not
2 collateral if he doesn't -- extrinsic
3 evidence.
4 SOLICITOR JONES: I think the extrinsic
5 evidence is a written statement of the --
6 from the witness, not a separate witness,
7 third party to come in here and say, 'this is
8 what the witness said.' Then we're all of a
9 sudden trying a little issue that distracts
10 the jury from the issue at hand.
11 THE COURT: And that's why the analysis
12 of is it collateral or not. It all goes back
13 to that. At least that's my analysis.
14 JOHN DEJONG: You keep talking about a
15 written statement. There was no written
16 statement.
17 SOLICITOR JONES: I know. That's what
18 I ---
19 THE COURT: All right.
20 JOHN DEJONG: I can't offer something
21 that doesn't exist.
22 THE COURT: All right, we need to bring
23 the jury out and tell them that they can go
24 home for the day.
25 Then if anybody has any jury charges,

1 they need to start getting them my way.
2 JOHN DEJONG: I don't know if Your Honor
3 wants to do it this evening, to *voir dire* my
4 client as to whether he wants to testify.
5 THE COURT: Okay. You want to do that
6 now?
7 JOHN DEJONG: Let's get the jury out.
8 THE COURT: And then we can follow up
9 in the morning. Okay, bring us the jury.
10 (JURY IN @ 4:30 P.M.)
11 THE COURT: Ladies and gentlemen, as I
12 indicated before, the State has closed their
13 case. Since it is 4:30 and there are things
14 that we have to go over at this point, it
15 doesn't make sense for us -- this is a good
16 time for y'all to break, because we still
17 have some matters to go over. We will break
18 for the day as far as y'all are concerned.
19 Please come back at 9:30 in the morning.
20 I know y'all are tired of hearing this,
21 but don't discuss the case among yourselves,
22 with family members, friends or anything like
23 that. Do not do any independent research
24 about this, do not pay any attention to any
25 news media coverage: TV, radio, newspaper,

1 social media especially. Also if you're
2 contacted by anybody other than the clerk's
3 office, please let the bailiff know. Y'all
4 have a good evening, see you in the morning
5 at 9:30.
6 (JURY OUT @ 4:32 P.M.)
7 THE COURT: Mr. Bagwell, raise your
8 right hand.
9 DEFENDANT: (Complies).
10 THE COURT: Do you swear to tell the
11 truth, the whole truth and nothing but the
12 truth, so help you God?
13 DEFENDANT: I do.
14 THE COURT: All right. Now, as I am
15 sure your attorney has discussed with you --
16 first of all, for the record, you're David
17 Bagwell; is that right?
18 DEFENDANT: Yes, sir.
19 THE COURT: Now I'm going to ask you --
20 I'm going to talk to you about your right to
21 testify and your right not to testify, just
22 to make sure that you know your rights. As
23 your attorney indicated, you make the final
24 decision.
25 DEFENDANT: Yes, sir.

1 THE COURT: But you have the absolute
2 right to testify on your behalf. You also
3 have the right to remain silent, that is your
4 Constitutional right.
5 If you decide that you don't want to
6 testify, then I will instruct the jury that
7 they are not to consider that in any way
8 against you because the burden will still be
9 on the State to prove you guilty beyond a
10 reasonable doubt. Okay?
11 DEFENDANT: Yes, sir.
12 THE COURT: So therefore if you do not
13 testify -- and I'm sure your attorney has
14 discussed with you that if you decide not to
15 testify and y'all don't put up any evidence,
16 there are certain strategies for that but
17 that could not be used against you; even if
18 you did put up other evidence, the fact that
19 you don't testify cannot be held against you.
20 Now, if you do decide to take the stand
21 then you're subject to the same cross-
22 examination as any other witness. That would
23 include any prior criminal record -- is there
24 any prior criminal record that could be used
25 for cross-examination purposes?

1 SOLICITOR JONES: I apologize, Your
2 Honor, I can't remember. I know that he does
3 have several convictions. Let me look at
4 that really quick. (Upon review), he has a
5 breach of trust charge/conviction, a petit
6 larceny charge/conviction, financial card
7 theft, financial card fraud, another petit
8 larceny, and a habitual traffic offender.
9 THE COURT: Which ones do you take the
10 position that you would be able to cross-
11 examine him on?
12 SOLICITOR JONES: All the ones that I
13 read, I believe, were crimes of dishonesty
14 and the habitual traffic conviction was one
15 where he could have been sentenced for more
16 than a year, a felony. And he does have a
17 domestic violence conviction that we've
18 already talked about, so I don't know how
19 you feel about me crossing him on those.
20 THE COURT: There have been
21 discussions of arrests on those, but have
22 there been convictions?
23 JOHN DEJONG: I don't recall any
24 discussions of convictions.
25 SOLICITOR JONES: I think the child

1 testified that he was convicted of that as
2 well.
3 THE COURT: I think the question was
4 asked but she didn't -- and then the question
5 was rephrased, did he go to jail? I think
6 was the ---
7 SOLICITOR JONES: (Affirmative nod), did
8 he go to jail.
9 THE COURT: Or that was Bobby McCann.
10 Anyway. The reason we are discussing is
11 because, Mr. Bagwell, do you understand that
12 you could be cross-examined on convictions
13 and that your criminal record could be
14 relevant in your cross-examination?
15 DEFENDANT: Yes, sir.
16 THE COURT: I just want to make sure
17 that you're aware should you testify that is
18 one of the things that can be used against
19 you. Do you understand your rights, the
20 right to testify and your right not to
21 testify?
22 DEFENDANT: Yes, sir.
23 THE COURT: Do you understand all the
24 factors that go into that decision?
25 DEFENDANT: Yes, sir.

1 THE COURT: Have you had sufficient
2 time to talk with your attorney about these
3 issues and whether you should testify or not
4 testify?
5 DEFENDANT: Well, -- yes and no. I
6 still want to ---
7 THE COURT: I don't want you to go into
8 any discussions. I'll go through this and
9 then I'll ask you in the morning your
10 decision. It sounds like, first of all, that
11 you want some additional time to talk to your
12 attorney.
13 DEFENDANT: Yes, sir.
14 THE COURT: Do you have any questions
15 of the court about your rights?
16 DEFENDANT: Actually I do.
17 THE COURT: Okay.
18 DEFENDANT: Some of the evidence that
19 I've had for three years ---
20 THE COURT: Hold on. I'm just talking
21 about your right to testify or not testify.
22 DEFENDANT: Oh, all right.
23 THE COURT: Do you have any questions
24 regarding that?
25 DEFENDANT: No, sir.

1 THE COURT: What I am going to do is
2 we're going to adjourn today, you'll have
3 time to talk with your attorney and in the
4 morning -- your attorney will probably
5 indicate to me whether you want to testify or
6 not, but I'm going to ask you again at that
7 point if you fully understand your rights as
8 I have explained them to you, have you had
9 plenty of time to talk to your attorney, and
10 do you wish to testify or not. Those are the
11 three questions that I will ask you in the
12 morning and you can let me know at that
13 point. Okay?
14 DEFENDANT: Okay.
15 THE COURT: Anything else before we
16 break for the day?
17 SOLICITOR JONES: Nothing from the
18 State.
19 JOHN DEJONG: Nothing on behalf of Mr.
20 Bagwell. I would ask if maybe security could
21 put up with me for a few minutes so we can
22 have a discussion about whether he wants to
23 testify or not, and to have his wife present.
24 THE COURT: That's up to Security.
25 JOHN DEJONG: Thank you.

1 THE COURT: Be here t 9:30. If you
2 have any jury charges, you can e-mail them,
3 fax them, drop them by, send them by Pony
4 Express. Get them to me.
5 SOLICITOR JONES: Your Honor, Toni
6 Bagwell -- Toni Durnil received a subpoena
7 for today's date, period, no other dates.
8 She was here today and yesterday. She
9 desperately wants to be released so that she
10 can go back to work.
11 JOHN DEJONG: I release her.
12 THE COURT: This is the mother of the
13 victim.
14 SOLICITOR JONES: That's correct.
15 THE COURT: Mr. Dejong, you said that
16 you release her?
17 JOHN DEJONG: That's correct, Your Honor.
18 (COURT IN RECESS)
19 (TRANSCRIPT CONTINUED NEXT PAGE)
20
21
22
23
24
25

1 AUGUST 30, 2017 9:30 A.M.
2
3 (DEFENDANT PRESENT)
4 THE COURT: Do you want to talk to him
5 first or present the proffer?
6 JOHN DEJONG: I've talked to Mr. Bagwell
7 to let him know what is going on. What we'd
8 like to do first is proffer the testimony of
9 Mr. Nettles, get Your Honors' ruling. I
10 don't want to keep this fine officer here any
11 longer than we need to.
12 THE COURT: Okay.
13 JOHN DEJONG: For the purpose of proffer,
14 I would call Sgt. Lonnie Nettles to the
15 stand.
16 (WITNESS TAKES STAND)
17 LONNIE NETTLES, having been sworn to
18 tell the truth, and nothing but the truth,
19 testified as follows:
20 DIRECT EXAMINATION
21 BY JOHN DEJONG:
22 Q. Who are you employed with, Sgt.
23 Nettles?
24 A. Colleton County Sheriff's Office.
25 Q. How long have you been with them?

1 A. A little over six years now.
2 Q. All right. Were you employed by the
3 Colleton County Sheriff's office in December
4 of 2013?
5 A. Yes, sir.
6 Q. Around December 30th, 2013, did you
7 take a report on a criminal sexual conduct
8 case?
9 A. I did.
10 Q. Who was the complainant in that
11 case?
12 A. The complainant was Toni Antoinette
13 Bagwell.
14 Q. Who was the alleged victim in that
15 case?
16 A. There were two alleged victims, two
17 juveniles, a male and a female: Ericka
18 Durnil and Nicholas Durnil.
19 Q. Was an arrest warrant ever issued in
20 that case?
21 A. There was no arrest warrant issued.
22 Q. Was David Bagwell -- excuse me, who
23 was the alleged suspect?
24 A. The suspect was David Scott Bagwell.
25 Q. And was David Scott Bagwell ever

1 arrested?
2 A. He was not.
3 Q. Is the case open at this point in
4 time?
5 A. It is not.
6 JOHN DEJONG: That would be the extent
7 of what I would ask him, Your Honor.
8 THE COURT: Do you want to ask him
9 anything?
10 SOLICITOR JONES: No, sir.
11 THE COURT: I think this -- I mean, I
12 think this has all kinds of evidentiary --
13 constitutes all kinds of problems. For one
14 thing, I think that the prejudice clearly
15 outweighs the probative value because it
16 would allow the jury to have to speculate
17 'okay, there was a report made but why wasn't
18 it made?' Was it because the solicitor
19 decided that there wasn't a case there? Was
20 it because the case was retracted by the
21 victims? Did somebody make a finding that
22 there wasn't probable cause? You know, a
23 statement -- and it is also a claim made by
24 the mother, who hasn't testified. I just
25 think -- I don't believe that this is going

1 to be admissible evidence.
2 JOHN DEJONG: Very well, Your Honor.
3 THE COURT: I'm sorry you had to drive
4 up here for that.
5 WITNESS: No problem.
6 (WITNESS STEPS DOWN)
7 THE COURT: Therefore, I deny your
8 Motion to present this witness.
9 All right. Now, shall we talk further
10 to Mr. Bagwell about his decision ---
11 JOHN DEJONG: I will offer him to you,
12 Your Honor. He has indicated to me that he
13 is going to testify.
14 THE COURT: Mr. Bagwell, I went through
15 everything yesterday. Do you recall our
16 conversation yesterday about ---
17 DEFENDANT: Yes, sir.
18 THE COURT: --- your right to testify,
19 your right to not testify. Do you have any
20 questions regarding that?
21 DEFENDANT: No, sir.
22 THE COURT: Have you had sufficient
23 time to talk with your attorney about whether
24 your should testify or not testify?
25 DEFENDANT: Yes, sir.

1 THE COURT: Your attorney has indicated
2 that you do wish to testify.
3 DEFENDANT: Yes, sir.
4 THE COURT: And that is your decision?
5 DEFENDANT: Yes, sir.
6 THE COURT: In light of understanding
7 all your rights, that is what you wish to do?
8 DEFENDANT: Yes, sir.
9 THE COURT: That's fine. Are we ready
10 to bring the jury in? Anything from the
11 State?
12 SOLICITOR JONES: Nothing from the
13 State.
14 THE COURT: Anything else before we
15 bring the jury in?
16 JOHN DEJONG: No, Your Honor.
17 THE COURT: Bring the jury in.
18 CLERK: We don't have all the jurors,
19 Your Honor.
20 THE COURT: Then we will be at-ease
21 until they all get here.
22 (BRIEF RECESS)
23 (DEFENDANT PRESENT)
24 (JURY IN @ 9:45 A.M.)
25 THE COURT: Good morning, ladies and

1 gentlemen. We will now -- at the end of the
2 day yesterday, the State closed their case,
3 so we will now -- Mr. Dejong?
4 JOHN DEJONG: May it please the Court,
5 Your Honor, the defense would call David
6 Scott Bagwell.
7 (WITNESS TAKES STAND)
8 DAVID SCOTT BAGWELL, having been sworn
9 to tell the truth, and nothing but the truth,
10 testified as follows:
11 DIRECT EXAMINATION
12 BY JOHN DEJONG:
13 Q. State your name again, please.
14 A. David Scott Bagwell.
15 Q. Now, if you will stay that close to
16 the microphone, we'll be able to hear you.
17 A. Okay.
18 Q. Mr. Bagwell, did you ever tie up
19 [redacted]?
20 A. No, sir, I did not.
21 Q. Did you ever fondle [redacted]?
22 A. No, sir, I did not.
23 Q. Did you keep a rope in your bedroom?
24 A. No, sir, I do not.
25 Q. Did you ever keep a green rope in

your bedroom?

A. No, sir.

Q. Did you ever keep a red rope in your bedroom?

A. No, sir.

Q. Did you ever keep a tan rope in your bedroom?

A. No, sir.

Q. Did you ever move MINOR CHILD from her bed into your bed or her mother's bed while she was asleep?

A. No, sir.

Q. Did you discipline MINOR CHILD?

A. When needed; yes, sir.

Q. How old are you, Mr. Bagwell?

A. Thirty-nine years old.

Q. Are you currently married?

A. Yes, sir.

Q. Who are you married to?

A. Meghan Owens Bagwell.

Q. How long have y'all been married?

A. Since October of last year.

Q. Did you ever live on Cleo Chapman Highway?

A. Yes, sir, back in 2013.

1 Q. When did you move in there, do you
2 recall?
3 A. I want to say it was right before
4 the summer, possibly, of 2013.
5 Q. Let me digress a moment here. Do
6 you know who Toni Bagwell or Toni Durnil is?
7 A. Yes, sir.
8 Q. Who is she?
9 A. She is my ex-wife.
10 Q. When were you and she married?
11 A. September 21, 2012.
12 Q. And how long did you live at the [redacted]
13 Cleo Chapman Highway address?
14 A. I'd say between five and seven
15 months, possibly.
16 Q. Do you recall about when you left
17 the Cleo Chapman Highway address?
18 A. I believe that it was October, late
19 September or early October.
20 Q. Where did you move to?
21 A. To Walterboro.
22 Q. Do you remember that address?
23 A. [redacted] Peniel Road, I believe.
24 Q. How long did you live there?
25 A. About a week.

1 Q. Then where did you move from there?
2 A. To Ruffin, South Carolina.
3 Q. Sorry?
4 A. Ruffin, South Carolina.
5 Q. Where is that?
6 A. That's probably about thirty minutes
7 from Walterboro, between Walterboro and
8 Orangeburg.
9 Q. What county is that in?
10 A. Colleton.
11 Q. All right. How long did you live in
12 Colleton County?
13 A. Altogether probably a month or two,
14 two months maybe.
15 Q. What is the time and date frame that
16 you lived in Colleton County?
17 A. We moved to Colleton the first time
18 in October, then we moved to Victoria Lane in
19 Ruffin November, and then about the middle of
20 November we moved to Beulah Road in Smoaks.
21 Q. What county is that in?
22 A. That's Colleton also,
23 Q. How long did you live in Smoaks?
24 A. Until December. The end of
25 December, right after Christmas, we moved to

1 Branchville.
2 Q. When you lived in Smoaks, did you
3 have occasion to talk to law enforcement
4 while you were there?
5 Q. On the telephone, yes.
6 Q. Were you ever arrested by Colleton
7 County ---
8 SOLICITOR JONES: I object to this line
9 of questioning, Your Honor.
10 THE COURT: Sustained.
11 JOHN DEJONG: I'm sorry, I didn't hear
12 Your Honor.
13 THE COURT: I am going to sustain the
14 objection unless you lay some other
15 foundation.
16 JOHN DEJONG: Very well. I am not sure
17 which part that he objected to, so we will
18 move forward and we'll see.
19 DIRECT EXAMINATION CONTINUED
20 BY JOHN DEJONG:
21 Q. Were you ever arrested in Colleton
22 County?
23 A. No, sir.
24 SOLICITOR JONES: Objection, Your
25 Honor.

1 THE COURT: All right. Sustained. I
2 ask that that be stricken. Ladies and
3 gentlemen, once something is stricken, that
4 is not something that you are to consider in
5 your deliberations.
6 JOHN DEJONG: All right.
7 DIRECT EXAMINATION CONTINUED
8 BY JOHN DEJONG:
9 Q. After Colleton County where did you
10 live?
11 A. We moved to Branchville, Ridge
12 Street.
13 Q. When you say "we", who ---
14 A. Me and Toni and the kids and her
15 mother.
16 Q. Let's go back to [redacted] #Cleo Chapman
17 Highway a little bit, who lived at that
18 address?
19 A. Me, Toni, MINOR CHILD, BROTHER and for
20 about half the summer I got my three kids.
21 That's pretty much who lived there.
22 Q. When you left Cleo Chapman Highway,
23 did your kids go with you?
24 A. No, sir. They was -- Toni and my
25 ex-wife, they got into a fight and since then

1 I haven't seen my children.
2 Q. When you and Toni got married, were
3 you working?
4 A. No, sir.
5 Q. Do you work now?
6 A. No, sir.
7 Q. Why not?
8 A. I am disabled.
9 Q. What is the nature of your
10 disability?
11 A. I have PTSD, am bipolar. I was
12 physically beat as a child up until I was old
13 enough to get out of the house. It's caused
14 me a lot of grief in my life.
15 Q. For the better part of the time you
16 and Toni were married, who was the bread
17 winner?
18 A. Toni was.
19 Q. So when she worked, who stayed home
20 with the children?
21 A. I did.
22 Q. Was that basically on a twenty-four
23 hour basis?
24 A. Yes. I was basically mom and dad to
25 all five of the kids when they was there.

1 Q. Did you ever show special treatment
2 to one child over another child?
3 A. No, sir, I was not allowed to do
4 that.
5 Q. Did you ever show MINOR CHILD or any
6 other child pornography?
7 A. No, sir, I was not allowed to have
8 pornography. I don't particularly like
9 pornography.
10 Q. Let's talk a little bit about you
11 disciplining the children. What forms of
12 discipline would you use?
13 A. I would put them in the corner. I
14 would also make them do a chair exercise, to
15 put their back up against the wall and squat
16 down like they were sitting in a chair.
17 Q. Did you ever take anything away from
18 them as punishment?
19 A. Yes, sir. If they wouldn't do their
20 chores or clean up, make their beds, I'd take
21 away their Nintendo PlayStation, Nintendo DS.
22 I'd take that away from them if they didn't
23 clean their room properly or, you know, do
24 what they were supposed to do.
25 Q. In December of 2013, do you remember

1 disciplining the children?
2 SOLICITOR JONES: I object again to the
3 line of questioning, Your Honor.
4 THE COURT: What grounds?
5 SOLICITOR JONES: Relevance.
6 THE COURT: Overruled.
7 DIRECT EXAMINATION CONTINUED
8 BY JOHN DEJONG:
9 Q. In December of 2013, do you remember
10 disciplining the children?
11 A. Yes, sir.
12 Q. How -- what form of discipline did
13 you use that time?
14 A. We'd just moved in over to Beulah
15 Road in Smoaks and we was trying to get
16 everything unpacked, get everything cleaned
17 up, get stuff situated. I put them in their
18 room, MINOR CHILD and BROTHER in their room to
19 clean their room to get everything situated,
20 to get their clothes put away, toys. They
21 refused to do it. They sat in there playing
22 their DS. So I took their DS away from them
23 and they got mad at me.
24 Q. What was their reaction to that?
25 A. They got really mad.

1 Q. How would you describe your
2 relationship with Toni Bagwell? A happy
3 relationship? A loving relationship? A
4 stormy relationship?
5 A. It was kind of stormy until we moved
6 in with her mother, when we moved to
7 Walterboro. After that it was just -- went
8 kaput. There was no relationship after that.
9 Q. When did you and Toni separate?
10 A. Let's see -- April 14th.
11 Q. Once you separated, where did you
12 go?
13 A. I moved in with Meghan.
14 Q. You were still married to Toni at
15 that point in time?
16 A. Yes, sir.
17 Q. Was she aware that you'd moved in
18 with Meghan?
19 A. Yeah. She was very mad about that.
20 Q. Okay. So I guess down in Colleton
21 County and in Orangeburg, both, you had a bit
22 of a stormy relationship with Toni?
23 A. Yes, sir.
24 Q. Without going into a great deal of
25 detail, tell us a little bit about that.

A. Like I said, when we moved to Walterboro, her mother was supposedly having heart problems or something, so we moved down there to help her. Toni was a CNA, so she was going to move down and help her mom.

We got down there and her mom started running the house. I didn't like that because I'm the husband, I'm supposed to be the one that you talk to about stuff. You discuss stuff with your mom and then all of a sudden I'm out of the picture, you know.

We started to not get along. I was working at a friend of mine's place. That's where I met Meghan at. When Toni found out that me and Meghan had been talking to each other, she had me locked up.

Q. For what?

A. CDV.

Q. Was that in Colleton County?

A. No, it was in Orangeburg County. The first one was in Branchville and the second one was in Orangeburg.

Q. Where was the first one?

A. Branchville.

Q. What county is that?

1 A. That's Orangeburg County.
2 Q. Where was the second one?
3 A. Orangeburg.
4 Q. Both of them were in Orangeburg?
5 A. Right. I was living at [redacted] Bridge
6 Street when I got the first one. Well, I
7 wasn't living there, that's where she was
8 living at after we had separated.
9 Like I said, me and Meghan had come back
10 to Pickens so that I could get away from her.
11 She wasn't leaving me alone, she kept
12 following me around town. I had to have the
13 police escort her -- to keep her away from
14 me.
15 SOLICITOR JONES: I am going to object
16 to relevance on this, Your Honor.
17 THE COURT: I will allow it.
18 DIRECT EXAMINATION CONTINUED
19 BY JOHN DEJONG:
20 Q. Go ahead, Mr. Bagwell.
21 A. The police chief down there at the
22 Branchville police station told me that she
23 could -- she and her mother would ride by,
24 screaming obscenities at me and I had to call
25 the police. He was like ---

1 SOLICITOR JONES: Your Honor, I am going
2 to object to relevance on this.
3 THE COURT: Well, I think it is
4 relevant, so I'm going to let it go -- as
5 long as it is not hearsay.
6 DIRECT EXAMINATION CONTINUED
7 BY JOHN DEJONG:
8 Q. Go ahead.
9 A. He pulled up while I was on the
10 phone with her and she immediately said, 'Oh,
11 he said...' ---
12 SOLICITOR JONES: Objection, Your Honor.
13 JOHN DEJONG: Don't say what she said or
14 he said.
15 THE COURT: Sustained as to hearsay.
16 DIRECT EXAMINATION CONTINUED
17 BY JOHN DEJONG:
18 Q. Go ahead but don't say what she
19 said.
20 A. Okay. Sorry.
21 Q. Go ahead.
22 A. Well, he pulled up and ended the
23 situation. That's when I decided to move
24 back to Pickens.
25 When we was in Pickens, I got a phone

1 call from the Branchville Police that said
2 that I had a warrant for a CDV.
3 THE COURT: All right, that's hearsay.
4 DIRECT EXAMINATION CONTINUED
5 BY JOHN DEJONG:
6 Q. Don't get into what people say.
7 A. Okay. Sorry.
8 Q. Did you go back to Branchville?
9 A. Yes, sir, I had to.
10 Q. Then what happened?
11 A. I went to jail for the whole month
12 of May. Every time I'd get out of jail, I'd
13 go right back to jail for CDV or breaking my
14 bond or -- just a number of things that
15 happened.
16 Q. So when did you finally break all
17 ties with Toni Bagwell?
18 A. That would be after I had one CDV
19 dropped, another CDV where I had to plead no
20 contest because they wouldn't accept my
21 evidence. After that, I haven't heard or
22 talked to her since.
23 Q. Well, you just mentioned that you
24 had those CDVs. You've had a couple of other
25 problems with the law, have you not?

A. Yes.

Q. Let me just ask you, were you convicted of breach of trust?

A. Yes, sir, I was.

Q. Where was that?

A. That was in Pickens County.

Q. How about financial card -- financial transaction theft?

A. Yes, sir, that was in Pickens County also.

Q. And financial transaction card fraud?

A. That was in Pickens County also.

Q. Two counts of financial transaction card fraud?

A. That was in Pickens County.

Q. Petit larceny?

A. That was in Easley.

Q. All right. Did you have trials on those or did you plead guilty?

A. I pled guilty, Your Honor -- sir.

Q. If you know, who made the report to Orangeburg County on the physical abuse and neglect?

A. That was me.

1 Q. Pardon?
2 A. That was me.
3 Q. That was you?
4 A. Yes, sir.
5 Q. So you called DSS and reported it?
6 A. Yes, sir.
7 Q. A typical day in your household, can
8 you just kind of explain that a little bit?
9 A. I would wake up about 5:30. The
10 kids would get on the bus about 6:30. I'd
11 get up, get the kids their bath, do MINOR CHILD's
12 hair, fix BROTHER's hair because by that time
13 their mama had already gone to work. I would
14 fix their hair so they wouldn't cry when they
15 come home from school because they got picked
16 on because their hair was all nappy. So I'd
17 get them ready, make their lunch, whatever,
18 put them on the school bus.
19 You know, I'd pick the house up, wash
20 clothes or whatever I had to do until they
21 got home from school.
22 Then I would make them dinner, because
23 she worked two shifts. She worked first and
24 second shift, so she didn't get home until
25 after ---

1 Q. She worked what?
2 A. She worked first and second shift.
3 Q. What hours?
4 A. She would get to work about 6:30 and
5 wouldn't get home until probably about
6 midnight or so.
7 Q. 6:30 in the morning?
8 A. Yes, sir.
9 Q. Okay.
10 A. So I was -- I was mom and dad to
11 [redacted] and [redacted]. I treated them no
12 different than I treated my kids. I loved
13 them. I raised [redacted] since he was a little
14 over a year old.
15 Q. Did -- it's a bit of a personal
16 question, but I will ask anyway. When y'all
17 lived at [redacted] Cleo Chapman Highway, did you
18 and Toni Bagwell share a bed?
19 A. Yes.
20 Q. All right. Did you and she share a
21 bedroom?
22 A. Yes, sir.
23 Q. Okay. You have given quite a few
24 addresses, Mr. Bagwell, that you and Toni and
25 the children lived at. I asked you about 507

1 Cleo Chapman Highway. Did you ever tie
2 MINOR CHILD up at any of those addresses?
3 A. No, sir.
4 Q. Did you ever fondle her at any of
5 those addresses?
6 A. No, sir.
7 Q. Did you ever lock her in the
8 bedroom?
9 A. No, sir.
10 Q. Did you ever lock her in the bedroom
11 at Cleo Chapman Highway?
12 A. No, sir.
13 Q. When MINOR CHILD was home, was BORTHER
14 usually there?
15 A. Yes, sir.
16 Q. Would you say most of the time, some
17 of the time or a little of the time or how
18 would you ---
19 A. I would say 99.9 percent of the time
20 or a hundred percent of the time. If MINOR CHILD
21 was home, BROTHER was home too. They went to
22 the same school, they were all there at the
23 same time.
24 Q. How old was BROTHER?
25 A. I think he was six.

1 Q. How old was MINOR CHIL?
2 A. I think she was, like, nine.
3 Q. Just so that I am sure, I don't
4 think I asked this question but you're not
5 the biological father or either MINOR CHILD or
6 BROTHER, are you?
7 A. No, sir.
8 Q. This particular case that we are
9 here for, have been for the last two-plus
10 days now, did you ever talk to law
11 enforcement? Did you ever talk to the cops?
12 A. No, nobody ever -- the only time
13 that I ever had contact with them was when I
14 got arrested for it. I just so happened to
15 be at a friend's house and an ambulance was
16 called. The police came out with the
17 ambulance because -- I don't know why, but
18 that's the first time that I knew that I had
19 warrants.
20 Q. Okay.
21 A. I had no clue.
22 Q. You had not talked to them before
23 them?
24 A. No, sir. I've had the same phone
25 number since me and Toni separated and

1 I've yet to get a phone call from anybody.
2 Q. Did you ever talk to them after
3 that?
4 A. No, they wouldn't talk to me.
5 Q. When was the last time that you got
6 out of jail on one of those criminal domestic
7 violence?
8 A. That would be a few months back, I
9 believe.
10 Q. When?
11 A. A few months back.
12 Q. I'm talking about when you lived in
13 Colleton County. Is that what you're talking
14 about?
15 A. No, no, I'd been living in
16 Orangeburg.
17 Q. How long did you spend in jail?
18 A. Almost -- I'd say about thirty-five
19 days, give or take.
20 JOHN DEJONG: The witness is with you,
21 Mr. Jones.
22 SOLICITOR JONES: Your Honor, may it
23 please the Court.
24 THE COURT: Yes, sir.
25 CROSS EXAMINATION

BY SOLICITOR JONES:

Q. Mr. Bagwell, you did live at [redacted] Cleo Chapman Highway in 2013; is that right?

A. Yes, sir.

Q. You testified that you lived there with Toni Durnil, [redacted] and [redacted]'s little brother; is that right?

A. Yes, sir.

Q. Did anybody else live there with y'all?

A. My three kids lived there with us for about half the summer.

Q. Half a summer?

A. (Affirmative nod).

Q. So would that be a month or a little over a month?

A. About, half the summer.

Q. And you said that Toni worked a lot?

A. Yes, sir.

Q. That she worked two shifts.

A. (Affirmative nod).

Q. Where did she work?

A. Harvey's Loving Care in Six Mile.

Q. And you said that you didn't work, that you have a disability?

A. Right.

Q. Let me clarify. You said that you also met your current wife, Meghan, at work or while you were working for a friend?

A. Well, her -- yes, sir.

Q. Where was that at?

A. Her dad -- I was volunteering over there helping -- well, I had met her brother through a couple of other friends. His dad needed some help and I went over to help him.

Q. So you worked and met Meghan at work?

A. Well, I didn't work. I say work but I volunteered and I didn't get paid.

Q. What was the nature of that volunteer work?

A. Putting some tires on some rims.

Q. Putting tires on rims?

A. (Affirmative nod).

Q. When you lived at [redacted] Cleo Chapman Highway, the bed that you slept on, you didn't have an actual bedframe, did you?

A. Yes, sir. We had a headboard and a footboard.

Q. But the bed was on cinderblocks,

1 wasn't it?
2 A. No, sir.
3 Q. There was never a bed that was on
4 cinderblocks?
5 A. Not to my knowledge. There was no
6 reason for it to have been on cinderblocks.
7 Q. So you've never slept on a bed that
8 was atop cinderblocks?
9 A. I mean, I may have. I'm thirty-
10 five, but I didn't at that time; no, sir.
11 Q. At that time?
12 A. (No verbal response).
13 Q. Well, you say that you may have.
14 A. What I am saying is that at the
15 house, I didn't.
16 Q. So you say that you may have slept
17 on a bed on top of cinderblocks?
18 A. I've been married four times now, so
19 I've ---
20 Q. You've been married four times?
21 A. Yes, sir, but we never had a bed
22 with cinderblocks on it. We had a headboard
23 and a footboard for our bed, and that was it.
24 Q. Just to be clear, you have slept on
25 a bed that's been on cinderblocks, it just

wasn't at Cleo Chapman?

A. Well, yeah, but not with me knowing.

Q. Not at Cleo Chapman?

A. Right.

Q. Okay. This is your fourth wife?

A. Yes, sir.

Q. So Toni worked two jobs. How many hours a day was she away from the home?

A. She worked one job.

Q. Two shifts. Excuse me. How many hours was she away from the house?

A. Like I said, she had to leave and be at work by 6:30, 6:45 and sometimes she didn't get home until 11:3o or 12:00. I mean, she didn't always work two shifts but for the most part she did.

Q. Can you give me a timeline from the time that you were with Toni of where you lived? The first place you lived, so on and so forth?

A. Yes, the first place we lived was [redacted] Blacksnake (phonetic) Road.

Q. Where was that?

A. That was [redacted], my mother's address is [redacted]. That's over here in Pickens County.

1 Q. Okay.
2 A. From there ---
3 Q. When about was that?
4 A. That was November of 2010.
5 Q. Where did you move after that?
6 A. I've got to think. I know that we
7 lived on Camp Creek Road. That was 2010-
8 2011. I am not sure of the month.,
9 Q. Okay. Just continue on for me with
10 where all you lived.
11 A. Okay. Camp Creek in 2011.
12 When we moved from there, we moved to
13 Florida and lived with Toni's dad.
14 Pensacola, Florida in like November'ish,
15 2011.
16 We moved back from Florida and we lived
17 on Duncan Road in Six Mile.
18 From there we moved to [redacted] Cleo Chapman
19 Highway.
20 From there we moved to Walterboro.
21 Then to Ruffin.
22 Smoaks.
23 Branchville.
24 Then we moved to Neeses Highway and
25 that's when ---

1 Q. That was a lot of moving, wasn't it?
2 A. (No verbal response).
3 Q. Sometimes when you moved, did y'all
4 even have time to unpack everything?
5 A. Yeah.
6 Q. You always unpacked everything?
7 A. Yeah.
8 Q. You didn't have boxes of clothes,
9 boxes sitting around the house?
10 A. When I was arrested at Neeses'
11 Highway, yeah, we still hadn't unpacked
12 because we had only been there for two days.
13 Q. You testified that you and Toni --
14 y'all had a pretty rocky relationship, didn't
15 you?
16 A. Not until we moved in with her
17 mother.
18 Q. So after her mother moved in, the
19 relationship was strained?
20 A. Oh, yeah, because I didn't like her
21 mother.
22 Q. So you felt that her mother was
23 taking on your role as the man of the house?
24 A. No, her mother was calling MINOR CHILD
25 and Toni blind SOB's because ---

1 Q. That's going into what ---
2 THE COURT: Yeah, you can't testify
3 about what somebody else said.
4 DEFENDANT: Okay. He was asking and I
5 was just answering.
6 CROSS EXAMINATION CONTINUED
7 BY SOLICITOR JONES:
8 Q. So it's safe to say that you didn't
9 like Toni's mother and Toni's mother didn't
10 like you. Correct?
11 A. Correct.
12 Q. So after -- you testified a little
13 bit about the domestic violence arrest that
14 occurred. After the domestic violence arrest
15 and you said that you pled, what was your
16 word?
17 A. No contest. Like I said, the judge
18 wouldn't allow my evidence.
19 Q. Since then, isn't it true that
20 you've attempted to get back with Toni?
21 A. No, sir.
22 Q. You never attempted to get back with
23 Toni?
24 A. No, sir. Toni has talked to me and
25 even -- this, that and the other. But, no,

1 I'm happy with Meghan.
2 Q. Did you send Toni an e-mail?
3 A. Only after she e-mailed me.
4 Q. Only after she e-mailed you?
5 A. She e-mailed me and I e-mailed back
6 but that was way before these accusations
7 came out.
8 Q. Did you not e-mail here in 2016 and
9 tell her that you loved her?
10 A. I don't think so.
11 Q. If I showed you the e-mail, would
12 that refresh your recollection?
13 A. Yes. To answer your question, I did
14 e-mail her.
15 Q. Okay.
16 A. But I had found out that I had
17 Chron's disease and I thought -- they told me
18 that I was dying and I was just letting her
19 know what had happened, whatever.
20 Q. Do you remember -- did you express
21 your love for Toni in that e-mail?
22 A. Maybe that I had loved her. But I
23 would not have e-mailed her had she not put a
24 note on my car at McDonald's. That's the
25 only reason that I e-mailed her.

1 Q. Okay. Isn't it true that at times
2 you and Toni argued.
3 A. Sometimes, yeah.
4 Q. Sometimes?
5 A. (Affirmative nod), not all the time.
6 We wouldn't have been together five years if
7 it was all the time arguing.
8 Q. And isn't it true that at times when
9 you argued that you threatened to kill Toni?
10 A. No, sir, that's negative.
11 Q. That's not true?
12 A. No, sir.
13 Q. Isn't it true that you threatened to
14 kill the kids?
15 A. No, sir, it's not.
16 Q. Isn't it true that you threatened to
17 kill them and you said that you would get
18 away with it?
19 A. No, sir, I don't recall talking to
20 children like that. I wouldn't have. I'm
21 not a violent person.
22 Q. You said that Toni worked two
23 shifts, so at times she would get home quite
24 late?
25 A. A lot of times, (affirmative nod).

1 Q. And at times when she'd get home
2 late, she's sleep on the couch?; wouldn't
3 she?
4 A. No.
5 Q. She never slept on the couch?
6 A. No, I'd have her dinner ready. I'd
7 warm her dinner up, she'd eat dinner and then
8 come to bed with me after her shower.
9 Q. So you would always have dinner
10 ready for her, is that correct?
11 A. If she hadn't had nothing. Yes,
12 sir.
13 Q. What time would she come home from
14 work?
15 A. Between 11:30 and 12:00 usually.
16 Q. Between 11:30 and 12:00 and you'd
17 have dinner waiting for her, most of the
18 time?
19 A. I'd cook dinner for the kids and I'd
20 have her plate in the microwave. Yes, sir.
21 I'd heat it back up for her.
22 Q. So you would stay up to 11:30 or
23 12:00 waiting for Toni?
24 A. Yeah, so I could spend some time
25 with my wife.

1 Q. And then you would wake up at 5:30
2 in the morning to help the kids?
3 A. Yes, sir. When you have responsi-
4 bilities, you have to do what you have to do.
5 Q. Do you have any tattoos on your
6 forearm?
7 A. Yes, sir.
8 Q. Do you have a tattoo of an alien on
9 your forearm?
10 A. Yes, sir.
11 SOLICITOR JONES: Your Honor, I would
12 ask that Mr. Bagwell show that tattoo to the
13 jury.
14 DEFENDANT: (Displays left forearm to
15 the jury).
16 CROSS EXAMINATION CONTINUED
17 BY SOLICITOR JONES:
18 Q. So on Cleo Chapman, you said that it
19 was summertime. You also said that you would
20 wake up at 5:30 to get the kids to the bus
21 and all that stuff.
22 A. Not in the summertime, no.
23 Q. Tell me what you did in the summer-
24 time. When you were at Cleo Chapman Highway,
25 it was summertime, right?

1 A. We would go to the river, right at
2 the bottom of the hill. We went to the river
3 every day, all five kids. We'd go fishing
4 swimming, whatever they wanted to do.
5 Q. Just you and the five kids?
6 A. Yes.
7 Q. What about after your three sons no
8 longer lived with you?
9 A. We still went to the river. We'd
10 get out of the house, we'd get tired of
11 playing the same games.
12 Q. You said that you're not a violent
13 person but you were arrested, how many times,
14 for domestic violence?
15 A. I was arrested twice for domestic
16 violence.
17 Q. Twice?
18 A. Yes.
19 Q. Just twice?
20 A. Yes, sir. One of them got dropped
21 because they couldn't show that I'd put my
22 hands on anybody. And, like I said, they
23 wouldn't accept my evidence in the other one
24 so I pled no contest.
25 Q. And you said when Mr. Dejong

1 questioned you that the last time that you
2 got out of jail for domestic violence was a
3 couple of months ago?
4 A. Right. It was for failure to go to
5 the Casa classes, which I didn't know that I
6 had to go to any. I think it was the anger
7 management classes but I didn't know that I
8 had to go to any. I spent thirty days in
9 Orangeburg County.
10 Q. So you failed to go to your anger
11 management classes?
12 A. Well, I didn't know that I had
13 classes. It was for the one that I pled no
14 contest to. They were supposed to contact me
15 and I never got contacted.
16 Q. But you've had the same phone number
17 forever?
18 A. Yes, sir. Well, not forever, just
19 since April of '14, I think.
20 Q. Would you say that you have a bit of
21 temper at times?
22 A. I would say no. Ninety-five percent
23 of the time, no. If somebody were to want to
24 fight or something, I would not back down.
25 But I wouldn't say that I like to fight or

1 anything.
2 Q. So you said that you were mother and
3 father to all the kids, that you would brush
4 their hair, bathe them -- did that include
5 Ericka? Did you bathe [redacted]?
6 A. No. She was old enough to bathe
7 herself. All of the kids would bathe
8 themselves. I would just tell them to go get
9 a bath. Her mother had to show me how to do
10 her hair, so that I could do her hair in the
11 mornings. She would come home from school
12 crying because people were picking on her
13 because her hair was nappy and looked like
14 garbage.
15 SOLICITOR JONES: I beg the Court's
16 indulgence -- no further questions, Your
17 Honor.
18 JOHN DEJONG: Nothing on redirect, Your
19 Honor. Step down, Mr. Bagwell.
20 (WITNESS STEPS DOWN)
21 JOHN DEJONG: The defense rests, Your
22 Honor.
23 THE COURT: Ladies and gentlemen, the
24 defense has rested their case. We will now
25 have to take another break. Please return to

1 your jury room. Again, do not discus the
2 case. We will bring you right back out as
3 soon as we figure out our schedule.
4 (JURY OUT @ 10:25 A.M.)
5 THE COURT: Are you anticipating any
6 additional evidence from the State?
7 SOLICITOR JONES: Your Honor, I don't
8 think so but I would like a couple of minutes
9 to kind of collect my thoughts.
10 THE COURT: We'll take a break. If you
11 are, then we will go ahead and discuss jury
12 charges and all that stuff.
13 SOLICITOR JONES: Yes, sir.
14 THE COURT: All right, we will be at-
15 ease for a few minutes.
16 (BRIEF RECESS)
17 (IN CHAMBERS CHARGE CONFERENCE)
18 (DEFENDANT PRESENT)
19 THE COURT: Is the State ready?
20 Anything before we bring the jury in?
21 SOLICITOR JONES: The State is ready,
22 Your Honor.
23 THE COURT: Defense? Anything before
24 we bring the jury in?
25 JOHN DEJONG: Ready for the Defense,

1 Your Honor. For the record, I would renew
2 all Motions, the Motion for a mistrial and
3 our Motion for a directed verdict.
4 THE COURT: And I deny those on the
5 grounds stated. Anything else?
6 JOHN DEJONG: No, sir, Your Honor.
7 THE COURT: Bring in our jury.
8 (JURY IN @ 11:25 A.M.)
9 THE COURT: All right, ladies and
10 gentlemen. I appreciate your patience.
11 The defendant rested and the State is not
12 putting up any additional evidence, therefore
13 that is the close of the case as far as all
14 evidence that will be presented to y'all.
15 Then we had to take some time to
16 determine, you know, make sure what the law I
17 will be charging you was.
18 So as I said, all the evidence has been
19 presented and now we will have closing
20 arguments by the attorneys. I remind you
21 that this is not evidence, it is their
22 summation or arguments about the case.
23 Then I will charge you on the law
24 applicable to this case. Then you will
25 retire to your jury room and begin your

1 deliberations.
2 At this time, I would ask that you devote
3 your attention to the attorneys. Mr. Jones.
4 SOLICITOR JONES: Thank you, Your Honor.
5 Did this look like it was fun for [redacted]
6 [redacted]? Did she look like she was having a
7 good time when she testified? Walking in
8 this courtroom and telling a bunch of
9 strangers about sexual abuse? Standing in
10 the same room with David Bagwell?
11 Did she enjoy it when that defense
12 attorney got up and asked her questions?
13 Absolutely not.
14 If you would believe that [redacted]
15 made this up, she'd have to have been a eight
16 or nine-year-old evil genius. At eight or
17 nine years old she concocted a plan to charge
18 David Bagwell with criminal sexual conduct
19 with a minor in the first degree.
20 She was so angry at David for beating her
21 mother that she wanted him gone and she knew
22 that DSS was going to come to her house,
23 completely unannounced. You heard what DSS
24 said, that it was an unannounced visit. Did
25 she call that mother and tell her that she

1 was coming? (Negative gesture). Did she
2 call that grandmother and tell her that she
3 was coming? (Negative gesture). Nobody in
4 the house knew that Rebecca Mosely from DSS
5 was going to come. But MINOR CHILD, the
6 evil genius, knew that she was coming?
7 She talked to the DSS agent, no other
8 adults in the room, and she told her that she
9 was sexually abused.
10 Then about a month later she went to a
11 forensic interview and she talked for thirty,
12 maybe even forty minutes, about domestic
13 violence, violence in the home, until the
14 forensic interviewer brought up 'any other
15 type of abuse?' Then she finally started
16 talking about the sexual abuse because she
17 knew that would be more important?
18 Then two months later that child met with
19 a pediatrician and told that doctor the exact
20 same thing, that she had been tied, that he
21 had held her eyeballs open while he forced
22 her to watch pornography, that he kept
23 pornography under the bed. That he
24 repeatedly told her that he'd kill her if she
25 told anyone, and that he threatened to kill

1 her family as well.
2 Then the child is taken away from her
3 family, taken away from her mother for three
4 years. For three years she maintains the
5 story.
6 Then she comes in here and she said the
7 same thing. In her cross-examination
8 testimony, she said the same thing.
9 The truth of the matter, what has
10 happened to the child is horrific:
11 She was sexually abused in 2009. She
12 told law enforcement, she testified and that
13 man was convicted.
14 She lived with her mother and David
15 Bagwell and endured domestic violence
16 throughout the home. Then finally when a
17 third party authority gets her by herself,
18 the DSS agent, the child tells her what is
19 happening. She has maintained that story to
20 today, because it is the truth.
21 If all Ericka wanted was to get David out
22 of the house, remember the timeline of when
23 she disclosed. He testified that in April he
24 was gone, he was already living with his new
25 wife, he wasn't in the home. Yet in May she

1 tells DSS because she wants him gone? That
2 doesn't make sense, because he already is
3 gone.
4 What about this mother? This mother had
5 multiple partners who lived in the home, that
6 exposed her to sexual abuse as a nine-year-
7 old. Obviously it's -- it is what it is.
8 If you want to believe that MINOR CHILD
9 maintained the lie for years on end to
10 protect that mother, (negative gesture), it
11 doesn't make any sense.
12 It appeared that the defense attorney was
13 questioning MINOR CHILD, trying to imply that
14 because MINOR CHILD witnessed the domestic abuse
15 that she was mad at David. She was so mad at
16 David that she watched this domestic
17 violence, watched him beat her mother, that
18 that was her motive to lie?
19 Then the defendant got on the stand and
20 said there was no domestic violence, none
21 whatsoever. 'I am the perfect father.'
22 Which one was it? Was there domestic
23 violence and the child had a motive to lie?
24 Or was there no domestic violence and he was
25 the perfect father?

1 That child had never watched that
2 forensic interview. She had never talked to
3 the police herself. She had never looked at
4 that pediatric report. She came in and
5 testified to the same thing: tied up on the
6 bed, put his mouth on her vagina, forced to
7 watch pornography. I think Shauna Galloway-
8 Williams put it as "core contextual details."
9 That is what she is talking about when she
10 says core contextual details.
11 We all know how difficult it is to
12 remember things in the past as adults. Think
13 about a child. Think about a child that has
14 lived in almost ten homes in three or four
15 years.
16 The defendant's testimony was that he had
17 been the perfect father, the perfect husband,
18 that he took care of everybody.
19 Pled guilty to domestic abuse charge
20 though he'd never assaulted anyone. He had
21 been in and out of jail. He didn't complete
22 his anger management classes because nobody
23 called him. Like in this case, 'I was
24 available but the cops just never called me.
25 They didn't want to talk to me.' That is not

1 what J.B. Kelley said, 'Yeah, I called him
2 multiple times, left messages.' It was
3 always somebody else's fault. He had a lot
4 of excuses.
5 He lied about that just like he lied
6 about not sexually abusing MINOR CHILD, not tying
7 her to the bed, not showing her pornography.
8 Think about the credibility of that.
9 The judge is going to tell you that the
10 credibility of each witness is totally up to
11 you. You can believe all of what a witness
12 said, parts of what a witness said, or
13 nothing that they said.
14 Think about why people lie. They lie to
15 gain a reward or to avoid punishment, don't
16 they? Children on up to adults. An adult
17 might lie on a resume to get a better job or
18 pay less taxes.
19 What did MINOR CHILD gain? What
20 punishment did she avoid? Being taken from
21 her house for three years, living in a foster
22 facility? Seeing her brother once a month?
23 At any time in those three years she
24 could have said, 'Wait a minute, Time-out,
25 guys. I made this stuff up, it didn't

1 happen. It didn't happen. Send me back to
2 my mom, send me back to my brother, let us
3 put our family back together.'
4 As I said before, she didn't need to say
5 this to get David Bagwell out of the home.
6 He was already gone.
7 She said it because it is the truth.
8 What about David Bagwell? Was anything
9 he said truthful? Was anything that he said
10 true? What reason does he have to lie to
11 y'all?
12 I spoke to you in my opening about the
13 nature of sexual abuse, that unlike other
14 crimes there is no surveillance video; there
15 is no third-party witness, a neighbor who saw
16 somebody stealing the car; there's no
17 fingerprint left on an object. It is just
18 the defendant and the child. So they are
19 very difficult cases for law enforcement.
20 Shauna Galloway-Williams has tremendous
21 education and training in the field of child
22 sexual abuse, child sexual abuse disclosure
23 and dynamics. She mentioned how long she has
24 been in practice, how many children that she
25 has talked to, how many sexual abuse cases

1 she has dealt with. In all her years and
2 with all her training, she told you about
3 common factors in families where sexual abuse
4 occurs: single mother, multiple partners
5 coming in and out of the home, leaving your
6 child with third parties; domestic violence
7 in the home, abuse in any way more likely
8 leads to sexual abuse; if you are sexually
9 abused once you are more likely to be
10 sexually abused again if you are not removed
11 from that situation. We heard that MINOR CHILD
12 was not removed from that situation.
13 Why did it take some time for Ericka to
14 disclose? Shauna Galloway-Williams touched
15 on that as well:
16 The defendant was married to her mother,
17 her mother had had multiple partners. It
18 sounds like they had a rocky relationship at
19 time but I'm sure that he made the mother
20 happy at times.
21 She is a child. She goes to school,
22 she had other friends, they had fathers, she
23 wanted a father. He's an adult, he's an
24 authority figure in their house.
25 The mom was gone, I am sure at times he

1 did make her food, put her on the school bus,
2 acted like a father. How difficult is that
3 in a child's mind to understand, that this
4 person who is a father figure is also
5 sexually abusing her?
6 He threatened to kill her, 'I will kill
7 your family, I will get away with it.' A
8 threat from a man who you have seen beat your
9 mother, drag your mother off the couch and
10 slam her head into walls. Do you think she
11 believed him?
12 Then what happened? In April he left the
13 home with another woman. He's gone. The
14 threat is gone. DSS came at just the right
15 time. She felt safe to tell DSS what
16 happened.
17 This case has all of those things,
18 aspects of disclosure, that Shauna Galloway-
19 Williams talked about.
20 Let's think about for a second the
21 difficulty in coaching a child to say these
22 things. You can imagine the training and
23 experience that you would have to have to
24 tell a child what to say, how to say it to
25 ensure that the child told authorities in

1 child-like terms. For a child to maintain
2 the same consistent core contextual details
3 over time to DSS, to a forensic interviewer
4 who is going to ask an hour and a half worth
5 of questions, to a pediatrician, and to you
6 three years later on a witness stand.
7 The difficulty in telling a child 'when
8 you talk about pornography, make sure that
9 you say that it is, like, R-rated.' Because
10 a child knows that R is bad, that they can't
11 watch; pornography is bad, so it's got to be
12 R-rated. Make sure you say that he held
13 your eyes open. Make sure to say that he
14 kept his pornography underneath the bed.
15 'Make sure that you say he tied you down
16 and tried to touch you, but you wiggled so
17 much that you don't think he could put
18 anything inside you, that he put his tongue
19 on your vagina. Don't call it your vagina.'
20 Think about how difficult that would be, to
21 coach a child. Think about how impossible it
22 would be for a child to repeat consistently
23 over years, to multiple people.
24 Dr. Croswell testified as a pediatrician
25 who practices and evaluates child sexual

1 abuse. She testified that in the vast
2 majority of case, in the vast majority of
3 sexual abuse cases that you do not see any
4 signs of penetration, you do not see any
5 physical symptoms of sexual abuse.
6 Quite frankly, in a case where an adult
7 puts his mouth on the vagina of a child, you
8 wouldn't expect to see any type of damage or
9 injury to the child physically.
10 She also told you a few things that the
11 child told her. Keep in mind the time from
12 when the child told Dr. Croswell those
13 details to today, how a nine-year-old could
14 keep all that straight.
15 She kept it straight because it's the
16 truth.
17 The judge is going to go over with you
18 the elements of the offense. I mentioned
19 them to you in my opening. The defendant is
20 charged with criminal sexual conduct with a
21 minor in the first degree. We have shown
22 that the defendant committed a sexual battery
23 on the victim, who at the time was under the
24 age of eleven years. MINOR CHILD told you her
25 birthday and at the time of the abuse she was

1 under the age of eleven. She accused the
2 defendant of performing oral sex on her, of
3 putting his mouth on her vagina. That makes
4 this criminal sexual conduct with a minor in
5 the first degree.
6 Dr. Croswell also told you the difficulty
7 of a child knowing when an adult touches
8 their vagina what is penetrated and what is
9 not. Remember that the statute says "however
10 slight." He touched her vagina with his
11 hand. If he penetrated, however slight, that
12 would also be criminal sexual conduct with a
13 minor in the first degree.
14 The judge is going to give you the
15 definition of "beyond a reasonable doubt."
16 You hear that all the time if you watch *Law &*
17 *Order*, and other shows, "beyond a reasonable
18 doubt." But what does it mean? The judge is
19 going to give you a fairly lengthy
20 definition. Part of what he is going to say
21 is that there are few things in this world
22 that we know beyond all possible doubt. In
23 this particular case, the evidence doesn't
24 have to be beyond all possible doubt. It has
25 to be beyond a reasonable doubt.

1 I want you to remember when we started
2 the trial that the clerk asked you to take an
3 oath. You stood up and you swore to tell the
4 truth. You didn't swear to look for
5 reasonable doubt. If reasonable doubt were
6 here, you wouldn't have to look for it, you'd
7 see it. You don't see it because it's not
8 here.
9 Think about all that this child went
10 through her entire life. It's a tragedy.
11 Sexually abused at eight or nine. She
12 testified. Lived with her mother who brings
13 multiple partners in the home, and another
14 partner sexually abuses her and she is taken
15 away from her family.
16 Why does she maintain the story? Not
17 because she has some motive to punish David.
18 It's not because her mother told her to say
19 things. She maintained the story because
20 it's the truth. Thank you.
21 THE COURT: Mr. Dejong.
22 JOHN DEJONG: Thank you, Your Honor,
23 may it please the Court, Mister Prosecutor,
24 Mr. Bagwell, ladies and gentlemen of the
25 jury.

1 At the outset, ladies and gentlemen, let
2 me say this, that David Bagwell is not on
3 trial for domestic violence. You heard a lot
4 of testimony as to that, that is not what
5 this case is about. Obviously there were
6 some dynamics in this family, maybe we could
7 say dysfunctional dynamics in this family,
8 but he is not on trial for domestic violence.
9 What he is on trial for, His Honor shared
10 with you yesterday in the Indictment:
11 criminal sexual conduct in the first degree.
12 That is what he is on trial for. This other
13 stuff does have bearing on the case but it is
14 not what he is on trial for.
15 Additionally, ladies and gentlemen, while
16 we are in that vein, when Mr. Bagwell
17 testified, he shared with you that he has a
18 prior criminal record. Now, His Honor is
19 going to give you the law. I am not the law
20 giver, Mr. Jones is not the law giver. His
21 Honor is the law giver, so you take the law
22 from him as you hear it. But I believe that
23 he will charge you somewhere or somehow along
24 the lines that the fact that his prior
25 criminal record was brought out in this trial

1 is not to be used by you to determine Mr.
2 Bagwell's guilt or innocence in this case.
3 The only thing that you can use that for, if
4 you use it for anything, and that is totally
5 up to y'all, but the only thing that it can
6 be used for is, as we often say, that it goes
7 to his credibility or his believability.
8 Yes, you may use it for that. I believe His
9 Honor's charge will include that.
10 But, again, the same as all the talk
11 about the domestic violence, neither of those
12 are what he is on trial for.
13 Now, in this case -- and you have now,
14 as His Honor shared with you, you have now
15 heard all the testimony and seen all the
16 evidence that has been admitted in this case.
17 Basically what this case boils down to,
18 ladies and gentlemen, is the alleged victim's
19 testimony against David Bagwell.
20 Yesterday the alleged victim made it
21 clear on the witness stand that she did not
22 like David Bagwell, that she wanted David
23 Bagwell out of the house, she wanted David
24 Bagwell to go to jail for a long time.
25 There was no question that the alleged

1 victim in this case was a victim in a prior
2 sexual abuse case. Again, I say that
3 certainly not to ask for sympathy for her,
4 because that would be a violation of your
5 oath, but I say that because children learn.
6 I think even the State's expert finally
7 agreed with me that they learn from their
8 prior experiences. I submit to you, ladies
9 and gentlemen, that this alleged victim in
10 this case went through the basic same process
11 in that case as she has gone through in this
12 case. So in one sense, there was nothing new
13 to her in this case because she had been
14 through it.
15 Yesterday when she was on the witness
16 stand, she talked about a red rope and a red
17 leash. I ask you to hold that thought for a
18 moment, because as I recall that's what she
19 said on the witness stand.
20 I add parenthetically there that me
21 saying what I heard from the witness stand,
22 if you heard something different, you take it
23 the way that you heard it. I would not
24 intentionally try to misstate what was said
25 or what you heard. Sometimes we hear things

1 differently, so I just share that with you.
2 Also she testified yesterday, as I
3 recall, that she had made these same
4 allegations earlier, in the month of
5 December, 2013.
6 SOLICITOR JONES: Your Honor, I would
7 object to that.
8 THE COURT: I think you need to -- I'll
9 sustain the objection.
10 JOHN DEJONG: May I be heard, Your Honor?
11 THE COURT: I think we need to send the
12 jury out then.
13 JOHN DEJONG: Pardon me?
14 THE COURT: I think we need to send the
15 jury out then.
16 JOHN DEJONG: That's fine.
17 THE COURT: Ladies and gentlemen, I
18 would ask you -- this is -- I know it is the
19 middle of the closing statements but there is
20 a matter that we need to address. If you
21 would, return to your jury room. We will be
22 with you shortly. Do not discuss the case.
23 (JURY OUT @ 11:53 A.M.)
24 THE COURT: First of all, please
25 repeat what you said.

1 JOHN DEJONG: She said on the witness
2 stand yesterday, Your Honor, that she had
3 made these same allegations in December of
4 2013.
5 THE COURT: I don't remember the
6 specifics.
7 SOLICITOR JONES: Your Honor, she did
8 not say that. She said that she did not
9 remember. He kept asking her -- the child
10 was very confused during the cross-
11 examination. He kept asking her that but the
12 child said, 'I don't remember.' 'I don't
13 remember.' He kept asking her about making
14 allegations previously and her only response
15 was that she did not remember.
16 THE COURT: I don't -- was it during
17 your cross-examination.
18 SOLICITOR JONES: She did admit that she
19 had told her mother previously but he's
20 trying to get back into December that she
21 said it happened.
22 THE COURT: Ms. Garrison (court
23 reporter), can we find ---
24 COURT REPORTER: --- her testimony?
25 THE COURT: Yes.

1 LAW CLERK: It was in the cross-
2 examination, right after cross started.
3 COURT REPORTER: Yes, sir. The
4 reference to December was in the cross-
5 examination by Mr. Dejong (audio replayed):
6 *Q. So let's now back up a little bit,*
7 *Ericka. When you made -- when you said that*
8 *David was touching you, do you remember what*
9 *town that you lived in?*
10 *A. I remember one was in Pickens and*
11 *the other was in Branchville.*
12 *Q. One was where? I'm sorry, dear.*
13 *A. One was in Pickens, one was in*
14 *Branchville.*
15 *Q. I'm sorry?*
16 *A. One was in Pickens and the other one*
17 *was in Branchville.*
18 *THE COURT: See if you can adjust her*
19 *microphone so that we can hear her.*
20 *COURT REPORTER: (Adjusts microphone).*
21 *CROSS EXAMINATION CONTINUED*
22 *BY JOHN DEJONG:*
23 *Q. The house that you lived in before*
24 *the one where you told the lady that David*
25 *had been touching you, the house before, do*

1 you remember telling your mom that David had
2 been touching you?
3 A. Yes.
4 Q. All right. And to your knowledge,
5 if you know, did your mom go to the police?
6 A. Yes, sir.
7 Q. After that, after your mom went to
8 the police, do you remember what you told
9 your mother?
10 A. I'm sorry?
11 Q. Did you tell her it wasn't true?
12 A. (No verbal response).
13 Q. Did you tell her that it wasn't
14 true, that you'd said it because you were mad
15 at David because he'd taken your X-Box away
16 from you?
17 A. I don't remember having an X-Box.
18 Q. A PlayStation or anything that,
19 anything else?
20 A. No, sir.
21 Q. You just don't remember?
22 A. No, sir.
23 Q. Okay. All right. So -- well, when
24 you say that David was doing these things to
25 you, where was your brother?

A. He was either in the living room watching cartoons or outside playing.

Q. This is kind of an old house, wouldn't you say?

A. Yes, sir.

Q. Pardon me?

A. Yes, sir.

Q. And the inside doors were all just like normal inside doors; right?

A. Yes, sir.

Q. There was nothing special about any of them, was there?

A. Not really. They were thicker.

Q. I didn't hear you.

A. They were thicker.

Q. Okay. Well, let me back up again. The house that you lived in before you told the ladies that David was touching you, when you told your mom in that house, did you tell your mom the same thing?

A. The same thing as what?

Q. What you've told us today, did you tell your mom that in the house that you lived before?

A. Yes, sir.

1 Q. The very same thing?
2 A. Yes, sir.
3 Q. All right. And -- well, let me ask
4 you this, MINOR CHILD If you know, after you
5 told your mom all of that, do you know if
6 anybody was arrested?
7 A. No, sir.
8 Q. You don't know or no one was
9 arrested?
10 A. I don't know.
11 Q. But after you told you mom that, and
12 that was in the house before, nothing
13 happened with that one; did it?
14 A. Nothing happened with what?
15 Q. When you went to your mom before
16 this time, before you talked to the lady down
17 in Orangeburg, the house that you lived in
18 before, you said that you told your mom that
19 he was touching you. Right?
20 A. Yes, sir.
21 Q. And I believe that you just shared
22 with us that you told your mom that he did
23 what you've shared with us today. Is that
24 correct?
25 A. Yes, sir.

1 Q. All right. Then -- do you remember
2 when that would have been? Could that
3 possibly have been around Christmas?
4 A. I don't remember, sir.
5 Q. Well, let's talk a little bit about
6 what was going on in your house. Did David
7 and your mom get along?
8 A. Not really.
9 Q. Were there ever any fights in the
10 house?
11 A. Yes, sir.
12 Q. And just so that we're all sure,
13 David is not your real dad; is that correct?
14 A. Yes, sir.
15 Q. Okay. I believe -- let me back up
16 here. Do you remember now when you made --
17 when you said that David was touching you,
18 that was in the house in Orangeburg. Can we
19 agree that was in Orangeburg?
20 A. Yes, sir.
21 Q. Let me ask you this, what we're here
22 for today, who did you tell that to?
23 A. To my mom.
24 Q. Anybody else?
25 A. My brother.

1 Q. Your mom and your brother?
2 A. (Affirmative nod).
3 Q. All right, so let's come back to
4 where we were. So your mom and your dad did
5 a lot of fighting?
6 A. Yes, sir.
7 Q. You didn't particularly like David,
8 did you?
9 A. No, sir.
10 Q. And indeed you -- because you
11 thought David had hurt your mom, you wanted
12 him out of the house, didn't you?
13 A. Yes, sir.
14 Q. More than that, you wanted David to
15 go to jail; didn't you?
16 A. Yes, sir.
17 Q. He even went to jail for a little
18 bit one time; isn't that right?
19 A. Yes, sir.
20 Q. And then when you -- do you remember
21 talking to this lady -- not on the Bobby
22 McCann case, but do you remember talking to
23 the lady in the little room where they said
24 you were -- that there was a camera, do you
25 remember that?

1 A. No, sir.
2 Q. Do you remember her name?
3 A. No, sir.
4 Q. You do or don't? I'm having a hard
5 time hearing you.
6 A. No, sir.
7 Q. You don't remember that?
8 A. No, sir.
9 Q. So you don't remember telling her
10 that you had pictures on your tablet and you
11 were going to take them to court with you and
12 show the judge?
13 A. (No verbal response).
14 Q. You don't remember that?
15 A. No, sir.
16 SOLICITOR JONES: I would object to
17 that question. He is intentionally trying to
18 confuse the witness. He knows that she was
19 not talking about this particular case when
20 she talked about those photographs.
21 THE COURT: All right.
22 JOHN DEJONG: I think I was talking about
23 a video, not photographs but -- okay.
24 CROSS EXAMINATION CONTINUED
25 BY JOHN DEJONG:

1 *Q. You just don't remember talking to*
2 *this lady at all is what you're telling me?*
3 *A. (Affirmative nod), no, sir.*
4 *Q. Now, so you had told your mom before*
5 *that David had been touching you, but nothing*
6 *happened; right?*
7 *A. Yes, sir.*
8 *Q. Then David didn't go to jail then,*
9 *did he?*
10 *A. No, sir.*
11 *Q. Did that make you angry?*
12 *A. I guess so.*
13 *Q. Because you wanted David to go to*
14 *jail, didn't you?*
15 *A. Yes, sir.*
16 THE COURT: All right. Thank you.
17 (PLAYBACK CONCLUDED)
18 THE COURT: Okay. Bring the jury in.
19 (JURY IN @ 12:08 P.M.)
20 THE COURT: All right, ladies and
21 gentlemen, sorry to have to break in the
22 middle of that. One of the things that we
23 had to do is determine what her testimony
24 was. But it is up to you to determine, as
25 always, what you recall the testimony is.

1 Mr. Dejong, you may continue with your
2 argument.
3 JOHN DEJONG: Thank you, Your Honor, may
4 it please the court.
5 So let's come to the video and talk about
6 that a little bit, remembering that the
7 alleged victim in this case, who had already
8 been through this once, I submit to you knows
9 the magic buttons and everything else.
10 The first thing that I would note about
11 the video is that when the examiner/
12 interviewer, whatever you want to call her,
13 asked her if she knew why she was there, her
14 response was, as I recall, 'Mom sent me to
15 talk about David.' Then for the next fifteen
16 or twenty minutes, however long it was, she
17 talked about all the domestic violence that
18 had taken place in the household. There was
19 not one word about sexual molestation,
20 touching or anything else at that point in
21 time.
22 If you noticed in that video, she was
23 quite talkative, quite forthright in talking
24 about all of that. When the interviewer
25 shifted gears, she became very reticent,

1 hesitant, took a long time to answer
2 questions. Remember, she had been through
3 this once before.
4 Then, again, it was a bit confusing as to
5 whether David had threatened her or whether
6 it was a secret or what exactly it was. She
7 alleges that David had touched her, that
8 something had happened along with the
9 domestic violence issues but, again, we don't
10 know.
11 Now, in the interview she talks about
12 being tied up. She talks about one rope, she
13 talks about a lime green rope. Yesterday, as
14 I mentioned a few moments ago, she talked
15 about a red rope, a red leash or possibly a
16 tan leash.
17 Now, the expert that the State brought
18 before you talked in vast generalities, 'what
19 happens here, what happens there.' She did
20 not talk about what happened in this
21 particular case because she couldn't.
22 She agreed that there are false
23 allegations. As I recall, she agrees that
24 children can be manipulative. One thing I
25 did find fascinating in her testimony, if I

1 recall correctly, was that she said that
2 adult can be equally manipulative -- she
3 didn't say equally manipulative. She said
4 adults can be very manipulative to get what
5 they want. As I recall, she said that --
6 she, the victim, on the witness stand -- mom
7 was very upset and angry with David.
8 The part that, I guess, really puzzles me
9 is the sequence or lack of sequence of
10 events, as they alleged occurred as stated by
11 the alleged victim in the interview.
12 She says that she was tied up, said that
13 her arms were tied at her sides. So that
14 David tied her so that she couldn't move.
15 She repeatedly said, 'I was wiggling, I broke
16 some of the ropes', although at one point in
17 time she said she could not remove the ropes,
18 she said that she'd broke some of the ropes.
19 She was wiggling so much, as I recall, that
20 David 'couldn't really do anything.'
21 Again, yesterday she talked about the
22 ropes -- whether it was tied to cinderblocks
23 or not, I don't remember. You take it the
24 way that you heard it, but there was
25 certainly no mention of cinderblocks in the

1 interview.

2 Now, the expert, I submit to you, -- and,
3 okay, she has education, she has training,
4 she's got everything -- not everything, but
5 training. She came in here and talked in
6 generalities. We are not here today, we have
7 not been here for the last two and a half
8 days to talk about generalities.

9 She said that children can pretend, she
10 admitted that children can lie, she admitted
11 that children can be manipulative, which they
12 do.

13 Then she talks about her clothes being
14 cut off. This is another strange one to me.
15 She alleges that David cut off her shirt, cut
16 off her pants and he burned them. Then what
17 did she say? That he throwed them in the
18 woods? Now, folks, if I am going to burn
19 anything, I am going to burn underwear, not
20 her shirt, not her pants. But even if you
21 were going to burn the shirt and pants, why
22 not burn the underwear also? Where they were
23 burned, we have no idea. She did say the
24 woods behind the house. Again, we didn't
25 hear anything from law enforcement say 'well,

1 maybe we should have gone and looked in the
2 woods.' Nothing was none. Indeed, law
3 enforcement -- as I recall -- never even
4 attempted to talk to Mr. Bagwell. They might
5 have attempted once but -- Detective J.B.
6 Kelley, I don't remember exactly what his
7 testimony was but you heard that but he said
8 he attempted to talk to Mr. Bagwell but he
9 never was able to talk with him.
10 Now, sometimes in all of the --
11 (coughing), excuse me. An alleged victim can
12 be quite spontaneous sometimes in relating
13 details.
14 The expert said that they watch for
15 contextual core details. Well, when we start
16 talking about that, the interview she just
17 very gratuitously threw in that David told
18 her that the only reason that he'd married
19 her mom was for her. Remember, -- I don't
20 remember the dates that came off the witness
21 stand but David and the mother had been
22 together for a number of years. Perhaps it
23 was a tumultuous relationship towards the end
24 but, nevertheless, they were together for a
25 number of years.

1 Then you talk about, I guess, gratuitous
2 spontaneity, when she was talking with Dr.
3 Croswell, -- she being the victim in this
4 case -- now she spontaneously throws out
5 something totally different. Now she throws
6 down that she was asleep, as I recall, in her
7 bed and moved to her mom's bed, David's and
8 mom's bed, or whosever it was. At that point
9 in time there was no mention of locked doors
10 or anything else, she just said 'I was
11 moved.' Now, then, she alleges that he
12 abused her at that point in time.
13 You know, it's like the expert comes in
14 -- experts come in and try to justify what is
15 inconsistent in these cases. You've got the
16 case as a whole and this particular case --
17 again, not generalities, -- the -- and
18 another thing that I noticed in the video
19 when she was talking, she the alleged victim,
20 was talking about the touching. She says
21 that David had her tied up, had her tied up
22 real tight. Then the examiner asked her
23 about touching on her rear and private parts.
24 The child had to think about that one for a
25 moment. So now she says that David untied

her when he did that. Again, that is the sequence of events that I don't understand. I submit to you that there would be some remembering of the sequence of events.

Then in that same vein, and I do not mean to be crude, but this was on the video, the alleged victim said she peed on him and on the bed, then he leaves the room and then he come back. Is this the sequence of events or is this some grandiose story that this alleged victim has come up with because she wants David Bagwell to go to jail, according to her testimony, "for a long time."

Also in that testimony -- and I asked Ms. Shauna Galloway-Williams, the State's expert, if children like to please. I think her response was that yes, by and large, children like to please adults. In the interview, as the interviewer was going through this, there were times that the young lady, the alleged victim, would say 'I don't remember' or 'I don't know.' Now, the interviewer does not accept that as an answer. She keeps pushing, keeps pushing, keeps pushing and ultimately I suggest to you that this child wanted to

1 please the interviewer, so she had -- she
2 felt like she had to come up with an answer
3 to that question.
4 And in that interview, it's almost like
5 there are two separate interviews; one where
6 the interview is just with the interviewer
7 and the alleged victim. Then we shift gears
8 and we go to the anatomical dolls. Again, if
9 you look at that -- in my opinion, there are
10 some pretty big differences when she starts
11 dealing with the anatomical dolls and what
12 she told the interviewer to begin with. I
13 would just ask you to consider that and to
14 remember that.
15 As I remember the testimony yesterday,
16 there was nothing as to penetration.
17 His Honor, I believe, is going to charge you
18 on both criminal sexual conduct first degree
19 and on criminal sexual conduct third degree.
20 If you find that there was no penetration,
21 which I submit there was no testimony about,
22 then you're thrown into the criminal sexual
23 conduct third degree. Just for purposes of
24 this statement, Mr. Bagwell, if he is guilty
25 of anything, which I submit that he is not,

1 but if he is then I submit what it would be
2 is criminal sexual conduct third degree.
3 The credibility of the witnesses, again
4 we talked about that a little bit -- seems
5 like a long time ago, Monday. Just a little
6 bit more on that, you can believe all of what
7 a witness says, you can believe none of what
8 a witness says, you can believe some of it.
9 That is up to you.
10 In particular, one of the things
11 that you can use is to look at the witnesses
12 is the demeanor of the witnesses, how they
13 questioned, the way that they answered
14 questions.
15 Now, Mr. Jones, when he was up here a few
16 minutes ago asked why do people lie. It's an
17 obvious question, but he answered 'to gain a
18 reward.' There was a reward for the alleged
19 witness. That reward was that she wanted
20 David Bagwell to go to jail for a long time.
21 SOLICITOR JONES: Your Honor, I would
22 object to that.
23 THE COURT: Overruled.
24 JOHN DEJONG: David was in and out of
25 the home, even -- I believe he was in the

1 home with the children, according to his
2 testimony, in 2014. So he was certainly in
3 and out of the house in whatever kind of
4 relationship this was. So where that leaves
5 us is that there is no other evidence in this
6 case, no physical evidence, and that always
7 fascinates me too. Dr. Croswell comes in and
8 goes to these great lengths to say, 'well, in
9 a sexual abuse case we don't often find
10 physical evidence.' But they don't want to
11 agree that the fact that they don't find any
12 physical evidence or medical evidence is
13 because it didn't happen. They will not
14 agree with that, at least I couldn't get her
15 to yesterday, as memory serves me.
16 Again, these folks come in and here say
17 'well, you might not have this', 'you might
18 not have any physical evidence, but that
19 doesn't mean that it didn't happen.' They
20 also say it could be made up. There's a
21 reason for making it up.
22 Again, Shauna Galloway-Williams talked
23 about coaching. This child didn't need to be
24 coached. She'd been through all of this
25 before, unfortunately. But she knew what to

1 say, how to say it, when to say it.
2 Reasonable doubt. His Honor will charge
3 you on what is reasonable doubt. Take the
4 law from him. I think his charge is along
5 the lines of, 'If you are firmly convinced
6 that Mr. Bagwell is guilty, you have to find
7 him guilty. But if you think there is a real
8 possibility that the defendant is not guilty,
9 then you must give the defendant the benefit
10 of that and find him not guilty.'
11 Yes, that is the difficult position that
12 y'all are in. However, today, ladies and
13 gentlemen, you are absolutely perfect.
14 Whatever your verdict is, no one can question
15 you. Whatever your verdict is, you don't
16 have to defend it. It is your verdict.
17 Nobody can question you or your verdict,
18 that's the end of it.
19 It is David Scott Bagwell's day in court
20 and that, ladies and gentlemen, is in your
21 hands. So I would ask you to look at the
22 totality of this case. You've heard all the
23 testimony, so you now have to make the
24 ultimate decision in this case.
25 I would ask you to look at the totality

1 of the case and determine, number one, which
2 I do not concede that he is guilty but if he
3 is guilty of anything it is criminal sexual
4 conduct in the third degree. I submit to you
5 that he is not guilty of anything. On behalf
6 of Mr. Bagwell, I ask you to bring back a
7 verdict of Not Guilty both on criminal sexual
8 conduct in the first degree and on criminal
9 sexual conduct in the third degree.
10 I am not going to belabor the point
11 anymore. I am going to sit down and hush.
12 You have been a tremendously attentive jury
13 throughout this trial and I appreciate that.
14 Again, on behalf of Mr. Bagwell, I truly,
15 truly appreciate you being here for the last
16 two and a half days.
17 THE COURT: Mr. Jones.
18 SOLICITOR JONES: Thank you, Your
19 Honor, may it please the Court.
20 Defense counsel made much that the child
21 had abused before, had testified before. He
22 apparently thinks that she is and evil
23 genius. A nine-year-old evil genius who has
24 maintained a story for years just to get
25 David Bagwell out of the house, even though

1 he was not in the home when she made the
2 disclosure.
3 A child who had been through all of this
4 before, who had been cross-examined, who had
5 been in therapy, thought that such a
6 wonderful experience that she wanted to do it
7 again?
8 Think about what that child went through.
9 Was this fun for her? Did she get a reward?
10 Also Shauna Galloway-Williams testified
11 that in her experience and training and
12 articles that she's aware of that if you were
13 sexually abused once, you are more likely to
14 be sexually abused again.
15 According to Mr. Dejong, if you're
16 sexually abused once you can't be believed
17 because you know "the magic buttons."
18 You will have the video available to you
19 to review, you will have the photographs
20 available to you for review.
21 Mr. Dejong mentioned several things that
22 he thinks he remembers about the testimony,
23 but I submit to you that he is incorrect.
24 The forensic interviewer asked her, around
25 the eighteen minute mark, 'why are you here

1 today?' She says something about David and
2 then for the next thirty or forty minutes she
3 talks about the abuse, where they lived, all
4 that sort of stuff. Then around the forty-
5 two minute mark the interviewer asked her
6 about any other type of abuse. That is when
7 she gets real quiet. It's something that she
8 didn't want to talk about. She knows that
9 she has been victimized. She's embarrassed.
10 But according to defense counsel she just
11 knows the "magic buttons."
12 If she knew the magic buttons, why
13 wouldn't she have gotten into the forensic
14 interview and in the first place start
15 talking about the sexual abuse?
16 If she knew the magic buttons, why would
17 she say that he didn't really penetrate but
18 that he did put his mouth on her and wiggle
19 his tongue?
20 If she made this up and wanted to punish
21 David Bagwell, why didn't she give these
22 facts?
23 Defense counsel also talked about the
24 problem with the sequence that the child told
25 of the sexual events. At one point she told

1 the pediatrician there were times when she
2 would wake up in the bedroom with David. At
3 other times she said that she was tied down,
4 after she got out of school but before her
5 mother got home from work.
6 But what she did say was that she was
7 abused on more than one occasion. This child
8 moved to ten different places in three to
9 four years. Sexually abused on more than one
10 occasion. Do you think those sexual abuse
11 locations might have run together a little
12 bit?
13 Do you think it might be difficult for a
14 nine-year-old or a ten-year-old to articulate
15 the exact sequence of what happened during
16 the sexual abuse?
17 We don't need Shauna Galloway-Williams to
18 tell us that it would be difficult for a
19 nine-year-old to tell you the exact sequence
20 of events on every particular day, at every
21 particular address, of how the sexual abuse
22 occurred.
23 Defense counsel also makes a big deal
24 that children like to pretend. That you
25 could never believe a child. That's absurd.

1 That child testified and she said that she
2 knows the difference between right and wrong.
3 You're the sole judge of the credibility
4 of that child. I want you to think of the
5 totality of the circumstances of her
6 credibility, her entire story.
7 Shauna Galloway-Williams didn't read any
8 of the reports, she didn't interview this
9 child, she didn't know anything about this
10 case. She talked to you about her training,
11 her experience and her education. She knows
12 nothing about this particular case. Yet
13 every article that she cited, every factor,
14 every element of sexual abuse came directly,
15 related directly to the facts of this case.
16 Why is that? Because the child was sexually
17 abused. It is not just some crazy
18 coincidence.
19 Defense counsel also wanted to make a big
20 deal out of that MINOR CHILD said that she wanted
21 the Defendant to be punished. She sat here
22 and told you that he sexually abused her.
23 What would you expect a child to say? Of
24 course she does.
25 You can watch the video and see for

1 yourself if you think that this child is just
2 trying to please the interviewer and that she
3 was being coached. The interviewer would
4 repeat what the child was saying to her to
5 clarify what the child was saying. On
6 several occasions the child did clarify, 'no,
7 no, I meant this.' Each time the interviewer
8 said 'thank you for clarifying, that's
9 important.' Remember, the interviewer goes
10 over that in the beginning of the interview.
11 The interviewer did not suggest one
12 detail to that child. You all watched the
13 video and you'll have it back in the jury
14 room and you can watch it again if you need
15 to.
16 Criminal sexual conduct in the first
17 degree, part of the offense is cunnilingus,
18 fellatio. That's oral sex. Cunnilingus is
19 oral sex performed on a female, that's what
20 happened in this case. These are not things
21 that people discuss in polite conversations
22 but it is necessary to know in this
23 particular case.
24 Defense counsel said that if he is guilty
25 of anything that he is guilty of CSC with a

1 minor third. There is no "if" about it.
2 David Bagwell is guilty of criminal sexual
3 conduct with a minor in the first degree.
4 Since defense counsel mentioned it, when
5 I talked about credibility, why do people
6 lie? Remember what happened to the child
7 after she disclosed. Was she rewarded? No.
8 Did she escape some punishment? No.
9 David Bagwell, what does he have to lose?
10 Defense counsel very briefly mentioned
11 punishment. Punishment is not to be
12 discussed at all. You are to determine the
13 facts or whether this happened or not.
14 And I want you to remember this as you
15 discuss what happened, and I know that this
16 is a very difficult topic to talk about, it
17 hasn't been fun for y'all either, but when
18 you go home you're going to try to forget
19 about this case. Nobody likes to think about
20 sexual abuse occurring in our society, to our
21 children. But it does. It did to MINOR
22 CHILD and David Bagwell is the one who
23 sexually abused her. Her mother did not
24 protect her but you can give her justice and
25 you can let her know that people in the

1 community will not stand for this, that when
2 an adult sexually abuses a child that they
3 are found guilty. Thank you for your time.
4 THE COURT: All right, ladies and
5 gentlemen, now you get to hear from me. It
6 is my job now to charge you on the law of
7 the case that applies in this matter.
8 First of all, the indictments charge the
9 defendant with criminal sexual conduct with a
10 minor in the first degree. I remind you that
11 the fact that the defendant was arrested and
12 charged in this case is not evidence. It
13 cannot be considered by you as evidence of
14 his guilt, not does it create any presumption
15 of any inference of his guilt.
16 Indictments, the document that you have
17 heard referenced, are simple formal written
18 documents to bring a matter to court. That
19 is the only thing that it is to be used for.
20 The defendant has pled not guilty to this
21 indictment, and that plea puts the burden on
22 the State to prove the Defendant guilty,
23 prove him guilty beyond a reasonable doubt.
24 I charge that it is an important rule of
25 law that a defendant in a criminal trial, no

1 matter what the seriousness of the charge may
2 be, will always be presumed innocent of the
3 crime for which the indictment was issued
4 unless guilt has been proven by evidence
5 satisfying you, the jury, of his guilt beyond
6 a reasonable doubt.
7 The presumption of innocence does not end
8 when you begin your deliberations but
9 accompanies the defendant throughout the
10 trial until you reach a verdict of guilt,
11 based on evidence satisfying you of that
12 guilt beyond a reasonable doubt.
13 The presumption of innocence is like a
14 robe of righteousness around his shoulders,
15 which remains with him until it is stripped
16 from the defendant by evidence again
17 satisfying you of his guilt beyond a
18 reasonable doubt.
19 The presumption of innocence is not
20 merely a legal theory, it's not just a legal
21 phrase. It is a very important and
22 substantial right to which every defendant
23 coming into any courtroom is entitled to
24 unless you, the jury, are satisfied from the
25 evidence of the defendant's guilt beyond a

1 reasonable doubt.
2 So what is reasonable doubt? You have
3 heard that term quite a few times, so let me
4 define for you what reasonable doubt is.
5 Reasonable doubt is that doubt which would
6 make a honest, conscientious juror searching
7 for the truth in a case to hesitate to act.
8 Proof beyond a reasonable doubt is proof
9 that leaves you firmly convinced of the
10 defendant's guilt.
11 There are very few things in this world
12 that we know with absolute certainty, and in
13 criminal cases the law does not require proof
14 that overcomes every possible doubt. If,
15 based on your consideration of the evidence,
16 you are firmly convinced that the defendant
17 is guilty of the crime charged, you must find
18 the defendant guilty.
19 If on the other hand you find that there
20 is a very real possibility that the defendant
21 is not guilty, you must give the defendant
22 the benefit of the doubt and find him not
23 guilty.
24 As I told you in the beginning, you and I
25 have difference roles in this trial. As the

1 trial judge, it is my responsibility to
2 preside over the trial of the case. I also
3 have the duty to rule on the admissibility of
4 evidence that has been offered during the
5 trial.
6 You are to consider only the competent
7 evidence which came from this witness stand,
8 the documents introduced into evidence and
9 any stipulation. If there was any testimony
10 or questions stricken from the record during
11 this trial, then you must not consider that
12 in your deliberations. You are to only
13 consider the testimony which has been
14 presented here from this witness stand and
15 which has been ruled on as being admissible.
16 I also have the duty to charge you on
17 what the law is. Basically you took an oath
18 that you would follow that law. You're to
19 disregard -- if you felt like the law should
20 be something different or if you were under
21 the impression that the law was something
22 different, or you were involved in a matter
23 previously where you thought the law was
24 different, then you are to disregard that and
25 you are to apply the law which I am stating

1 to you right now.
2 In every case tried before a jury, you
3 are the sole judge of the facts. That is a
4 very important part of this. As a judge, I
5 cannot intimate, I can't state, I can't
6 comment, I can't have an opinion about the
7 facts in a case. If anything that I did or
8 that I said in any way made you think that I
9 have an opinion on the facts or if I stated
10 something that appeared to be an opinion on
11 the facts, please disregard that. It is your
12 duty to determine what the facts of this
13 particular case are. The law does not allow
14 me to have an opinion on the facts.
15 This is a matter solely for you. As
16 jurors, it is your duty to determine the
17 effect, the value and the weight of all the
18 evidence presented during this trial.
19 Direct and circumstantial evidence, I
20 want to discuss that with you. There are two
21 types of evidence that are generally
22 presented during a trial, direct evidence and
23 circumstantial evidence.
24 Direct testimony is the testimony of a
25 person who claims to have actual knowledge of

1 facts, such as an eyewitness. It is evidence
2 which immediately establishes the main fact
3 to be proved.
4 Circumstantial evidence is a chain of
5 facts and circumstances indicating the
6 existence of a fact. It is evidence which
7 immediately establishes collateral facts from
8 which the main fact may be inferred.
9 Circumstantial evidence is based on inference
10 and not on personal knowledge or observation.
11 I usually like to give an illustration.
12 Direct evidence is if you go home this
13 evening and as you are getting out of the car
14 it is raining. That is direct evidence that
15 it is raining. But if you pull up, you go in
16 your house and you come back out an hour
17 later and it is not raining but the top of
18 your car is wet, there are puddles, the
19 ground is wet, then that is circumstantial
20 evidence that it rained while you were in the
21 house.
22 The law makes no difference to the weight
23 or value to given to either direct or
24 circumstantial evidence. Nor is a greater
25 degree of certainty required of

1 circumstantial evidence than of direct
2 evidence. You should weigh all of the
3 evidence in the case.
4 After weighing all of the evidence, if
5 you are not convinced of the guilt of the
6 defendant beyond a reasonable doubt, you must
7 find the defendant not guilty.
8 Necessarily you must determine the
9 credibility of witnesses who have testified
10 in this case. Credibility simply means
11 believability. It becomes your duty as
12 jurors to analyze and to evaluate the
13 evidence and determine which evidence
14 convinces you of its truth.
15 In determining the believability of
16 witnesses who have testified in this case,
17 you may believe one witness over several
18 witnesses or you may believe several
19 witnesses over one witness. You may believe
20 a part of the testimony of a witness and
21 reject the remaining part. You may accept
22 the entire testimony or you may reject the
23 entire testimony.
24 You are to consider whether any witness
25 has exhibited any interest, bias, prejudice

1 or other motive in the case. You can also
2 consider the appearance and manner of a
3 witness while they were on the witness stand.
4 In other words, you give it the weight that
5 you feel is appropriate based on the
6 competent experience of the twelve jurors.
7 There has been evidence presented that
8 witnesses have made prior statements which
9 are not consistent with the witness' present
10 statement or testimony. You may use this
11 evidence to decide whether to believe a
12 witness. You may also use evidence of the
13 earlier contradictory statement to determine
14 the truth of those statements. It is up to
15 you to decide to believe the earlier
16 statement or the testimony given in trial.
17 If a witness has shown to have knowingly
18 testified untruthfully concerning a material
19 matter, you may consider this in determining
20 whether to trust the witness' testimony as to
21 other matters. You may reject all testimony
22 of that witness of give all or part of the
23 testimony the weight that you think it
24 deserves.
25 You have heard evidence that the

1 You should consider any expert opinion
2 received in evidence in this case like all
3 other evidence and give it the weight that
4 you think that it deserves.
5 If you decide that the opinion of an
6 expert witness is not based on sufficient
7 education and experience, or if you conclude
8 that the reasons given in support of the
9 opinion are not sound, or that the opinion
10 is outweighed by other evidence, you may
11 disregard the opinion entirely.
12 An expert witness' testimony is to be
13 given no greater weight than that of any
14 other witness simply because that witness was
15 an expert.
16 Further, you are not required to accept
17 an expert's opinion even though it may be
18 uncontradicted.
19 We also had testimony of children during
20 this trial, of a child. Where a witness is a
21 child, you must determine, as with any
22 witness, whether that testimony is
23 believable. In deciding believability, you
24 may consider not only matters that I have
25 already discussed with you about witnesses

1 but you may also consider the age of the age,
2 the child's ability to observe and remember
3 facts, and the child's ability to understand
4 and answer questions. Because a young child
5 may not fully understand what is happening
6 here, it is up to you to decide whether the
7 child understood the seriousness of appearing
8 as a witness in a criminal trial, whether the
9 child understood the questions, whether the
10 child has a good memory, and whether the
11 child understands the difference between
12 lying and telling the truth.
13 In addition, young children may be
14 influenced by the way that questions are
15 asked. It is up to you to decide whether the
16 children understood the questions asked and,
17 again, to give it the weight that you feel is
18 appropriate.
19 The particular charge here is criminal
20 sexual conduct with a minor in the first
21 degree. In order for the defendant -- strike
22 that.
23 The State, as I have said throughout, has
24 the burden of proof. This is what the State
25 has to prove beyond a reasonable doubt:

1 One, that the actor -- and I will define
2 some of these terms in a minute. The actor
3 engages in sexual battery with a victim who
4 is less than eleven years of age.
5 A "sexual battery" is sexual intercourse,
6 cunnilingus, fellatio, anal intercourse, or
7 any intrusion, however slight, of any part of
8 a person's body or of any object into the
9 genital or anal openings of another person's
10 body, except when the intrusion is
11 accomplished for medically recognized
12 treatment or diagnostic purposes.
13 If you find that the State has not shown
14 beyond a reasonable doubt that a sexual
15 battery occurred, you would stop deliberating
16 on this charge and your verdict would have to
17 be Not Guilty as to the charge of criminal
18 sexual conduct with a minor in the first
19 degree.
20 If you find that a sexual battery did
21 occur, you must then decide whether the State
22 has proven beyond a reasonable doubt that the
23 victim is less than eleven years of age.
24 Those are the elements of criminal sexual
25 conduct with a minor, first degree.

1 If you find that the State has not proven
2 that the defendant is guilty of first degree
3 criminal sexual conduct with a minor, has not
4 met the elements of that charge, then you
5 must then determine whether the State has
6 proved that the defendant is guilty of what
7 we call a lesser-included offense of third
8 degree criminal sexual conduct with a minor.
9 The elements for criminal sexual conduct
10 with a minor in the third degree that a
11 person -- again, this is a lesser-included
12 offense if you find that they did not meet
13 the burden on first degree. Third degree is
14 defined as a person is guilty of criminal
15 sexual conduct with a minor if the actor,
16 which I have already defined for you, is over
17 fourteen years of age and the actor willfully
18 and lewdly commits, or attempts to commit, a
19 lewd or lascivious act upon or with the body,
20 or its parts, of a child under sixteen years
21 of age, with the intent of arousing, appeal-
22 ing to, or gratifying the lust, passions or
23 sexual desires of the actor or of the child.
24 "Actor" means a person accused of
25 criminal sexual conduct.

1 The word "lascivious" means tending to
2 excite lust, lewd, indecent, obscene, sexual
3 impurity, tending to deprave morals in
4 respect to sexual relations.
5 The word "lewd" means obscene, lustful,
6 indecent, and lecherous. The term imports a
7 lascivious intent. It signifies that form
8 of immorality which has relation to moral
9 impurity in order to establish criminal
10 liability, criminal intent is required.
11 For example, the mental state required to
12 be proven by the State for a particular crime
13 must be purpose, intent, knowledge, reckless-
14 ness or criminal negligence. Criminal intent
15 must be proven by the State beyond a
16 reasonable doubt.
17 Criminal intent is always a matter that
18 must be determined by the jury from the
19 circumstances surrounding the situation.
20 There is no way to prove intent to a
21 mathematical certainty. There is no way
22 medical science can dissect a person's brain
23 and determine what the person had in mind, so
24 the law says that criminal intent may be
25 inferred from the circumstances shown to have

1 existed. This is how you make a determina-
2 tion of whether or not the element requiring
3 intent was present.
4 It is not necessary to establish intent
5 by direct and positive evidence, but intent
6 may be established by inference in the same
7 way as any other fact by taking into
8 consideration the acts of the parties and all
9 the facts and circumstances of the case.
10 Criminal intent is a mental state, a
11 conscious wrongdoing. It is up to you to
12 determine what the defendant intended to do
13 based on the circumstances shown to have
14 existed.
15 Criminal intent can arise from action or
16 a failure to act. It may arise from
17 negligence, recklessness or an indifference
18 to duty or to consequences that is considered
19 by the law to be the equivalent of criminal
20 intent.
21 At this time, Mister Foreman, I am going
22 to go over the verdict form with you. I'll
23 ask the bailiff to hand you the form,
24 (tendering).
25 First of all, the first part is just the

1 caption of the case with the Indictment
2 number. It says Verdict Form.
3 The first question that you've got to
4 answer is, number one, as to Indictment --
5 and it gives the indictment number -- "We,
6 the jury, unanimously find the Defendant,
7 David Bagwell,..." -- this is your deliberation
8 on criminal sexual conduct with a minor in
9 the first degree. You will check -- and pay
10 no attention to the order, because I had to
11 put them in some order. The first is that if
12 you feel the State has met its burden on that
13 charge, then you would check Guilty. Sign
14 your name at the bottom. If you find that
15 the State did not meet its burden on that
16 charge, that the defendant is not guilty,
17 then you would check "Not Guilty" and sign
18 your name at the bottom.
19 If you find Guilty on the charge, then
20 you've completed your deliberation.
21 If you find Not Guilty, then you go to
22 number two, because that is the lesser-
23 included offense that I talked about. Then
24 you must determine if you feel that the State
25 met its burden beyond a reasonable doubt

1 proving criminal sexual conduct in the third
2 degree, a lesser-included offense of the
3 first charge. If you find that it has, then
4 you would check Guilty. If you find that the
5 State did not meet its burden, that the
6 Defendant is not guilty, then you would check
7 Not Guilty.
8 When you complete your deliberations, you
9 sign the verdict form.
10 Let me make sure that you understand,
11 too, that your verdict must be unanimous.
12 That means that all twelve of you must agree
13 on the verdict.
14 Your verdict cannot be based on sympathy,
15 passion, prejudice, emotion or any other
16 consideration but merely on the evidence
17 which has been presented to you.
18 What you are going to do is that you're
19 going back there, you're going to deliberate
20 and when you've reached your verdict, knock
21 on the door and let the bailiff know. Then
22 we will bring you back to the courtroom to
23 receive your verdict.
24 A couple of other things. If you have
25 any questions, Mister Foreman, your job is to

1 write that question on a piece of paper, date
2 it, sign it and give that to the bailiff.
3 The bailiff will present that question to me
4 and I will respond to your question either in
5 writing or by bringing you back into the
6 courtroom.
7 I would also tell you that very often --
8 sometimes jurors will come back and ask to
9 see some other document or hear some evidence
10 or see some statement. The only thing that
11 you can consider is the evidence that was
12 admitted during the trial by the parties. We
13 cannot supplement the record, it is the
14 evidence that has already been presented.
15 I want to thank the alternate. You're
16 like the backup quarterback. If nothing
17 happens -- and you know that we have already
18 had to use an alternate, so your role is very
19 important. Unfortunately, under our law you
20 cannot deliberate with the twelve jurors. So
21 once the deliberations begin, you will need
22 to step out.
23 Put the verdict form on the bar there.
24 FOREMAN: (Complies).
25 THE COURT: Now, I'm sending you back

1 to the jury room but you may not start your
2 deliberations yet. I need to consult with
3 the attorneys to make sure that I didn't miss
4 something in my charge on the law or
5 misstated something. If there is any
6 additional part, I'll bring you back out and
7 give you additional instructions on the law.
8 If not, then you will receive the exhibits
9 and at that point you may begin your
10 deliberations, but not before. Okay. You
11 may retire to your jury room.
12 Also, your lunch should be here. If not,
13 it will be very shortly -- it's pizza.
14 If you have any questions, write them
15 down.
16 (JURY OUT @ 1:00 P.M.)
17 THE COURT: Any exceptions or additions
18 from the State?
19 SOLICITOR JONES: None from the State,
20 Your Honor.
21 THE COURT: Any exceptions or additions
22 from the Defense?
23 JOHN DEJONG: None on behalf of Mr.
24 Bagwell, Your Honor.
25 THE COURT: Then if you will review the

1 exhibits, we will send them to the jury and
2 they may begin their deliberations. If they
3 want to send the video, they can send a note
4 out and we will let them review it.
5 JOHN DEJONG: Are you going to send it
6 back?
7 SOLICITOR JONES: They can't view back
8 there but, Your Honor, just send it back.
9 THE COURT: Okay. They'll let us know
10 if they want to see it.
11 (COUNSEL APPROVAL OF EXHIBITS)
12 (JURY IN DELIBERATIONS @ 1:10 P.M.)
13 (ALTERNATE EXCUSED)
14 (DEFENDANT PRESENT)
15 (NOTIFIED OF JURY QUESTION @ 1:50 P.M.)
16 THE COURT: We have received a note
17 from the jury. I'm going to bring them in to
18 answer it.
19 COURT REPORTER: Court's Exhibit 2.
20 (SO ENTERED AS COURT'S EXHIBIT 2)
21 (JURY INTO COURTROOM @ 1:58 P.M.)
22 THE COURT: Mister Foreman, I have
23 received your note asking, (reading): "Is
24 the tongue or the hand touching the outside
25 of the vagina or butt considered first degree

1 criminal sexual conduct?" Then you've signed
2 it and dated it today.
3 I think the way to respond to that is
4 that I am just going to recharge you on just
5 the elements of criminal sexual conduct with
6 a minor, first degree.
7 Criminal sexual conduct is the actor
8 engages in sexual battery with a victim who
9 is less than eleven years of age.
10 A "sexual battery" is sexual intercourse,
11 cunnilingus, fellatio, anal intercourse, or
12 any intrusion, however slight, of any part of
13 a person's body or of any object into the
14 genital or anal openings of another person's
15 body, except when the intrusion is
16 accomplished for medically recognized
17 treatment or diagnostic purposes.
18 That is the definition. That is the
19 question that you need to respond to.
20 If you have any additional questions or
21 need to be recharged on any additional law,
22 just let me know.
23 (JURY OUT @ 2:05 P.M.)
24 THE COURT: Any exception or objection
25 from the State on that definition?

1 SOLICITOR JONES: Your Honor, I think if
2 you're going to read CSC first, I think also
3 CSC third should have been read as well.
4 THE COURT: I think that they asked
5 specifically as to what is considered first
6 degree, and that's the reason that I
7 responded that way.
8 SOLICITOR JONES: Yes, sir.
9 THE COURT: Any objection from the
10 Defense?
11 JOHN DEJONG: No, Your Honor. As I
12 understood the question, they were basically
13 asking for the definition of sexual battery?
14 THE COURT: That's what I -- yeah. I
15 think that's all they needed.
16 JOHN DEJONG: I think in your charge
17 that you said sexual battery was the same
18 either for -- you basically gave -- it
19 couldn't have been the same, though.
20 THE COURT: No, I gave the whole thing
21 about lewd and lascivious.
22 JOHN DEJONG: Yes, sir.
23 THE COURT: Okay, we will be -- well,
24 we have another question.
25 (NOTIFIED OF JURY NOTE @ 2:08 P.M.)

1 COURT REPORTER: Court's Exhibit 3.
2 (DEFENDANT PRESENT)
3 THE COURT: All right, we are still on
4 the record. The question is, "Did the
5 victims say that the defendant put his mouth
6 on her vagina and wiggled his tongue?"
7 My response that I've written on the note
8 is, "I cannot answer a question about a
9 factual matter. We can replay any portion of
10 the testimony requested. If you want to
11 replay any portion of the testimony, try to
12 identify specific portions."
13 Any objections or exceptions to that
14 response?
15 SOLICITOR JONES: I think there is a
16 chance that they may not understand and will
17 want to see the video again.
18 THE COURT: Then they can ask to see
19 it.
20 JOHN DEJONG: I think that it is pretty
21 clear.
22 THE COURT: All right, take that to the
23 jury.
24 (COURT'S EXHIBIT 3 RETURNED TO JURY)
25 THE COURT: We will be at-ease until

1 the next question.
2 (JURY IN DELIBERATION @ 2:18 P.M.)
3 (ADVISED OF JURY VERDICT @ 2:20 P.M.)
4 (DEFENDANT PRESENT)
5 THE COURT: All right, I've been
6 advised that we have a verdict. Anything
7 from the State before we bring the jury in?
8 SOLICITOR JONES: No, sir, Your Honor.
9 THE COURT: Anything from the defense?
10 JOHN DEJONG: Nothing from the defense,
11 Your Honor.
12 THE COURT: All right. I know that I
13 don't have to remind you but I would ask that
14 all parties restrain yourselves. I don't
15 want any type of reaction whatsoever to the
16 verdict.
17 (JURY IN @ 2:25 P.M.)
18 THE COURT: Mister Foreman, I under-
19 stand that the jury has reached a verdict?
20 FOREMAN: Yes, sir.
21 THE COURT: Please tender the verdict
22 form to the Clerk.
23 FOREMAN: (Tenders).
24 THE COURT: (Upon review), I find that
25 the verdict appears to be in proper form.

1 I need for the Foreman to check the date.
2 You can go back to the jury room and -- or
3 correct the date on that.
4 FOREMAN: (Complies).
5 THE COURT: Thank you. It appears that
6 the verdict has been properly completed.
7 Mister Clerk, you may publish the verdict.
8 CLERK: The State of South Carolina
9 versus David Scott Bagwell, Indictment Number
10 15-GS-39-0102, "We, the jury, unanimously
11 find the Defendant, David Scott Bagwell,
12 guilty of criminal sexual conduct in the
13 first degree."
14 If this was your verdict and is still
15 your verdict, so say all of you by raising
16 your right hand.
17 (UNANIMOUS RESPONSE BY JURORS)
18 THE COURT: Anything related to the
19 jury, from the State?
20 SOLICITOR JONES: No, sir, Your Honor.
21 THE COURT: Anything from the ---
22 JOHN DEJONG: Nothing on behalf of Mr.
23 Bagwell, Your Honor.
24 THE COURT: Ladies and gentlemen,
25 again I want to thank you for your service.

1 This concludes your services for this case.
2 Unfortunately it does not conclude your
3 service for the week. The jury panel is
4 coming back in the morning at 9:00 o'clock
5 and I need you to report back in this
6 courtroom here at that time. We will be
7 starting another case.
8 Thank you very much for your service.
9 If somebody has an issue with tomorrow, I
10 will step back there in just a minute.
11 (JURY EXITS COURTROOM)
12 THE COURT: I am going to step back
13 there. Y'all get your paperwork ready.
14 (JURY DISMISSED)
15 (BRIEF RECESS)
16 (DEFENDANT PRESENT)
17 THE COURT: Are we ready for
18 sentencing?
19 JOHN DEJONG: Yes, sir, Your Honor.
20 THE COURT: Well, first, are there any
21 Motions?
22 SOLICITOR JONES: No, sir.
23 JOHN DEJONG: Nothing at this time, Your
24 Honor.
25 THE COURT: All right. Mr. Bagwell, if

1 you will please stand.
2 DEFENDANT: (Complies).
3 THE COURT: Anything else before
4 sentenceing, from the Defense?
5 JOHN DEJONG: No, Your Honor.
6 THE COURT: From the State?
7 SOLICITOR JONES: Would you like for me
8 to read the rest of his rap sheet?
9 THE COURT: Was there more than what
10 y'all have already ---
11 SOLICITOR JONES: I will just tell you:
12 2001, breach of trust;
13 2005, assault and battery third;
14 2008, financial card theft, two; and
15 financial card fraud, and a petit larceny;
16 2014, domestic violence;
17 2017, HTO and I believe he is currently
18 on probation for that.
19 THE COURT: Mr. Bagwell, the jury has
20 found you Guilty of criminal sexual conduct
21 with a minor in the first degree. I will be
22 glad to hear from you or your attorney,
23 anything that you want to tell me.
24 DEFENDANT: Well, I don't think I was
25 fairly represented. I mean, I have a police,

1 report from Colleton that was for the exact
2 dates of what she supposedly said I did,
3 where she recants her statement, where she
4 says that she lied because she was mad at me.
5 I did not do this to that little girl.
6 I am not a child molester. I treated these
7 kids like my kids for the five years that I
8 raised them from babies. I'm not a child
9 molester, sir.
10 THE COURT: Anything else?
11 DEFENDANT: I don't think that I was
12 fairly represented when you've got somebody
13 that wouldn't allow in certain evidence that
14 would show my innocence. I mean, it got
15 struck from the record like it was nothing.
16 It's everything that I've clung to for three
17 years, to my innocence. I did not do this.
18 THE COURT: I am sure that your
19 attorney has advised you that you have the
20 right to appeal this sentence within ten ---
21 DEFENDANT: She's mad at me because I
22 met this woman and ---
23 THE COURT: Hold on. I was just saying
24 that I am sure your attorney has advised you
25 or will advise you that you have the right to

1 appeal the sentence within ten days from
2 today. Your appeal must in writing and your
3 attorney will explain that to you further.
4 I'm just letting you know that.
5 I want to hear everything that you have
6 to tell me, but -- it's my understanding that
7 what we are talking about here is a sentence
8 of twenty-five years to life.
9 JOHN DEJONG: That is my understanding,
10 Your Honor.
11 THE COURT: And that any portion -- by
12 all means, Mr. Bagwell, I didn't mean to cut
13 you off. I want to hear anything that you
14 want to tell me.
15 DEFENDANT: I have heard, have her
16 mother on video (sic), that they are going to
17 have me locked up for the rest of my life.
18 Whether Mr. Dejong has that as part of the
19 evidence -- or why it wasn't put in evidence,
20 I don't know, but he's had it for three years
21 now. It's been here on my same phone since
22 all this happened.
23 I did not do this. Like I said, my ex-
24 wife, Toni, the mother, she's mad because I
25 met this woman and -- I wasn't happy with her

1 and all that. She called and got me on a CDV
2 after I left. I come back to fix it and she
3 said, 'if you come back, I'll drop the CDV.'
4 I come back to her and the CDV went away.
5 Then as soon as I moved into another place,
6 she used my disability check to get into
7 another place and the next day is when she
8 had me arrested for another CDV. I spent the
9 whole month -- I mean, the last three years
10 of my life has been ruined by her. I have
11 three kids, my friends and family, everybody
12 has stopped talking to me because they think
13 that I did this, but I didn't do this. I
14 have never messed with a child. I don't know
15 why all this didn't come out in the trial, I
16 feel like I was misrepresented.
17 THE COURT: Mr. Bagwell, it's not my
18 duty to determine the facts of this case, as
19 I instructed the jury. My role at this point
20 is merely the sentencing. Is there anything
21 else that you want to tell me before I impose
22 sentence? Or Mr. Dejong, anything that you
23 would like to tell me?
24 JOHN DEJONG: Your Honor, you pretty
25 much heard all of his personal information

1 when he was on the witness stand. He does
2 have some issues with his post-trauma stress
3 disorder and with being bipolar. He has been
4 on medication. He also broke a hip in 2014.
5 He was in the Rose Center in Orangeburg in
6 May of 2014 for an attempted suicide.
7 Your Honor, the crime that he was accused
8 of is a horrible crime. I understand that
9 the penalty is very steep. There is nothing
10 that I can do about that, the legislature has
11 set that.
12 You've heard his prior record, Your
13 Honor. He is now thirty-five years of age.
14 I certainly think twenty-five is way more
15 than a gracious plenty, but I can't do
16 anything about that.
17 For the record, Your Honor, I have shared
18 with him his right to appeal, that I would
19 appeal any conviction. I have also shared
20 with him his right to post-conviction relief.
21 THE COURT: Again, I didn't mean to cut
22 the State off. Is there anything that the
23 State wants to say?
24 SOLICITOR JONES: Nothing, Your Honor.
25 THE COURT: Anything else? (No

1 response). Okay. The sentence of the Court,
2 Mr. Bagwell, is that you be confined to the
3 South Carolina Department of Corrections for
4 thirty (30) years.
5 (TRIAL CONCLUDED)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

State of South Carolina v. David Scott Bagwell
Case No. 15-GS-39-0102
Jury Trial of August 28-30, 2017
Certificate of Court Reporter

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 13th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the jury trial held in the within action heard on August 28-30, 2017, before The Honorable Perry H. Gravely;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Deborah Garrison

Deborah Garrison

Greenville, South Carolina
October 29, 2017

383

WITNESSES

Jan Kelley

Pickens County Sheriff's Office

10/12/2014

ARREST WARRANT NUMBER
2014A3910600120

ACTION OF GRAND JURY

TRUE BILL

FEB 10 2015

Foreperson of Grand Jury

VERDICT

GUILTY

Foreperson of Petit Jury
Date: 8/30/17

DOCKET NO. 2015-GS-39-0102
SBT

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

FEB 10 2015 TERM 2015

THE STATE

vs.

DAVID SCOTT BAGWELL

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on FEB 10 2015 the Grand Jurors of Pickens County present upon their oath:

That DAVID SCOTT BAGWELL did in Pickens County, between the dates of August 28, 2013 and October 30, 2013, commit a sexual battery on [redacted] who was less than eleven years of age. This is in violation of §16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR BAR #

STATE OF SOUTH CAROLINA)
COUNTY OF Pickens)
STATE VS.)
David Scott Bagwell)
AKA:)
Race: WHITE Sex: M Age: 35)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: Branchville, SC 29432-2325)
DL#: [redacted] SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS3900102
A/W#: 2014A3910600120
Date of Offense: 10/30/2013
S.C. Code § : 16-03-0655(A)(1)
CDR Code #: 0385

RECEIVED
SEP 05 2017
SC Court of Appeals

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Sex, Crim Sex Cond, 1st Deg W/Min <11 Yr

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Jones, Christopher L.	78892 SC Bar#	Defendant	DEJONG, JOHN W.	01620 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.00
TOTAL		$ 128.00

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk [signature]
Court Reporter: [signature]

Presiding Judge [signature]
Judge Code: 2755
Sentence Date: 8/30/17

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 5, 2018

By: _____

James Falk

FALK LAW FIRM
PO BOX 1058
CHARLESTON SC, 29402
(843) 606-6007

ROBERT DUDEK
Chief Appellate Defender
South Carolina Commission on Indigent Defense
PO BOX 11589
Columbia, SC 29211-1589
803) 734-1330

RECEIVED
DEC 05 2018
SC Court of Appeals