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ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY

SC COURT OF APPEALS

DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN PETER BARNES,

APPELLANT

APPELLATE CASE NO. 2011-199787

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**EXHIBIT #4 (SEALED ARC RECORDS)
STATE'S EXHIBIT #1 (VIDEO OF FIRST ARC INTERVIEW – APRIL 19, 2010)**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 JOHN PETER BARNES,)
)
 DEFENDANT.)
 _____)

2010-GS-40-7545

SEPTEMBER 12, 2011

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE DEANDREA BANJAMIN, JUDGE

APPEARANCES:

MARGARET FEND, ESQUIRE
DEBRA BARRY, ESQUIRE
ATTORNEYS FOR THE STATE

GREG COLLINS, ESQUIRE
RHODES BAILEY, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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STATE'S EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1 Your motion regarding violation of Rule 3.7, and I've
2 read *Sanders* and -- what's the other case? *Sanders* and
3 *Sierra*. I'll be glad to hear from you. I'll let you place
4 it on the record.

5 MR. COLLINS: Thank you, Your Honor. As was
6 stated in chambers, we were informed last week that both
7 attorneys, the Prosecutors on this case were -- had an
8 interview with the child victim of this case without
9 anybody else present in the room. Any kind of case where a
10 child is involved it's different. They're a different type
11 of witness. There are special statutes that allow
12 videotapes to be admissible that wouldn't be admissible in
13 any other situations. And the reason for that is that any
14 time a child witness is interviewed, it takes a trained
15 professional to interview those children. And that all
16 started back in the eighties when a lot of false
17 allegations came forth because officers were using the same
18 techniques on children as they use on adults. As a society
19 we figured out that you need to be a trained professional
20 to interview a witness.

21 Now, I'm not saying Ms. Fend or Ms. Barry don't know a
22 lot about this as well, but our position is that each time
23 the child was interviewed, and each time he's been
24 interviewed in this case, we know who interviewed him and
25 we know where and they're non-lawyers. We have videos of

1 some of them, or most of them actually. And we look at
2 those videos, we evaluate those videos. We can employ
3 experts to look at the techniques used by the interviewers.
4 It's a very important part of our defense as to how this
5 child is handled from the time that he initially did not
6 disclose and now he's at the point where he is disclosing
7 these allegations.

8 The main part of our defense is to look at how many
9 times he was interviewed, how he was interviewed, and who
10 interviewed him and what type of situation. The reason
11 this is important is a week before trial he's meeting with
12 two prosecutors in the courthouse, a week before trial and
13 he comes up with new, very detailed pieces of information,
14 which we know they use, and we know they have experts who
15 testify that they look for small details like that to
16 determine whether or not the allegation is compelling.
17 That's a very important part of their case which is why
18 they disclosed it to us because they know it's big. All
19 we're asking for is a hearing that *State v. Sanders*
20 allegation or any allegation of a Rule 3.7 violation -- and
21 it's very clear that we at least get a hearing so that you
22 can hear the whole situation and make a ruling on it.
23 We're just asking for a hearing that we can put both
24 Prosecutors on the stand and ask them exactly what manner
25 and how they interviewed this child. We also intend on

1 calling the child to ask him a few questions as well, but
2 we feel like we're entitled to that because it was not
3 recorded and the reason it's a violation of Rule 3.7 is
4 that there was no other witness in the room. The only two
5 witnesses are the two attorneys. And every other person
6 that interviewed this child is on the witness list.
7 They're the only two that aren't. That's why they're on
8 our witness list, they were the last ones to interview with
9 him and they got new information from him. We think we're
10 entitled to it and then we think at the very least we're
11 entitled to a hearing.

12 The only thing that can solve all of this is if one of
13 them's taken off the case. As in Rule 3.7 you can be in
14 the same firm and be a witness in the case. If one is
15 taken off the case, there's no need for this hearing. We
16 can go forward without it. However, since they both intend
17 to stay on the case, we think we're entitled to a hear
18 because when they put up their case and we put our defense,
19 we're going to put them on the stand.

20 THE COURT: All right. Yes, ma'am.

21 MS. FEND: Your Honor, a few things. Number one
22 is the videotape requirement or the videotaping of children
23 at the Assessment and Resource Center, it's not a
24 requirement for us to prosecute. The videotape requirement
25 is if we wanted to get that interview in evidence. If the

1 child is under a certain age and certain criteria are met
2 under the statute, the prosecution can admit the videotape
3 of the interview. If that's not videotaped, we're not
4 going to get that piece of evidence in in those cases. But
5 any investigator could decide, you know what, I'm not going
6 to send this child to the ARC, I'm going to do an interview
7 on my own. So first of all, there's no requirement that
8 anybody videotape.

9 Secondly, is there are -- there is another witness
10 that can testify to all of these things. Will, the victim
11 himself, can testify about his meeting with us. In any
12 given case, even with adults as witness, they can be cross-
13 examined about, you know, you met with the Solicitor, you
14 met with them so many times. Did they tell you this
15 information or that information? Is that why you're
16 changing -- is that why you now have more information and
17 are testifying to things that weren't in your original
18 interview. This child can explain, you know, our
19 interview, that we, you know, met and discussed what
20 happened to him and how these other things that were not on
21 that interview, weren't on that videotape that he's now
22 testifying to, how that came to his memory and how that
23 came about.

24 If he was to testify differently than what he told us,
25 we'd have an obligation as Court Officers to then tell him

1 while he's on the stand to say, you know, now you need to
2 know now he's completely changed his story or he's denying
3 "X" or admitting to "Y". This is case preparation and
4 sitting down and talking to a witness like any other -- 3.7
5 doesn't distinguish between if you have a child or if you
6 have an adult witness.

7 And I think the cases that they provide to you really
8 talk about in cases where they wanted to then impeach a
9 witness about something that was said. If we don't have
10 another witness to that incident, we are now unable to do
11 that. We're not going to be able to impeach those
12 witnesses. So this is -- there is someone that can testify
13 to these things. The victim himself can testify why there
14 are additional memories and things that he remembers about
15 the sexual abuse that happened to him, that he originally
16 didn't talk about in those first two interviews.

17 MR. COLLINS: Your Honor, if I may respond just
18 briefly. Looking directly at the Rule, it's very clear
19 when an advocate can become a necessary witness. They
20 cannot stay the advocate on the case unless those three
21 exceptions. This case doesn't fall anywhere in those three
22 exceptions. I believe we stated on the record that it has
23 nothing to do about what the child said in the interview
24 about the reason they're a necessary witness. They're a
25 necessary witness because they have knowledge about

1 interviewing techniques. They deal with these cases on a
2 regular basis and we have a right to cross-examine them on
3 the techniques and methods they used to interview this
4 child. It has nothing to do with whether or not his
5 testimony changed and whether or not they're going to be an
6 impeachment witness. They're a defense witness because we
7 want to put them on the stand and cross-examine them on how
8 they interviewed this child, what questions and where and
9 what type of influences that could have happened. So
10 having him to cross-examine does not cure our problem
11 whatsoever.

12 MS. FEND: I guess that word is what I'm kind of
13 focusing in on is where it says necessary witness. And
14 we're not necessary. We may have the witness themselves,
15 the child victim, that can come in and testify as to those
16 things, as well as Ray Olszewski, who is a forensic trained
17 interviewer that will be here to testify. They can also
18 pose those questions to that expert as well, is, you know,
19 why, after all of this time, would a child come up with
20 additional details of what happened to them? We're not the
21 necessary witnesses. All the witnesses that are already
22 here on the witness list can provide all of that
23 information

24 THE COURT: All right. I'm going to -- in the
25 Rule it also says, is acting as an advocate at trial and it

1 talks about being a necessary witness. I do -- the
2 victim's here. He's testifying. You're able to cross-
3 examine him about what they asked him or what they said to
4 him. I'm not going to disqualify either one of the
5 attorneys. I don't think, you know, based on my reading of
6 the cases, I don't think a hearing is necessary.

7 The case that you're referring to, *Sanders*, actually
8 that's a case where the State is trying to call the Defense
9 attorney as a witness. In reading both cases, the Court
10 strongly, strongly, strongly discourages attorneys being
11 called as witnesses in a case. I think this is trial
12 preparation and the witness is available. You can ask him
13 any question that you all want to ask him about his
14 preparation with the State's attorneys, if they coached him
15 into saying anything, what they asked, and that kind of
16 stuff.

17 MR. COLLINS: Your Honor, we would ask a proffer
18 based on the language in *State v. Sanders* that says, we
19 take this opportunity to set forth the proper procedure
20 when counsels removal is sought -- which is being sought
21 right now -- is to have an evidentiary hearing. As a
22 procedural safeguard, an evidentiary hearing is appropriate
23 to determine whether there's evidence to support or not
24 evidence to support.

25 Again, Your Honor, we would ask that they just proffer

1 their testimony and have some sort of hearing so that we
2 can establish this for the record. Otherwise, we have no
3 way to establish a record on this issue.

4 MS. FEND: Your Honor, I actually would be happy
5 to provide a proffer of how the disclosure came about.

6 THE COURT: That's fine. Do you want to hear
7 from both of them?

8 MS. FEND: Well, the proffer does require either
9 of us as court officers -- as sworn officers of the court,
10 so I don't need to testify. I mean, I would proffer what
11 happened.

12 MR. COLLINS: If she's a witness, she's going to
13 have to testify.

14 MR. BAILEY: She's still a witness, Judge.

15 THE COURT: I'll let her proffer, but I'm not
16 going -- I'll let her proffer her testimony. She's an
17 officer of the court. She can tell you all how the
18 conversation went. But, I mean, I don't think I need to
19 put her under oath and put her on the stand.

20 MR. BAILEY: All right, Judge. We would still
21 like to preserve, you know, for the record our objection
22 that she be allowed to wear two hats in this way.

23 THE COURT: That's fine.

24 All right. Yes, ma'am. I'll let you proffer any
25 testimony.

1 MS. FEND: I mean, essentially, the methods is he
2 came in for ---

3 MR. COLLINS: Before we continue, can we ask that
4 the victim in this case be removed from the courtroom? I
5 don't want to do any more harm that's already been done,
6 repeated questions, information given, age of the child. I
7 would ask that it be done in-camera or with the victim out
8 of the courtroom.

9 MS. FEND: He has a right to be here under the
10 Victim's Rights Act.

11 THE COURT: I don't think I can put him out of
12 the courtroom.

13 MR. COLLINS: Your Honor, I'm just asking the
14 Court for safety purposes, we're objecting to the proffer
15 because we don't get to ask any questions and we don't get
16 to know the true nature. And as an advocate she can't
17 proffer testimony. Under *State versus Hill* what an
18 attorney says is not testimony. So this proffer isn't
19 technically testimony unless she's sworn in and allow us to
20 ask her questions. So it still doesn't establish a record
21 for appeal or a record for any review.

22 And, Your Honor, the *State v. Hill* case had to do with
23 the question -- where the jury selection process was being
24 challenged, and as an attorney, the attorney stated to the
25 Court on the record certain things that were learned during

1 jury qualification. And the Court of Appeals of South
2 Carolina ruled that that is not evidence and cannot be
3 reviewed under appeal. I would say that this proffering
4 process that we're involved in right now is that exact same
5 thing where she is talking as an officer of the court and
6 it's not evidentiary. In fact, in value it wouldn't be
7 able to be reviewed.

8 MS. FEND: What this victim actually said to us
9 in this meeting is hearsay, so I wouldn't be able to
10 testify to it anyway. It's hearsay what the victim said,
11 unless, as we have disclosed, the additional things that he
12 told us, unless he denied making those statements to us,
13 then we could testify to impeaching him and we would be
14 called because they would say, did you tell the Solicitor
15 this? And if he said, no, ---

16 THE COURT: Well, at that point, you become a
17 witness.

18 MS. FEND: Right, at that point. But that's not
19 happened. He's not been on the stand. He's not denied
20 making these statements, so that impeachment is not there.
21 So anything that he told us in our meeting is hearsay and
22 is not admissible. What I'm doing is they challenged
23 basically that something improper was done in the method of
24 getting this out, and I am here to -- I was offering under
25 3.7 as they were asking or you actually read the word

1 proffer, I was offering to proffer the method. But, you
2 know, if they're objecting to that, then I won't offer the
3 proffer. And, I mean ...

4 MR. COLLINS: Well, we'll take ---

5 MS. FEND: We'll stand with the Court's holding
6 that I would not testify as a witness.

7 MR. COLLINS: Your Honor, I mean, we'll take what
8 we can get, whatever proffer you order; we just want it on
9 the record we object to this being the method used because
10 our position is that this is not going to keep this on the
11 record for appeal or for review.

12 THE COURT: All right. Hold on one second.

13 All right. What I'm going to do is I will let her
14 proffer testimony about what happened and after that if we
15 need to -- based on what I hear, if we need to have a
16 hearing at that point, we will.

17 MS. FEND: Essentially, Your Honor, he came in
18 for -- to meet with us regarding the details of the abuse.
19 He met with myself and Debra Moore, and we didn't use any
20 leading questions, basically just said what can you
21 remember that happened to you, tell us about what happened.
22 He gave us the details, which were consistent with that
23 which is disclosed or has been provided to Defense counsel
24 in the ARC records and the videotape. Talked to him about
25 basically his age and kind of assessed that we thought he

1 was old enough to go watch these interviews on his own to
2 refresh his memory back to when he met with Ray Olszewski
3 the two times, made copies of those DVDs and had them sent
4 to his home so he could watch them in privacy at his own
5 home by himself. He represented to us that he reviewed
6 those two DVDs. He came back to our office. We sat down
7 with him and said, you know, did you have a chance to watch
8 them? Did they refresh your memory about what happened?
9 And he said, yes, but there are some things that I didn't
10 tell Ray in the interview, and those three things were
11 disclosed to Defense in the email.

12 It was that he would use the excuse that he had to pee
13 in order to get the masturbation to stop. It was that he
14 remembered that the Defendant would play music and he could
15 remember two distinct songs that the Defendant would play.
16 And then the third thing in one of the -- I guess in the
17 second ARC tape, he referred to that when it happened was
18 somewhere around November of '09 for multiple times. And
19 he said basically he didn't know when exactly it started,
20 the dates, but that he knew it was after he found out that
21 the Defendant was his biological dad. And so because that
22 was different from this interview, we disclosed that third
23 thing to them as well.

24 MR. COLLINS: Your Honor, this is the first time
25 we've ever heard they had two meetings. This is the first

1 time we've ever heard the child was allowed to review his
2 own video, which I have never seen done before in a case.
3 We need, we need time to hire an expert and review this
4 information and how it can affect the child's testimony.
5 So we'd either ask that the case be continued so we can
6 hire an expert and let's explore this issue a little bit
7 further. This is new information that we did not have
8 until right now.

9 MS. FEND: First of all, I don't have to tell him
10 how many times I meet with the witness. How many times I
11 meet with the witness has zero bearing and I have no
12 obligation to turn over to them how many times I meet with
13 a witness. The second thing is, having the child watch the
14 interview happens all the time. It's a regular occurrence,
15 regular. It's like giving a statement, a written
16 statement. If he had given a written statement, we would
17 get that written statement to a witness. It happens in
18 every single case and every single witness. You say, did
19 you give a written statement? You hand it to them and you
20 say, read this and refresh your memory about the events.
21 Every single case. It would be irresponsible of us not to
22 provide a witness their prior written statement or in this
23 case, it was videotaped, to that witness to review.

24 THE COURT: All right. I find that this is trial
25 preparation, that there is no -- based upon what I've

1 heard, there is no violation of Rule 3.7 and that neither
2 of the attorneys need to step down from the trial of this
3 case.

4 MS. FEND: Just to clear up the record, too, so
5 they don't think I was misrepresenting anything, I actually
6 met with this victim more times. It was only those two
7 times that I discussed the actual facts of what happened to
8 him. The other time, just getting to know him so that he
9 would be comfortable with me coming back and discussing the
10 case, so there were ---

11 THE COURT: The victim will testify and they'll
12 have an opportunity to cross-examine the victim. They can
13 ask him how many times they met, what they ask you about,
14 did you look at the videos? That's nothing that is
15 uncommon in any case.

16 MR. COLLINS: Your Honor, it's our position that
17 it's uncommon in cases with children. That's the
18 difference. There's different statutes and different rules
19 of evidence with children and their testimony.

20 But for the record, we would like to say we object to
21 the nature of the proffer. We object to the failure to
22 sequester the victim in this. We object to the lack of
23 hearing, denial of a hearing, and also would ask for a
24 ruling on our motion for a continuance so that we may
25 retain an expert to deal with this new information that

1 we've received.

2 THE COURT: All right. Your motion is denied.

3 Your motion to continue is denied.

4 MR. COLLINS: Thank you, Your Honor.

5 THE COURT: All right. Anything else? Let's

6 see.

7 MR. BAILEY: I guess we'll move on to the Denno
8 hearing now.

9 THE COURT: Yes.

10 MS. BARRY: Your Honor, the State calls
11 investigator Travis Holdorf.

12 THE CLERK: Do you swear or affirm the testimony
13 you're about to give in this case to be the truth, the
14 whole truth and nothing but the truth, so help you God?

15 WITNESS: I do.

16 THE CLERK: Have a seat in the witness box.
17 State your name for the record, please.

18 WITNESS: Travis Holdorf.

19 TRAVIS HOLDORF,

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MS. BARRY:

23 Q. Investigator Holdorf, where are you employed?

24 A. I'm employed at the Richland County Sheriff's
25 Department.

1 said. Any exceptions by either side?

2 MS. FEND: Nothing from the State?

3 MR. BAILEY: No, Judge.

4 THE COURT: All right. And I'll go ahead and
5 tell you before we start opening statements, I normally
6 will -- we will normally hold court from about nine-thirty
7 until five-thirty, maybe six o'clock at the latest. If you
8 have childcare issues, let the bailiff know and they'll get
9 the message to me. We will take a break about every hour
10 and a half. But if you need one before then, I'll glance
11 over at you all or grab the bailiff and one of them will
12 get my attention so you can take a break if you need to
13 take a break prior to that hour and a half break.

14 At this time, we will have opening statements. We
15 will hear from Ms. Fent and then from Mr. Collins.

16 **OPENING STATEMENT**

17 **BY MS. FEND:**

18 Eleven-year-old Minor 1 suffered one of the
19 worst kinds of violations any young boy can suffer at the
20 hands of the very person that you hope will protect you
21 above all others, his own biological father. The Defendant
22 was masturbating young Minor 1 in the bathtub at the
23 Defendant's home, giving him bubble baths and lighting
24 scented candles as he masturbated his son.

25 As a thirteen-year-old young man he will come up here

1 on this witness stand, and with strength, will tell you the
2 details of how that happened and exactly what happened to
3 him. Not an easy thing for a young thirteen-year-old
4 little boy to come in and talk about.

5 And I ask that as you listen to the testimony in this
6 case, that you take that into consideration and think about
7 anyone having to come into a courtroom and talk about their
8 most recent sexual experience with strength. And so as you
9 listen to him and you watch him on this witness stand, I
10 just ask that you take that into consideration.

11 You will hear that the Defendant admitted to the
12 bubble baths, to the scented candles, and he admitted to
13 one act of masturbation. That is the essence of our case.
14 It really is that simple.

15 However, I will let you know, I would like to tell you
16 a little bit of some of the evidence that you will hear.

17 Minor 1's mother, many, many years ago prior to Minor 1
18 being born, was married to William Dean Murray, II, and she
19 had an affair. She had an affair with the Defendant, with
20 John Barnes, and she had two children as a result of that.

21 She had the victim in this case and his brother Minor 2
22 It was not until 2008 when, after moving to a couple of
23 other states that they moved back here to South Carolina,
24 and Minor 1 recalls first having contact with the Defendant,
25 that they were moving back here, moving into a house or

1 wherever they were living and that the Defendant came over
2 to help the family move back in. And it was subsequent to
3 that that he recalls then going over to the Defendant's
4 house on weekends, a couple of times during the week to
5 visit. He was called John or Uncle John.

6 At some point during that time period, there was a
7 family court action between Minor 1's mother and his legal
8 father, William Murray. During that time there was some
9 DNA tests done and it was determined then that Minor 1 was, in
10 fact, the product of this relationship that his mother Amy
11 Gieselman had with John Barnes. John Barnes, the
12 Defendant, told the victim himself, pulled him into his
13 room and said, I'm not supposed to tell you this yet, but I
14 am your biological father. Minor recalls that it was after
15 he found out that John Barnes was his biological father
16 that these incidents began taking place in his home, in the
17 Defendant's bathroom, with the bubble baths and the
18 candles.

19 I am not going to stand up here and we are not going
20 to stand up here and argue that this is a perfect family.
21 This is truly an unconventional family by many definitions
22 of the word. But what I ask you to do is to focus in on
23 what happened in that bathroom with the Defendant and his
24 biological son, what Will comes up here and tells you about
25 that, and the Defendant's own admission. You are going to

1 hear that initially Minor 1 tells his sister Scarlett about
2 these inappropriate things happening. He feels comfortable
3 and he discloses to her. She turns around and discloses to
4 her step-mother, Jamie Murray, and her dad, Mr. Murray.
5 They then turn around and call law enforcement and notify
6 law enforcement about this happening.

7 Investigator Travis Holdorf is the investigator
8 assigned to this case and he schedules an interview for
9 Minor 1 at what's called the Assessment Resource Center. It
10 is a place where they do interviews of children, they are
11 trained to do interviews, conduct interviews of children.
12 And Minor 1 was brought in and he admits basically to the
13 baths. He's an eleven-year-old and he admits that his dad,
14 John Barnes, is giving him bubble baths, but denies any
15 type of sexual inappropriateness at that time. It's an
16 eleven-year-old who's embarrassed to talk about it. The
17 Defendant comes in and gives his statement to Investigator
18 Travis Holdorf and he initially denies anything sexually
19 inappropriate happened, but admits also to giving him, the
20 eleven-year-old son, bubble baths with scented candles.

21 Investigator Holdorf does a great job in talking with
22 the Defendant and saying, hey, if there's anything else you
23 want me to know, you want to tell me your side of the
24 story, anything else you want me to know, you just pick up
25 the phone, give me a call and let me know. And sure

1 enough, within a short period of time, the Defendant picks
2 up that phone and calls Investigator Holdorf and says, I
3 have more information to give you. And he comes in and he
4 sits down with Investigator Holdorf and that's when he
5 admits to the one act of masturbation in that bathroom.

6 Then Minor 1 is contacted again, another interview is set
7 up at the Assessment Resource Center to bring him in and
8 talk to him about it, and that's when he gives all the
9 details and that it happened many times and that he was
10 very embarrassed and scared to tell about it the first
11 time.

12 You'll hear from Investigator Holdorf. You'll hear
13 from the trained interviewer, Ray Olszewski. You'll hear
14 from his sister, Scarlett, his step-mother, and how all
15 that disclosure and how it's reported to law enforcement
16 that brings us here this week. And it is the close of our
17 case when all the witnesses have testified and you have all
18 the evidence that we'll come back before you and we're
19 going to ask you that justice be served and that you find
20 him guilty beyond a reasonable doubt of the act. Thank
21 you.

22 THE COURT: Thank you. Yes, sir.

23 MR. COLLINS: May it please the Court.

24 THE COURT: We'll hear from Mr. Collins.

25 OPENING STATEMENT

1 BY MR. COLLINS:

2 How did we all get here? How did we get in a room
3 where an innocent man is on trial for something that he
4 didn't do? She made it sound real simple, open and shut.
5 But we're going to hear from a lot of different witnesses,
6 hear a lot of different things over the next couple of
7 days. It's not that simple. As we hear from the different
8 witnesses, hear the different things that happened, there's
9 going to be a couple of different questions that are going
10 to stick out to you. We're not going to run from them.
11 We're not hiding from them.

12 ----- Number one, why would a child make something like this
13 up? Number two, how could a father sign a statement
14 admitting to doing it?

15 Now, let's talk about the first question. Why would a
16 child make this up? You're going to hear about a family
17 situation that isn't exactly stable. Custody fights, child
18 support fights, step-mothers fighting with mothers, mothers
19 fighting with step-fathers, sisters fighting with step-
20 fathers, new fathers coming into the equation when he was
21 eight, nine years old. How does that affect a child? Are
22 they caught in the cross-fire? Are different people
23 influencing him in different things? You're going to hear
24 about repeated interviews of this child, asking him time
25 and time again about this situation, about his father, John

1 Barnes, by trained professionals. You're going to hear
2 about how he was interviewed by untrained professionals,
3 even as lately as last week. How does that affect a child?
4 Because he is a child.

5 Second question, how can a father sign a statement
6 that he did this? You're going to hear from John. He's
7 going to get on this stand and he's going to tell you some
8 things. He's going to tell you about how he was confronted
9 with these allegations, these horrific allegations, how it
10 affected him because he knows right then and there, these
11 new sons in his life, they're gone. It doesn't matter how
12 this thing shakes out, they're out of his life. We all
13 know how these allegations affect everyone involved. He's
14 lost all hope immediately of having any kind of life with
15 his two sons, his two boys. That's over. That puts a man
16 in a little bit of despair. He tells Investigator Holdorf
17 some things that day and then he goes home and it starts
18 really setting in. He's lost his boys. And that father is
19 -- he starts thinking about the legal justice system, the
20 jaws of this court system. It's not nice in here. It's
21 cut-throat in here. And he doesn't want his child to have
22 to go through that. Nobody wants their child to have to
23 get up here on the stand and talk about what we're going to
24 talk about this week. And he's lost hope for his own sake.
25 John's not even thinking about himself. He's thinking

1 about his sons. He's going to protect his boy.

2 So he calls Holdorf up and he goes in there. He says,

3 I'm going to take this on the chin. I'm not going to make

4 my boy go through this. Unfortunately, John's not a

5 lawyer. He didn't have one there with him. He wasn't told

6 he could have one there with him. He didn't understand

7 what he was taking on the chin. And now he's depending on

8 himself, he's depending on Mr. Bailey to stand up and

9 protect and fight for him. He's also depending on each and

10 every single one of you to have an open mind, to think

11 about this case objectively as your oath instructs you to

12 do. An open mind, think sometimes, sometimes kids do make

13 things up. Sometimes people sign statements that aren't

14 true. There's such a thing as a false confession. We've

15 all heard of it. And sometimes innocent men are put on

16 trial for things they didn't do.

17 THE COURT: Thank you. Yes, ma'am. Please call

18 your first witness.

19 MS. FEND: The State calls Scarlett Murray.

20 THE BAILIFF: Place your left hand on the bible

21 and raise your right hand, please.

22 THE CLERK: Do you swear or affirm the testimony

23 you're about to give in this case will be the truth, the

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

25 WITNESS: I do.

1 THE CLERK: Have a seat in the witness box and
2 state your name for the record, please.

3 WITNESS: Scarlett Murray.

4 SCARLETT MURRAY,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MS. FEND:

8 Q. Scarlett, how old are you?

9 A. I'm eighteen years old.

10 Q. And what are you doing with yourself right now,
11 working, going to school?

12 A. Getting ready to go off to Job Corp and get my
13 culinary license.

14 Q. And get your what?

15 A. Culinary arts license.

16 Q. Okay. Tell us your relationship with Minor 1 ?

17 A. He is my little brother.

18 Q. Okay. And your relationship with, I guess, Dean
19 Murray, William Dean Murray, II?

20 A. Junior? That's my father.

21 Q. And are your mom and your dad married right now?

22 A. Not any more.

23 Q. Okay. Do you remember when they got divorced?

24 A. 2004, I believe.

25 Q. And between that time and now, who have you lived

1 with?

2 A. I've lived with my mother and my step-father.

3 Q. And is that here in Columbia, South Carolina?

4 A. Yes, it is.

5 Q. Okay. Tell us about the visitation that you have with
6 your dad, Dean?

7 A. I go visit my dad every Thanksgiving, every spring
8 break and one week out of Christmas Break and all summer.

9 Q. And all summer?

10 A. (Affirmative nod).

11 Q. I want to take you back to spring break of 2010, so
12 around April of 2010.

13 A. Uh-huh (affirmative).

14 Q. Did you go visit your dad at that time?

15 A. I did.

16 Q. And who else was with you when you went to go visit
17 your dad?

18 A. My little brother Minor 1 and my little brother
19 Minor 2

20 Q. Any other siblings that you have?

21 A. I have no other siblings.

22 Q. Okay. And how old is Minor 2

23 A. Minor 2 is eleven.

24 Q. Okay. Tell us what you remember basically about that
25 spring break?

1 A. Basically, we went -- we spent time with my dad. We
2 did a lot of walking around D.C., but then when we came
3 home my brother Minor¹ and I decided we wanted to go to
4 the park one day. And he confided in me and told me about
5 his time spent at John Barnes' house.

6 Q. At that point, what was your relationship with John
7 Barnes?

8 A. He was a family friend. I had currently found out
9 that he was my brothers' father, both my brothers' father.

10 Q. Okay. So would you go over to John Barnes' house?

11 A. Yes.

12 Q. How often would y'all go over to John Barnes' house?

13 A. They went more often than I did. I had other plans.
14 But everyone ---

15 Q. And try to speak up a little bit so we make sure
16 everybody can hear you, okay?

17 A. I would go over every once in a while. I'd spend a
18 night every now and then. Nothing more than that, really?

19 Q. John Barnes, do you see him in the courtroom today?

20 A. Yes, I do.

21 Q. And can you point to him and describe, I guess, where
22 he's sitting and what he's wearing so that we know who
23 you're talking about?

24 A. He's right there at the Defendant's table. He's
25 wearing a nice suit.

1 Q. He's wearing what?

2 A. A suit.

3 Q. Okay. There's three people sitting at that table.

4 Which one is he?

5 A. With grey hair and glasses and a beard.

6 Q. Okay. And do you remember around what time period it
7 was that you started going over to his house?

8 A. Approximately the beginning of 2010 -- or at the end
9 of 2009, beginning of 2010.

10 Q. Okay. And I don't know if I asked you this, but how
11 frequently would y'all go over there?

12 A. The boys would go spend a lot of time, really. They
13 actually liked going over there sometimes. Usually, he
14 would take them to school so they would be there during the
15 school weeks. And I would go over every once in a while on
16 the weekends, sometime during the weeks.

17 Q. And what was the sleeping arrangements? How many
18 bedrooms were there?

19 A. There were two bedrooms. Me and both of my brothers
20 had a room to ourselves and John had a separate room. And
21 later, a few months later, I realized that Minor 1 started
22 sleeping with John Barnes in his room.

23 Q. Okay. So in April of 2010, you're at your dad's house
24 -- and what state does he live in?

25 A. Virginia.

1 Q. Virginia. For spring break and you said that you and
2 Minor¹ went to the park together?

3 A. Uh-huh (affirmative).

4 Q. Was there anybody else at the park with you?

5 A. Nobody was there at the moment.

6 Q. Okay. And you said he told you about some
7 inappropriate things?

8 A. Yes, ma'am.

9 Q. That were happening between he and who?

10 A. He and John Barnes.

11 MR. BAILEY: Objection, Your Honor.

12 THE COURT: Yes, sir, if you'll state your
13 objection.

14 MR. BAILEY: This is outside the time and place
15 rule for this case, Your Honor.

16 THE COURT: All right. Let me ---

17 MR. BAILEY: Under hearsay, the time and place,
18 exception on the hearsay, Judge.

19 MS. FEND: At this point what he told her, I'm
20 not getting out the details, but it sets up why she didn't
21 go -- it's not for the truth of the matter asserted.

22 THE COURT: Let me see you all up here.

23 (WHEREUPON, Ms. Fend, Ms. Barry, Mr. Bailey and Mr.
24 Collins approached the bar.)

25 THE COURT: All right. Ladies and gentlemen of

1 THE COURT: You can bring them back in.

2 (WHEREUPON, the jury entered the open court at
3 approximately 4:29 p.m.)

4 THE BAILIFF: The jurors are all present, Your
5 Honor.

6 THE COURT: Yes, ma'am. You may proceed.

7 **DIRECT EXAMINATION**

8 **CONTINUED BY MS. FEND:**

9 Q. After your discussion with your brother, what if
10 anything, did you do with that information that you now
11 had, that Minor 1 told you about?

12 A. I immediately took that information and gave it to my
13 step-mother who was also at the park with my father. And
14 she therefore gave the information to my father who called
15 the Richland County Sheriff's Department down here.

16 Q. Okay. Your step-mother, what's her name?

17 A. Jamie Murray.

18 Q. No further questions at this time. If you'll just
19 answer any questions from Defense counsel.

20 THE COURT: Yes, sir.

21 MR. BAILEY: Thank you, Judge.

22 **CROSS-EXAMINATION**

23 **BY MR. BAILEY:**

24 Q. Good evening, Scarlet, hi.

25 A. Hi.

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

COURT OF GENERAL SESSIONS
2010-GS-40-7545

3
4 STATE OF SOUTH CAROLINA,)

5 Plaintiff,)

6 vs.)

7 JOHN PETER BARNES,)

8 Defendant .)

TRANSCRIPT OF RECORD

9 September 13-15, 2011
10 Columbia, South Carolina

11
12 B E F O R E:

13 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE; and a
14 jury.

15
16 A P P E A R A N C E S:

17 MARGARET FENT BODMAN, ASSISTANT SOLICITOR
18 DEBRA BARRY, ASSISTANT SOLICITOR
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24 DEBORAH M. McCURDY, RPR
25 Official Court Reporter

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1 THE COURT: And he turned 12 on June?

2 MS. BARRY: June 5th.

3 MR. COLLINS: Your Honor, there is a section
4 within the section that talks about if one side
5 wants to challenge whether or not he is mentally
6 above -- over 12 years old or under 12 years old.

7 And, again, this is weird because the roles
8 are reversed than they normally are. I would think
9 they have to establish some type of testimony that
10 his mental and cognitive abilities are below 12.
11 And judging from watching those videos, I think
12 they will have a very hard time establishing that.

13 MS. BODMAN: We in no way will say that he is
14 mentally below 12. He is way above.

15 THE COURT: All right. All right, you can go
16 ahead and call your witness. We'll have the
17 in-camera testimony from Mr. Olszewski.

18 MS. BARRY: The State calls Ray Olszewski.

19 THE BAILIFF: Place your left hand on the
20 Bible, raise your right hand, and face the clerk,
21 please.

22 (Witness complies.)

23 THE CLERK: Do you swear or affirm the
24 testimony you are about to give in this case will
25 be the truth, the whole truth, and nothing but the

1 truth, so help you God?

2 THE WITNESS: Yes, I do.

3 THE CLERK: Have a seat in the witness box,
4 state your name, and spell your last name, please.

5 THE WITNESS: First name, Raymond. Last name,
6 O-L-S-Z-E-W-S-K-I.

7 RAYMOND OLSZEWSKI,
8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION(IN CAMERA)

10 BY MS. BARRY:

11 Q Mr. Olszewski, where are you employed?

12 A I am employed at the Assessment and Resource Center
13 here in Columbia.

14 Q And what is the Assessment and Resource Center?

15 A The Assessment and Resource Center is a child
16 advocacy center, nationally accredited child
17 advocacy center. More descriptively, we're a child
18 abuse evaluation and treatment center. We conduct
19 forensic interviews and medical exams on children
20 that are suspected to have been sexually or
21 physically abused and other types of abuse.

22 Q And how long have you been employed there?

23 A Employed there since December of 1999, so over 11
24 years.

25 Q Can you give the Court your educational background,

1 beginning with your undergraduate degree.

2 A I have a bachelor's degree in psychology from the
3 State University of New York in Oneonta. I have a
4 master's degree in social work from the University
5 of South Carolina here in Columbia. I am a
6 licensed master social worker here in Columbia. I
7 received my license in November of 1997.

8 I also have a diplomate in forensic social
9 work through the academy of forensic social work.
10 It is just a post-graduate certification in a
11 specialty area.

12 Q Have you attended seminars and training regarding
13 the forensic interviewing of children?

14 A Yes, numerous trainings and seminars over the
15 years. In addition, I teach. I'm on the faculty
16 for a forensic intern course that we teach three to
17 four times a year. We teach front line
18 professionals in South Carolina on how to conduct
19 forensic interviews. It is called Child First
20 South Carolina, previously called Finding Words
21 South Carolina. I teach a good portion of that
22 course, as I said, three to four times a year. I
23 have been doing that since 2001.

24 Q But you have also attended other trainings and
25 seminars regarding --

1 A Attend frequent workshops, yes. I have attended
2 40-hour courses on forensic interviewing, a basic
3 interviewing course when I started working back in
4 2000. I have been to advanced interviewing
5 courses, continuing education workshops on all
6 topics dealing with child sexual abuse, forensic
7 interviewing with children.

8 Q And so at the ARC, what do you do?

9 A My primary job responsibilities is to conduct
10 forensic interviews of suspected child abuse
11 victims.

12 A forensic interview is a fact-finding or
13 investigative interview trying to determine, first
14 of all, whether or not something happened. And if
15 it did, get as many facts as we can about what took
16 place: Who, what, when, where, how.

17 Q And approximately how many forensic interviews have
18 you performed?

19 A It would be over a thousand. I don't have an exact
20 number.

21 Q Have you testified in court in this state?

22 A Yes, I have.

23 Q Can you estimate approximately how many times?

24 A Well, I have testified as both a fact and expert
25 witness. A fact witness far too many times to

1 count. As an expert witness it would be over 20
2 times, at least.

3 Q And each time you testified were you qualified as
4 an expert?

5 A The time that I was testifying as an expert, yes.

6 MS. BARRY: Your Honor, at this time we would
7 move to qualify Mr. Olszewski as an expert in child
8 sexual abuse and child forensic interviewing.

9 MR. COLLINS: Your Honor, I believe we are
10 afforded an opportunity to voir dire the witness.
11 As far as them trying to qualify the witness as an
12 expert, I don't believe this hearing is an
13 appropriate time to qualify the witness as an
14 expert, because I would definitely want to do this
15 in front of the jury because I have some -- we
16 would object to him being qualified as an expert.
17 I have a whole long line of questions to go into
18 about that.

19 MS. BARRY: Your Honor, that --

20 MS. BODMAN: At that point then that stops --

21 THE COURT: Hold on, only one person. But you
22 are also asking me to determine if the video is
23 trustworthy, and I'm assuming that is what we are
24 getting to, and he is going to have to testify as
25 to that.

1 MR. COLLINS: Your Honor, if you read the most
2 recent case of State v. Douglas regarding forensic
3 interview expert testimony, the Supreme Court has
4 said that they don't have to be qualified as an
5 expert, but yet they can still testify to aid the
6 jury, or in this case to aid the Court, to
7 determine the method used in the interview.

8 And I think the problem with the expert
9 testimony is that there is no way to gauge the
10 science, there is no way to test the reliability,
11 the repeatability of the methods. That is the only
12 thing. But they can still aid the jury and aid the
13 Court as far as their experience and how they
14 interviewed the child and the reason they use
15 different questioning techniques.

16 And the Supreme Court in State v. Douglas has
17 said they don't have to be an expert to be able to
18 testify about that. So I'm going to be asking him
19 about those issues, I'm just -- I don't want him to
20 be qualified as an expert now and not in front of
21 the jury where I can go up and address those
22 situations about the science of forensic
23 interviewing.

24 THE COURT: All right. But you can still
25 cross-examine him now. I mean, I can determine if

1 he will be qualified as an expert. And then we can
2 go through this whole exercise again in front of
3 the jury.

4 MR. COLLINS: My position is that would be a
5 violation of due process to my client to reveal
6 what we are going to do before we actually do it
7 with her part of the case. It would be sitting
8 there waiting for my questions the second time
9 around and could possibly be ready for it.

10 THE COURT: Well, he can't -- I'm assuming he
11 can't answer them any different.

12 MR. COLLINS: Hum?

13 THE COURT: If he answered them any different
14 you would impeach him, I would guess.

15 MR. COLLINS: That is true, but there is -- I
16 just don't think I should be forced to reveal what
17 we are going to be doing in front of the jury in a
18 hearing where it is not necessary for him to be
19 qualified as an expert. We are only addressing the
20 video itself as to guarantees of trustworthiness,
21 whether or not improper things were used, any
22 improper techniques while interviewing the child.
23 That can be testified to without qualifying him as
24 an expert.

25 THE COURT: Yes, ma'am?

1 MS. BARRY: Your Honor, it has been my
2 practice that before going through the Terry -- and
3 I have done many of these hearings -- that the
4 witness is qualified as an expert based on his
5 training, experience and education.

6 And, as Your Honor pointed out, any -- I don't
7 know what they are planning on springing in front
8 of the jury, but, I mean, this is a court of law,
9 it is not a game. And we are all officers of the
10 court.

11 We would just ask that he be qualified as an
12 expert now and then again in front of the jury. I
13 think that is proper. And that has been the
14 procedure that has been followed.

15 I'm not familiar with State v. Douglas. And I
16 think -- I don't believe all lay witnesses can
17 testify, give opinion testimony. They must have
18 some level of knowledge that exceeds that of the
19 typical juror.

20 MR. COLLINS: Your Honor, the issue with
21 qualifying as an expert has nothing to do with his
22 background, his education and his experience. The
23 issue is the Daubert test and whether or not the
24 field of expertise is actually that, a field of
25 expertise. You can't be qualified as an expert in

1 any scientific field unless it is qualified as a
2 scientific field that can be tested. That can be
3 the repeatability of results, reliability of the
4 opinions. And in this field of science there is no
5 way to test that because it is all opinion. Every
6 single issue that comes up, there is competing
7 research studies on these issues. And that is what
8 I'm going to get into with the witness in front of
9 the jury as far as different things and different
10 methods.

11 As far as this hearing, he has testified about
12 his experience and his education which Your Honor
13 can take into consideration in determining whether
14 or not he improperly elicited any improper
15 information from this interview of this one video
16 that we're seeking to introduce as long as nothing
17 improper was done. And he can testify about what
18 he has learned and what is proper and what is
19 improper. And I can ask him about different
20 studies that show this trend and that trend. But
21 to qualify him as an expert now without enforcing
22 me to challenge the level of expertise before the
23 jury is in here I believe is improper.

24 THE COURT: All right. Well, I'm going to --
25 I'll give you an opportunity to cross-examine the

1 witness, and we'll make the determination as to
2 whether or not he is qualified as an expert at this
3 time. I do not find that it violates your client's
4 due process rights. He will have an opportunity to
5 ask the same questions. If the witness changes his
6 testimony, you will have the opportunity to impeach
7 him. I'll give you an opportunity to cross-examine
8 him regarding his expertise as a child -- you said
9 child sexual abuse and forensic interviewing?

10 MS. BARRY: Yes, ma'am. Child abuse, yes,
11 ma'am.

12 THE COURT: All right.

13 MR. COLLINS: Your Honor, if I am given an
14 opportunity to do this in front of the jury, I have
15 no objection for this hearing of him being
16 qualified for this hearing only.

17 MS. BARRY: Your Honor, if he has no objection
18 to him being an expert now, I don't --

19 THE COURT: I don't think you can bifurcate
20 it.

21 MR. COLLINS: Well, then I have no questions,
22 and I object to him being qualified as an expert.
23 I have no questions.

24 THE COURT: All right. He will be -- you
25 object to him being qualified as an expert. There

1 is no --

2 MR. COLLINS: Because based on Daubert, the
3 field of expertise cannot be defined in such a way
4 to test the reliability and repeatability.

5 THE COURT: All right. The objection will be
6 overruled. He will be qualified as an expert in
7 child sexual abuse and forensic interviewing.

8 MS. BARRY: Thank you, Your Honor.

9 BY MS. BARRY:

10 Q Mr. Olszewski, what is a forensic interview?

11 A Again, it is a fact-finding or investigative type
12 interview. We are trying to determine whether or
13 not something has happened, and if it has, get all
14 the facts that we can about what took place: Who,
15 what, when, where, how.

16 Q And where is it conducted?

17 A We conduct our forensic interviews at the ARC, or
18 the Assessment Resource Center. It is on the
19 campus of the Department of Mental Health, State
20 Hospital campus on Bull Street. We call it a child
21 friendly facility. We have forensic interview
22 rooms. They are furnished in a particular way. We
23 have video recording equipment that we use so every
24 interview that is done is recorded onto a hard
25 drive and then transferred to a DVD.

1 won't be an issue next time.

2 But at this time we are going -- the State is
3 going to call their next witness.

4 MS. BODMAN: The State calls Minor 1

5

6 THE BAILIFF: Place your left hand on the
7 Bible, raise your right hand, and face the clerk,
8 please.

9 (Witness complies.)

10 THE CLERK: Do you swear or affirm the
11 testimony you are about to give in this case will
12 be the truth, the whole truth, and nothing but the
13 truth, so help you God?

14 THE WITNESS: Yes, I do.

15 THE CLERK: Have a seat in the witness box,
16 and state your full name for the record, please.

17 THE WITNESS: Minor 1

18 Minor 1

19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. BODMAN:

22 Q How old are you?

23 A Thirteen.

24 Q And what do you go by?

25 A I just go by anything with Minor 1 or Minor 1 in it.

- 1 Q Minor 1 or ^{Minor} ? Where do you go to school?
- 2 A E.L. Wright Middle School.
- 3 Q And how long have you been going to E.L. Wright?
- 4 A About a year and three quarters.
- 5 Q And what grade are you in?
- 6 A I'm in eighth.
- 7 Q And what school did you go to before E.L. Wright?
- 8 A Kelly Mill Middle.
- 9 Q How do you like E.L. Wright?
- 10 A The teachers are nice. Just the attitude of the
- 11 students gets on my nerves.
- 12 Q And why does that get on your nerves?
- 13 A I don't suffer incompetence well.
- 14 Q You don't suffer incompetence well?
- 15 A Not really.
- 16 Q I take it that you like to learn?
- 17 A Yes.
- 18 Q You like -- you love school?
- 19 A Yes.
- 20 Q What are your favorite subjects at school?
- 21 A Math, science, language arts, mainly.
- 22 Q Tell us a little bit about what you did this
- 23 summer.
- 24 A I went to college for three weeks and I went to
- 25 Kansas and did random stuff in D.C.

1 Scarlett. I mean, we can tell each other anything.
2 And we know we'll be honest to each other.

3 Also, because if I told anybody at school I
4 would be treated differently than I was already
5 being treated, and I didn't wanted to start
6 anything up at school.

7 Q You were talking about how you didn't particularly
8 like E.L. Wright?

9 A Yeah. I'm already treated as the odd one out
10 anyway, so I'd rather not start anything up.

11 Q When you got back here then to South Carolina, do
12 you remember going to talk to Ray Olszewski,
13 Mr. Ray, at the ARC?

14 A Not -- not too long after we got back.

15 Q Okay. Did you tell Ray -- that first time you met
16 with him, did you tell him everything that was
17 happening at John Barnes' house?

18 A Not everything, at first.

19 Q And why didn't you tell Ray about everything that
20 was happening?

21 A Because I was embarrassed, nervous, you know. We
22 kind of -- at that time it would have been a one,
23 two -- at that time it would have been a fourth
24 time, and I'm still not too comfortable with
25 telling every single detail. So I told him

1 everything I felt comfortable to tell him.

2 Q Okay. Do you remember then going a second time to
3 talk to Ray at the ARC?

4 A Yes, after the summer.

5 Q Okay. And did you then tell him more about what
6 was happening at --

7 A Yes.

8 Q -- at John Barnes' house. And why was it that you
9 felt comfortable or that you decided to tell that
10 second time that you were interviewed?

11 A Because -- because I felt a little bit more
12 comfortable. I mean, I had already recounted the
13 same story four times already, but with more and
14 more detail.

15 Q So the details that you gave Ray in that second
16 interview, did you give all those same details to
17 your -- to Scarlett, your stepmom and your mom?

18 A Not like all the details. Maybe a few, but not all
19 of them.

20 Q Okay. Tell the jury basically what was happening
21 to you at John Barnes' house?

22 A Well, what happened was, whenever we needed to like
23 get bathed somehow, ^{Minor 2} my dorky little
24 brother, he would take a shower. And that is all
25 he would ever take. But because I was somebody who

1 went through a school switch in the middle of the
2 year, really, not literally, what happened -- well,
3 since I was actually needing to carry more books
4 than I was used to, I was dealing with a lot more
5 incompetence than I was used to or that I could
6 tolerate, so I suddenly felt stressed, so John came
7 up with the idea of taking bubble baths.

8 Q So you confided in him that you were feeling
9 stressed out?

10 A Yes.

11 Q Okay. And he suggested -- or who suggested the
12 bubble baths?

13 A John. He thought that it would like help me from
14 being stressed because, you know, bubble baths are
15 relaxing.

16 And so also while we were getting the elements
17 for the bath, I came across some scented candles in
18 the Dollar Store and I said, hey, these might be
19 good. And so he got a few of them.

20 And not too long after we got everything, we
21 started taking the bubble baths.

22 Q So describe what would happen during these bubble
23 baths.

24 A Well, the lights would be off, the candles would be
25 lit, the bath would already be drawn. And he would

1 have -- and soon after he got an MP3, he would
2 place that on the side of the tub and play music
3 during it.

4 Q Do you remember what music he would play?

5 A Sometimes Elton John. He would play whatever he
6 had on it, like Elton John, Dr. Hook and the
7 Medicine Show. I don't remember -- I don't think
8 he -- I don't exactly remember if he did, but I
9 think he played Meatloaf too.

10 Q So the bath would be drawn, the candles would be
11 lit, and music would be playing. Then what would
12 happen next?

13 A So then he would wash me down with a washcloth, had
14 some hand soap and a washcloth so he would wash me
15 down from head to toe. And then after that he
16 would tell me to relax. And then he would
17 masturbate me for about ten seconds until it
18 actually felt like I needed to use the restroom.
19 So I would tell him, I need to pee. And then he
20 would grab a red plastic cup from the side of the
21 sink, hand it to me, I would turn my back to him so
22 my butt was in his face, and I would attempt to use
23 the restroom.

24 When it -- after a few seconds and confusion,
25 I hand him back the cup and he would put it back on

1 the side of sink, and then we just talked for the
2 rest of the time I was in the tub.

3 Q While he was washing you and doing this, would he
4 be saying anything to you during that time?

5 A The only time -- other than our talks after the
6 masturbation -- during the masturbation he would
7 constantly whisper, relax, to me.

8 Q And you said that you would -- or let me get this.
9 Did you say that you would just tell him that you
10 had to pee or did you actually feel like it was, it
11 was a sensation to you that -- like you had to pee?

12 A Right. It felt like I actually had to pee.

13 Q And then he would -- you said he would give you a
14 cup?

15 A (Nods affirmatively.)

16 Q And describe that again, because you said something
17 about, in confusion I would hand him back the cup.

18 A Well, it felt like I had to pee, and when I tried
19 to pee I didn't pee. So...

20 Q You would just hand him back the cup?

21 A Yes. And usually when I feel like I have to pee, I
22 pee.

23 MR. BAILEY: Your Honor, we have a matter of
24 law we would like to discuss.

25 THE COURT: Ladies and gentlemen of the jury,

1 your legal dad, your stepmom, we talked about your
2 family situation.

3 A Yes.

4 Q How did you feel about having all these people
5 influence you in your life?

6 A Well, since -- well, since they are all influences
7 to me -- I mean, they are all supposed to be like
8 my main influence, like I'm supposed to be a part
9 of how I'm supposed to grow up from them, so if I
10 have one person saying one thing to me, another
11 person saying another thing to me, and a third
12 person saying, hey, do this, I mean, how would you
13 feel if somebody said one thing and another person
14 said another? I mean, wouldn't you get confused
15 too?

16 Q Absolutely. I would definitely get confused.

17 A So --

18 Q Did you ever feel like your legal father, William
19 Murray, Jr., lied to you?

20 A Well, since I have been told -- well, since I have
21 been told that William Murray, Jr. was a liar, then
22 I guess -- well, since I was told that by at least
23 one person, then what am I supposed to think? Like
24 nobody else has contradicted that except for him
25 himself, and his wife. Well, what else am I

1 A Yes.

2 Q Okay. And then did you speak with anybody -- and
3 you spoke with him again in August?

4 A Right.

5 Q Of 2010. Did you speak with anybody in between
6 that about this?

7 A No.

8 Q Okay. But you spoke again with Ray?

9 A Uh-huh.

10 Q In August, right?

11 A Right.

12 Q And then you say --- you just said now that you
13 spoke with the two lawyers over here?

14 A Yes.

15 Q Is that correct? Debra and Margaret, I don't know
16 what you called them, Ms. Bodman and Ms. Barry, you
17 spoke with them?

18 A Yes.

19 Q Okay. And you spoke with them a few times, or how
20 many times would you say?

21 A Three times. But I guess -- well, about this case
22 I guess that would technically be two times, but
23 the first time it was just a get-to-know.

24 Q Okay. Did the prosecutors give you videos of your
25 interviews with Ray?

1 A Yes.

2 Q Okay. Did they mail them to you? Did they hand
3 them to you?

4 A They had -- who did you call him, Ace? They had
5 Ace drive them to our house and deliver them.

6 Q Okay. And did you watch the videos?

7 A Yes.

8 Q Did you watch them a few times?

9 A Only once each.

10 Q Okay. But then you spoke -- but then you spoke
11 with the Solicitors again before the trial, right?

12 A Right.

13 Q You spoke with them -- even just this past week you
14 spoke with them, right?

15 A Yes, we spoke on Tuesday.

16 Q Okay. What did y'all talk about?

17 A Well, it was prior to that that I watched the
18 videos at all. And after watching the videos --
19 and I didn't do a very thorough job, to tell the
20 truth -- but after watching them, I had instant
21 memories of stuff that I forgot to tell Ray or
22 stuff that I remembered by watching me tell stuff
23 to Ray, and other stuff like that.

24 Q What did the Solicitor -- what did the
25 Solicitors -- is what we call Prosecutors -- what

1 did these two lawyers ask you?

2 A They asked me like very open-ended questions about
3 stuff about the case, like, for example: Is there
4 anything else you remember? And then I would go on
5 and answer.

6 And then if they thought I was being too
7 vague, then I would give them -- then they would
8 ask a little bit more specific question, and I
9 would answer it and I would try to be less vague.

10 Q Okay. So y'all talked about what you were going to
11 say in court today; is that right?

12 A A little. I mean, we talked about the case, yes.

13 Q Okay. All right, great.

14 Minor 1 , just a couple more questions. When
15 you spoke with these lawyers, was there anybody
16 else in the room with you when you spoke?

17 A No, everybody else was sent out.

18 Q Okay. And today since we have been here at this
19 trial, you have been in the courtroom with us the
20 whole time, right?

21 A Other than the breaks, yes.

22 Q Okay, great. Thank you, Minor 1 . Thank you very
23 much.

24 THE COURT: Yes, ma'am. Anything?

25 REDIRECT EXAMINATION

1 (Witness steps down and is excused.)

2 THE COURT: All right, call your next witness.

3 MS. BARRY: The State calls Ray Olszewski.

4 THE BAILIFF: Place your left hand on the
5 Bible, raise your right hand, and face the clerk,
6 please.

7 (Witness complies.)

8 THE CLERK: Do you swear or affirm the
9 testimony you are about to give in this case will
10 be the truth, the whole truth, and nothing but the
11 truth, so help you God?

12 THE WITNESS: Yes, I do.

13 THE CLERK: Have a seat in the witness box,
14 and state your full name for the record, please.

15 THE WITNESS: My first name is Ray, last name
16 is Olszewski. That is O-L-S-Z-E-W-S-K-I.

17 RAY OLSZEWSKI,
18 after being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. BARRY:

21 Q Mr. Olszewski, where do you work?

22 A I work at the Assessment and Resource Center, or
23 the ARC, here in Columbia.

24 Q And can you tell the jury what the Assessment
25 Resource Center is?

1 A Sure. The ARC, the Assessment Resource Center, is
2 a nationally accredited child advocacy center, or
3 child abuse evaluation and treatment center. We
4 are an outpatient clinic. Children are referred to
5 us by, usually by law enforcement investigators or
6 detectives or by DSS by child protective service
7 workers. And we conduct forensic or investigative
8 interviews of suspected child abuse victims. We
9 also have a medical component where we have a
10 pediatrician who does exams on many of those
11 victims as well, and up until recently provided
12 ongoing treatment for identified victims of child
13 abuse.

14 Q And at the ARC, what are your duties and
15 responsibilities?

16 A My primary duty and responsibility is as a forensic
17 interviewer. And a forensic interview is simply an
18 investigative or a fact-finding type interview
19 where we are trying to determine whether or not
20 something has happened. And if it has, we get as
21 many facts as we can about whatever it is from the
22 child.

23 Q And how many years have you been employed there in
24 that capacity?

25 A A little over 11 years at this point.

1 Q Can you tell the jury what your educational
2 background is beginning with your undergraduate
3 degrees?

4 A Sure. I have a bachelor's degree in psychology and
5 I have a master's degree in social work from the
6 University of South Carolina here in Columbia. And
7 I'm a licensed master social worker here in the
8 State of South Carolina. And I also have a
9 diplomate in forensic social work, which is just a
10 post-graduate certification in a specialty area.

11 Q Have you attended any trainings and seminars?

12 A Yes. I have attended many trainings, workshops,
13 seminars.

14 In 2000 I attended a basic forensic
15 interviewing course. It is called Finding Words.
16 It was a week-long course in Boise, Idaho.

17 I have also attended advanced interviewing
18 training in Minneapolis, Minnesota, at a child
19 advocacy center there called Corner House.

20 And over the years, just numerous other
21 workshops and trainings. There is a national
22 conference, it is held every year. I have gone to
23 that several times for people like myself that do
24 forensic interviewing with children.

25 I also teach forensic interviewing of children

1 as well.

2 Q And tell us about that.

3 A The course I attended in 2000 was called Finding
4 Words. Again, it is a week-long interviewing
5 course. It teaches us specific protocols,
6 protocols we use at the ARC. It is a nationally
7 recognized forensic interview protocol.

8 In 2001 we began teaching that protocol here
9 in South Carolina. We teach it to front line child
10 abuse professionals, so law enforcement officers,
11 child protective service workers, Solicitors,
12 Prosecutors, other forensic interviewers. So we
13 have been teaching that course three or four times
14 a year, every year since 2001. And I'm one of the
15 lead faculty for that course.

16 Q And approximately over your 11 years, how many
17 forensic interviews have you conducted?

18 A I don't have an exact number. It would probably be
19 over a thousand interviews.

20 Q And have you testified in courts of record in this
21 state?

22 A Yes, I have.

23 Q Do you know how many times?

24 A It would be over 20 times as an expert witness and
25 more including fact witness testimony as well.

1 Q And each time were you qualified as an expert?

2 A Each time I was offered as an expert, yes, I was
3 qualified.

4 MS. BARRY: Your Honor, at this time we would
5 qualify -- move to qualify Ray Olszewski as an
6 expert in the field of child sexual abuse and child
7 forensic interviewing.

8 THE COURT: Any voir dire?

9 MR. COLLINS: Your Honor, just off the bat, I
10 don't think we have the proper foundation for the
11 field that she is proposing him to be qualified in.
12 We have heard nothing about -- what was the first
13 thing, child?

14 THE CLERK: Child sexual abuse.

15 MR. COLLINS: Child sexual abuse is way too
16 broad or vague of a category to be declared as an
17 expert.

18 THE COURT: I'll let you ask questions.

19 VOIR DIRE EXAMINATION

20 BY MR. COLLINS:

21 Q Can you describe the science behind child sexual
22 abuse? Is there a science called child sexual
23 abuse?

24 A No.

25 Q No. Is there an empirical way to get actual

1 numbers for the successful rate of a forensic
2 interview?

3 A How would you define -- I mean, you have to define
4 success. I mean, if we --

5 Q Is there a way to know if you are a hundred percent
6 accurate in your opinions about these interviews?

7 A A hundred percent accurate to my opinions? Not for
8 every case. I mean, if you look at particular
9 cases that have maybe gone to trial that I have
10 done, gone to trial where there has been a
11 compelling interview combined with a conviction.

12 Q Okay. There are -- you know what an empirical
13 study is?

14 A Yes.

15 Q Okay. They are -- can you name the empirical
16 studies that prove the reliability of the methods
17 that you use at ARC?

18 A Like I said, it is a nationally recognized
19 protocol. It is based on research.

20 Q Sir, can you name one empirical study that gives
21 the reliability of the methods that you use at
22 Assessment Resource Center? Just one?

23 A For the protocol we use?

24 Q Can you name one empirical study that shows the
25 success rate of the methods used at the place where

1 you work?

2 A Okay. Well, these are facts. It is an
3 investigative type interview.

4 Q It is a yes or no question. Can you --

5 A Well --

6 THE COURT: Let him answer the question.

7 A Yes, I'm not sure on -- I mean, I'm not sure I
8 understand the question exactly. I mean, it is a
9 fact-finding type interview. We are asked to do
10 basically a witness interview of a child that is
11 suspected of having been harmed. And so we're
12 gathering facts from that child, asking questions
13 in a developmentally appropriate manner, using
14 open-ended questions to try to elicit information
15 from the child. Am I a human lie detector test?
16 No. I mean, I don't know --

17 Q And then you pass on the information you guys get,
18 you pass it on to law enforcement or to medical,
19 right?

20 A Correct. We pass it on to the investigating
21 agencies that have referred the child.

22 Q And now you guys are doing counseling on children?

23 A It depends. We refer some children to counseling.
24 Some -- they used to be referred in-house,
25 sometimes to our own center. We no longer offer

1 counseling, so we refer them out to another
2 facility now.

3 Q And have you ever been qualified as an expert in --
4 MR. COLLINS: I'm sorry, I keep forgetting,
5 what was the first?

6 MS. BARRY: Child sexual abuse.

7 Q Have you ever been qualified as an expert in the
8 field of child sexual abuse?

9 A Yes. Many times when I'm in court it is worded in
10 different ways. Sometimes it is child forensic
11 interviewing, child sexual abuse, forensic
12 interviewing of children. The exact wording is
13 sometimes different.

14 Q Let's focus specifically on the child forensic
15 interviewing. That entails the types of questions
16 you ask children, right?

17 A Well, it entails the protocol we use, the types of
18 questions that are asked, yes.

19 Q The environment in which you conduct the interview?

20 A The environment the interview takes place.

21 Q The number of times, you want to do the interviews
22 in a short amount of time?

23 A Yes. It all plays a part in it.

24 Q The amount of training the interviewer has?

25 A Correct.

1 Q Child sexual abuse, you would admit, involves
2 anything happening to the child sexual abuse? It
3 is a pretty open-ended term, isn't it?

4 A It is a much broader area, yes.

5 Q And, again, there is -- you can't name a single
6 study that can test the reliability of the methods
7 that you guys use at the Assessment Resource
8 Center?

9 A I don't have any in front of me, but I can go
10 back -- there is a whole body of research that
11 supports different aspects of what we do that I
12 can -- you know, if I'm here tomorrow I can bring
13 those to you. I mean, I can bring you a list of
14 articles.

15 Q At this point in time you don't have any?

16 A Well, there is the Child Sexual Abuse Combination
17 Syndrome by Ronald Summit. There is the Process of
18 Disclosure by Sorenson and Snow. Those are two
19 articles that describe what we do.

20 Q There is articles. There are empirical studies
21 that have actual numbers?

22 A Well, the Sorenson and Snow article had numbers,
23 yes. That was an -- it was an article as well as a
24 study.

25 Q And it hasn't been done in the Assessment Resource

1 Center?

2 A I'm sorry?

3 Q No empirical study, no statistical number from the
4 Assessment Resource Center, there is no study that
5 you can testify about?

6 A We are not really a research agency, we are more of
7 a functioning facility. We do have some ongoing
8 research, but it is minimal.

9 Q Okay.

10 MR. COLLINS: I have no further questions at
11 this time.

12 I would object to him being qualified as an
13 expert in child sexual abuse as being too broad a
14 subject to be deemed an expert in.

15 I believe -- I object to him being an expert
16 in the field of child forensic interviewing because
17 there is no way to test if it is actually a
18 science.

19 THE COURT: All right. Thank you.

20 Yes, ma'am, any questions, follow-up
21 questions?

22 MS. BARRY: No, ma'am.

23 THE COURT: All right. He will be admitted as
24 an expert in child -- as an expert in child
25 forensic interviewing.

1 Ladies and gentlemen of the jury, normally a
2 person cannot give opinion testimony. Normally
3 when a person testifies they must testify as to
4 what they either saw, heard or sensed by smell, or
5 something of that nature. However, there is an
6 exception if someone is qualified because of
7 education, experience, they are permitted to give
8 their opinion in certain areas if the Court
9 qualifies them that way.

10 This witness will be qualified in the area of
11 child forensic interviewing to give opinion
12 testimony in that area. That does not mean that
13 you must accept the opinion, but it is evidence for
14 you to use in any way you see fit and give it the
15 weight and credibility you believe is appropriate.

16 Yes, ma'am, you may continue.

17 MS. BARRY: Thank you, Your Honor.

18 **DIRECT EXAMINATION CONTINUES**

19 BY MS. BARRY:

20 Q Can you please tell us what a forensic interview
21 is?

22 A A forensic interview, again, is a fact-finding or
23 investigative type interview trying to determine
24 whether or not something has happened. We often
25 have some basic information, what we call intake

1 information, ahead of time.

2 We go in, you know, objective, open-minded,
3 trying to determine whether or not something
4 happened. And if it has, we try to get as many
5 facts as we can about what took place and who,
6 what, when, where, how.

7 And that is going to be affected sometimes by
8 the age of the child. So we would expect less
9 detail and perhaps less information from a very
10 young child, like a preschool age child, where we
11 would expect a teenager to be able to provide more
12 details and more information.

13 Q Is there a certain protocol that you follow?

14 A At the ARC we use a nationally recognized protocol.
15 It is known as RATAC, R-A-T-A-C. It is an acronym.
16 Each letter stands for a different stage of the
17 forensic interview protocol. So the R, for
18 example, stands for report, there is a report on
19 the case. The first A stands for anatomy
20 identification. The T stands for touch inquiry.
21 The second A is abuse scenario, if there is one.
22 And C is closure. That is RATAC.

23 Q Can you give the jury an idea how these interviews
24 are conducted within your office?

25 A Sure. Again, we like to think we have a

1 child-friendly facility, so we have a waiting area
2 so when a child comes in they are often brought by
3 a family member, and we don't allow alleged
4 perpetrators to come to the ARC, so they are
5 brought by some other caregiver of some sort. They
6 are in the waiting area. The caregiver has some
7 paperwork to fill out.

8 Once that is done, I will come and get the
9 child from the waiting area and bring them to one
10 of our three forensic interview rooms.

11 Each room is very sparsely furnished. We just
12 have like some comfortable furniture in there, a
13 flip chart to do some drawing on. We have a chest
14 with some anatomically correct diagrams that we
15 sometimes use. And we also have some anatomically
16 correct dolls that we sometimes use as tools. Each
17 room is equipped with a camera and microphone for
18 videotaping purposes. Every interview is recorded.

19 Once we bring a child in the room, I'll
20 introduce myself. I will tell them about the
21 recording equipment. And then begin the interview
22 process.

23 And, again, how the interview unfolds will
24 often depend on the age of the child. So RATAC may
25 look different depending on how old the child is.

1 So an interview with a 5-year-old, for example, is
2 going to look very different than an interview with
3 a 15-year-old.

4 Q And what, if any, guidelines are established for
5 the interview with the child?

6 A And by guidelines?

7 Q What do you tell the child as far as the rules of
8 the interview?

9 A We really don't have a lot of rules. Sometimes we
10 will explain to children that this is a place where
11 we only talk about things that are real and true.
12 It really just depends on the circumstances.
13 Certain things might come up that we try to
14 reinforce.

15 If I make an error, for example, and the child
16 corrects me, I explain to them how important that
17 is that sometimes I might make a mistake and it is
18 important that they feel comfortable enough to
19 assert themselves and let me know about that.

20 Sometimes we -- I accidentally repeat myself
21 or ask the same question more than once. I may
22 tell a child that, no, that doesn't mean you gave
23 me the wrong answer, it just means I forgot or I'm
24 looking for a little bit different information than
25 what I asked the first time.

1 So there are some rules. But those often get
2 used -- it is not like you sit down and, well, this
3 is a list of rules. They often are just -- if they
4 happen -- if they occur in the interview then we
5 reinforce and then we explain them at that point.

6 Q And what type of questions do you ask the child?
7 What is the format of your question when you are
8 talking with the child?

9 A Well, we feel it is particularly -- it is important
10 particularly in an abuse scenario, if there is one,
11 unfortunately, where the child is going to be
12 explaining what has happened to them, that we use
13 as many open-ended questions or prompts as we can.

14 So these would be broad questions like, tell
15 me about that, and then what happened, or what
16 happened next, or even more focused recall
17 questions, but they are still kind of broad. Well,
18 what happened at your mom's house, or what happened
19 at your dad's house.

20 So those are the best kinds of questions to
21 ask. They are more effective with older children.
22 The younger children have a harder time with a big
23 broad question.

24 If you have asked your 4-year-old, what did
25 you do at preschool today, they might just say

1 nothing or stare at you, because that is a big
2 tough question for them to handle.

3 But sometimes even with older kids we need to
4 get more specific or focused, so it is okay to
5 use -- for us to use maybe multiple choice
6 questions if the situation arises. So, did it
7 happen in your room or the bedroom or someplace
8 else. Or even yes or no questions, either/or type
9 questions.

10 So a yes/no question may be okay. If the
11 answer is yes, we may follow it up with an
12 open-ended question like, well, then tell me about
13 that.

14 The questions we try to avoid using are
15 leading questions or suggestive questions like, you
16 were in your room when that happened, weren't you.
17 That would be a sort of suggestive or leading
18 question and we would try to avoid something like
19 that.

20 Q And why does your facility use those safeguards?
21 Why are they in place?

22 A Well, you know, we want to get as much information
23 as we can from the child as a usual fact-finder or
24 objective interviewer. I'm not trying to -- I'm
25 not trying to just confirm something I have heard

1 in an intake, I'm trying to figure out whether or
2 not this happened. So I don't want to lead a child
3 down a certain path or down a certain road or, you
4 know, put words in their mouth or try to get them
5 to say something that I think they should say or to
6 try to confirm some hypothesis I have. I want to
7 hear from them what they have to say.

8 Q And typically what, if any, information are you
9 provided with prior to your interview with a child?

10 A Well, you know, we have some intake information.
11 Again, this information often comes from a law
12 enforcement investigator or a DSS representative.
13 It is all just some basic information of what the
14 nature of the allegation was, how it came to that
15 agency's attention. We may often get a copy of an
16 incident report along with the intake information
17 so I have that to review.

18 And then when they first come to the ARC, the
19 caregiver sometimes fills out a caregiver
20 questionnaire, which is some basic information from
21 the person bringing the child in about the family
22 makeup and some other information on that form that
23 is sometimes reviewed prior to the interview.
24 Sometimes it is helpful.

25 Q Specifically in this case, did you have on occasion

1 A Typically when we do an interview we have an
2 interview out from the session where we give an
3 opinion on how we feel the interview -- based on
4 our opinion of how the child performed in the
5 interview, whether or not it was compelling, for
6 example, or problematic.

7 It is not whether or not we think the child
8 was truthful or not, it is whether or not we think
9 the interview was compelling or whether there were
10 some problems.

11 And we have different psychologies that we
12 look at, like whether the child was talking about
13 sexual abuse, physical abuse, psychological abuse,
14 neglect, or some other situation, because we also
15 interview children who witness violent crimes or
16 other types of incidents. So we will, for example,
17 we will maybe check the box for sexual abuse. And
18 then maybe the interview was compelling, so I would
19 say that is a compelling interview for sexual
20 abuse. So that is an example of how we look at an
21 interview.

22 Then there is a separate section that would
23 say, no disclosure at all. So if a child didn't
24 say anything about anything happening or gave
25 denials about something happening, we would say

1 there was no disclosure. And then also was that
2 compelling or problematic. So that is how we look
3 at it.

4 Now, were you asking me in this case what I
5 concluded?

6 Q Well, you talk about disclosures. Can you explain
7 to the jury what type of disclosures there are?

8 A Like from the broad sense or just in general how
9 they are disclosed?

10 Q General. Right.

11 A Well, there are really two different types:
12 Accidental disclosures or purposeful disclosures.
13 When I'm speaking here, I'm talking about how does
14 the allegation initially come to somebody's
15 attention. Now, by purposeful disclosure, we mean
16 just that, the child's purpose. --

17 MR. COLLINS: Objection, Your Honor. This is
18 not his field of expertise. He is talking about an
19 initial disclosure. It has nothing to do with the
20 interview.

21 THE COURT: Overruled.

22 A A purposeful disclosure would be one where a child
23 intentionally comes forward, purposefully comes
24 forward and tells somebody that they have been
25 being abused. So they go to a guidance counselor,

1 they go to their parents, they go to somebody they
2 trust, they go to a school resource officer. So
3 they make it intentionally.

4 An accidental disclosure would be one where
5 the abuse or some concern about abuse is discovered
6 by accident, so a parent discovers a videotape that
7 is concerning or discovers an e-mail that was sent
8 by the child perhaps to a friend, or a parent walks
9 in on a couple of young children engaging in some
10 kind of exploratory sex play that goes beyond the
11 norm and then questions one of the children. And
12 that -- we call that an accidental discovery or an
13 accidental disclosure. Where a child has a
14 physical complaint and goes to the hospital and is
15 positive for gonorrhea that has never said
16 anything. So these are accidental discoveries.

17 Does that answer your question?

18 Q Are you familiar with the term, process of
19 disclosure?

20 A Yes.

21 Q Can you describe that for the jury?

22 A Yes. Children who have been abused --

23 MR. COLLINS: Objection, Your Honor. Again,
24 this is outside his field of expertise.

25 THE COURT: Overruled.

1 A In our field we think of disclosure as more of a
2 process than an event. So in my experience and
3 what I have seen, children very rarely are abused
4 and then make an immediate outcry, that they are
5 abused and they immediately pick up the phone and
6 call 9-1-1 or run and tell somebody. That is
7 unusual. For most children it is a process. So
8 most children don't tell right away. There is some
9 delay in reporting. It could be weeks, months,
10 years. Oftentimes they may have been asked along
11 the way and they may have denied that anything had
12 taken place.

13 And then when they finally do tell, initially
14 it is often a tentative type of disclosure or maybe
15 they are testing the waters, they are telling a
16 little bit of it to see what the reaction might be
17 because they are worried about what the reaction is
18 going to be or because they heard what the reaction
19 might be if they tell.

20 So there is this tentative stage that many
21 children go through where the disclosure is
22 incomplete.

23 Then for the majority of those kids,
24 especially the ones who have good support systems
25 in place, they --

1 THE COURT: Yes, ma'am, you may continue.

2 DIRECT EXAMINATION CONTINUES

3 BY MS. BARRY:

4 Q Mr. Olszewski, based on your training and
5 experience with the Finding Words and your
6 experience as a forensic child forensic
7 interviewer, are you taught the dynamics of delayed
8 disclosure?

9 A Yes.

10 Q And are you aware of how that would impact your
11 testimony as an expert?

12 A I'm not sure I understand the question.

13 Q You testified that you have been previously
14 qualified as an expert?

15 A Right.

16 Q And you previously testified as an expert in this
17 area?

18 A Yes.

19 Q And as an expert in these areas, is it based on
20 your training and experience?

21 A Yes.

22 Q And your training, does it include or did it
23 include learning about the process of disclosure?

24 A Yes.

25 Q Does that assist you in telling the jury and trying

1 to inform them and instruct them about the dynamics
2 of the process of disclosure?

3 A Yes.

4 Q And based on your experience and training and
5 classes that you have attended, are you familiar
6 with a term like minimization?

7 A Yes.

8 Q Does your experience and training and education
9 assist -- does that assist you in informing the
10 jury what that means?

11 A Yes.

12 Q What is minimization?

13 A When a child minimizes, it means they don't --
14 again, it is almost -- it is not quite a
15 disclosure, but they don't tell everything. They
16 may make it sound less severe than it actually was.

17 So we have sometimes kids who initially will
18 say that they were fondled and then later they will
19 say maybe that they were penetrated, so we know
20 those initial statements were minimized.

21 Q Is that type of training, learning about
22 minimization, delayed disclosure or the process of
23 disclosure, does that training assist you as a
24 child forensic interviewer?

25 A Yes.

1 Q In what way?

2 A Well, we need to pay attention, we need to be aware
3 of things like that so that when we're doing an
4 interview -- you know, we're looking to see if we
5 feel as though the child is maybe in a full
6 complete phase of disclosure or if they are perhaps
7 minimizing or in a tentative stage, you know, why,
8 what does that mean, what if anything will we
9 recommend based on that. We will recommend therapy
10 if the child was in a minimized disclosure. We
11 would recommend further forensic interviewing.
12 Some of this is interviewer-based, based on my
13 opinion as an interviewer, some of it is based on
14 consultation with our multi-disciplinary team.

15 So, you know, I may talk with an investigator
16 and say, well, the child is saying this, but it
17 seems to me like it is a minimized or tentative
18 disclosure. And then, you know, I may leave it up
19 to the investigator to do more investigation or
20 suggest another interview. So --

21 Q And as an expert in child forensic interviewing,
22 what types of things are you looking for when you
23 call something a tentative disclosure or
24 minimization?

25 A And that is a good question. Kids will sometimes

1 use phrases like, well, he touched me there, but it
2 was an accident.

3 To me that is a red flag. You know, the child
4 is trying maybe to say that something happening,
5 but they are not yet ready to put the blame on
6 somebody maybe or, you know, they are not quite
7 sure so they will say it was an accident.

8 You know, the funny thing about kids is they
9 often, especially if the abuse is perpetrated by a
10 family member, they don't necessarily want to see
11 that person get in trouble. It is not really about
12 justice or revenge, maybe like it is for an adult
13 victim. I don't know, I don't work with adult
14 victims much. But for kids, they often still love
15 this person that may be harming them, so they are
16 conflicted about what to do.

17 MR. COLLINS: Objection, Your Honor. Now we
18 are getting into speculation again about what a
19 child is thinking at different times.

20 THE COURT: Overruled.

21 MS. BARRY: Thank you, Your Honor.

22 A So out of this conflict may be borne some tentative
23 or minimized statements, he touched me there, but
24 it was an accident. Maybe even the child on some
25 level wants to believe it was an accident because

1 they don't want to believe somebody would do this,
2 somebody they love would do this to them
3 intentionally, so.

4 Q And as an expert in the field of child forensic
5 interviewing, having done over a thousand
6 interviews with children in the 11 years that you
7 have worked at the ARC, is it common for children
8 to give all details in one interview?

9 A No. I mean, no, it is not. In my experience, you
10 know, that is not the case. And that could be for
11 a variety of reasons. I don't think that I have
12 probably ever asked all the questions I could
13 possibly ask, you know, to get every possible
14 detail. You know, there are more possible details
15 there can be. And I, you know, know from my
16 experience in kids that have gone on to therapy
17 that I interviewed sometimes they disclose
18 additional details or elements later on in therapy
19 that weren't disclosed, you know, during the
20 forensic interview, so.

21 Q And you said you met with the victim in this case,
22 Minor 1 ?

23 A Yes.

24 Q The first time in April of 2010?

25 A Correct.

1 Q Did you have an occasion to subsequently meet with
2 him again?

3 A Yes, on August 12th, 2010.

4 Q And where did you meet him at?

5 A Also at the ARC, Assessment and Resource Center.

6 Q Did you perform the same type of interview with
7 him?

8 A Yes, similar type of interview. It was kind of a
9 follow-up interview, having just seen him four
10 months prior. It was a little bit different. The
11 reportability might be just, you know, do you
12 remember being here before and what he has been
13 doing, and then going from there.

14 Q Are you aware of his age at that time?

15 A He had turned 12 in June, so he was 12 when I saw
16 him in August.

17 Q Was he able to give you more details on that --

18 MR. COLLINS: Objection, Your Honor. Calls
19 for hearsay.

20 MS. BARRY: I'm not asking for the details,
21 Your Honor, just yes or no.

22 MR. COLLINS: The fact that there were more
23 details is information. That is hearsay.

24 THE COURT: Overruled.

25 A He gave additional information in that interview,

1 yes.

2 Q You testified a few minutes ago that that is not
3 uncommon, correct?

4 A That's correct.

5 Q Was he able to tell you where -- this additional
6 information that he alleged to you, where did that
7 occur?

8 A Yes.

9 Q Where did it occur?

10 A At John's house.

11 Q And did he give you a time frame?

12 A Yes. From around November of last year until about
13 April of that current year.

14 MS. BARRY: Beg the Court's indulgence.

15 (Pause.)

16 MS. BARRY: That's all I have.

17 THE COURT: All right, ladies and gentlemen of
18 the jury -- I'm sorry, you can step down.

19 (Witness steps down.)

20 MR. COLLINS: Your Honor -- I'll bring it up
21 when we're through. I'm sorry, I apologize.

22 THE COURT: And this is probably a good time
23 to break for the evening. It is about 5:07. And
24 you will hear the cross-examination of the witness
25 in the morning. We will start at 9:30.

1 the hearing of the jury.)

2 MS. BARRY: The State calls Investigator
3 Travis Holdorf.

4 THE BAILIFF: Place your left hand on the
5 Bible, and raise your right hand, please.

6 (Witness complies.)

7 THE CLERK: Do you swear or affirm the
8 testimony you are about to give in this case will
9 be the truth, the whole truth, and nothing but the
10 truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Have a seat in the witness box.
13 (Witness complies.)

14 THE CLERK: State your name for the record.

15 THE WITNESS: Travis Holdorf.

16 TRAVIS HOLDORF,
17 after being duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. BARRY:

20 Q Investigator Holdorf, where are you employed?

21 A I'm employed at the Richland County Sheriff's
22 Department.

23 Q How long have you been employed at the Richland
24 County Sheriff's Department?

25 A I was hired in 1994.

1 Q What are your current job duties?

2 A Currently I'm assigned to the special victims unit.
3 That consists of working rape cases, child abuse
4 cases. Every seventh week our shift goes on-call,
5 then I'm primary for homicide.

6 Q Back in 2010 was that your duties and
7 responsibilities?

8 A Yes, ma'am.

9 Q Did you have an occasion to be involved in an
10 investigation of John Barnes?

11 A Yes, ma'am.

12 Q When did you receive a report regarding the
13 investigation?

14 A April 12th, 2010.

15 Q When you received this report, what if anything did
16 you do?

17 A We look at the age of the victim, with the victim
18 being 11. The best course of action is to send
19 that person to the ARC for a forensic interview.

20 Q Why is that?

21 A It is a child. We put them in a place with
22 professionals when they are interviewed so you have
23 an interview that is not contaminated and no one is
24 misled. It is done by trained people so we can
25 arrive where we are today.

1 Q So did you talk with the victim in this case,
2 Minor 1 , prior to the ARC interview?

3 A No, ma'am. I would talk to the parents, explain to
4 them the process: We're going to be sending them
5 to the ARC and that it can take -- sometimes we
6 schedule these appointments, it could take several
7 weeks. You have several agencies who use the
8 Resource Center. I also asked them not to ask any
9 questions about this case with him, not to talk
10 with him about this case. And if they do -- the
11 victim does bring something up, to let them know
12 about it. Try not to have it constantly be brought
13 up all the time in front of the victim just so we
14 can try to get exactly what the victim knows.

15 Q Did you actually talk with the victim at all in
16 this case?

17 A No, ma'am.

18 Q What date -- are you aware of what date he went to
19 the ARC for his forensic interview?

20 A Yes, ma'am. I received a report from the ARC. The
21 first interview date was April 19th, 2010.

22 Q Did you accompany the family?

23 A No, ma'am. I got there at a different time as the
24 family. I did not even see the family that day and
25 went straight to the viewing room, if you will.

1 they are each individual questions unless it is
2 something that just can't be done. On this case it
3 was a lot of individual questions.

4 Q And was the Defendant given an opportunity to
5 review the statement?

6 A He was given the statement to read, make sure he
7 understands it, reads what it says. Also as I'm
8 typing it up where he was sitting he can see my
9 computer very clearly and would see what I'm
10 typing.

11 Q Did he make any changes to your statement?

12 A On the first one, on the second page I had was,
13 w-a-s, I left off the "h," it is supposed to be
14 wash. So, yes, ma'am.

15 Q He made that change?

16 A Yes, ma'am.

17 Q And who signed at the bottom?

18 A I swear him to it. He swears or affirms this is
19 the truth, the whole truth, and nothing but the
20 truth, and that he has made the statement of his
21 own free will and accord without reward or
22 intimidation. Then I have him sign it.

23 MS. BARRY: Your Honor, at this time we would
24 offer the statement from June 18th, 2010, into
25 evidence.

1 THE COURT: What is the objection?

2 MR. BAILEY: It is outside the scope of what
3 he is here to be a witness to, Judge.

4 THE COURT: Can you rephrase the question,
5 please?

6 BY MS. BARRY:

7 Q Did you feel you had enough probable cause to get a
8 warrant?

9 A No, ma'am.

10 Q And what if anything did you tell the Defendant at
11 that time?

12 A That is when I left it with him with -- if there is
13 something more he needed to tell me, if there is
14 something that he had left out to let me know, that
15 the lines of communication were open.

16 Q So those lines of communication, did you have
17 contact with the Defendant subsequent to this
18 interview?

19 A Yes, ma'am. Approximately a week or so later he
20 called and said there was more he wanted to tell
21 me.

22 Q The Defendant called you?

23 A Yes, ma'am.

24 Q And what did you do?

25 A I was tied up on something at the time. I told him

1 that we would as soon as I could get an appointment
2 to get him to come down and we would sit down and
3 talk. When I'm talking to people I don't really
4 use the word interview or interrogate, I talk to
5 people. And when I talk to them there is not a
6 shining a light down on their head. It is not a
7 metal room or anything else. There is just a
8 little metal table. It is my office cubicle. It
9 is the same place where I talk to victims or anyone
10 else. I don't touch anyone, I just try to get
11 their side of events.

12 As I said, we make an appointment where you
13 can come down and we can talk. And we made that
14 appointment on July 1st.

15 Q And did he come in on July 1st?

16 A Yes, ma'am.

17 Q Was he in custody at that time?

18 A No, ma'am. He drove himself to and from this
19 appointment.

20 Q He drove himself? He was not in custody?

21 A No, ma'am.

22 Q And was he free to leave?

23 A Yes, ma'am.

24 Q Did he voluntarily speak with you?

25 A Yes, ma'am.

1 Q Did you use any threats, coercion or promises of
2 leniency against him to get him to talk to you?

3 A No, ma'am.

4 Q Did he general give you a statement freely and
5 voluntarily?

6 A Yes, he did.

7 Q And on July 1st, what did the Defendant tell you?

8 A We started out talking and he said that -- we
9 started out, he might have touched him to where it
10 developed to what he put in the statement, which is
11 where he does admit to touching him and he does
12 admit to masturbating him.

13 Q Do you have a copy of the original statement?

14 A Yes, ma'am, I do, signed by both myself and
15 Mr. Barnes.

16 MS. BARRY: Your Honor, at this time we would
17 offer this into evidence.

18 THE COURT: Can you show it to Mr. Bailey?

19 MS. BARRY: Yes, ma'am.

20 MR. BAILEY: No objection, Judge.

21 (WHEREUPON, State's Exhibit No. 9 was
22 marked for identification and received
23 into evidence.)

24 Q State's Exhibit Number 9 is blown up on the board
25 as well. If you would come down and publish that

1 to the jury as well?

2 A Yes, ma'am.

3 THE WITNESS: May I step down?

4 THE COURT: Yes, sir.

5 (Witness steps down.)

6 MS. BARRY: State's Exhibit Number 6 and 7 for
7 ID, Your Honor?

8 MR. BAILEY: No objection.

9 (WHEREUPON, State's Exhibit No. 6 was
10 marked for identification only.)

11 (WHEREUPON, State's Exhibit No. 7 was
12 marked for identification only.)

13 Q So on July 1st, please tell the jury what
14 Mr. Barnes told you.

15 A We have the same template as before. You see the
16 date has changed.. July 1st, 2010 at 16:55, which
17 is military time for 4:55 p.m. The Defendant's
18 name, address, daytime phone number, and then the
19 nighttime phone number. He makes the following
20 statement, to wit.

21 Do you want me to read it?

22 Q (Nods affirmatively.)

23 A Then general it is after we talked, it is just to
24 open up to get some dialogue.

25 Is there any additional information you'd like

1 to add to your previous statement?

2 His response was, yes, I did explain to
3 Minor 1 how to masturbate. We were talking about
4 sexuality and his interest in boys or girls. I
5 told him that it was all right to have feelings
6 about girls and if need be about boys. We were in
7 the bathroom. Minor 1 was in the bathtub taking a
8 bath. I was clothed next to the bathtub. I was
9 washing Minor 1. I don't know how one thing led to
10 another. I noticed he had an erection. He was
11 covered in bubble bath. I touched him on his lower
12 leg and moved my hand from his ankle to his lower
13 leg. I asked him if he was chicken. He said no.
14 I went up to his knee. I asked him if he was
15 chicken. And he said no. I moved to his lower
16 thigh. And I asked him general. And he said no.
17 I moved to his hip and asked if he was chicken.
18 And he said no, that he was not chicken. I went to
19 his other hip and brushed against his penis. We
20 started talking about masturbation general. I
21 started demonstrating on Minor 1 how to masturbate.
22 He said no, and I stopped.

23 I asked a question, how many times did this
24 happen?

25 He said, just once.

1 I asked, how long did you masturbate Minor 1 ?

2 He said, just a few seconds.

3 Q Page 2, read that for the jury.

4 A It continues on Page 2.

5 I asked a question, were you aroused?

6 He stated, no.

7 I asked, what was the purpose of this?

8 He said, to teach Minor 1 a safe outlet. I
9 was concerned that he would get an erection from
10 it.

11 I asked a question, how often would you wash
12 Minor 1 ?

13 He said, about ten times. About five or six
14 where I would wash him. They were mainly bubble
15 baths and mostly on his back. I was in the
16 bathroom with him five or six times. The other
17 times he was by himself.

18 I asked a question, would you wash his genital
19 area?

20 He said, not intentionally. I would stick
21 with his feet and his back.

22 I asked a question, aside from the
23 masturbation incident, how many times did you touch
24 Minor 1 's genital area?

25 He stated, just that time. That was the on

1 time he made me aware of it.

2 I asked if he bathed ^{Minor 2}

3 He said, no.

4 Did you show ^{Minor 2} how to masturbate?

5 He said, no.

6 And then I asked general, last question, is
7 there anything you'd like to add or change about
8 your statement?

9 He said, not at this time.

10 It is signed by Mr. Barnes on both pages and
11 myself.

12 Q And what date is that?

13 A This is going to be the 1st of July.

14 Q So on July 1st, after the Defendant voluntarily
15 gives you that statement, did you arrest him at
16 that time?

17 A I did not.

18 Q And what if anything did you do after he left your
19 office?

20 A I contacted Ray from the ARC. I wanted to have
21 ^{Minor 1} re-interviewed since the first time he
22 had said that nothing had happened, and to see if
23 that was something we could do.

24 He indicated that was something we could do,
25 that all I have to do is just reschedule it, it was

1 THE CLERK: Have a seat in the witness box.

2 (Witness seated.)

3 THE CLERK: State your full name for the
4 record, please.

5 THE WITNESS: My name is John Peter Barnes.

6 JOHN PETER BARNES,

7 after being duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BAILEY:

10 Q Good afternoon, Mr. Barnes. Can you tell us a
11 little bit about yourself to the jury? Tell us
12 your age, where you are from, where did you grow
13 up.

14 A I'm 47. I grew up an army brat, so the first ten
15 years of my life I traveled over the southeast and
16 to Germany.

17 THE COURT REPORTER: Can you speak in the
18 microphone, please?

19 A Oh, I'm sorry. I lived briefly on my grandparent's
20 farm in Germany. And since my father retired when
21 I was 11 years old, I spent almost my entire life
22 here in Columbia.

23 Q So how long have you been in -- when did you move
24 to Richland County?

25 A 1975.

1 Q And where did you graduate from high school?

2 A Lower Richland.

3 Q What did you do after high school?

4 A Went straight to the navy. I spent a few years in
5 the navy and then a few years in construction after
6 that, made some concrete pipe and went to -- ended
7 up in retail after that.

8 Q And would you say you have done a lot of physical
9 labor?

10 A Yes, I did.

11 Q I think everybody notices you have crutches with
12 you today. Could you explain why?

13 A The work that I was doing, it caused damage to my
14 back and I ended up being a technician for office
15 equipment and driving around a lot, driving
16 thousands of miles every month, and it just caused
17 a steady deterioration of my back.

18 Q Okay. What kind of work are you doing right now?

19 A I work at a computer doing primarily accounts
20 receivables, processing invoice checks, checks that
21 people pay us.

22 Q Did you have any additional jobs on top of that
23 before you were arrested on this charge -- on this?

24 A I used to own a laundromat.

25 Q And how long did you own a laundromat?

1 A Approximately six years.

2 Q Mr. Barnes, I'd like to talk about Amy Geiselman.

3 How did you meet Ms. Geiselman, the mother of

4 Minor 1 and Minor 2

5 A I met her through the laundromat. She was a --

6 THE COURT REPORTER: You are going to have to
7 speak up, I'm sorry.

8 A Oh, I'm sorry. I'm kind of a soft-spoken guy. I
9 met her through the laundromat. She started being
10 a regular customer on my nights to work. I had
11 worked with the laundromat for ten years before my
12 brother -- before I bought it. And she started
13 coming in on nights that I was working. And after
14 a while we started talking and then we started
15 dating and we got engaged to be married.

16 Q Okay. Did she tell you if she was married at the
17 time?

18 A No. She said she was divorced.

19 Q Okay. Was she divorced?

20 A No, she was not.

21 Q Okay. What happened when you found this out?

22 A I broke it off.

23 Q But did you see her general?

24 A Yes. She made contact with me later and she said
25 she still wanted to get divorced and marry me. And

1 this went on and off for five years.

2 Q When did you find out that Minor 1 and Minor 2
3 were -- that you were the father of her sons,
4 Minor 1 and Minor 2

5 A For Minor 2 I did not find out until the DNA tests.
6 For Minor 1 she first told me when she was pregnant
7 that she was pregnant by me. Then she said she was
8 not pregnant by me. Then when the child was born
9 she said it was mine. And then she turned around
10 and said it was not mine.

11 And after I found out that she had left her
12 husband, I dropped it. I gave up on it.

13 Q Did you ever get confirmation that he was yours?

14 A Yes. We had a DNA test.

15 Q Whose idea was it to have a DNA test?

16 A Amy wanted the DNA test on Minor 1

17 Q And why did she want the DNA test?

18 A To try to -- she told me it was to try to readjust
19 her custody and child support that she had with
20 William Jr.

21 Q To your knowledge, was she getting along with
22 William Jr.?

23 A They had never gotten along.

24 Q Did Amy -- did you start spending time with Minor 1
25 after you found out, after you got confirmation

1 that they were your sons?

2 I'm sorry, when did you start spending time
3 with Minor 1 and Minor 2

4 A When the guys wanted to move back from Ohio I
5 started spending time with the boys. And then when
6 it came time for the DNA tests, we told Minor 1 and
7 Minor 2 what the tests were for, to determine
8 whether or not the boys were my sons.

9 Q How often when they moved back did you spend time
10 with Minor 1 and Minor 2

11 A Initially it was just a little bit of time here and
12 there, maybe, you know, a couple of hours here and
13 there a day, here and there. Maybe on occasion
14 spend a weekend.

15 As Minor 1 noted, when they first started
16 spending time with me at my house, Vicky and J.D.
17 were living with me. So I had set up a tent in the
18 back yard for us to sleep in initially, but that
19 didn't last very long.

20 And then they didn't start spending time with
21 me during the week until they started baseball.

22 Q Did you take them to the baseball practice?

23 A Yes, I took them to the baseball practice and
24 helped coach the team during practice.

25 Q Did you do anything else when they were at your

1 A Yes, I did.

2 Q Was that on June 18th of 2010?

3 A Yes, it was.

4 Q And this was your first meeting with him?

5 A Yes, it was.

6 Q Okay. How did you feel general at this time in
7 your life?

8 A I was already extremely depressed because of losing
9 my mother, you know, worried about my father, if
10 his cancer was going to come back. I mean, I knew
11 it was just a matter of time before I lost my
12 laundromat unless I could find some way to save it.
13 And now these -- the renewed fight between all the
14 parents. It was just killing me.

15 Q So would you say that the allegations upset you?

16 A Very much so.

17 Q When you first -- when you met with Investigator
18 Holdorf, what did he say to you?

19 A Well, he started off with pleasantries.

20 And I explained to him everything about what
21 was going on in my life.

22 And he told me that ^{Minor 1} had made
23 allegations that I was rolling around naked on the
24 bed with him, sleeping naked with him, and
25 masturbating him frequently in the bathtub.

1 Q So he said a bunch of things to you?

2 A Yes, he did.

3 Q Okay. And how did this make you feel?

4 A Each -- each word was ripping my heart out. I
5 couldn't take it.

6 Q But on that day, you did give him a statement the
7 first time?

8 A Yes, I did.

9 Q Okay. Did you talk to him about baths that Minor 1
10 took at your house?

11 A Yes. I told him that it was Minor 1's idea, you
12 know, that Minor 1 wanted the -- wanted baths. In
13 hindsight now I think it was a bad idea, but I let
14 Minor 1 have the baths.

15 Q Did you explain -- or did he ask about candles?

16 A Yes, he did. General, that was Minor 1's idea.
17 Minor 1 wanted the candles.

18 Q Did you have any attitudes about candles in your
19 house?

20 A No open flames, at least not around the children.
21 As I told Mr. Holdorf, I'm terrified of open fires
22 just unattended. So when I was living in Cedarwood
23 there was a rash of arsons, a bunch of buildings
24 were being burned down. And based on the pattern
25 of the buildings being burned, mine was very

1 soon -- mine was possibly next or very soon to be
2 burned down.

3 Q Okay. I'm sorry, I just want to back up a second.
4 You said when you were at Cedarwood. Was this your
5 last residence?

6 A No, this was many years ago. This was many years
7 ago. This was right about the time ^{Minor 1} was
8 born.

9 Q You were concerned about fire?

10 A Yes.

11 Q And fire safety?

12 A Right. And I never let the boys around the open
13 fire by themselves. You know, if they wanted to
14 stoke the fire in the fireplace, which is in my
15 living room, they were not allowed near the
16 fireplace unless I was in the living room with
17 them. You know, if I had to leave the living room
18 for any reason they had to stay away from the
19 fireplace until I got back.

20 If -- you know, like if one boy was in the
21 bedroom and the other was in the living room, then
22 if I left, then whoever was in the living room left
23 with me.

24 Q Did you allow ^{Minor 1} to be in the bathroom with
25 flames unsupervised?

1 A No.

2 Q Now, is this what you told -- basically what you
3 just told the jury, is this what you told -- these
4 events, is this what you told Investigator Holdorf
5 in June?

6 A Right.

7 Q You told this on June 18th, right?

8 A Correct.

9 Q Then you left the interview with Investigator
10 Holdorf, is that correct?

11 I'm sorry, did you meet with him again at a
12 later time?

13 A Well, I did not leave Investigator Holdorf until --
14 well, he informed me that ^{Minor 1} was continuing
15 with the interviews. He said that another
16 interview was already scheduled for the ARC. And
17 he asked me to take a polygraph. He asked if I
18 would volunteer for a polygraph. And then he
19 released me, let me -- or he allowed me to leave.

20 Q Okay. Well, when you left -- you eventually spoke
21 with Investigator Holdorf again?

22 A Yes, I did.

23 Q Okay. When did you meet with him general? Do you
24 remember the date?

25 A July. July 1st.

1 Q Okay. How did you feel at this time?

2 A I wanted to die. I had lost my sons. I had lost
3 everything in my life that was meaningful. The one
4 person I used to turn to was my mother. She is
5 gone. The on strength that I had left was my sons,
6 and Amy took them from me general. And the thought
7 of ^{Minor 1} having to go through all of this was too
8 much for me to bear. I wanted to -- I wanted it to
9 end. I wanted to protect ^{Minor 1}. I did not want
10 him to go through any more of those interviews. I
11 did not want him having to testify against all of
12 his parents in any way.

13 Q Is this why you met with Investigator Holdorf
14 general?

15 A Yes, it is.

16 Q Were you clear-headed at the time?

17 A I don't know if I was clear-headed. I wanted to --
18 since I could not think of any other way to commit
19 suicide, I was going to try suicide by police.

20 Q So do you think that sounds like you were
21 clear-headed?

22 A No.

23 Q When you spoke to Investigator Holdorf this time,
24 what did he say to you?

25 A At one point he told me that, you know, the

1 allegations that ^{Minor 1} said first, you know, they
2 were no big deal, you know, there is no handbook
3 for parenting, you know, parents make mistakes.
4 And, you know, and if any of the allegations are
5 true, it was just a mistake.

6 Q Did he -- did you feel like after speaking to him
7 that it would -- that -- I'm sorry. You say that
8 Investigator Holdorf led you to believe that this
9 was not a big deal?

10 A Correct.

11 Q Did Investigator Holdorf's words lead you to
12 believe that it would be easier if you signed the
13 statement?

14 A I let him know under no certain terms I was there
15 to protect ^{Minor 1} to -- so that he would not have
16 to go through any more interviews. I would do
17 whatever it took to protect ^{Minor 1}

18 Q And what did you think that would take?

19 A I don't know.

20 Q At the time were you aware of the trouble that this
21 kind of thing could cause, signing this kind of
22 statement?

23 A No, I did not.

24 Q Did you think that signing a statement would make
25 it easier on everybody?

1 A I -- yes, I did.

2 Q If you could go back, would you sign the statement
3 again?

4 A No, I would not.

5 Q Was anybody with you when you signed the statement?

6 A Just Mr. Holdorf.

7 Q Do you know anything about the legal system?

8 A Very little.

9 Q Did he type up the statement, Investigator Holdorf?

10 A Yes, he did.

11 Q You didn't write that statement?

12 A No, I did not.

13 Q At this time did you feel like you had much to live
14 for?

15 A No, I did not.

16 Q Did you have any hope of seeing your sons general?

17 A No. I don't believe I will ever see my sons
18 general.

19 Q What has changed between then, the time you gave
20 the statement, and now?

21 A I have advocates now telling me what is right as
22 far as what to do, and I've got people telling me
23 not to commit suicide. I've got people trying to
24 convince me I've got reasons to live, even though I
25 can't see it.

1 Q Well, do you -- even though you still feel upset,
2 would you say you are thinking more clearly now?

3 A Yes.

4 Q Mr. Barnes, I would like to address these
5 allegations directly. Did you ever molest your
6 son?

7 A No, I did not.

8 Q Did you ever touch his private parts
9 inappropriately?

10 A No, I did not.

11 Q Would you ever do this kind of a thing?

12 A I would rather die than hurt my children.

13 Q Thank you.

14 Mr. Barnes please answer any questions that
15 the Prosecution has.

16 THE COURT: Yes, ma'am?

17 MS. BARRY: May it please the Court?

18 CROSS-EXAMINATION

19 BY MS. BARRY:

20 Q You would agree with me that ^{Minor 1} is
21 your biological child, correct?

22 A Yes, he is.

23 Q And you would agree that he began staying with you
24 when they returned to South Carolina?

25 A Yes.

1 Q In fact, they stayed with you at your home on
2 Sunview Drive, correct?

3 A That is correct.

4 Q You testified that you slept in a tent with the
5 kids?

6 A In the back yard.

7 Q In the back yard? How long did y'all do that?

8 A That lasted two weekends. The boys didn't like it.

9 Q Yet you had a two-bedroom home, correct?

10 A Yes. One of the bedrooms was rented out at that
11 time.

12 Q Minor 1 would come over?

13 A I'm sorry?

14 Q Minor 1 came over, right?

15 A Could you be more specific?

16 Q Minor 1 would stay at your home?

17 A Not by himself, no.

18 Q He would with Minor 2 correct?

19 A Correct.

20 Q And sometimes Charlotte -- Scarlett would come?

21 A I asked that Scarlett come to help introduce me and
22 get the boys adjusted to being around me.

23 Q And part of your parental duties was to give your
24 children baths, correct?

25 A No.

1 Q In fact, ^{Minor 2} didn't get baths, did he?

2 A No. He didn't want candles.

3 Q He didn't get baths because he didn't like candles?

4 A He took a bubble bath, but he didn't want a -- he
5 didn't want a candlelit bath.

6 Q But you said he didn't get baths because he didn't
7 like candles?

8 A I did not bathe him because he did not want
9 candles.

10 Q Did he take baths or did he take showers? Isn't it
11 true he took showers and not baths because he
12 didn't like candles?

13 A No. The children came to me one day and said they
14 were tired of taking showers, they took showers at
15 home, they took showers at my house. They were
16 arguing constantly about who was supposed to take
17 the showers first.

18 I had this thing where I would take them to
19 the dollar store and give them a five-dollar bill
20 each, and they saw the bubble bath and asked if
21 they could buy the bubble bath.

22 Q Sir, you just said ^{Minor 2} didn't take baths
23 because he didn't like candles. Can you elaborate
24 on that?

25 A I was not in the bath with ^{Minor 2} when he took his

1 bubble baths.

2 Q But you gave ^{Minor 1} a bath, didn't you?

3 A Eventually, yes.

4 Q With candles?

5 A I let him be in the bathtub with the candles as
6 long as I was there to prevent anything from
7 happening.

8 Q So you were there in the bathroom, weren't you?

9 A Yes, I was.

10 Q Kneeling beside the tub?

11 A Not at first.

12 Q Washing your child?

13 A No, not at first.

14 Q But when he was 11 years old you washed your son,
15 correct?

16 A Yes. I knew that Amy was trying to take the
17 children from me general.

18 Q But when -- the younger -- your younger son,
19 ^{Minor 2} you didn't bathe him, did you?

20 A No.

21 Q You weren't in the bathroom?

22 A No.

23 Q Were you?

24 A No, I was not.

25 Q But the older son you were in the bathroom, you

1 were kneeling down, you were washing your older
2 child, correct?

3 A Yes.

4 Q With a rag?

5 A Yes.

6 Q And candles, scented candles, correct?

7 A Yes.

8 Q And that is the on light in the bathroom?

9 A No. There are two light fixtures in the bathroom.
10 The main light fixture lights up the -- it is very
11 bright in the bathroom. The other light fixture is
12 dimly lit. And that light fixture would remain on.

13 Q But you spoke to both of the boys about
14 masturbation, correct?

15 A I spoke to the children about cigarettes, about
16 alcohol, about drugs, and about sex.

17 Q And you actually explained to ^{Minor 1} when he was 11
18 years old how to masturbate?

19 A No, I did not.

20 Q You had this discussion in the bathroom, didn't
21 you?

22 A No, I did not.

23 Q You had this discussion while he was taking a
24 bubble bath with candles?

25 A I did not.

1 Q In a dimly lit -- you deny that?

2 A I deny that.

3 Q Yet you came in and gave a statement to the police
4 that you did that, correct?

5 A I was led to believe that giving such a statement
6 would be protecting my child.

7 Q On June 18th Investigator Holdorf on told you that
8 you were being accused of inappropriate touching of
9 your children, correct?

10 A No. He told me I was accused of wrestling naked
11 with my sons, with sleeping naked with my sons,
12 with masturbating on a pretty regular basis. And
13 none of that was true.

14 Q When you went and met with Investigator Holdorf,
15 you drove yourself in, correct?

16 A I went with Investigator Holdorf. I knew he
17 carried his sidearm on his right side.

18 Q You --

19 A I knew --

20 Q -- drove yourself --

21 A I knew he carried his sidearm on his right side. I
22 waited in the lobby. He came and got me. I looked
23 at him. He sat me down in his cubicle. I looked
24 at his sidearm. I could not find a way for me to
25 get to his sidearm without him preventing me.

1 There was no way for him -- for me to force anybody
2 else in that building to shoot me.

3 Q Sir, my question is, how did you get to the
4 Sheriff's Department?

5 A I could have walked. It is that close. I drove.

6 Q And how did you leave?

7 A I drove. I was looking for a way to die and I
8 failed. I couldn't find a way to commit suicide.

9 Q Isn't it true you have done that before, though?

10 A Without the influence of adverse medications? No.

11 Q But on June 18th, you were not arrested for this
12 charge, were you?

13 A No, I was not.

14 Q In fact, you went home?

15 A Yes, I was.

16 Q And you thought about it, didn't you? You thought
17 about your conversation with Investigator Holdorf,
18 this man right here?

19 A On June 19th I was devastated. I had confirmation
20 that I had lost the on thing that was left in my
21 life. There was -- I knew Amy wanted to take the
22 children from me again. She had taken them from me
23 before simply because she could. And now I had
24 lost them forever. The on thing I had in my life
25 at that time was my children.

1 Q But you contacted him about a week later, right?

2 A To see if there was any way for me to protect

3 Minor 1 , to keep him from -- I did not want him to
4 go to any more interviews. I did not want him to
5 go back to the ARC.

6 Q So by --

7 A And by the things that Mr. Holdorf was telling me,
8 that it was no big deal, it was just parental
9 mistakes, that we -- I believed if I gave that
10 statement Minor 1 wouldn't -- Minor 1 would be
11 protected.

12 Q So you voluntarily called Investigator Holdorf and
13 told him you had more information to give him to
14 protect your child?

15 A As I told him when I got there, I wanted to do
16 whatever it took. I told him I would do whatever
17 it took to protect my son.

18 Q You drove yourself back to the Sheriff's
19 Department?

20 A Yes.

21 Q On July 1st?

22 A Yes, I did.

23 Q And you drove yourself out, correct?

24 A Yes, I did.

25 Q And that day you weren't arrested either, were you?

- 1 A No, that day I bought a rope.
- 2 Q I'm sorry?
- 3 A I bought a rope.
- 4 Q But on that day you voluntarily told Investigator
- 5 Holdorf that, yes, I did explain to ^{Minor 1} how to
- 6 masturbate. You signed that?
- 7 A Yes, I did sign it. I will not deny signing that
- 8 statement.
- 9 Q And you will not deny that you --
- 10 A But I will not -- I will not confirm that any of
- 11 that statement is true. Yes, I know I swore that
- 12 that is a sworn statement, but I lied.
- 13 Q But you lied? You lied then?
- 14 A I lied to protect my son. As I told Mr. Holdorf, I
- 15 would do anything to protect my son.
- 16 Q And you are lying today, aren't you, about teaching
- 17 your son how to masturbate, isn't that true?
- 18 A No.
- 19 Q To protect yourself?
- 20 A No.
- 21 Q You also told him in a signed sworn statement, we
- 22 were talking about sexuality and his interest in
- 23 boys and girls, correct?
- 24 A I made the conversation up. I don't remember every
- 25 detail of it.

1 Q And isn't it true you told him in a signed sworn
2 statement, I told him it was all right to have
3 feelings about girls and if need be about boys,
4 right?

5 A I don't remember what I said. I made it up as I
6 was going along.

7 Q The whole truth and nothing but the truth?

8 A I lied.

9 Q You lied July 1st and you signed your name?

10 A Yes. I would lie to protect my son. I would die
11 to protect my son.

12 Q But you bought a rope?

13 A I couldn't reach the rafters in my laundromat.

14 Q We were in the bathroom. Minor 1 was in the
15 bathtub taking a bath.

16 You don't deny that, do you? You have already
17 testified that you gave Minor 1 a bath?

18 A Yes.

19 Q You won't deny that you said, I was clothed next to
20 the bathtub?

21 A I'm sorry?

22 Q You don't deny that you were clothed next --
23 kneeling next to the bathtub, because you testified
24 to that already?

25 A Yes.

1 Q And you won't deny that you were washing Minor 1 ,
2 right?

3 A Correct.

4 Q I don't know how one thing led to another.

5 That is your statement, correct?

6 A That is -- that is on the statement.

7 Q And isn't that true?

8 A Isn't what true? The fact that I lied when I made
9 that statement?

10 Q I don't know how one thing led to another.

11 What did you mean by that?

12 A I don't know. I made it up as I went along.

13 Q Isn't it true in a signed sworn statement you said,
14 I noticed he had an erection?

15 A Is it true I made the statement or is it true that
16 it happened? It is not true that it happened.

17 Q Sir, you contacted an investigator at the Richland
18 County Sheriff's Department with additional
19 information after you had time to think --

20 A I wanted to die.

21 Q -- after you had time --

22 A My life was over.

23 Q Can I finish my --

24 THE COURT: Sir, please let her ask the
25 question.

1 MS. BARRY: Thank you.

2 THE COURT: And then you can answer, okay?

3 Q After you had time to think about your original
4 statement, you contacted them voluntarily and it is
5 your testimony to protect your son? Is that your
6 testimony?

7 A Yes.

8 Q Isn't it true this testimony is to protect
9 yourself?

10 A My life is over. If they come back with a guilty
11 or a not guilty, I'm still without my sons. I am
12 still without a reason to live. If I -- no matter
13 which door I go out of here, it is the same for me,
14 a prison without my sons. I have the physical pain
15 that I endure every day. I watched my mother die
16 slowly every day. What am I protecting myself
17 from?

18 Q On July 1st, 2010, in a signed sworn statement you
19 wrote down -- you signed your name to paper, he was
20 covered in bubble bath. I touched him on the lower
21 leg and moved my hand from his ankle to his lower
22 leg. I asked him if he was chicken.

23 Isn't that true?

24 A That I did it? No, it is not true.

25 Q Isn't that true that is what you swore to?

1 THE BAILIFF: The jurors are all present, Your
2 Honor.

3 THE COURT: All right, ladies and gentlemen of
4 the jury, you'll now hear closing arguments,
5 beginning with Ms. Bodman for the State.

6 Thank you.

7 CLOSING STATEMENT

8 MS. BODMAN: A perfect storm was what ^{Minor 1} was
9 caught up in of family turmoil, violence in the
10 home, hiding in the closet with his brother. A
11 mom, a dad, a stepmom, a stepdad. Finding out he
12 has a biological father, not his legal dad.
13 Financial problems in the home. He is going over
14 to the Defendant's house. He changed schools. He
15 is stressed out. He is picked on at school.

16 But he decides -- tells Mr. Barnes, I am
17 stressed out, and they decide maybe some baths
18 would help him out.

19 Then he gets him into that bathroom, isolates
20 him, starts bathing him, washing him, isolating him
21 there. Then he is then able to sexually abuse him.

22 A perfect storm. All of these kind of things
23 come together that puts him in that bathroom with
24 the Defendant.

25 I want to talk to you about some of the law

1 that applies in this case. First off is what is
2 charged, lewd act. It is unlawful for a person who
3 is over the age of 14 -- we have heard his
4 birthdate, he is in his 40s -- to willfully and
5 lewdly commit or attempt a lewd or lascivious
6 act -- masturbation -- upon or with the body or its
7 parts of a child under the age of 16 -- he is 13
8 today. He was 11 when this happened -- with the
9 intent of arousing, appealing to, or gratifying the
10 lust or passion or sexual desire of the person or
11 of the child with the intent. It doesn't mean that
12 anybody is successful in getting aroused, but that
13 is the intent of the act, is either to arouse
14 himself or ^{Minor 1} And that is the purpose and
15 intent of masturbation.

16 You heard ^{Minor 1} talk about how sitting in that
17 bathtub and being masturbated by the Defendant, he
18 would get the sensation or the urge like he had to
19 pee.

20 And he would tell him, I have to pee, and the
21 Defendant would hand him a cup.

22 And then he said, in confusion I would hand it
23 back. Because this is an 11-year-old boy who was
24 not sure about the sensations that he is feeling,
25 what this is, that he could liken it to peeing,

1 needing to pee, but then he was confused why he
2 didn't pee into that cup.

3 That act in that bathroom is a lewd act.

4 We have to prove this case to you beyond a
5 reasonable doubt. I will talk to you a little bit
6 about what does that mean. Proof beyond a
7 reasonable doubt is proof that leaves you firmly
8 convinced of the Defendant's guilt.

9 There are a few things in this world that we
10 know with absolute certainty. And in criminal
11 cases the law does not require proof that overcomes
12 every possible doubt.

13 If, based on your consideration of the
14 evidence, you are firmly convinced that the
15 Defendant is guilty of the crime charged, you must
16 find him guilty.

17 If, on the other hand, you think there is a
18 real possibility that he is not guilty, you must
19 give him the benefit of the doubt and find him not
20 guilty.

21 There are a few things in this world that we
22 know with absolute certainty. The on way that we
23 would be able to prove to you beyond every possible
24 doubt, 100 percent absolute certainty is if you
25 were in that bathroom and saw it yourself. That is

1 absolute certainty. Because then you are a
2 witness, you are not a juror. You would be sitting
3 in this chair and not this one.

4 But that doesn't happen in sexual abuse cases
5 because pedophiles isolate their victim so that
6 there are no witnesses, so that child is alone.

7 You use your common sense when you go over all
8 of this evidence, all the testimony that you heard.
9 You brought your common sense in that door when you
10 came in here for jury duty and you are not going to
11 leave it in this courtroom. You are going to take
12 it out that door and into the jury deliberation
13 room.

14 Reasonable doubt. Why would a man lie about
15 masturbating their son? That is ridiculous,
16 ludicrous, absurd. That is completely
17 unreasonable. No man is going to lie that they
18 masturbated their son.

19 Why would Will lie about this? This was his
20 refuge from the violence in the home, the
21 screaming, the yelling, the dragging, his mom
22 talking about his dad, William Murray. Liar. The
23 infighting. The fighting with his sister. Not
24 having to hide in that closet. Financial reasons.
25 Being able to get some food over at John Barnes'

1 house. He said it was entertaining. It was great
2 to go over there. They had more entertainment for
3 themselves than they did at their house. So they
4 were away from all of that drama and able to
5 entertain themselves. Why is he going to cut off
6 the very refuge that he had? It is not going to
7 happen.

8 This excuse of lying about masturbating his
9 son in order for ^{Minor 1}'s protection, I lied that I
10 masturbated him in order to protect him. Protect
11 him from what? Protect him from another interview
12 with ARC? Protect him from having to talk about
13 this again? Protection from people finding out
14 about it because he just did not want anybody at
15 school to know? He is having a hard enough time.
16 He is already, he says, the odd guy out, different
17 than everybody else, picked on. That this is going
18 to get back to school and it is going to even be
19 more turmoil in his life? Protect him from having
20 to talk to us about it? Protect him from having to
21 come into this courtroom and talk to you about it?
22 That is absurd and completely unreasonable.
23 Absurd.

24 This family is not the family of the year.
25 There is so much going on over there. But I want

1 you to think about it. They want to bring out all
2 this turmoil and basically just say, these are -- I
3 want you to get a picture of just, this is horrible
4 people, horrible -- you know what? Like it or
5 not -- like it or not, John Barnes is a part of
6 that family. And you know what? There is a
7 pedophile in the family. He is a part of all of
8 that, like it or not.

9 Credibility of the witnesses. You are the
10 judge of the credibility or the believability of
11 each and every witness that took this stand. Was
12 he or she straightforward or hesitant when
13 answering questions? Was the witness consistent or
14 inconsistent? How does the witness know the facts
15 that he or she is testifying to? Was the witness
16 present during the incident or did he happen on the
17 scene afterwards? Was the testimony of the witness
18 strengthened or weakened by the other testimony or
19 evidence? Is there some reason a witness would
20 want to give testimony which would help or hurt one
21 side or the other? In other words, was the witness
22 biased or prejudiced?

23 I want you to think about ^{Minor 1} and how he
24 testified on that witness stand and what he said in
25 the forensic interview.

1 He sat up. Yes, ma'am. No, ma'am. I don't
2 remember that. That might have happened. He is
3 going to be straightforward. In light -- even with
4 his sister sitting here in the courtroom, he says
5 on that witness stand to you, you know, Scarlett is
6 kind of known to be a liar in the family. Minor 1 is
7 nothing but a hundred percent the truth. He can't
8 help but just tell you the truth of what is going
9 on. And do you think that airing the dirty laundry
10 of sitting in that -- hiding in the closet and the
11 violence in the home isn't a difficult thing to
12 talk about? But he did. He is going to tell you
13 all of it, a hundred percent of it.

14 The consistency or inconsistency. We heard
15 from Ray Olszewski about the process of disclosure
16 and that it explained, you know, how he would
17 initially probably disclose to a trusted person,
18 his sister Scarlett, but then in that first
19 forensic interview he gives kind of a tentative or
20 problematic disclosure. He says, well, to say in a
21 non-embarrassing way, he was washing me for
22 cleaning purposes. But there are -- when you watch
23 that first interview, there are significant
24 telltale signs that he is holding back.

25 At times he is, well, not really. How at some

1 times he is very, very, very talkative about all
2 this other stuff, but then when it comes down to,
3 well, let's talk about John Barnes, he says, you
4 knew you were here to talk about John Barnes. He
5 stopped being talkative. Well -- well -- I guess,
6 you know, to say in a non-embarrassing way, he was
7 washing me for cleaning purposes.

8 He is giving that -- the example that Ray gave
9 you about how in a tentative disclosure sometimes
10 the child will say what happened, but then say,
11 well, it was an accident. It was an accident.

12 Well, his cleaning purposes, which is
13 tentative disclosure, and the fact that he said
14 non-embarrassing term, to say in a non-embarrassing
15 way. Think about that.

16 Well, ^{Minor 1}, why don't you tell us the
17 embarrassing way? The embarrassing way was
18 masturbation. Non-embarrassing is washing me for
19 cleaning purposes. Embarrassing, he was
20 masturbating me.

21 All of this is your common sense, applying
22 your common sense to this process of disclosure.

23 And then he then comes in and he testified
24 that finally in the second interview he says, well,
25 the reason he didn't say it in the first interview

1 is because he was embarrassed. And he was ready in
2 the second interview to come in and say what
3 happened.

4 Is the testimony of the witnesses strengthened
5 or weakened by other testimony? John Barnes and
6 the victim, bubble baths, candles, washing,
7 kneeling by the bathtub, same bathroom. All of
8 those, this is the truth. All of that information.

9 Is there a reason a witness would want to give
10 testimony? And I talked about that, the bias, the
11 prejudice, because there is no reason for Will to
12 come in and lie about it. And it is turmoil. This
13 is a refuge for him. So he cut that off.

14 Investigator Holdorf. Credibility. The
15 Defendant wants you to think that he was this
16 intimidating, you know, threatening man. You can
17 see that from him. This is an honest guy. He told
18 you exactly the way that it was.

19 Come on in. Come talk to me about what
20 happened. And he tells him, you know, I'm here to
21 talk to you -- I want to talk to you about some
22 inappropriate things that are going on. He doesn't
23 give him any more details about it.

24 The Defendant was fine. There is no --
25 nothing to indicate this guy came in all suicidal

1 and was looking to grab the gun. He gave you an
2 honest account of how this all happened.

3 Then he says, the lines of communication are
4 open. If there is anything else you want to say
5 come on in and say it.

6 Sure enough, the Defendant called him back up
7 and said, I want to say some more things and come
8 in. Because in that time period he is at home
9 thinking, if ^{Minor 1} is going to tell it all, and of
10 course he is going to be believed, he is a
11 believable kid, so his wheels are turning, I need
12 to get back in there and somehow minimize it and
13 not make it so bad. I need to tell them what
14 happened, but I'll just make it not that bad.

15 But he comes in and just says, well, it was
16 one time and just a couple of seconds.

17 He knows and he even says himself he knew on
18 June 18th that he would never see him again. He
19 knew on June 18th he would never see him again
20 because it is the truth. Because he was doing this
21 to ^{Minor 1}.

22 John Barnes. You judge his credibility just
23 like any other witness. It is up to you to decide
24 whether or not you believe his testimony. He comes
25 in here, takes the witness stand, and he is

1 barely -- you can barely hear him he is talking so
2 softly, he wants you to think he is this poor, sad
3 figure. He wants you to know all about his
4 physical ailments and his -- the illnesses in his
5 family. He is working on you to make you feel
6 sorry for him. Speaking softly.

7 She says, can you speak up, I can't hear you?

8 I'm a soft-spoken guy. I'm a soft -- he could
9 speak up when she was asking him questions,
10 couldn't he? He was blaring through that
11 microphone. Why are you asking me that again? Why
12 are you -- You can speak up. This man was putting
13 on a show for you. Putting on a show. Feel sorry
14 for me.

15 You know what? You can feel sorry for him.
16 If that is what you want to do, feel sorry for him.
17 But there is something up here that makes him
18 sexually abuse children. There is something up
19 here that makes him do that. Be repulsed or feel
20 sorry, whatever.

21 I want you to also, in his credibility,
22 deciding the believability of the statement and his
23 testimony is think about this nugget of this truth
24 that comes out about what happened. The nugget of
25 truth of really how kind of sick this was and how

1 Minor
1 was a result of this perfect storm.

2 He says -- she says, why didn't you bathe

3 Minor 2

4 Well, he didn't like candles.

5 Why do you -- why are candles required for a
6 bath?

7 No, Minor 2 wasn't victimized because he
8 couldn't get Minor 2 in the bath situation. He
9 couldn't isolate Minor 2 the way that he was able
10 to with Minor 1 , this odd little 11-year-old boy who
11 decided he wanted to take bubble baths with scented
12 candles.

13 Well, I didn't bathe Minor 2 because he didn't
14 like candles.

15 That is the nuggets of truth that are coming
16 out about what is up here in John Barnes' head.
17 The way that he talked about, how I put my hand on
18 his lower leg and I said, are you chicken. And I
19 moved it up to his knee, are you chicken. He says,
20 I just came in and lied. I made it up as I went
21 along.

22 Who has that up there? Who has that up there?
23 Someone who did it. The truth. He is remembering
24 what he did. Someone that is going to come in --
25 now, first of all, as I said, it is completely

1 unreasonable that someone is going to -- a man is
2 going to come in and lie that they masturbated
3 their son, but let's say in some other situation
4 you are going to, as they said in opening
5 statement, take it on the chin to protect your
6 child about something, you are going to take it on
7 the chin and admit it.

8 Well, you're going to come in and say, I did
9 it, whatever they said I did, I did it. You know,
10 you get blamed at work for something and you know
11 you didn't do it, well, you just go, fine, fine, I
12 apologize, I'm sorry, I did it.

13 The details. It is in the details of what he
14 gives in his second statement that you know you can
15 rely that that is the truth. He was just hoping to
16 minimize it and say it was one time, so it is not
17 as bad.

18 The videotape. The interview. You have Video
19 Number One that was shown to you. That is in
20 evidence. The judge will instruct you that, as you
21 have heard mention of the second interview, the
22 second videotape, that that tape, the second one,
23 was not admitted into evidence. The judge is going
24 to instruct you it was not placed into evidence as
25 a matter of law. And so the tape itself -- the

1 tape itself should not be considered for any
2 purpose during your deliberation.

3 But what is in evidence for you to consider is
4 the testimony that you heard from Ray Olszewski,
5 from the victim himself about that second
6 interview.

7 So how he came in there the second time and he
8 says that he disclosed everything to Ray on that
9 second interview. And that was watched by
10 Investigator Holdorf and said it was consistent
11 with what the Defendant admitted in the second
12 statement.

13 The victim testified, though, that it happened
14 probably about 15 or more times. Watch again that
15 first interview for these nuggets of him saying,
16 no, not really, the pauses in answering versus when
17 he is chatty. And at the -- kind of toward the end
18 when he would say, he would talk me through my
19 decision to bathe myself.

20 He would talk to him about, are you sure you
21 want to bathe yourself today? And we would discuss
22 it and he would talk me through my decision to
23 bathe myself.

24 That was their code. That was code of, can I
25 masturbate you today. Who has to talk an

1 11-year-old into a decision to bathe himself? Get
2 in there and take a bath. You're filthy. This is
3 their code.

4 He is telling you all of those nuggets in that
5 first interview that he is holding back what
6 happened.

7 The statements of the Defendant, you are to
8 decide whether or not they were freely and
9 voluntarily given. And the judge is going to
10 instruct you about all the different factors that
11 you can consider: The age of the Defendant, his
12 education or lack thereof, his mental ability or
13 capacity.

14 So didn't he know what he was doing? He went
15 in and sat down with Holdorf. He drove himself
16 there. Sat down. This is what we are going to
17 talk about. There is nothing in the evidence that
18 he had any kind of mental -- he himself said, yes,
19 I'm a smart guy, I'm intelligent. So he knows
20 exactly what he is doing. And he decides, I
21 will -- I will give you a statement.

22 The judge will instruct you that if the
23 Defendant is in custody -- if a Defendant is in
24 custody, then you want to consider whether or not
25 they were given their what are called Miranda

1 rights: The right to remain silent, the statement
2 could be used against him, the right to have a
3 lawyer present, et cetera, et cetera.

4 And Holdorf, Investigator Holdorf testified he
5 didn't testify that he gave him those rights
6 because he testified that the Defendant was not in
7 custody. The Defendant drove himself. And he
8 testified he drove himself to the police station,
9 parked the car, got out, went inside. And
10 Investigator Holdorf let him leave.

11 The second time he called up and said, I want
12 to come in. This is voluntary. I want to come in
13 and tell you more information. Drove himself to
14 the police station, walked in, gave a statement,
15 left again. Not in custody. He chose to give
16 those statements and those were the words that he
17 gave.

18 Minor 1 has weathered this storm pretty well.
19 Made it through coming in here and having to tell
20 you all extremely embarrassing things that happened
21 to him.

22 All of the testimony from all of the witnesses
23 establishes proof beyond a reasonable doubt that
24 John Barnes committed a lewd act on Minor 1.

25 Thank you.

1 THE COURT: Thank you.

2 Yes, sir, Mr. Bailey.

3 MR. BAILEY: Thank you, Your Honor. May it
4 please the Court?

5 THE COURT: Yes, sir.

6 CLOSING STATEMENT

7 MR. BAILEY: How did we get here? How did we
8 get here today in this courtroom? And how did we
9 get here in this position where an innocent man,
10 John Barnes -- he has a name -- where an innocent
11 man is being accused of inappropriately touching
12 his own son?

13 Now, at the very beginning of this trial we
14 addressed the two questions that are probably on
15 your mind more than any other ones. We said them
16 up front. One, why would a child make this up.
17 Number Two, why would a man sign some kind of a
18 statement that said he did this. And I think that
19 these have been answered, but I'm going to answer
20 them again.

21 I'd like to start first with the timeline
22 about how we got here. The timeline is very
23 important. This doesn't hold as well as I thought
24 it would.

25 All right. January 20th, 2009. This is the

1 first recorded allegation of Minor 1 --

2 Minor 1 's, I'm sorry, legal father. This is
3 the first reported incident where he called up
4 people in South Carolina from Virginia and said, I
5 don't know what is going on, but I don't like it
6 with Minor 1 and this other gentleman.

7 Now, Minor 1 was interviewed. There was an
8 investigation done. They found that there was
9 absolutely no probable cause, and that case was
10 closed.

11 Minor 1 was brought into the principal's
12 office. He was interviewed by an officer of the
13 law. He was there. That is Minor 1 's first
14 interview, January 20th, 2009.

15 January 26th. Investigator Iseman, an officer
16 of the Richland County Sheriff's Department,
17 investigated thoroughly and decided that there was
18 no cause, that this had a lot to do with custody
19 disputes with family members fighting over custody
20 of the kids. He had William Jr. trying to get at
21 Amy, Minor 1 's mom. You had William Jr. trying to
22 get John Barnes.

23 Now, imagine if you are William Jr. You've
24 got two sons really. One of them is named after
25 you. And there is another man, the biological

1 father of that child.

2 Now, this was a perfect storm all right. This
3 was a perfect storm. And that is what led to the
4 chaos. That's why we're here today because of this
5 screwed up family has acted out their psycho drama
6 in this courtroom.

7 But let's get back on the timeline here. All
8 right. New charges from Virginia, from the same
9 man that hates John Barnes. They call down from
10 Virginia and Investigator Holdorf is assigned this
11 case.

12 All right. Next, the first ARC interview with
13 Minor 1 Investigator Holdorf, he did not
14 interview Minor 1. You know why? Because he knows
15 that you should be a professional before you
16 interview a child. So I give him a lot of credit
17 for following the protocol on that, or at least
18 somebody that is supposed to be a professional.

19 So Minor 1 is interviewed April 19th, 2010.
20 Now, you've seen that video. You will get a chance
21 to see that video again. I want you to count how
22 many times Minor 1 says, nothing inappropriate
23 happened. I want -- take your time. Count it.
24 Watch it as many times as you like. Now, Minor 1
25 didn't say that John Barnes did anything.

1 We move on to June 18th. This is the first
2 statement that John gave to Investigator Holdorf.
3 Now, contradictory to what Ms. Bodman just said, we
4 never said that Investigator Holdorf was pushing
5 him around or acting like this bulldog. I believe
6 that John said himself that he was, you know,
7 friendly, he was pleasant. Frequently when you
8 want to get something out of somebody or you want
9 them to say what you want to, you are friendlier.
10 The carrot stick. Money works better than vinegar,
11 is what my wife tells me.

12 We'll get more -- we'll get back to a little
13 more of that later, but -- so he meets with him
14 June 18th. They speak, extensively.

15 John Barnes signs a statement. He says, no, I
16 did not do this. No, I did not do this. No, I did
17 not inappropriately touch my son.

18 So, so far, help me -- let's see, here is a
19 denial up here, January. Here is a denial by
20 Minor 1 himself. Here is a denial by John Barnes.

21 Now, John Barnes came in. He testified
22 himself. He doesn't have to do that. Under the
23 law we don't have to put any witnesses up. He got
24 up and told you himself because he wanted to. He
25 got up and told you the state of mind that he was

1 in at the time of this second interview.

2 His mother was dying, suffering from
3 Alzheimer's. He had lost his business. His sons,
4 who he had just met for the first time in his life
5 a few years before, contact has been taken, been
6 cut off completely. He was in a weak state. He
7 wasn't -- he wasn't in the right state of mind. He
8 is talking -- he is devastated. He was suicidal.
9 He told you that himself.

10 His second statement finally he says, you
11 know, I was distraught, I was devastated, I didn't
12 know how he could ever come back from allegations
13 like this. What he thought about was ^{Minor 1} He
14 told you that. I don't need to repeat it over and
15 over again. He was weak. He was a weak man.

16 The on way he knew how to react in the moment,
17 Investigator Holdorf says, hey, this is no big
18 deal. I think he believed that. Investigator
19 Holdorf says to him, this is no big deal. You
20 know, you don't want to put the child in the
21 justice system. I mean, you have got to see the
22 justice system today, actually this whole week.
23 You don't want to put your child through
24 testifying. We're going to have to interview him
25 500 more times. He thinks his life is over. He is

1 suicidal. He is broke. He doesn't care anymore.
2 All he thinks about is, they are going to be
3 ragging my child and they are going to keep
4 interviewing him again until he says what they want
5 him to say.

6 And that is really an interesting point I
7 would like to focus on. When he interviewed him
8 the second time, Investigator Holdorf made
9 Mr. Barnes believe that Minor 1 had told him, that
10 Minor 1 had implicated him personally. He had at
11 this point. You saw that video. The on statement,
12 the official statement that the police had was the
13 first ARC interview, the one you saw, and he told
14 Mr. Barnes, well, you know, Minor 1 says you are
15 rolling around naked with each other and you are
16 doing strange things.

17 Mr. Barnes does not know how to react to this.
18 The rest of his life. Stress. The fact that it
19 feels likes his life was over, his relationship was
20 over anyway.

21 The fact that Holdorf says, this is no big
22 deal. You know, just make it easier on everybody.
23 It is not a big deal.

24 Just, you know, how can I stop this. How can
25 I stop this.

1 Just stop this. It is not a big deal.

2 All right. Well, some months pass, almost
3 four months between April and August, right? By
4 this point we know that Investigator Holdorf called
5 the Murray family up in Virginia. Minor 1 spent
6 the summer up there. You know he has told him he
7 has talked to John Barnes again. He might downplay
8 what he said to him, but he said, I mean, even in
9 the simplest statement was, oh, there is new
10 information. We need to set up an appointment with
11 ARC immediately. He says, we need to send that
12 child back there. We need to send the child back
13 there.

14 So Minor 1 goes back again. He spent all
15 summer with the people that hate John Barnes. They
16 had been with him. Everybody knows about these
17 allegations. There is no way you would -- a child
18 would be with these parents four months and them
19 not talk about this.

20 He comes back. His parents are waiting
21 outside. He tells them what they want to hear.
22 First denial. Second denial. Denial by my client.

23 My client, a broken man, breaks down, does
24 what they want him to do. Minor 1 still hasn't
25 said anything. But then once they get verification

1 there, well, finally after, you know, stretch this
2 out a year and a half, finally they get ^{Minor 1} to
3 say something.

4 Now, we know, getting back to the timeline,
5 that the Solicitors, who I don't think they are
6 trained professionals in questioning children, but
7 they sent ^{Minor 1} some homework to do. He is a
8 brilliant kid. He is a very likeable young man.
9 And you know he is going to do his homework because
10 he is extremely smart. Anybody can tell that by
11 talking to him. They mail him these DVDs. They
12 send them to him. Study these, watch these DVDs.
13 Okay?

14 And then Ms. Barry and Ms. Bodman interviewed
15 him again, three more times. Now, they are not
16 trained like Mr. Olszewski -- I'll talk about
17 Mr. Olszewski in a minute -- but, you know, they
18 prepared him, they talked to him, they made sure
19 that, you know, that he said what he is supposed to
20 say in this courtroom.

21 All right. I'd like to talk a little bit
22 more -- the two big questions, okay? I'm going to
23 take this down. I apologize for this handwriting.
24 I am going to put this timeline right here, if it
25 is all right.

1 All right. Why would a child say something
2 had happened that didn't happen?

3 I interviewed Minor 1 . Again, Minor 1 is a
4 very smart young man. He is a very likeable young
5 man. And I do think that there was a perfect
6 storm, but it was a perfect storm that led to him
7 being bullied and drilled into a situation where he
8 had to make allegations against John Barnes, the
9 most unpopular and disliked member of this family
10 that Ms. Bodman says he is part of.

11 Minor 1 was pulled in different directions.
12 He was pulled everywhere. He said that himself.

13 When I asked him, when I spoke with him, I
14 asked him about the kind of pressure he is under,
15 about how does it feel when everybody is fighting
16 each other, when everybody wants him to be with
17 them or say this thing about that person or this
18 parent versus that parent.

19 And he said to me -- he asked me a question.
20 He said, wouldn't you be confused too?

21 Yes, I would, especially if I was 11 years
22 old.

23 All right, let's talk about the different
24 directions Minor 1 was pulled in. And this is
25 Minor 1 . Eleven years old. Actually it started

1 way before ^{Minor 1} was 11 years old.

2 Okay. One, you've got -- I'm going to just
3 write Murray Jr. in Virginia. With Murray Jr.
4 we'll say his wife Jamie, his stepmother. And over
5 here you've got his legal and biological mom, Amy
6 Geiselman.

7 Now, these two parties, these two families
8 were fighting so much that Jamie Murray had to call
9 the police on Amy at some point. And that was
10 during the middle of the first investigation into
11 John Barnes' alleged inappropriate activity.

12 All of a sudden custody -- you heard us ask
13 earlier, were -- you know, were your parents -- did
14 your stepmother ever have to call the police on
15 your mom?

16 This all happened while they were fighting
17 about custody, child support and other things. It
18 appears in, you know, these allegations about my
19 client. But these two, or these two parties, or
20 these three, they have been fighting for years.
21 Okay.

22 And we've got Scarlett. Now, Scarlett was a
23 teenage girl at the time. There was obviously --
24 and you have heard a lot of testimony about the
25 abuse in that house. Pulling hair, grabbing by the

1 necks, whatever. We know the house was an
2 unpleasant place. I don't have to tell you any
3 more about that. I don't have to tell you how
4 that pulled ^{Minor 1} apart even harder than anything
5 else.

6 But the first alleged statement that ^{Minor 1}
7 said about John Barnes is supposedly to have come
8 to him saying something to Scarlett.

9 Now, in that video that you saw, and you may
10 watch it again, he will say, I spoke to Scarlett
11 about taking baths, but he doesn't say that he
12 spoke to Scarlett about anything inappropriate
13 happening.

14 And, of course, ^{Minor 1} called Scarlett on the
15 stand just a couple of days ago, he says she was a
16 professional liar.

17 Now, again, I'm not even saying Scarlett is a
18 liar, but it is kind of like a game of telephone.
19 Okay, little brother was taking baths at his house.
20 Here is John Barnes, who we have been told is the
21 villain for, you know, I don't know how many years.
22 Mom, guess what? He is taking these baths. And
23 they are bubble baths. And, you know, it just
24 doesn't sound right.

25 And then, you know, one thing leads to

1 another. Oh, and then it gets to stepmom Murray,
2 who already hates John Barnes, who has done
3 everything he can to get John Barnes out of
4 Minor 1 's life, before you know it he has got these
5 full-fledged allegations.

6 And you kind of wonder how many times the kid
7 has got to be told by the people closest to him
8 that something happened before he sort of starts to
9 believe it. So maybe he believes it. Maybe he
10 just feels he has got to do what he has got to do
11 to make the peace.

12 Ray Olszewski. We got Ray. Ray from the ARC.
13 Here is another direction. Now, if Minor 1 would
14 have said in his very first statement to the ARC,
15 this happened, I was inappropriately touched. I
16 could see if it was the first thing he said, but,
17 no, no, no, no, he didn't say the first thing, so
18 all of a sudden it becomes a part of a process. He
19 said, it is a process to find the truth. You know,
20 sometimes maybe a process means keep looking until
21 we get the answer we want.

22 And, of course, we've got DVD videos. We've
23 got homework assignments given to Minor 1 by the
24 Government's lawyers. Watch these, Minor 1 .

25 And then, of course, we have the Solicitors,

1 what we call Prosecutors in South Carolina, State's
2 lawyers, Government's lawyers. How many people
3 pull on ^{Minor 1} ? Wouldn't he be confused too? How
4 many people are telling ^{Minor 1} this happened?
5 John Barnes is bad. This happened. Tell me it
6 happened. Tell me it happened. Tell me it
7 happened. No, no, no, tell me more about what
8 happened. And the story changes even up until last
9 week.

10 Let's talk about Mr. Barnes, John Barnes.
11 Again, I told you, he didn't have to take the
12 stand. He did not have to take the stand. But he
13 did.

14 I think you saw -- you know, he is a strange
15 man. He is soft-spoken. That is not an act. I
16 have known Mr. Barnes for a while. You saw when he
17 broke out of that fragile state was when he was
18 berated by the Solicitor. Of course he yelled
19 back. Are you kidding? She yelled at him straight
20 for 20 minutes trying to put words in his mouth. I
21 would think somebody was -- didn't have a pulse if
22 they sat there and took that kind of abuse. And I
23 thought he actually handled himself pretty well.

24 Investigator Holdorf wasn't putting him in a
25 room with windows making him sweat, you know,

1 holding cigarettes in front of him, you know,
2 sweating him out. Investigator Holdorf said, this
3 is tough. This is hard.

4 I know. I know about your mom. I'm so sorry
5 about your mom. I know about your laundry
6 business. You know, that is terrible. That is
7 rough. Aw, man, it is -- things happen. Things
8 happen. I know about -- you know, I know you don't
9 get to see your sons anymore. Let's just sign
10 this. He types up the statement. Sign this. It
11 will be better. Just sign it, and you can put this
12 all behind you.

13 What can I do to stop this? What can I do to
14 stop this?

15 It is all behind us if you just sign this
16 statement.

17 Is it the method everyone would use to protect
18 their son? No. But a broken-down, weak, suicidal
19 man, it makes sense. False confessions happen.
20 You can turn on television and you can see that on
21 almost any Dateline program. False confessions are
22 a reality. People don't go into confessions hoping
23 they are going to say their defense. They go in
24 there. They meet with them several times so that
25 they will say what they want them to say.

1 Investigator Holdorf is I'm sure a very nice
2 man. He does his job. His job is to arrest people
3 so they can be convicted.

4 All right. Reasonable doubt. Ms. Bodman
5 talked about reasonable doubt. Reasonable doubt is
6 whenever you hesitate. Whenever you hesitate. The
7 State has to prove that Mr. Barnes did this beyond
8 a reasonable doubt. If there is any hesitation, if
9 you think maybe this didn't happen, maybe this
10 didn't happen, that is reasonable doubt.

11 Hey, if you say -- if you are thinking to
12 yourself, yes, you know, this could have happened,
13 I think this could have happened, that is not
14 reasonable doubt. If you are thinking, well, there
15 is evidence on both sides. It probably happened.
16 That is not beyond a reasonable doubt. You have to
17 be certain that everything that they have said is
18 absolutely correct, that they have proven beyond a
19 reasonable doubt that these things happened like
20 they said they happened.

21 But I'm going to focus on some specific ideas,
22 some specific doubts that I think any person would
23 have about this case.

24 All right. That Mr. Murray Jr. and his wife
25 have a history, a pattern of trying to make

1 allegations that have been previously found -- or
2 ruled unfounded by the Richland County Police
3 Department. They have got a pattern of trying to
4 make things stick against John. That is reasonable
5 doubt.

6 The fact that he hates John Barnes, that John
7 Barnes is the real father of his legal children,
8 that John Barnes was another thing between him --
9 that stands between him and his regular family.
10 That is reasonable doubt.

11 All right. Back to Scarlett. The fact that
12 she is -- you know, that ^{Minor 1} called her a
13 professional liar. I'm not here to call her names.
14 The fact she is a teenage girl, the fact that the
15 on real -- the on direct statement apparently was
16 this game of telephone over the course of several
17 different people and hearsay from a teenager, I
18 think that is reasonable doubt.

19 The fact that ^{Minor 1} flatly denies anything
20 happened, right here, right here. You know, that
21 is reasonable doubt.

22 I tell you what. ^{Minor 2} we don't see
23 ^{Minor 2} here. Let's talk about who we don't see
24 here. Why is the little brother, who was
25 supposedly the on other person in this house at

1 this time, not here today? Minor 2 was interviewed
2 by ARC.

3 Minor 2 said, do you like going over to John
4 Barnes' house? Nothing bad happened? They would
5 say, did you ever see him do anything to Minor 1 ?

6 No, I don't know he did anything to Minor 1 .

7 Has he ever doing anything to you?

8 Minor 2 says, no, he has never done anything.

9 Minor 2 is not here. Minor 2 would be the on
10 person, the on -- third person in that house. He
11 is supposed to be there the whole time. They
12 didn't want to put him up. There is a reason.
13 Because Minor 2 didn't say what would help their
14 case.

15 Repeated interviews over and over again. I
16 don't need to repeat them any more than they have
17 already been repeated. There is your repeat
18 interviews. By different people. Authority
19 figures. Officers of the law. Lawyers. Untrained
20 lawyers. His family. He was isolated from the
21 investigation down here. He was up there for
22 however many months. Family told him over and over
23 again, discussing it, you know, discussions.
24 Repeated interviews. Tell us how this happened
25 Tell us how this happened. Tell us how it

1 happened.

2 Also something I forgot to mention, getting
3 back to Holdorf, Holdorf's statement. No audio.
4 No video. Read the newspaper about how much money
5 the Richland County Sheriff's Department gets.
6 They get enough. They get a lot.

7 Now, Investigator Holdorf says, it is not our
8 policy. It is not our policy to record this
9 conversation. That is because it is their policy
10 to make sure it is just his word versus yours about
11 what he said or how he said it when you give him a
12 typed statement, you tell him, it will be okay, it
13 will be okay, just sign the statement. It will
14 make it easier for everybody.

15 Let's talk about another doubt that we should
16 have with Holdorf's investigation. What did
17 Holdorf not do? Over the course of five months he
18 did not go to the house. He didn't send anybody to
19 the house. This is the scene of the crime. He
20 never even went to the house. He never looked at
21 the bathroom. He never looked for candles. Never
22 looked for a bubble bath.

23 In fact, he told you himself that his whole
24 investigation report from five months was less than
25 two pages long. That is because he wasn't

1 investigating. He was building a case.

2 The confession was made under strange
3 circumstances. The confession. Even at that point
4 he didn't arrest John Barnes.

5 Get the kid back to ARC. Get the kid to say
6 this happened. Hey, guess what, this is what he
7 said happened. Get the kid to say this happened.
8 We need another interviewer from the kid. Right
9 here.

10 And he told them this whole time -- well, he
11 has already said this. Just sign this. It will be
12 easier.

13 Minor 1 finally says what they want him to say
14 right there.

15 John Barnes' statement. John Barnes came up
16 here. He doesn't have his family and support in
17 here with him. He got up on the stand himself. He
18 told you that he was here today to straighten out
19 after he had cleared his head, after he realized
20 finally the magnitude of what he had signed trying
21 to make it go away. He realized the seriousness of
22 it.

23 His testimony yesterday, the way he stood his
24 ground and spoke the truth when Ms. Barry tried to
25 jump on him, got up in the box with him, yelled at

1 him and screamed at him, you know, like this was a
2 courtroom TV show. That is doubt. That is
3 reasonable doubt.

4 Ladies and gentlemen, this is -- any time
5 there is any kind of allegation of inappropriate
6 contact with a child it is serious. Everybody
7 takes it seriously. It is scary. It is
8 uncomfortable. Ms. Bodman did her best to make
9 this sound as uncomfortable and weird as possible.
10 She is going to come up here and talk about candles
11 and whisper in this creepy voice and try to make it
12 as creepy -- she wants you to get squiggly in your
13 chair because this is about abusing a child and
14 they just rubber-stamp it.

15 You know, she says, pedophile, pedophile,
16 pointing at him. She thinks that in America all
17 you have to do is call somebody a pedophile and
18 they are.

19 You know what? This is America. This isn't
20 Iraq, this isn't Iran, this isn't Communist China.
21 You don't just get to point at somebody and paint
22 them with a brush and expect members of the jury to
23 just put their stamp on it because it is an
24 uncomfortable subject.

25 Ladies and gentlemen, you are going to go back

1 in the jury room and you are going to watch videos,
2 you are going to think about what we said. I don't
3 get to get up and talk anymore. It has been a long
4 week, you are probably tired of hearing me talk
5 anyway. The State is going to get up and speak
6 again. I don't get to reply to what they are
7 saying. Now, I can assure you I would have plenty
8 of things to say, but I'm just not allowed to.

9 I would ask that somebody consider that, that
10 you keep an open mind and remember what I have said
11 now since I don't get to get the last word in. I
12 would ask that if just one of you would consider
13 the fact that we can't address whatever they are
14 about to say. Remember what I have said. You can
15 carry that torch.

16 Ladies and gentlemen of the jury, how did we
17 get here? Interviews. Perfect storm of screwed up
18 family. Getting pulled in a hundred different
19 directions. A man who has been broken down by
20 life, who is convinced it was okay to sign
21 something and that it would just go away.

22 Ladies and gentlemen, that is how we got here
23 and that is how an innocent man is on trial for
24 this horrific act.

25 I ask you to find John Barnes not guilty.

1 THE COURT: Thank you. Yes, ma'am.

2 CLOSING STATEMENT

3 MS. BARRY: This was the perfect storm for

4 11-year-old Minor 1 . And 11-year-old

5 Minor 1 is the perfect victim. He lived in

6 a house full of turmoil, knew about things that an

7 11-year-old shouldn't have known. That his mom had

8 an affair and that this man was the biological

9 father. This man, John Barnes.

10 But Minor 1 told you he liked going over there

11 to John Barnes' house. As soon as they moved back

12 to South Carolina, Uncle John, they would go to his

13 house.

14 And John told this little boy that he was his

15 biological father. He had a computer. They had

16 games. He took them whenever she asked him to.

17 Because he is a predator. And Minor 1 was

18 easy prey. A child, ladies and gentlemen. A child

19 who loved this man, his biological father.

20 A confused little boy. He had been raised by

21 another man. A confused little boy who lived in a

22 home where there was fighting, so much so that they

23 had to hide in the closet. He knew that. He knew

24 that. But he was willing to take him in.

25 And I'm not asking you to like that family.

1 I'm not asking you to like Amy Geiselman, Jamie
2 Murray, any of them. Minor 1 is the victim.
3 Please stay focused on that little boy, the victim
4 in this case.

5 They are not victims in this case. This case
6 is not about them and their lifestyle. This case
7 is about the result of what he did in the bathroom
8 of his home.

9 His home was a safe haven for Minor 1. That
10 was his escape from his house. From the fighting
11 that went on in his home. And you saw him. He is
12 an intelligent young man, little boy -- well, boy.
13 Thirteen years old. Had the strength and courage
14 to take this witness stand in front of all these
15 people and all of you.

16 Ask yourself how difficult would that be as an
17 adult to come in and talk about the things that he
18 talked about. Your dad masturbating you. But he
19 did it.

20 He told you that the first statement he was
21 nervous. He liked to take bubble baths. And the
22 Defendant provided these candles from the dollar
23 store. These scented candles. Ocean Breeze. And
24 he would sit in the bathtub with the Defendant
25 kneeling by his side being washed by his father at

1 11 years old.

2 The Defendant himself said Minor 2 didn't like
3 baths because he didn't like candles. Well, do you
4 have to have candles to take a bath? He didn't
5 wash his younger son. He could wash himself. And
6 so could Minor 1. He can wash himself. And
7 sometimes he did. Sometimes he didn't. And that
8 was their code.

9 He would talk him into washing him. And I'll
10 wash you. Ask yourselves, what does washing mean?

11 In Minor 1's first interview at the ARC he
12 said, to tell you in a non-embarrassing way, I'm
13 here today -- I'm paraphrasing -- I'm here today to
14 tell you about my dad washing me. The embarrassing
15 way would be, I'm here to tell you about my dad
16 masturbating me. That is the embarrassing way.
17 But the code is the non-embarrassing way. And that
18 is washing.

19 Ask yourselves what did Minor 1 have to
20 lose by coming into this courtroom, by going to --
21 by telling his sister, first of all, that his dad
22 masturbated him or did inappropriate things. What
23 did he lose by telling the truth that his dad
24 masturbated him? He lost his safe haven. He had
25 nothing to gain. He gained freedom from the

1 predator. He got away from him.

2 His first interview with Ray Olszewski
3 April 19th, 2010, when he said the code word, he
4 was washed, the non-embarrassing way. He is 11
5 years old. It was a tentative disclosure. Over a
6 thousand interviews, Ray Olszewski is a trained
7 professional. And he told you that first interview
8 was very concerning to him. He is not putting
9 words in kids' mouth. He doesn't lead them to get
10 answers that he wants. He just has an interview in
11 a kid-friendly environment trying to elicit
12 information in a non-leading way. He didn't put
13 words in ^{Minor 1} s mouth. But he was very
14 concerned. And he told you that is common for
15 children to kind of test the waters. This is his
16 father. This is his father.

17 But after spring break he told his sister
18 something bad had happened. And it took him a
19 little bit of time. But no one ever told him what
20 to say. Investigator Holdorf never even talked to
21 him. He did the right thing. He followed
22 protocol. He left it up to Ray Olszewski, an
23 expert, to interview the child.

24 In this process of disclosure sometimes you --
25 kids never disclose. He testified to that.

1 Sometimes they never do. It took him a while.

2 And on June 18th, 2010, that is when John
3 Barnes gives his statement. He is told that
4 Minor 1 had disclosed some inappropriate touching,
5 and he talked about the baths and the candles. But
6 a week later he thought about what he said. He
7 thought about what he said. I submit he probably
8 wasn't sure what Minor 1 had said because he didn't
9 talk to him. He had not talked to the kids. This
10 man that is so concerned about his children, he
11 loved them so much. They were the world to me, he
12 said. Yet he goes months, April -- from April of
13 2010 without even talking to them. Did he care
14 that much about them?

15 July 1st, 2010, when Investigator Holdorf sets
16 up a meeting and John Barnes voluntarily comes to
17 the Sheriff's Department. He tells the truth. He
18 signs his name admitting that he taught his son to
19 masturbate.

20 I ask you to consider this. Do boys need to
21 be taught how to masturbate? Is that part of
22 growing up?

23 You'll have all this in the jury room. Read
24 over what he says, what he swore to and signed.
25 But he wasn't even arrested then. Investigator

1 Holdorf isn't out to get John Barnes. He doesn't
2 even arrest him that day. John Barnes drove
3 himself from the Sheriff's Office. He had to wait
4 another month and two weeks to get the victim back
5 in to the professionals to interview again. They
6 didn't give him any information. They didn't tell
7 him, this is what your dad said. But after that
8 second interview that Investigator Holdorf
9 witnessed, he had enough evidence to arrest John
10 Barnes.

11 They want to talk about how confused this
12 little boy is. Oh, yes, he is confused because his
13 dad molested him. No doubt about it. But they
14 want to talk about how confused he is, these
15 multiple interviews. He had two at the ARC and
16 three with us. He testified to that. One was a
17 greet and meet. He had a second. He had on
18 opportunity to review his DVD. And then the third.
19 Three times.

20 Ray Olszewski, who teaches this nationally
21 accredited course on how to interview, how to
22 interview children, attended by law enforcement,
23 social workers, prosecutors, said there is nothing
24 improper about showing a child the DVD, the
25 interview. He said prosecutors come to that

1 training. There is no evidence, ladies and
2 gentlemen, in the record that says we are
3 untrained, that Ms. Bodman and myself are
4 untrained.

5 Had we not spoken to ^{Minor 1} just like
6 we do every other witness we wouldn't be doing our
7 job. As trial lawyers it would be irresponsible
8 and unprofessional not to talk to a witness, any
9 witness, before they take the stand, particularly a
10 child, a 13-year-old eighth grader.

11 If Investigator Holdorf's job was to -- on job
12 was to arrest and convict John Barnes, I ask you to
13 consider why didn't he do it after the first
14 statement? Certainly why didn't he do it after
15 this statement, his second confession on July 1st,
16 2010? He is gathering facts. He had not talked to
17 the victim the second time or had an interview the
18 second time. He waited until he had enough
19 evidence. He waited until the second interview
20 that was consistent with his statement, what he
21 testified to, and then he arrested him.

22 But this devastated, weak man, as they want to
23 characterize him as, yesterday apparently was
24 telling the truth. What man would lie about
25 masturbating his son? What father would lie about

1 masturbating his child? If he -- to protect him,
2 he would just say, okay, I want to save my son from
3 this. I don't want him to go through any more.

4 In January of 2009 he had already been accused
5 of inappropriate contact, but it was unfounded.
6 Travis Holdorf read the incident report that
7 Investigator Iseman unfounded that case. He
8 probably thought that would happen again. He says
9 he was afraid he would not see his -- he knew he
10 wouldn't see his kids again. And the reason he
11 knows this time is because it is true. Because he
12 admitted it.

13 Who has the motive to lie, ladies and
14 gentlemen? What did ^{Minor 1,} gain by coming
15 in here and lying? Nothing. What does Ray
16 Olszewski gain or lose? Nothing. Investigator
17 Holdorf? Been at the Sheriff's Department since
18 1994.

19 He has the motive to lie. This man that wants
20 you to believe that he is -- that he gave that
21 statement to protect his son, yet yesterday changed
22 it because he knew -- I submit to you yesterday he
23 changed his story to protect himself. He sat up
24 there and lied to protect himself. But he has had
25 time to clear his mind. Oh, he said it. And

1 yesterday was the time to tell the truth. No.

2 Yesterday was the time to protect himself.

3 I ask you to protect Minor 1 . Protect

4 Minor 1 by finding John Barnes guilty of

5 lewd act on a minor.

6 THE COURT: All right, ladies and gentlemen of
7 the jury, at this time we're going to take about a
8 five minute break before I charge you the law.

9 We've been going about an hour and a half, and I
10 promised you on the first day that we would take
11 breaks about every hour and a half. So we'll take
12 about a five minute restroom break, and I'll have
13 you all come back and I'll charge you on the law.

14 Thank you.

15 (WHEREUPON, the jury retires to the jury
16 room at 12:23 p.m.)

17 THE COURT: We'll take about a five minute
18 break.

19 (WHEREUPON, a break was taken.)

20 THE COURT: Hold on.

21 MR. BAILEY: Judge, we just want to move for a
22 mistrial based on some stuff that was referenced in
23 the closing, essentially the same thing we have
24 been saying all along, that the State said that the
25 expert validated their methods. Also they said

1 we -- there was no evidence in the record to say,
2 we are not trained, which of course gets back to
3 making themselves witnesses -- the insinuation of
4 course that they are trained, and this gets back to
5 making themselves witnesses and making themselves
6 part of that process. Again, Judge, I just want to
7 renew that previous objection and that is why we
8 are moving for a mistrial at this time, Judge.

9 THE COURT: The motion will be denied.
10 Bring them on in.

11 (WHEREUPON, the jury came into open
12 court at approximately 12:33 p.m.)

13 THE BAILIFF: The jurors are all present, Your
14 Honor.

15 JURY CHARGE

16 THE COURT: All right, ladies and gentlemen of
17 the jury, at this time it is my responsibility to
18 charge you, or instruct you as to the law.

19 I remind you that during this trial you and I
20 have certain duties to perform. As the trial judge
21 it is my responsibility to preside over the trial
22 of this case, and I also have the duty to rule on
23 the admissibility of evidence offered during this
24 trial.

25 You are to consider on the competent evidence

1 before you. If there was any testimony ordered
2 stricken from the record in this case during this
3 trial you must disregard that testimony.

4 You are to consider on the testimony which has
5 been presented from the witness stand and exhibits
6 which have been made a part of the record in this
7 case and any stipulations of counsel.

8 I have the additional duty to charge you the
9 law applicable to this case. As the presiding
10 judge, I am the sole judge of the law of this case,
11 and it is your duty as jurors to accept and apply
12 the law as I now state it to you.

13 If you already have an idea as to what the law
14 is or what the law ought to be and it does not
15 agree with what I now tell you the law is, you must
16 abandon this idea because you are sworn to accept
17 the law and apply the law exactly as I state it to
18 you.

19 In every case tried in this court before a
20 jury, the jury becomes the sole and exclusive judge
21 of the facts in a case. A trial judge cannot state
22 comments or make any statement to a trial jury
23 about the facts in a case.

24 Since you, the jury, are the sole judges of
25 the facts in this case, you are not to infer from

1 what I have said during the progress of the trial
2 in ruling upon the admissibility of evidence or
3 otherwise or anything that I say now during the
4 course of this instruction to you that I have any
5 opinion about the facts in this case. The law does
6 not allow me to have an opinion about the facts in
7 this case. This matter is solely for you, the
8 jury, to determine. As jurors it is your duty to
9 determine the effect, value, weight and truth of
10 the evidence presented during this trial.

11 There are two types of evidence which are
12 generally presented during a trial: Direct
13 evidence and circumstantial evidence.

14 Direct evidence is the testimony of a person
15 who claims to have actual knowledge of a fact, such
16 as an eyewitness. It is evidence which immediately
17 establishes the main fact to be proved.

18 Circumstantial evidence is proof of a chain of
19 facts and circumstances indicating the existence of
20 a fact. It is evidence which immediately
21 establishes collateral facts from which the main
22 fact may be inferred. Circumstantial evidence is
23 based on inferences and not on personal knowledge
24 or observation.

25 The law makes absolutely no distinction

1 between the weight or value to be given to either
2 direct or circumstantial evidence, nor is a greater
3 degree of certainty required of circumstantial
4 evidence than of direct evidence. You should weigh
5 all the evidence in the case.

6 After weighing all the evidence if you are not
7 convinced of the guilt of the Defendant beyond a
8 reasonable doubt, you must find the Defendant not
9 guilty.

10 Necessarily, you must determine the
11 credibility of witnesses who have testified in this
12 case. Credibility means believability. It becomes
13 your duty as jurors to analyze and to evaluate the
14 evidence and determine which evidence convinces you
15 of its truth.

16 In determining the believability of witnesses
17 who have testified in this case, you may believe
18 one witness over several witnesses or several
19 witnesses over one witness. You may believe a part
20 of the testimony of a witness and reject the
21 remaining part of the testimony of that same
22 witness. You may believe the testimony of a
23 witness in its entirety or reject the testimony of
24 a witness in its entirety. You may consider
25 whether any witness has exhibited to you any

1 interest, bias, prejudice or other motive in this
2 case. You may also consider the appearance and
3 manner of a witness while on the witness stand.

4 A statement alleged to have been made by the
5 Defendant has been admitted into evidence in this
6 case. While the Court has determined that the
7 statement is admissible, I instruct you that you
8 make the ultimate decision of whether or not the
9 Defendant made the statement.

10 If the Defendant made the statement, you must
11 determine whether the statement was made by the
12 Defendant voluntarily and of his own free will.
13 This means that the statement was not caused by
14 pressure, force, fear, threat, coercion or
15 intimidation or by hope or a promise of leniency or
16 a reward of any kind.

17 In determining whether the statement was
18 voluntary, you should consider both the
19 characteristics of the Defendant and the details of
20 the questioning. Some of the factors that you must
21 consider are the age of the Defendant, the
22 Defendant's education or lack of education, the
23 Defendant's mental ability or capacity, the
24 Defendant's IQ or intelligence, the Defendant's
25 background and environment, the place and length of

1 detention, the nature of the questioning, and, if
2 the Defendant was in custody, the advice or lack
3 thereof to the Defendant of his constitutional
4 rights, including but not limited to the right to
5 remain silent, that any statement could be used
6 against him in a court of law, the right to have a
7 lawyer present, and that if he could not afford a
8 lawyer a lawyer would be appointed to represent him
9 without any cost, and that he could stop making a
10 statement at any time.

11 You must carefully consider all of the
12 surrounding circumstances before you give any
13 weight to an alleged statement.

14 The State has the burden of proving beyond a
15 reasonable doubt that the alleged statement was
16 voluntary. If you determine it was, you may give
17 the statement any further consideration that you
18 deem proper. You must decide what weight, if any,
19 should be given the alleged statement. If you
20 determine the alleged statement was not the free
21 and voluntary statement of the Defendant, you
22 should not consider the statement at all.

23 During this trial you have heard testimony
24 from a child. Where a witness is a child, you must
25 determine, as with any witnesses, whether that

1 testimony is believable.

2 In deciding believability, you may consider
3 not on matters that I have already discussed with
4 you, but you may also consider the age of the
5 child, the child's ability to observe and remember
6 facts, and the child's ability to understand and
7 answer questions.

8 Because young children may not fully
9 understand what is happening here, it is up to you
10 to decide whether the child understood the
11 seriousness of appearing as a witness at a criminal
12 trial, whether the child understood the questions,
13 whether the child has a good memory, and whether
14 the child understands the difference between lying
15 and telling the truth.

16 In addition, young children may be influenced
17 by the way the questions are asked. It is up to
18 you to decide whether the child understood the
19 questions asked.

20 During this trial you have heard witnesses
21 mention a video which has not been placed into
22 evidence as a matter of law. This video itself has
23 not been entered into evidence and you should not
24 consider it for any purpose during your
25 deliberation. To do so is outside of your role as

1 jurors.

2 There has been evidence presented that
3 witnesses have made prior statements which are not
4 consistent with the witness's present testimony.
5 You may use this evidence to decide whether to
6 believe the witness. You may also use evidence of
7 the earlier contradictory statement to determine
8 the truth of those statements. It is up to you to
9 decide whether to believe the earlier statement or
10 the testimony given at trial.

11 If a witness is shown to have knowingly
12 testified untruthfully concerning any material
13 matter, you may consider this in determining
14 whether to trust the witness's testimony as to
15 other matters. You may reject all testimony of
16 that witness or give all or part of the testimony
17 the weight you think it deserves.

18 The rules of evidence ordinarily do not permit
19 witnesses to testify to opinions or conclusions.
20 An exception to this rule exists for the witnesses
21 we call expert witnesses. A witness who by
22 education and experience have become an expert in
23 some art, science, profession or calling may state
24 an opinion as to the relevant material matter in
25 which the witness claims to be an expert and may

1 also state the reason for that opinion.

2 You should consider any expert opinion
3 received in evidence in this case and, like any
4 other evidence, give it the weight you think it
5 deserves.

6 If you decide that the opinion of an expert
7 witness is not based on sufficient education and
8 experience or if you conclude that the reasons
9 given in support of the opinion are not sound or
10 that the opinion is outweighed by other evidence,
11 you may disregard the opinion entirely.

12 An expert witness's testimony is to be given
13 no greater weight than that of other witnesses
14 simply because the witness is an expert.

15 Further, you are not required to accept an
16 expert's opinion even though it is not
17 contradicted.

18 The indictment charges the Defendant with lewd
19 act on a minor child. I remind you the fact that
20 the Defendant was arrested, charged and indicted in
21 this case is not evidence in this case and cannot
22 be considered by you as evidence of guilt in this
23 case, nor does it create any presumption or
24 inference of guilt. This document is simply the
25 formal written instrument which contains the charge

1 made against the Defendant. It is the formal
2 document by which this case is brought into this
3 court.

4 The Defendant has pled not guilty to this
5 indictment, and that plea puts the burden on the
6 State to prove the Defendant guilty. A person
7 charged with committing a criminal offense in South
8 Carolina is never required to prove himself
9 innocent.

10 I charge you that it is an important rule of
11 the law that a Defendant in a criminal trial, no
12 matter what the seriousness of the charge may be,
13 will always be presumed to be innocent of the crime
14 for which the indictment was issued unless guilt
15 has been proven by evidence satisfying you of that
16 guilt beyond a reasonable doubt.

17 The presumption of innocence does not end when
18 you begin your deliberation, but it accompanies the
19 Defendant throughout the trial until you have
20 reached a verdict of guilt based on evidence
21 satisfying you of that guilt beyond a reasonable
22 doubt.

23 The presumption of innocence is like a robe of
24 righteousness placed about the shoulders of the
25 Defendant which remains with the Defendant until it

1 has been stripped from the Defendant by evidence
2 satisfying you of the Defendant's guilt beyond a
3 reasonable doubt.

4 The presumption of innocence is not mere legal
5 theory. It is not just a legal phrase. It is a
6 substantial right to which every Defendant is
7 entitled unless you, the jury, are satisfied from
8 the evidence of the Defendant's guilt beyond a
9 reasonable doubt.

10 What is a reasonable doubt in the law? A
11 reasonable doubt is the kind of doubt that would
12 cause a reasonable person to hesitate to act. The
13 State has the burden of proving the Defendant
14 guilty beyond a reasonable doubt. Some of you may
15 have served as jurors in civil cases where you were
16 told that it is on necessary to prove that a fact
17 is more likely true than not true, such as, by the
18 greater weight or preponderance of the evidence.
19 In criminal cases, the State's proof must be more
20 powerful than that. It must be beyond a reasonable
21 doubt.

22 Proof beyond a reasonable doubt is proof that
23 leaves you firmly convinced of the Defendant's
24 guilt. There are very few things in this world
25 that we know with absolute certainty. And in

1 criminal cases the law does not require proof that
2 overcomes every possible doubt.

3 If, based on your consideration of the
4 evidence, you are firmly convinced that the
5 Defendant is guilty of the crime charged, you must
6 find the Defendant guilty.

7 If, on the other hand, you think there is a
8 real possibility that the Defendant is not guilty,
9 you must give the Defendant the benefit of the
10 doubt and find him not guilty.

11 The Defendant is charged with committing a
12 lewd act on a minor. A minor is a person under the
13 age of 16. The State must first prove beyond a
14 reasonable doubt that the Defendant was over the
15 age of 14. Next, the State must prove that the
16 Defendant willfully and lewdly committed or
17 attempted a lewd or lascivious act on or with the
18 body or its parts of a child under the age of 16
19 with the intent to arouse, appeal to, or gratify
20 the lust, passion or sexual desires of the
21 Defendant or the child.

22 Willfully means voluntarily and intentionally
23 with the specific intent to do something the law
24 forbids. Lewd means obscene, lustful, indecent or
25 lecherous. Lascivious means tending to incite

1 lust, lewd, indecent, obscene or tending to deprave
2 the morals and respect to sexual relations.

3 In order to establish criminal liability,
4 criminal intent is required. For example, the
5 mental state required to be proved by the State for
6 a particular crime might be purpose, intent,
7 knowledge, recklessness or criminal negligence.

8 Criminal intent must be proved by the State
9 beyond a reasonable doubt. Criminal intent is
10 always a matter that must be determined by the jury
11 from the circumstances surrounding the situation.

12 There is no way to prove intent to a
13 mathematical certainty. No medical science can
14 dissect a person's brain and determine what the
15 person had in mind. So the law says that criminal
16 intent may be inferred from the circumstances shown
17 to have existed. This is how you make a
18 determination of whether or not the element
19 requiring intent was present. It is not necessary
20 to establish intent by direct and positive
21 evidence, but intent may be established by
22 inference in the same way as any other fact by
23 taking into consideration the acts of the party and
24 all the facts and circumstances of the case.

25 Criminal intent is a mental state, a conscious

1 wrongdoing. It is up to you to determine what the
2 Defendant intended to do based on the circumstances
3 shown to have existed.

4 Criminal intent can arise from action or a
5 failure to act. It may arise from negligence,
6 recklessness or an indifference to duty or to the
7 consequences that is considered by the law to be
8 the equivalent of criminal intent.

9 Mere presence at the scene is not sufficient
10 to prove someone guilty of a crime. A Defendant's
11 presence where a crime is being committed or mere
12 association with the person who committed the crime
13 does not make a Defendant an accomplice or an aider
14 and abettor of the person committing the crime.

15 The burden is on the State to prove every
16 element of the crime charged. If you find after
17 reviewing all the evidence that the State has
18 proved the Defendant was on present at the scene of
19 a crime and that they have not proved beyond a
20 reasonable doubt any other participation in the
21 crime, then you must find the Defendant not guilty.
22 The law is that proof of at the scene of a crime is
23 not sufficient to find someone guilty.

24 The law requires that a jury verdict must be
25 unanimous, which means that all the jurors must

1 agree. The only two forms of the verdict are
2 guilty or not guilty.

3 Mr. Foreman, once the jury reaches a verdict
4 of not guilty or guilty, circle the verdict on the
5 face of the verdict form and sign under the verdict
6 to signify that what you have circled is the
7 verdict of all the jurors. Then notify us that you
8 have reached a verdict by knocking on the door.

9 The State and the Defendant are entitled to
10 the individual opinions of each juror on the issues
11 of fact in this case. It is the duty of each of
12 you to consider and weigh all the evidence in the
13 case and from such evidence to determine, if you
14 can, the question of the guilt or innocence of the
15 Defendant.

16 There is nothing peculiarly different in the
17 way a jury should consider the evidence in a
18 criminal case from that in which all reasonable
19 persons treat any question depending upon evidence
20 presented to them. You are expected to use your
21 good sense, consider the evidence in the case for
22 on those purposes for which it has been admitted
23 and give it a reasonable and fair construction in
24 the light of your common knowledge of the natural
25 tendency and inclinations of human beings.

1 If the accused be proved guilty beyond a
2 reasonable doubt, say so. If not so proved guilty,
3 say so.

4 Your verdict in this case will be one of two
5 forms. If from the evidence and the law you find
6 that the Defendant is not guilty, you will circle
7 not guilty on the verdict form that I will give you
8 and the foreman will sign his name. If, on the
9 other hand, you find that the Defendant is guilty
10 based upon the evidence and the law which you have
11 heard, you will circle guilty on the verdict form
12 and the foreman will sign his name.

13 Your verdict must be unanimous. It must be
14 guilty or not guilty.

15 I have a verdict form here in my hand which
16 you will have back in the jury room and it reads:
17 The State of South Carolina in the Court of General
18 Sessions of the Fifth Judicial Circuit, County of
19 Richland. Indictment Number 2010-GS-40-7545.

20 State of South Carolina versus John Peter Barnes.

21 Verdict Form. Please circle the appropriate
22 verdict below and follow the accompanying
23 instructions carefully. One: As to the charge of
24 lewd act on a minor, we, the jury, unanimously find
25 the Defendant -- and the first one says guilty, the

1 second one says not guilty. And I'm not suggesting
2 anything, I just had to put one before the other.
3 Stop and end your deliberations. Please sign and
4 date it. Mr. Foreman, sign your name and date it
5 and knock on the door.

6 Before you begin your deliberations, I am
7 going to take up some matters of law with the
8 parties, and you will -- you should, once the --
9 when it is time to deliberate, the bailiff will
10 bring the jury verdict form and the exhibits back
11 into the jury room and you may begin your
12 deliberations. Your lunch is here. You may eat
13 while you deliberate. But do not begin your
14 deliberations until you receive this verdict form
15 and the other evidence that has been entered.

16 All right. Thank you.

17 (WHEREUPON, the jury retires to the jury
18 room at 12:55 p.m.)

19 THE COURT: Any objection or exceptions to the
20 jury charge?

21 MS. BODMAN: None from the State.

22 MR. BAILEY: None from the jury charge, no,
23 ma'am.

24 THE COURT: Do you all want to take a look at
25 the verdict form and make sure the bailiffs have

1 understanding that the jury has reached a verdict.
2 Is that correct?

3 THE FOREPERSON: Yes, we have, Your Honor.

4 THE COURT: All right. Would you pass that to
5 the bailiff?

6 (Court views verdict form.)

7 THE COURT: I am going to ask the clerk to
8 publish the verdict.

9 THE CLERK: State of South Carolina, County of
10 Richland versus John Peter Barnes. Indictment
11 2010-GS-40-7545.

12 As to the charge of lewd act on a minor: We,
13 the jury, unanimously find the Defendant guilty..
14 Signed by the Foreperson, Number 83, on
15 September 15th, 2011.

16 Mr. Foreman, is this your verdict and the
17 verdict of the entire jury?

18 THE FOREPERSON: Yes, it is.

19 THE COURT: All right. Do you wish me to poll
20 the jury?

21 MR. BAILEY: Yes, Your Honor, please.

22 THE COURT: All right. Yes, ma'am.

23 THE CLERK: Ladies and gentlemen of the jury
24 panel, when I call your number I am going to ask
25 you two questions. Just answer yes or no to both

1 I would like to thank you all. You may be
2 contacted by the lawyers. If you do not wish to
3 speak to them, you don't have to speak to them, but
4 if you wish to you can if you are contacted by
5 anyone regarding the case.

6 All right. Thank you.

7 (WHEREUPON, the jury was excused at 3:34 p.m.)

8 THE COURT: All right. Yes, ma'am? I'm
9 sorry, any -- do you want to state your motions on
10 the record?

11 MR. COLLINS: Yes, Your Honor. We would renew
12 all previous motions and objections. I would also
13 ask for a new trial based on all of the things
14 previously stated individually and together, in
15 particular the statement, the comments made in the
16 Solicitor's second closing argument pitting
17 themselves as witnesses in this trial.

18 I believe the comments were, there is no
19 evidence on the record saying the prosecutors are
20 untrained, insinuating that they are trained
21 interviewers.

22 And also that their expert validated the
23 things that they did and how they handled this
24 child.

25 We feel that our client lost his right of

1 confrontation of material witnesses in this case by
2 not being able to call the two prosecutors as
3 witnesses in the case.

4 And we also feel that his due process was
5 violated because he wasn't even allowed a hearing
6 at the beginning of the trial.

7 So we would ask for a new trial based on all
8 of those issues.

9 THE COURT: All right. Anything in response?

10 MS. BARRY: Your Honor, the comment in closing
11 about being untrained was in response to him,
12 Rhodes Bailey, saying in his argument that we were
13 untrained, and that was not in the record, though
14 the expert did testify that prosecutors, law
15 enforcement and DSS workers go to the Child First
16 trainings and are commonly trained. They never
17 asked him whether either one of us were trained.
18 They had an opportunity to do so and chose not to.

19 THE COURT: All right. The motions will be
20 denied. I think you have made a record of it and
21 your motion for a new trial is denied.

22 All right. Yes, ma'am?

23 MS. BARRY: Your Honor, I believe the
24 stepmother of the victim would like to address Your
25 Honor, Jamie Murray.

1 MR. BAILEY: Don't we have to go to sentencing
2 first?

3 MS. BARRY: As Your Honor heard, this abuse
4 started with ^{Minor 1} when he moved back to South
5 Carolina from Ohio, you heard his testimony, once
6 he moved back and started spending time with the
7 Defendant. And you were also able to view the
8 second video and saw that it wasn't just bathing
9 and inappropriate touching, it was masturbation.
10 He admitted to that, Your Honor, and it is the
11 State's position that it happened as ^{Minor 1} stated
12 numerous times, maybe even more than he said it
13 did.

14 He sentenced this little boy to -- well, stole
15 his innocence and sentenced him to a lifetime of
16 horrible memories of not on the turmoil in his
17 family, but having to deal with the fact that his
18 biological father molested him.

19 He is a very articulate little boy, so
20 hopefully he will grow up to live a normal life,
21 but none of us will know that.

22 The Defendant does not have a prior record,
23 but his stepmother, the victim's stepmother, would
24 like to address Your Honor at the appropriate time.
25 Jamie Lee Murray. She was our second witness.

1 THE COURT: All right, I will be glad to hear
2 from her. And if I can get Mr. Bailey to step
3 over. Yes, ma'am?

4 MS. MURRAY: I'm Jamie Murray, Your Honor.
5 I'm ^{Minor 1} 's stepmom.

6 What this man did to ^{Minor 1} has caused a
7 problem from mornings when he is at our house when
8 we all sit down around the table together as a
9 family and talk about the dreams we've had to my
10 husband and I getting up in the middle of the night
11 to a child with nightmares.

12 A year ago, two years ago ^{Minor 1} had dreams
13 of being a drummer and living in Utah and wanted to
14 have three children. This morning he says he
15 doesn't want to have children of his own.

16 He sentenced him to post traumatic stress
17 disorder. And I just want the man to stay as far
18 away from this child as possible and from this
19 family as possible.

20 THE COURT: Thank you. Anyone else?

21 MS. BODMAN: We're requesting the maximum
22 sentence, Your Honor. There is no one else that
23 wishes to speak.

24 THE COURT: All right. Mr. Bailey, I will be
25 glad to hear from you.

1 MR. BAILEY: I have represented John Barnes
2 for I guess approximately a year, for a year now.
3 He is -- he has no previous record. He was a navy
4 veteran and served his country for some time.

5 I told him that if this was a conviction he
6 would probably be going to jail. Of course I told
7 him they would probably be asking for a significant
8 amount -- asking for the same amount if he were
9 pleading guilty.

10 Judge, this charge carries with it mandatory
11 GPS for life and he will also be on the sex
12 offender registry for the rest of his life.

13 We would ask, Judge, that you not penalize him
14 for his exercising his constitutional right for a
15 trial.

16 I will say that I have a lot of clients, and
17 he was not a lot of trouble, and he was always very
18 respectful.

19 THE COURT: Would he like to say anything?

20 MR. COLLINS: No, Your Honor.

21 MS. BODMAN: Your Honor, on the sentencing
22 sheet I may have neglected to check off that GPS
23 monitoring box.

24 MR. BAILEY: It is mandatory under the law no
25 matter.

1 THE COURT: I think they will do it anyway.
2 I'm trying to see where it is on here. And I may
3 just be overlooking. Do you know where it is?

4 MS. BODMAN: I remember seeing it on the
5 sentencing sheet. Yes, mandatory GPS right there.

6 THE COURT: All right, sir. On Indictment
7 Number 2010-GS-40-7545, you will be sentenced to
8 the State Department of Corrections for 15 years.

9 Thank you.

10 You'll have to register. This is mandatory
11 registry also?

12 MS. BODMAN: Yes.

13 MR. BAILEY: Thank you, Judge.

14 (WHEREUPON, the proceedings were concluded.)
15
16
17
18
19
20
21
22
23
24
25

Statement

State of South Carolina)

) S. S.

County of Richland)

Q. Did you wash Minor 1 ?

R. Yes. Mainly back. I might have occasionally done his legs and arms.

Q. Did you wash his genitals?

R. If I did it was not intentional.

Q. How often would you give Minor 1 a bath?

R. Once or twice a week. It was not every night. They preferred baths over showers.

Q. Did you give Minor 2 a bath?

R. No he did not like candles.

Q. Did you show/ demonstrate to Minor 1 or Minor 2 how to masturbate?

R. No.

Q. Did you talk with them about masturbation?

R. Yes. I told them that it was ok and natural. I told them that it was a part of growing up.

Q. Why would Minor 1 say that you washed his genital area on more than one occasion?

R. I don't know.

Q. Is there any reason that Minor 1 would lie about this?

R. Only if like before when William Murray Jr took him down to Richland County. He had said that I had sexually abused him, this was a few years ago.

Q. What is your relationship with Scarlett?

This statement was made in the presence of T. Holdo
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this 18 day of June

Signed: [Signature]

Witness: _____

Witness: _____

[Signature]
Notary Public for South Carolina
My commission expires 11/22/16

Statement

State of South Carolina)

) S. S.

County of Richland)

R. I met her when she was four years old. I thought of her as a daughter. Scarlett wanted her mother all to herself and did not like me with her. She turned on me. She told the resource officer that I had touched her inappropriately. She accused me of ordering the playboy channel. I started missing money from my Laundromat. Amy was attending the store a couple of evenings a week. She would have Scarlett with her and I would have the boys. Some money came up missing and I talked to Amy about it. I was not going to do anything because I wanted a strong relationship with Scarlett.

Q. Would Minor 1 and Minor 2 spend the night at your house?

R. Yes.

Q. Would you sleep in the same bed as them?

R. Yes.

Q. What would you wear?

R. Shorts. I was always dressed and they were always dressed.

Q. Is there anything that you would like to add or change about your statement?

R. No nothing I can think of at this time.

This statement was made in the presence of T. H. H. H.
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this 18 day of June

Signed: Jahla

Witness: _____

Witness: _____

S. H. H.
Notary Public for South Carolina
My commission expires 11/22/16

Statement

State of South Carolina)

) S. S.

County of Richland)

Personally appeared before me this July 1, 2010 at 1655, an officer duly and legally authorized to administer oaths in the above named county and state aforesaid, comes one John Barnes of _____ Day time telephone number _____ Night time telephone number _____

Who makes the following statement under oath to wit:

Q. Is there any additional information that you would like to add to your previous statement?

R. Yes. I did explain to Minor 1 how to masturbate. We were talking about sexuality and his interest in boys or girls. I told him that it was alright to have feelings about girls and if need be about boys. We were in the bathroom. Minor 1 was in the bathtub – taking a bath. I was clothed next to the bathtub. I was washing Minor 1. I don't know how one thing led to another. I noticed that he had an erection. He was covered in bubble bath. I touched him on his lower leg and moved my hand from his ankle to his lower leg. I asked him if he was chicken. He said no. I went up to his knee. I asked him if he was chicken and he said no. I moved to his lower thigh and asked him again and he said no. I moved to his hip and asked him if he was chicken and he said no that he was not chicken. I went to his other hip and brushed against his penis. We started talking about masturbation again. I started demonstrating on Minor 1 how to masturbate. He said no and I stopped.

Q. How many times did this happen?

R. Just the one time.

Q. How long did you masturbate Minor 1 ?

R. Just a few seconds.

This statement was made in the presence of T. Haldorf
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this 1 day of July

Signed: [Signature]

Witness: _____

Witness: _____

[Signature]
Notary Public for South Carolina
My commission expires 11/22/16

Statement

State of South Carolina)
) S. S.
County of Richland)

Q. Where you aroused?
R. No.

Q. What was the purpose of this?

R. To teach Minor 1 a safe outlet. I was concerned that he would get an erection from me.

Q. How often would you wash Minor 1 ?

R. About ten times. About five or six where I would wash him. They were mainly bubble baths and mostly on his back. I was in the bathroom with him 5 or 6 times. The other times he was by himself.

Q. Would you wash his genital area?

R. Not intentionally. I would stick with his feet and his back.

Q. Aside from the masturbation incident how many times did you touch Minor 1's genital area?

R. Just that time. That was the only time he made me aware of it.

Q. Did you bathe Mino
R. No.

Q. Did you show Min how to masturbate?
R.. No

Q. Is there anything that you would like to add or change about your statement?
R. Not at this time.

This statement was made in the presence of _____
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this 1 day of July

Signed: Paul H. [Signature]

Witness: _____

Witness: _____

Notary Public for South Carolina
My commission expires 01/22/26

197

WITNESSES

✓(S) Travis Holdorf – Richland County Sheriff

ARREST WARRANT NUMBER

1901372

ACTION OF GRAND JURY

TRUE BILL

Meslee H. Fields
Foreperson of Grand Jury

Date: DEC 08 2010

VERDICT

Guilty

Foreperson of Petit Jury

Date: 9/15/11 #83

DOCKET NO. 2010-GS-40-7545

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2010

92

THE STATE

vs.

JOHN PETER BARNES

Indictment for
LEWD ACT ON MINOR CHILD

SC Code: 16-15-0140

CDR Code: 2468

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

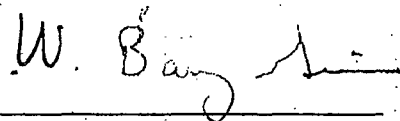
At a Court of General Sessions, convened on DECEMBER 8, 2010, the
Grand Jurors of Richland County present upon their oath:

LEWD ACT ON A MINOR CHILD

CDR: 2468 16-15-0140

That JOHN PETER BARNES, being over fourteen years of age did
in Richland County on or between JANUARY 1, 2009 AND MARCH
31, 2010, willfully and lewdly commit a lewd or lascivious act upon
or with the body of a child, less than sixteen (16) years of age, to
wit: _____, with the intent of arousing,
appealing to, or gratifying the lust or passions or sexual desires of
said defendant or of the victim, in violation of Section 16-15-0140,
S. C. 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.



WARREN B. GIESE, SOLICITOR

ARREST WARRANT

1-901372

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

THE STATE

CASE #1004856710

against

John Peter Barnes

Address:

Phone: 12 SSN:
 Sex: M Race: W Height: 6 Weight: 200
 DL State: SC DL #:
 DOB: Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: Travis Holdorf - 644

Offense: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1

Offense Code: 2468

Code/Ordinance Sec: 16-15-0140

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused
 is to be arrested and brought before me to be
 dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
 defendant John Peter Barnes
 on 9/10/10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
 1701 Main Street
 P O Box 192
 Columbia, SC 29202

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Personally appeared before me the affiant Travis Holdorf whobeing duly sworn deposes and says that defendant John Peter Barnesdid within this county and state on or about 03/13/2010

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

That between JANUARY 1, 2009 AND MARCH 31, 2010 while at in the LYKESLAND Magisterial
 District of Richland County, one JOHN PETER BARNES did commit the crime of LEWD ACT ON A CHILD, UNDER 16
 because he did willfully and unlawfully commit a lewd and lascivious act (masturbation) upon a child under the
 age of sixteen (16) years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person
 or of the child. was interviewed at the ARC and did make statements that implicated the defendant in this crime.

The defendant has also given a written statement implicating himself in his crime.

RCSD Case #1004856710

Affiant and others are witness to prove the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/13/2010defendant John Peter Barnes

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Lykesland Magistrate as set forth below:

DESCRIPTION OF OFFENSE: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
 her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
 soon thereafter as is practicable

Sworn to and subscribed before me

on 09/09/2010

Signature of Issuing Judge
 Michael R Davis

Judge Code: 5458

Judge's Address 1403 Caroline Road

Columbia, SC 29209-2609

Judge's Telephone (803)576-2500

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 518

10 SEP 30 AM 11:44
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Richland

VS.

John Peter Barnes

AKA:

Race: W

Sex: M

Age: 47

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (over 16)

in violation of § 16-15-0140

of the S.C. Code of Laws, bearing CDR Code #

2468

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

Barry, Debra

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 15 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk:

Court Reporter:

SCCA/217 (06/2010)

INDICTMENT/CASE#: 2010-GS-40-7545

A/W#: 1901372

Date of Offense: 1/1/2009 - 3/31/2010

S.C. Code § : 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSThe 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:

Barry, Debra

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 15 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk:

Court Reporter:

SCCA/217 (06/2010)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

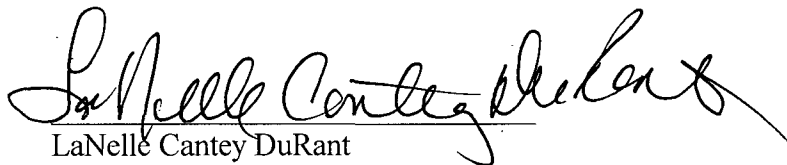
Judge Code: 2161

Sentence Date: 9-15-11

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 17th, 2013



LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from Richland County

DeAndrea G. Benjamin, Circuit Court Judge

RECEIVED

JAN 17 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

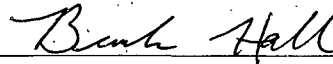
JOHN PETER BARNES,

APPELLANT

APPELLATE CASE NO. 2011-199787

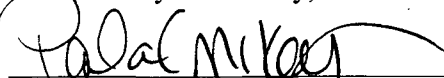
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 17th day of January, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 17th day of January, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.