

VOLUME I OF II

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Pickens County
Letitia H. Verdin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES ANTHONY DURHAM,

APPELLANT

APPELLATE CASE NO. 2019-001959

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

NOVEMBER 18-19, 2019 TRIAL: STATE’S EXHIBIT #2 (Body Cam Video)

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	2016-GS-39-1419
COUNTY OF PICKENS	)	
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JAMES ANTHONY DURHAM,	)	
DEFENDANT.	)	
_____	)	

November 18 and 19, 2019
Pickens, South Carolina

B E F O R E:

THE HONORABLE LETITIA H. VERDIN, JUDGE

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(SW) - Denotes State's Witness
(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
(State's Exhibits)			
1	Brenda Link's Body Camera Footage	5	N/A
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P R O C E E D I N G S

MONDAY, NOVEMBER 18, 2019

(WHEREUPON, State's Exhibit Numbers 1 through 6 were
premarked for identification.)

(WHEREUPON, proceedings commenced at 10:34 p.m.)

MR. KING: A questionnaire, I can hand up a copy of
what I'm going to propose.

THE COURT: Okay. Let's see it. Okay.

Have you seen this, Ms. Owen?

MS. OWEN: No, Your Honor. He's not provided a copy.
I do believe I know what it is, though.

THE COURT: What's the State's position on this?

MS. OWEN: Your Honor, just so you're aware, this
case was tried in August, and that's something Judge
Cooper does. And I would ask that we not do this. I
think it's time-consuming and we tend to get the same
results as we get when you ask the questions at the bench.
I will leave it in your discretion, but it does take -- it
was very time-consuming, and I believe we got most of the
same answers we would have gotten back in the jury room
regardless if you just ask the questions and we come to
the bench.

THE COURT: I'll send it back. And the main reason
I'm going to -- I mean not sent it back. Send it out to

1 the jurors. One of the main reasons is because this case
2 was tried before and that's what Judge Cooper did. So I
3 intend, of course, to abide by, for the most part, his
4 rulings. I would not -- in fact, I think I would abide by
5 his rulings in total on it, but I'm happy to do that.

6 I'm not going to ask a lot of these questions on voir
7 dire or however anybody wants it. I'm going to -- you
8 know, I'm going to ask my general questions that I ask,
9 and I think they cover most of these, and then I think
10 this little questionnaire would be helpful.

11 Okay. How many -- and it's five and five on this?

12 MS. OWEN: Five and ten, Your Honor.

13 THE COURT: Five and ten.

14 MR. KING: That's correct, Your Honor.

15 THE COURT: Okay. And you think you'll finish
16 tomorrow?

17 MS. OWEN: Yes, Your Honor.

18 MR. KING: Yes, Your Honor.

19 I've got two issues I just want to clear up.

20 THE COURT: Okay. All right.

21 MR. KING: So with these written voir dire slips,
22 what we did is we handed them out to the jurors, and then
23 we took each of them individually into the jury room. We
24 had a court reporter. All counsel sat at the far end, the
25 judge sat at the other end with the court reporter. And

1 he said, "Are these your answers and is there any reason
2 why you feel like you can't do this?" I found it very
3 enlightening. There were people that came in and said,
4 "I've never told anybody this before." One woman broke
5 down. And my concern is those kind of responses don't
6 happen in the open courtroom. They happen in an
7 individualized setting where everybody is subjected to the
8 same thing.

9 THE COURT: All right. We'll just see. We'll just
10 see. That's, I think, maybe a little over the top, but
11 we'll see, all right, based on what the responses we get
12 are.

13 All right. Next, what's your next issue?

14 MR. KING: And this is something I don't know how to
15 address. Since we already tried this case, I guess
16 witnesses can say that there was a prior hearing, but we
17 shouldn't be talking about a prior trial. I obviously
18 don't know what the right answers are. I just want to ---

19 THE COURT: Well, the right answer is they can --
20 they can refer to a prior hearing in this matter, but
21 that's it.

22 And the indictments on this, Judge Cooper, for some
23 reason, wrote "mistrial declared" on the indictments, so
24 we'll send back a verdict form.

25 MS. OWEN: I have an extra copy of the indictment if

1 you need one, Your Honor.

2 THE COURT: Okay.

3 MS. OWEN: It's just not the original.

4 THE COURT: Okay. All right. And so we'll need --
5 is everybody all right with one alternate?

6 MS. OWEN: Yes, Your Honor.

7 MR. KING: That's fine with defense, Your Honor.

8 (Pause in proceedings.)

9 THE COURT: Let's go ahead and bring the jury pool
10 back in. Thank you.

11 (WHEREUPON, the jury panel entered the courtroom at
12 10:43 a.m.)

13 JURY QUALIFICATION

14 THE COURT: All right. Ladies and gentlemen, you're
15 stuck with me. I'm sorry, but you're stuck with me.

16 All right. We are now going to find out -- I told
17 you that we -- this morning I found out you were qualified
18 to serve as a juror this week in Pickens county. Now I
19 need to find out if you are qualified to serve in the
20 trial of this particular case. To do that, I'm going to
21 go through a list of questions, and I'm going to tell you
22 a little bit about the case itself. And then we have got
23 a small survey for you to fill out, so we're going to pass
24 that out. And it -- and then based on your answers to
25 this, I might have some additional questions for you.

1 I want everyone to know that it is my goal in here
2 not to embarrass anyone or to put anyone on the spot,
3 period, okay? So if you need to come and speak with me
4 about anything privately at any time, of course the
5 attorneys will be there, but other than that, if you need
6 to speak with me about anything at any time, all you need
7 to do is make a motion you need to come up here or
8 something like that. But we're going to first let you
9 answer some questions via survey. Okay.

10 Now, this is the State of South Carolina vs. James
11 Anthony Durham. Mr. Durham is charged with criminal
12 sexual conduct with a minor second degree, and he is
13 charged by that by an indictment in this court. If you
14 serve on the jury, you will find out what an indictment is
15 and what an indictment is not.

16 For purposes of our -- for purposes of this matter
17 right now, an indictment is simply this, it is the
18 document by which somebody is charged and brought into
19 court. That's it. It's not evidence of anyone's guilt,
20 but it does have the barest bones of the allegations that
21 the State has made against the defendant and that you
22 would be determining whether or not the State has met its
23 burden of proof as to these allegations.

24 All right. I'm going to read the indictment to you
25 right now just so you know the nature of the case. That's

1 it. It alleges that James Anthony Durham did, in Pickens
2 county, on or about the 14th day of May 2016, commit a
3 sexual battery on ZAL, the initials ZAL, who was 14 years
4 of age or less but who was at least 11 years of age. All
5 right. So those are the bare bones of the allegations in
6 this case.

7 Now, I'm going to ask you a couple questions first
8 and then we're going to hand out the survey and we're
9 going to get rolling after that.

10 Ms. Owen would you please introduce yourself and
11 Mr. Durham.

12 MS. OWEN: Thank you, Your Honor.

13 Good morning, ladies and gentlemen. My name is Megan
14 Owen. I work for the 13th Circuit Solicitor's Office.
15 This is Durham Hill. He is going to also prosecute this
16 case with me.

17 THE COURT: I called you Mr. Durham, and I'm sorry.

18 MR. HILL: That's all right, Your Honor.

19 THE COURT: It's Mr. Hill. So sorry.

20 Ladies and gentlemen of the jury, any member of the
21 jury panel related by blood or marriage or otherwise
22 acquainted with in any way Ms. Owen or Mr. Hill or anyone
23 in the 13th Circuit Solicitor's Office? And if so, please
24 stand.

25 (No response.)

1 THE COURT: And none are standing.

2 Ladies and gentlemen, just to explain what the 13th
3 Circuit Solicitor's Office is, just a little more finely,
4 is just that the solicitor is the prosecutor or what some
5 people call in some other states the district attorney or
6 something like that, and the 13th circuit, as I said
7 earlier, is Pickens and Greenville county. Anyone believe
8 you know anyone in the 13th Circuit Solicitor's Office?
9 And if so, please stand.

10 (No response.)

11 THE COURT: And none are standing.

12 All right. Mr. King, will you please introduce
13 yourself and your client.

14 MR. KING: Yes, ma'am.

15 Good morning. My name is Daniel King. I'm a
16 criminal defense attorney here in Pickens. I have the
17 honor of representing James Anthony Durham. Also with me
18 will be Mr. John Dejong who is over in the corner. He
19 most likely will not be sitting with me, but he'll be in
20 the gallery and I may consult with him at times.

21 Thank you for being here today.

22 THE COURT: All right. Any member of the jury panel
23 related by blood or marriage or otherwise acquainted with,
24 ever been represented by, anything, Mr. King or
25 Mr. Dejong? And if so, please stand.

1 (No response.)

2 THE COURT: And none are standing.

3 Any member of the jury panel related by blood or
4 marriage or otherwise acquainted with James Anthony
5 Durham, the defendant in this case? And if so, please
6 stand.

7 (No response.)

8 THE COURT: And none are standing.

9 Any member -- you heard me read the allegations in
10 this case, the barest bones of the allegations in this
11 case. Any member of the jury panel believe he or she
12 knows anything about the particular allegations in this
13 case? And if so, please stand.

14 (No response.)

15 THE COURT: And none are standing.

16 Any member of the jury panel acquainted with, ever
17 been arrested by, have any connection with the Clemson
18 City Police Department? And if so, please stand.

19 (No response.)

20 THE COURT: And none are standing.

21 All right. Let me -- all right. Now, ladies and
22 gentlemen, we turn to the survey, and we're going to pass
23 this out and pass out a pen. Some of you might need to
24 share pens if you do not mind. But we will pass out the
25 survey and ---

1 MR. KING: Do you mind if we use pencils, too? We
2 have pencils over here.

3 THE COURT: Oh, yeah. If you all will -- yeah.
4 we're going to hand them out. And if you don't mind --
5 and we'll let the bailiffs do it. Thank you.

6 MR. KING: Sorry.

7 THE COURT: That's okay. You're good.

8 And ladies and gentlemen, you'll see that at the top
9 of this little survey, it has your juror number, okay?
10 Let me tell you a couple of things about this survey.
11 This survey is going to be used for nothing more than just
12 some information for us to see if we need to speak with
13 you any further. If you put your juror number on it, no
14 other identifiable information, please, so nobody would be
15 able to see who did. And then there are four questions,
16 and please answer all those questions.

17 Thank you.

18 MR. KING: May we approach for a second?

19 THE COURT: Sure.

20 (WHEREUPON, a bench conference was held off the record.)

21 THE COURT: I'm so sorry. Immediate family means
22 brother, sister, mother, father, spouse or child, okay?
23 That's immediate family. If anybody needs to get their
24 survey back based on that, I apologize that I did not give
25 -- anybody need to get their survey back? Will y'all give

1 her -- y'all figure out what her number is right here,
2 please.

3 THE BAILIFF: The one who asked the question?

4 THE COURT: No, sir. This lady right here who said
5 she needs her survey back.

6 (Pause in proceedings.)

7 THE COURT: Might have forgotten to put their juror
8 number on the survey. Anyone? I can just match it
9 against my juror list.

10 (Pause in proceedings.)

11 THE COURT: Let me just say I appreciate everyone's
12 honesty, especially on Question Number 4. That's very
13 helpful. Thank you so much.

14 First, we'll step down here.

15 Juror Number 186. I appreciate you saying you're not
16 sure. That's understandable.

17 JUROR NUMBER 186: I have little children.

18 THE COURT: I understand. Tell me this.

19 JUROR NUMBER 186: I can be impartial.

20 THE COURT: Okay. That's all we ask is -- tell me
21 this. Do you think that when I give you the instruction
22 not to make your mind up about any facts whatsoever and
23 just base your decision based on the testimony and
24 evidence, can you do that?

25 JUROR NUMBER 186: Yes.

1 THE COURT: Yes, you can do that?

2 JUROR NUMBER 186: Yeah.

3 THE COURT: Okay. All right. Very well. Thank you
4 so much.

5 Juror Number 82. You answered yes to all of these.

6 JUROR NUMBER 82: Uh-huh.

7 THE COURT: Okay. You feel like you could not be a
8 fair and impartial juror?

9 JUROR NUMBER 82: (Shakes head negatively.)

10 THE COURT: Okay. All right. Here's what I'm going
11 to do. We've got another case that's going to start a
12 little bit later in the week, and so we can put you on
13 that jury pool, okay?

14 JUROR NUMBER 82: Okay.

15 THE COURT: But I'm going to excuse you from this
16 one. And I appreciate it, and I'm sorry to have to call
17 you up.

18 JUROR NUMBER 82: That's okay. Do I just need to
19 check the call-back number?

20 THE COURT: If you'll just go have a seat for just a
21 moment and then we'll do it right after that. Thank you.

22 Juror Number 103. Hey. I appreciate your honesty
23 about this, and I'm so sorry.

24 JUROR NUMBER 103: I know.

25 THE COURT: I have to ask you this. You say that you

1 feel like you could be a fair and impartial juror. You
2 answered "yes" to Question 1 and 2, so somebody had been
3 charged with it. And -- but you still feel like you can
4 be fair and impartial?

5 JUROR NUMBER 103: Yeah. Because, I mean, my brother
6 did it, you know. He should have been. They had
7 evidence. I mean, that's fair.

8 THE COURT: I understand. So you could just listen
9 to the testimony and evidence in this case, and if you
10 thought the State met its burden of proof, you could find
11 the defendant guilty, if you thought the State didn't meet
12 its burden of proof, you could find the defendant not
13 guilty.

14 JUROR NUMBER 103: Right.

15 THE COURT: Okay. All right. Thank you, Juror
16 Number 103. Thank you so much.

17 Juror Number 33. I'm so sorry to bring you up here
18 like this.

19 JUROR NUMBER 33: You're fine.

20 THE COURT: I apologize. You answered "yes" to
21 Number 3, so someone in your immediate family.

22 JUROR NUMBER 33: Yeah. It's me.

23 THE COURT: Okay. Tell me this. You know, we've got
24 other cases you can serve on.

25 JUROR NUMBER 33: I'm good.

1 THE COURT: You think you could be a fair and
2 impartial juror in the trial in this case?

3 JUROR NUMBER 33: Yes.

4 THE COURT: All right. I don't want to get too much
5 into your business, but you don't feel like something
6 that's being said in this trial might be a trigger or
7 anything like that for you?

8 JUROR NUMBER 33: No.

9 THE COURT: Okay. All right then. Very well. Thank
10 you so much. Juror Number 33.

11 Juror Number 170. Hey, you answered "yes" to
12 Number 4.

13 JUROR NUMBER 170: Yes.

14 THE COURT: Let me ask you this. If you heard
15 testimony and evidence in this case, could you determine
16 this case based on whether or not the State met its burden
17 of proof? In other words, you understand the burden of
18 proof is on the State, and your job as a juror is to
19 determine whether or not the State met its burden, do you
20 think you can base that decision solely on the testimony
21 and evidence presented in this trial?

22 JUROR NUMBER 170: Yes. I think I could. It would
23 take some work, but yes.

24 THE COURT: Okay. All right. I certainly appreciate
25 it. Thank you for your honesty with us.

1 Okay. Juror Number 3. You answered "yes" to
2 Question Number 4, and I appreciate your honesty with us.
3 Quick question about that. If you were chosen for this
4 particular jury, you would be asked to decide whether or
5 not the State met its burden of proof. As you know, the
6 State has the burden of proof in this case to prove it.
7 Do you think that you could base your decision solely on
8 the testimony and evidence presented?

9 JUROR NUMBER 3: It would be a hard decision for me
10 to make, you know, as far as -- because you're asking me a
11 child or someone that -- to come forward and say something
12 of that nature, I'd have to lean to that. I mean,
13 it's ---

14 THE COURT: Okay, okay. If you -- if you heard the
15 testimony and evidence and you felt like the child -- or
16 you felt like the State didn't meet its burden of proof,
17 could you find the defendant not guilty? The burden of
18 proof is, of course, beyond a reasonable doubt.

19 JUROR NUMBER 3: Yeah. I'd have to look, you know,
20 hear the case, hear which way it goes by myself because,
21 you know, it's a tough decision to make because we as an
22 adult are supposed to show an example to our children.

23 THE COURT: Exactly.

24 JUROR NUMBER 3: You know, someone who has been
25 accused of that, I don't know.

1 THE COURT: Okay. I'll tell you what. I'm -- there
2 are other cases later in the week and we can use you later
3 in the week, so I'm going to excuse you from the trial of
4 this particular case, okay?

5 JUROR NUMBER 3: Okay.

6 THE COURT: Thank you, sir.

7 JUROR NUMBER 3: Can I leave now or ---

8 THE COURT: Just have a seat and we'll get to you.

9 Okay. Juror Number 42. Hey there. I noticed that
10 you answered "yes" to Number 4.

11 JUROR NUMBER 42: Yes.

12 THE COURT: And my question is this. You know that
13 the State has the burden of proving this case, right? And
14 we've all heard the burden of proof is beyond a reasonable
15 doubt. Okay. Could you base your decision in this case
16 solely on the testimony and evidence presented in this
17 case, and if you felt like the State met its burden of
18 proof, find the defendant guilty, if you felt the State
19 didn't meet its burden of proof, find the defendant not
20 guilty? Could you do that?

21 JUROR NUMBER 42: Probably. I wasn't sure -- full
22 disclosure, because my job involves working with lots of
23 children.

24 THE COURT: Tell me about that.

25 JUROR NUMBER 42: I'm a residential -- I'm a camp

1 director.

2 THE COURT: Okay.

3 JUROR NUMBER 42: So I do lots of, obviously, sexual
4 abuse prevention training and I hire and train college
5 kids and I have kids who come from further backgrounds who
6 have had a lot of ---

7 THE COURT: Sure.

8 JUROR NUMBER 42: --- and so I work very closely with
9 them, so I just knew it would be personal.

10 THE COURT: It would be personal. I'll tell you
11 what. We've got another case later in the week we could
12 probably use you on. Why don't -- on this particular
13 case, I'm going to excuse you from service on this
14 particular case.

15 JUROR NUMBER 42: Okay. I was just worried I
16 couldn't be partial, so I'm -- full disclosure.

17 THE COURT: That's okay. That's what we want. Thank
18 you.

19 MR. KING: Judge, 33, and 170?

20 THE COURT: Yeah.

21 MR. KING: 33 was the one that said that she was -- I
22 know she says she doesn't have any triggers, but that
23 always kind of scares me because we don't know if it's
24 going to trigger.

25 THE COURT: Sure. You've got strikes.

1 Is Juror Number 134, Ms. Mullinax, would you come
2 forward, please. I just have a quick question. Nothing
3 related to the survey.

4 Now that you're up a little bit closer with Mr. King,
5 do you remember him?

6 JUROR NUMBER 134: I've never been represented by
7 him, but I know somebody who has.

8 THE COURT: Right. Okay, okay. And do you think you
9 might have had some dealings with Mr. King over that? Had
10 you ever talked to him on the phone or anything like that?

11 JUROR NUMBER 134: I've emailed. I think I emailed
12 him.

13 THE COURT: Email. Okay, okay. Do you think you can
14 be a fair and impartial juror in the trial of this case
15 knowing that Mr. King is going to be a lawyer in this
16 case?

17 JUROR NUMBER 134: If I could serve on another one,
18 I'd rather.

19 THE COURT: Okay. All right. Let's do that then.
20 I'm going to transfer you to another case, okay? You'll
21 just have a seat.

22 All right. I have excused from service on this case
23 Jurors Number 80, Number 42, Number 3, and Number 134. I
24 say that to say that you don't need to respond to my
25 question in this case, but is there any juror for any

1 reason whatsoever, even reasons we've already talked
2 about, is there any juror for any reason whatsoever who
3 believes he or she could not be a fair and impartial juror
4 in the trial of this case? And that is listen to all the
5 testimony and evidence and determine whether or not the
6 State has met its burden of proof in this case. Any
7 member of the jury panel believe he or she, other than the
8 ones I called out, believe he or she could not be a fair
9 and impartial juror in the trial of this case? And if so,
10 please stand. And no further are standing.

11 THE BAILIFF: Judge, you've got one.

12 THE COURT: 82. Oh, yes, ma'am. Would you come up
13 here, please. Thank you. And I might have mistakenly
14 said Juror Number 80. I meant Juror Number 82 has been
15 excused, but I'll -- I just wanted you to know that you
16 didn't have to respond again.

17 Yes, ma'am. Tell me your juror number.

18 JUROR NUMBER 4: Number 4.

19 THE COURT: Yes, ma'am.

20 JUROR NUMBER 4: Does accused of something matter?
21 Is that a reason?

22 THE COURT: Oh, who has been accused of something?

23 JUROR NUMBER 4: My father.

24 THE COURT: Your father.

25 JUROR NUMBER 4: Yes.

1 THE COURT: Okay. And I assume he was not convicted.

2 JUROR NUMBER 4: No. Not to my knowledge.

3 THE COURT: Okay. Tell me this. Do you think you
4 could be a fair and impartial juror, in other words,
5 listen to all the testimony and evidence?

6 JUROR NUMBER 4: I think I could.

7 THE COURT: Okay.

8 JUROR NUMBER 4: But I was just wanting to make sure
9 that you knew.

10 THE COURT: No. I'm so glad. That's exactly the
11 information we need. I appreciate it.

12 JUROR NUMBER 4: Yes, ma'am. Thank you.

13 THE COURT: Thank you so much.

14 All right ladies and gentlemen, we are now ready to
15 turn to jury selection in this case. Mr. King, is there
16 anything?

17 MR. KING: Judge, I have additional voir dire that I
18 ask to be made a Court's Exhibit.

19 THE COURT: All right. Very well. It certainly will
20 be.

21 All right. And now we're ready to turn to jury
22 selection in this case. And I promise you we'll walk you
23 through it. You're going to hear potentially your name
24 and juror number called. You'll hear the State say
25 something like "please present the juror" or "please swear

1 the juror," and you'll hear the defense say something like
2 "please seat the juror." Both sides might say "excuse the
3 juror." You don't even need to worry yourself with it.
4 We'll tell you what to do from here. But when you hear
5 your name and juror number called, just stand right where
6 -- if you'll just stand up right where you are.

7 A couple of quick things. If you're selected to
8 serve on this jury, bring all your belongings with you
9 because you won't be returning to that seat. And then
10 secondly, I don't think anybody's going to get their
11 feelings hurt if they're not selected for the jury, but
12 sometimes people say, "Why wasn't I selected?" Believe
13 me, it's nothing personal. I assure you it is nothing
14 personal in any way.

15 All right. Based on that, we're ready to get going.
16 And it's five and ten and do one alternate.

17 Yes, ma'am?

18 MS. OWEN: Witness list?

19 THE COURT: Oh, I'm so sorry. Gosh. I totally -- I
20 got off-kilter here. We're not ready yet. I've got to
21 ask you a couple more questions. I'm so sorry. Thank
22 goodness. I don't know what's wrong with me this morning.
23 I guess it might be Monday.

24 Okay. I'm going to go through a witness list, and if
25 any of you believe that you know any of these witnesses at

1 all or even think you know somebody with that name or
2 anything, I'm going to ask you to please stand and let's
3 talk about it, okay? Okay. I'm going to go through the
4 whole list, and if -- and like I said, if you think you
5 know anybody, just at the end of the list if you would
6 stand. All right. **Minor** Ross Ables of the
7 Anderson County Sheriff's Office; Brenda Link of the
8 Clemson Police Department; Patrick Bikas of Probation,
9 Pardon and Parole; John Brown of the Clemson Police
10 Department; Jonathan Duncan of the Clemson Police
11 Department; Larry King -- I don't think it's the TV
12 person; Lindsey Massey of DSS; Christine Carlberg of the
13 Julie Valentine Center; Erica Van Wagner of Greenville
14 Mental Health; Jennifer Coley of Greenville, evidence
15 custodian; Timothy Nafziger of the Greenville DNA lab;
16 Jagannadha Kandala of the Greenville DNA lab; Vanessa
17 Durham; Jennifer Winch; Brian Bolding; Gaye Allen-Cook;
18 and Ms. Amanda Donald. And if so, if you know any of
19 these potential witnesses, please stand.

20 (No response.)

21 THE COURT: All right. And none are standing.

22 Okay. Now we really are ready, I think. Okay. All
23 right. We're really ready. And if you just stand when
24 you hear your name and Juror Number called.

25 By the way, that might not be all the witnesses who

1 testify. These attorneys just list every potential
2 witnesses who would testify. We anticipate this case
3 going into tomorrow.

4 All right. Go ahead.

5 JURY SELECTION

6 THE CLERK: When I call your name, if you'll please
7 stand.

8 Juror Number 110, Hannah Laney.

9 (WHEREUPON, Hannah Laney, a white female, stood.)

10 THE CLERK: What says the State?

11 MS. OWEN: Please present the juror.

12 THE CLERK: The defense?

13 MR. KING: Please swear Ms. 110.

14 THE CLERK: Please come have a seat in the jury box.
15 This way, ma'am.

16 THE COURT: That's okay. It's a little bit
17 confusing.

18 THE CLERK: Juror Number 62, Cory Eskew.

19 (WHEREUPON, Cory Eskew, a white male, stood.)

20 THE CLERK: What says the State?

21 MS. OWEN: Please present this juror.

22 THE CLERK: The defense?

23 MR. KING: Please swear Mr. 62.

24 THE CLERK: Please come have a seat in the jury box.

25 Juror Number 36, Karen Carson.

1 (WHEREUPON, Karen Carson, a white female, stood.)

2 THE CLERK: What says the State?

3 MS. OWEN: Please present this juror.

4 THE CLERK: The defense?

5 MR. KING: Please excuse Ms. 36.

6 THE CLERK: Please have a seat.

7 Juror Number 4, Ina Alexander.

8 (WHEREUPON, Ina Alexander, a white female, stood.)

9 THE CLERK: What says the State?

10 MS. OWEN: Please excuse the juror.

11 THE CLERK: Please have a seat.

12 Juror Number 176, Herbert Trebuchon.

13 (WHEREUPON, Herbert Trebuchon, a white female, stood.)

14 THE CLERK: What says the State?

15 MS. OWEN: Please excuse this juror.

16 THE CLERK: Please have a seat.

17 Juror Number 46, Marcus Davis.

18 (WHEREUPON, Marcus Davis, a white male, stood.)

19 MS. OWEN: Please present this juror.

20 THE CLERK: The defense?

21 MR. KING: Please swear Mr. 46.

22 THE CLERK: Please come have a seat in the jury box.

23 Juror Number 120, John Mason.

24 (WHEREUPON, John Mason, a white male, stood.)

25 THE CLERK: What says the State?

1 MS. OWEN: Please present the juror.

2 THE CLERK: The defense?

3 MR. KING: Please swear Mr. 120.

4 THE CLERK: Please come have a seat in the jury box.

5 Juror Number 128, Harold Moore.

6 (WHEREUPON, Harold Moore, a white male, stood.)

7 THE CLERK: What says the State?

8 MS. OWEN: Please present the juror.

9 THE CLERK: The defense?

10 MR. KING: Please excuse Mr. 128.

11 THE CLERK: Please have a seat.

12 Juror Number 177, Casey Trotter.

13 (WHEREUPON, Casey Trotter, a white female, stood.)

14 THE CLERK: What says the State?

15 MS. OWEN: Please present the juror.

16 THE CLERK: The defense?

17 MR. KING: Please excuse Ms. 177.

18 THE CLERK: Please have a seat.

19 Juror Number 41, Christopher Collins.

20 (WHEREUPON, Christopher Collins, a white male, stood.)

21 THE CLERK: What says the State?

22 MS. OWEN: Please present the juror.

23 THE CLERK: The defense?

24 MR. KING: Please swear Mr. 41.

25 THE CLERK: Please come have a seat in the jury box.

1 Juror Number 112, Joseph Leslie.
2 (WHEREUPON, Joseph Leslie, a white male, stood.)
3 MS. OWEN: Please present the juror.
4 THE CLERK: The defense?
5 MR. KING: Please swear Mr. 112.
6 THE CLERK: Please come have a seat in the jury box.
7 Juror Number 17, Steve Bellue.
8 (WHEREUPON, Steve Bellue, a white male, stood.)
9 THE CLERK: What says the State?
10 MS. OWEN: Please excuse this juror.
11 THE CLERK: Please have a seat.
12 Juror Number 167, Lisa Stewart.
13 (WHEREUPON, Lisa Stewart, a white female, stood.)
14 MS. OWEN: Please present this juror.
15 THE CLERK: The defense?
16 MR. KING: Please excuse Ms. 167.
17 THE CLERK: Please have a seat.
18 Juror Number 34, Joseph Cannon.
19 (WHEREUPON, Joseph Cannon, a white male, stood.)
20 THE CLERK: What says the State?
21 MS. OWEN: Please present this juror.
22 THE CLERK: The defense?
23 MR. KING: I apologize. What was the number?
24 THE CLERK: Number 34.
25 MR. KING: Please swear Mr. 34.

1 THE CLERK: Please come have a seat in the jury box.

2 Juror Number 47, Kipling Deck.

3 (WHEREUPON, Kipling Deck, a white male, stood.)

4 MS. OWEN: Please excuse this juror.

5 THE CLERK: Please have a seat.

6 Juror Number 103, Sandra Jones.

7 (WHEREUPON, Sandra Jones, a white female, stood.)

8 MS. OWEN: Please present this juror.

9 THE CLERK: The defense?

10 MR. KING: Please excuse Ms. 103.

11 THE CLERK: Please have a seat.

12 Juror Number 113, Ruby Lewis.

13 (WHEREUPON, Ruby Lewis, a white female, stood.)

14 THE CLERK: What says the State?

15 MS. OWEN: Please present this juror.

16 THE CLERK: The defense?

17 MR. KING: Please swear Ms. 113.

18 THE CLERK: Please come have a seat in the jury box.

19 Juror Number 39, Gregory Cline.

20 (WHEREUPON, Gregory Cline, a white male, stood.)

21 MS. OWEN: Please present this juror.

22 THE CLERK: The defense?

23 MR. KING: Please excuse Mr. 39.

24 THE CLERK: Please have a seat.

25 Juror Number 16, Wayne Bell.

1 (WHEREUPON, Wayne Bell, a white male, stood.)

2 MS. OWEN: Please present this juror.

3 THE CLERK: The defense?

4 MR. KING: Please swear Mr. 16.

5 THE CLERK: Please come have a seat in the jury box.

6 Juror Number 77, Lori Gwinn.

7 (WHEREUPON, Lori Gwinn, a white female, stood.)

8 MS. OWEN: Please present this juror.

9 THE CLERK: The defense?

10 MR. KING: Please excuse Ms. 77.

11 THE CLERK: Please have a seat.

12 Juror Number 170, Michael Talbert.

13 (WHEREUPON, Michael Talbert, a white male, stood.)

14 THE CLERK: What says the State?

15 MS. OWEN: Please present this juror.

16 THE CLERK: The defense?

17 MR. KING: Please excuse Mr. 170.

18 THE CLERK: Please have a seat.

19 Juror Number 118, Mark Martin.

20 (WHEREUPON, Mark Martin, a white male, stood.)

21 THE CLERK: What says the State?

22 MS. OWEN: Please present the juror.

23 THE CLERK: The defense?

24 MR. KING: Please swear Mr. 118.

25 THE CLERK: Please come have a seat in the jury box.

1 Juror Number 50, Thomas Dimmock.
2 (WHEREUPON, Thomas Dimmock, a white male, stood.)
3 MS. OWEN: Please present this juror.
4 THE CLERK: The defense?
5 MR. KING: Please excuse Mr. 50.
6 THE CLERK: Juror Number 73, Joshua Goza.
7 (WHEREUPON, Joshua Goza, a white male, stood.)
8 MS. OWEN: Please present this juror.
9 THE CLERK: The defense?
10 MR. KING: Please swear Mr. 73.
11 THE CLERK: Please come have a seat in the jury box.
12 Juror Number 53, Erin Doherty.
13 (WHEREUPON, Erin Doherty, a white female, stood.)
14 THE CLERK: What says the State?
15 MS. OWEN: Please excuse this juror.
16 THE CLERK: Please have a seat.
17 Juror Number 181, Slater White.
18 (WHEREUPON, Slater White, a white male, stood.)
19 THE CLERK: What says the State?
20 MS. OWEN: Please present this juror.
21 THE CLERK: The defense?
22 MR. KING: Please swear Mr. 181.
23 THE CLERK: Please come have a seat in the jury box.
24 THE COURT: All right. One and two on the
25 alternate.

1 THE CLERK: This is for the alternate. Juror
2 Number 147 Renee Ramey.

3 (WHEREUPON, Renee Ramey, a white female, stood.)

4 MR. KING: What was the number?

5 THE CLERK: 147.

6 MS. OWEN: Please present this juror.

7 THE CLERK: The defense?

8 MR. KING: Please excuse Ms. 147.

9 THE CLERK: Juror Number 23, Rebecca Brazell.

10 (WHEREUPON, Rebecca Brazell, a white female, stood.)

11 MS. OWEN: Please present this juror.

12 THE CLERK: The defense?

13 MR. KING: Please swear Ms. 23.

14 THE CLERK: Please come have a seat in the jury box.

15 THE COURT: All right. Any objection to the manner
16 in which the jury was selected, from the State?

17 MS. OWEN: None from the State, Your Honor.

18 THE COURT: Any from the defense?

19 MR. KING: Not on behalf of Mr. Durham.

20 THE COURT: All right. Very well, then. Ladies and
21 gentleman who are selected on our jury, I'm going to give
22 you some instructions in just a moment, but to our jurors
23 who were not selected for this particular jury, if you'll
24 call back in after 6:00 this evening, but you're excused
25 for the balance of the day.

1 (WHEREUPON, the remaining jury panel exits the courtroom
2 at 11:32 a.m.; Court's Exhibit Numbers 1 and 2 were marked
3 for identification.)

4 THE COURT: All right. Madam Clerk, do you mind
5 swearing the jury?

6 THE CLERK: Sure will.

7 If you will, please stand and raise your right hand.
8 And after the oath is administered, if you will say "I
9 will."

10 (WHEREUPON, the jury is duly sworn.)

11 THE CLERK: Thank you.

12 JURY INSTRUCTIONS

13 THE COURT: Ladies and gentlemen, what I'm going to
14 say to you now is just intended to serve as an
15 introduction to the trial of this case. It's not my
16 instruction on the law in this case. I'll instruct you on
17 the law applicable in this case at the end of this trial
18 after you hear closing arguments from the attorneys in
19 this case.

20 It's my understanding the attorneys believe that this
21 trial is going to go through tomorrow but will only last
22 through tomorrow is what my understanding is. Of course,
23 it's not an exact science, but that's what we believe and
24 that's what our best guess is.

25 The defendant is charged by an indictment filed in

1 this court with the crime of criminal sexual conduct with
2 a minor second degree, the elements of which are going to
3 be explained to you later, as I said. The indictment is
4 simply the document by which someone is charged with a
5 crime and brought into court. That's it. It's not any
6 evidence of anybody's guilt, and I've already gone over
7 that with you.

8 The defendant has pled not guilty to this indictment,
9 and therefore, the burden of proving the elements of the
10 crime charged falls squarely on the State, and, of course,
11 they must prove that beyond a reasonable doubt. You'll
12 hear more about what reasonable doubt is later.

13 You're the sole judge of the facts. You're to
14 determine the facts based solely on the testimony and
15 evidence that's presented in the trial of this case. As I
16 said -- well, I'll tell you this. The same law that makes
17 you the judge of the facts makes me the judge of the law.
18 That means that you must take the law as I give it to you,
19 apply it to the facts just as you find them to be, and
20 from that you'll determine whether or not you believe the
21 State has met its burden of proof.

22 I cannot -- because you're the sole judge of the
23 facts, I cannot, as the trial judge, have an opinion on
24 the facts in this case, and I do not. If I say anything
25 or do anything that makes you think I have an opinion on

1 the facts of this case, you're to disregard that because I
2 do not and the law cannot allow me to have an opinion on
3 the facts of the case.

4 Until you begin your deliberations, you must not
5 discuss this case with anyone, even with your fellow
6 jurors. That surprises people from time to time. The
7 reason is we want you to listen to everything in this case
8 and make your mind up based solely on what you hear in
9 this case but not until you've heard all the testimony and
10 seen all the evidence in this case.

11 Now, you're going to go home this evening. As I told
12 you, you're going to have this overnight. Naturally, your
13 family is going to ask you what kind of -- you know, did
14 you get picked for a jury. That's going to happen. You
15 can tell them you got picked for a jury, but please, under
16 your juror oath, do not even mention the charge in this
17 case, because it could elicit some sort of response, and
18 we wouldn't want you to be influenced in any way by
19 anything other than just what you hear in this courtroom.

20 That also means in this day and age you can't discuss
21 the case on Facebook. I don't know. I sound silly when I
22 talk about it because I'm not exactly sure about it all,
23 but Facebook or blogs or anything like that. You can't
24 discuss anything on there about it. Of course, at the end
25 of this trial after you've rendered your verdict, you can

1 discuss it with whomever you want to or not discuss it
2 with whomever you want to. That will be your decision.

3 This is a small courthouse. You're going to run into
4 folks who have either testified or you're going to run
5 into these attorneys in the hall or anything like that.
6 These attorneys are just the best there are. They
7 wouldn't dream of discussing this case with you in any
8 way. But if someone were to try to discuss this case with
9 you, a witness or someone else, you're to identify
10 yourself as a juror immediately. If they do not quit
11 talking to you, you tell one of these fellows right here
12 in the navy blue jackets. They'll let me know, and I
13 assure you we'll take care of that situation right away.
14 I don't anticipate that, but if it were to happen, please
15 do let them know.

16 From time to time, you'll hear the attorneys say
17 something like they might need to approach on a matter of
18 law or we need to take up a matter of law outside your
19 presence. If that happens, you heard me say earlier -- I
20 don't want you to think we're hiding the ball from you or
21 anything. You heard me say earlier I can't have an
22 opinion on the facts in this case. Sometimes I have to
23 comment on the facts in ruling on a matter of law, so as
24 not to influence you in any way, we'll just discuss it
25 very briefly here or let you step to your jury

1 deliberation room for just a moment. But let me give you
2 this guarantee. If y'all are in there waiting on us,
3 we're in here working.

4 You're going to have to determine the credibility of
5 witnesses who testify in this case. Credibility simply
6 means believability. You do it like you do every day.
7 You look at how someone acts. You think about if they've
8 got any interest or bias in the outcome of this matter,
9 you see how it matches up with the other evidence that
10 you've seen in this case and testimony you've heard, and
11 from that you decide who, if anyone, you believe is
12 telling the truth in this case.

13 In just a moment you're going to hear the State
14 make what is called an opening statement. In the opening
15 statement, the attorney for the State will tell you what
16 he or she believes the evidence is going to show in this
17 case. It's just merely their contention as to what the
18 issues are and is not evidence. The defense may make a
19 statement in this case, make an opening statement in this
20 case, but is not required to do so. As I've told you
21 before, the burden is squarely on the State and they must
22 produce the testimony and evidence in this case before you
23 can find someone guilty beyond a reasonable doubt.

24 All right. Now, Mr. Collins -- Mr. Collins, will you
25 serve as foreperson of this jury?

1 JUROR NUMBER 41: I will.

2 THE COURT: Your verdict needs to be a unanimous one,
3 so nobody's opinion is more important than another. I
4 just need someone who will lead the discussions in the
5 jury deliberation room and who will sign and date the
6 verdict form at the end. And if you'll take on that task,
7 I certainly would appreciate it.

8 Is it Ms. Brazell? Am I saying that right.

9 JUROR NUMBER 23: Yes, ma'am.

10 THE COURT: You're our alternate in this case. And
11 you probably know what an alternate does, but so I've said
12 it, you'll stay with us through the balance of the trial,
13 listen to the testimony and evidence that's presented in
14 the case. If we get to deliberations and your services
15 are not needed, then I'll excuse you. But if I had to
16 remove a juror or a juror had some sort of emergency, then
17 you could just step in as though you were one of the
18 12 jurors all along. I appreciate your service as I
19 appreciate everyone's service in this case. This is an
20 important case to both sides, and so I appreciate what
21 you're doing here today and tomorrow with us.

22 Any objection to my initial instructions, from the
23 State?

24 MS. OWEN: No, Your Honor.

25 THE COURT: Any from the defense?

1 MR. KING: None from the defense, Your Honor.

2 THE COURT: All right then. We're ready to begin
3 with an opening statement.

4 MS. OWEN: Your Honor, may we approach for a moment?

5 THE COURT: Sure.

6 (WHEREUPON, a bench conference was held off the record.)

7 THE COURT: The attorneys don't think their opening
8 statements are going to be particularly lengthy, so we're
9 going to go ahead and do those, and then I'm going to let
10 you go to lunch.

11 Yes, sir?

12 OPENING STATEMENTS

13 MR. HILL: Thank you, Your Honor. May it please the
14 Court.

15 THE COURT: Yes.

16 MR. HILL: Mr. King.

17 Ladies and gentlemen of the jury, as you now know,
18 today you're here for the case of Mr. James Durham who was
19 charged with criminal sexual conduct with a minor, a
20 charge we take very seriously in this State and in this
21 county. And the reason that this type of case is so
22 important is because of how unique it is. What makes it
23 unique is that typically, we don't have a lot of insight
24 into these cases. And that's typically because they
25 happen behind closed doors and out of the public view.

1 They don't ---

2 MR. KING: Judge, I'm going to object. This is --
3 this is argument.

4 THE COURT: Overruled.

5 MR. HILL: These cases typically happen behind closed
6 doors, not out in public like maybe a fight or something
7 along those lines. And it also is because of the
8 relationships involved of the people involved in the case
9 and the nature of the crime. But today we have something
10 different because we have someone different, someone who
11 saw something, someone who knew what he saw was wrong,
12 someone who was willing to do something about it.

13 Now, the judge mentioned to you that it's our job as
14 the State to prove to you that this case happened beyond a
15 reasonable doubt. So what is proof beyond a reasonable
16 doubt? It's not proof beyond any doubt, proof beyond all
17 doubt, rather it's proof that leaves you firmly convinced
18 of the defendant's guilt. It doesn't cause you to
19 hesitate to act when finding the defendant guilty.

20 Now, it is our burden, but it's one that we gladly
21 accept, and it's not an impossible burden. In fact, it's
22 the same burden in every other criminal case in this
23 country where a jury like yourselves has found the
24 defendant guilty of a crime.

25 So what is your role in the case? The judge said

1 you're the trier of fact. You get to determine what
2 happened in this case, and everything you're going to need
3 to determine that is going to come from this witness stand
4 right here, whether that's thorough a witness's testimony
5 or whether that's through evidence you can see or hear.
6 And we ask that you do one thing when you listen to all
7 that evidence. You think about who has a dog in this
8 fight. Who has something to gain or something to lose.
9 The judge will tell you you get to determine the
10 believability or the credibility of each witness, so think
11 about that when listening to all this evidence.

12 We want to thank each and every one of you for being
13 here today mainly because y'all have sacrificed of your
14 own time to be here and to come and serve on this jury.
15 And without individuals like yourselves, our justice
16 system simply will not function. So we thank you for
17 that. We believe at the end of this case when we stand
18 back up here in closing arguments and speak with you and
19 ask you to find the defendant guilty of criminal sexual
20 conduct with a minor, you'll be able to do just that.

21 Thank you.

22 THE COURT: Thank you, Mr. Hill.

23 Mr. King?

24 MR. KING: Thank you, Judge may it please the Court.

25 THE COURT: Yes, sir.

1 MR. KING: Mr. Hill and Ms. Owen.

2 Minor says it didn't happen and science says it
3 didn't happen. Mr. Hill hasn't introduced anybody to you.

4 Minor is the alleged victim in this case. She's the
5 young Minor She was 11 when this incident
6 allegedly took place. And I say that it's an incident
7 that allegedly took place because a repairman came into
8 Mr. Durham's apartment where he was hanging out with his
9 daughter Minor in the morning. He came in unannounced
10 and thinks he saw something. That's why we're here today.

11 Minor was pulled out of the house by law
12 enforcement. She says, "I don't know what you're talking
13 about." She said, "What he's saying did not happen." She
14 told her mom after law enforcement talked to her this
15 didn't happen. She went to the hospital and she told the
16 nurse at the hospital this didn't happen.

17 Then the Department of Social Services took her into
18 custody. They gave her to her church pastor to live with
19 for a while. She told three caseworkers with the
20 Department of Social Services that this didn't happen.
21 She lived with another family for several months and told
22 them this didn't happen. She continued to say it didn't
23 happen throughout the entire phase of the investigation
24 including a special interviewing at the Julie Valentine
25 Center. She went there and had a safe conversation with

1 an interviewer, and she told the interviewer this didn't
2 happen. She's testified under oath at a prior hearing and
3 said this didn't happen. She swore to tell the truth, the
4 whole truth and nothing but the truth and said this didn't
5 happen.

6 Now, Larry King is the witness. He's the reason why
7 we're here. He's the repairman that came into the home.
8 He's going to testify to something to the effect he opened
9 the door without knocking, he thinks that he saw
10 Mr. Durham and young Ms. Land in front of him and
11 Ms. Land was performing oral sex on Mr. Durham. That's
12 what he thinks he saw right in front of him. That's what
13 he'll testify to.

14 He didn't turn around, though, and call 9-1-1 or say,
15 "Whoa, we need to get her off." What he did, and he's
16 going to tell you, he threw up his hand and walked over
17 into the bathroom and fixed the showerhead. That's what
18 he's going to testify to, that he fixed a showerhead after
19 he saw an 11-year-old girl performing oral sex on a grown
20 man. He fixed the showerhead, then went out to his car.
21 He still didn't call 9-1-1. He'll tell you he didn't call
22 9-1-1. He didn't call law enforcement at all. He called
23 his boss and started talking to his boss about it. And
24 then his boss said, "I'm going to call law enforcement.
25 Go to the police department right now." That's when he

1 took some sort of affirmative action to address what he
2 thinks he saw. And it's because he didn't see it. He
3 came in there, saw something he didn't expect and
4 convinced himself that he saw something else.

5 Now, Mr. Durham is way over here. Come here,
6 Mr. Durham. This is James Durham.

7 THE COURT: Mr. King, let him return to his seat.
8 Thank you.

9 MR. KING: Okay. All right.

10 He's the innocent James Durham, because under the
11 law, he is presumed innocent until proven guilty. So that
12 means throughout this whole trial, every time anyone looks
13 at him over there, he is the innocent Mr. Durham. I
14 encourage you to look at him throughout the trial. Watch
15 him. He's most likely going to be upset, sometimes angry,
16 sometimes, obviously, sad, and that's because he's here
17 accused of a crime, number one, that he didn't commit;
18 number two, of acts that didn't even happen to anybody in
19 this incident. We'd ask you to keep that in mind because
20 that's required of all of you under your oath.

21 Now, Mr. Hill talked about that the State has the
22 heavy burden of proving beyond a reasonable doubt that
23 Mr. Durham committed this offense. That's a heavy burden,
24 and it's particularly heavy in this case. It's going to
25 be so heavy that they won't be able to meet it because,

1 number one, **Minor** says it didn't happen; number two,
2 science says it didn't happen.

3 This is an interesting case because we've got DNA
4 evidence. They took Mr. Durham's underwear, they swabbed
5 it for DNA, and they compared all the DNA in his underwear
6 to **Minor** DNA. And the results are her DNA's not in
7 there. She'll tell you that's the same underwear he had
8 on when the repairman Larry King was there, he didn't
9 shower, he didn't wash, he did nothing like that because
10 they didn't think anything was wrong when Larry King left.
11 There was nothing to hide because nothing happened, and
12 the DNA evidence proves it didn't happen.

13 So we ask you all to pay attention carefully. Listen
14 to **Minor**. She's the one who says everything important
15 because she's the alleged victim, and she says and has
16 consistently said this didn't happen. And fortunately, we
17 have the science behind it that backs her up and says this
18 didn't happen.

19 We know the State's not going to be able to meet
20 their burden of beyond a reasonable doubt, and we ask you
21 to return a verdict of not guilty at the end of the
22 trial.

23 Thank you.

24 THE COURT: All right. Ladies and gentlemen, now
25 it's time to break for lunch. If you'll be back in your

1 jury deliberation room at 1:30, so if you'll be back at
2 1:30. It's a little before 12:00 right now. I hope you
3 have a good lunch.

4 I sound like a broken record. Don't discuss the case
5 with anyone, please.

6 Thank you.

7 (WHEREUPON, the jury exits the courtroom at 11:52 a.m.)

8 THE COURT: All right. Thank you.

9 I just want to remind everybody that -- and this
10 isn't at any particular person, but just so you know, when
11 I try a case, I like -- this is how I look at a trial, a
12 trial is that the State puts up its case, shows what it's
13 got pursuant to the rules, and the defense, if they want
14 to put up a case, they can too, okay? And then we let
15 12 people decide. We're not going to do any hijinks or
16 anything like that. No -- nothing crazy is going to
17 happen, period.

18 Now, Mr. Durham, I feel like you're an emotional
19 person ---

20 DEFENDANT DURHAM: Yes, ma'am.

21 THE COURT: --- and I know that this is an emotional
22 time for you.

23 DEFENDANT DURHAM: Yes, ma'am.

24 THE COURT: But if you become a distraction to this
25 jury, I'm going to remove you.

1 DEFENDANT DURHAM: I understand that.

2 THE COURT: Okay. All right. As long as we
3 understand that being emotional, being upset is one thing,
4 but trying to draw the attention of jurors is not -- is
5 not, okay?

6 DEFENDANT DURHAM: I understand.

7 THE COURT: All right. We're not going to do that.
8 Okay. All right. Are we ready to move to our
9 Jackson v. Denno hearing?

10 MS. OWEN: Yes, Your Honor.

11 THE COURT: All right. Go ahead.

12 MS. OWEN: I call Ross Ables.

13 Your Honor, we've got a body camera video that is
14 part of the Jackson. We've got it available. We've got
15 the computer in here if you want to watch it. If not, we
16 can do the testimony and you can let us know.

17 THE COURT: Okay. I can watch the video, I guess,
18 over lunchtime, I would think.

19 MS. OWEN: Sure.

20 THE COURT: Okay. Let's do it like that. All
21 right.

22 MR. HILL: The State would call Ross Ables.

23 THE COURT: All right.

24 THE CLERK: Place your left hand on the Bible and
25 raise your right hand.

1 WHEREUPON,

2 ROSS ABLES

3 After having been duly sworn, testified as follows:

4 THE CLERK: Have a seat, and state your name for the
5 record, please.

6 THE WITNESS: Ross Benjamin Ables.

7 DIRECT EXAMINATION

8 BY MR. HILL:

9 Q And Officer Ables, where are you employed?

10 A Currently at the Anderson County Sheriff's Office.

11 Q Okay. And about how long have you been there?

12 A Approximately three years.

13 Q Okay. And on May 14th of 2016, were you employed
14 with Clemson City?

15 A I was.

16 Q Okay. And did you have occasion to be involved in
17 this case?

18 A I was.

19 Q Okay. And did you take the statement from the
20 defendant in this case?

21 A I did.

22 Q Who was with you that day?

23 A That would be Sergeant Link, Officer Duncan, Officer
24 Bikas.

25 Q Okay. And where were you when you spoke with him?

1 A Starting out at the doorway of the apartment, and
2 then we moved into the apartment.

3 Q Okay. And you spoke to him at both locations?

4 A Correct.

5 Q You did you have your body camera on at that point in
6 time?

7 A I did.

8 Q And was it recording throughout this entire encounter
9 with Mr. Durham?

10 A Yes.

11 Q Let me show you what's been marked as State's Exhibit
12 Number 1 -- Number 2. I apologize. Officer Ables, can
13 you please tell me what that is?

14 A It's the copy of my body cam video.

15 Q And how do you know that?

16 A It's got my initials on it.

17 Q Okay. And you had an opportunity to review that?

18 A I have.

19 Q Is that why you put your initials on it?

20 A Yes.

21 Q Now, Officer Ables, when you initially made contact
22 with Mr. Durham, what did you do?

23 A I mirandized him.

24 Q Okay. And why did you mirandize him?

25 A Due to the nature of the incident and also because he

1 incriminated himself, I wanted him to be advised of his
2 rights.

3 Q Okay. And who initiated the conversation?

4 A He did.

5 Q Okay. And how did he do that?

6 A He wanted to know what was going on.

7 Q And do you -- how do you typically advise someone of
8 their Miranda rights?

9 A I have a Miranda card.

10 Q And do you carry that card with you?

11 A I do.

12 Q Do you have it on you today?

13 A I do.

14 Q And can you please read what that card says.

15 A Okay. It says, "You have the right to remain silent.
16 Anything you say can and will be used against you in a
17 court of law. You have the right to talk to a lawyer and
18 have him or her present with you while you're being
19 questioned. If you cannot afford to hire a lawyer, one
20 will be appointed to represent you before any questioning,
21 if you wish. You can decide at any time to exercise these
22 rights and not answer any questions or make any
23 statements." And then I ask, "Do you understand each of
24 these rights I've explained to you, and having these
25 rights in mind, do you wish to talk to us?"

1 Q And did he appear that he wanted to speak with you?

2 A Yes.

3 Q Okay. And about how long did you interact with
4 Mr. Durham?

5 A Approximately 20, 25 minutes.

6 Q And throughout that entire time, did he appear to
7 want y'all to speak with him?

8 A Yes, he did.

9 Q At any point in time, did anybody make any threats
10 towards him ---

11 A No.

12 Q --- about not speaking with y'all?

13 A No.

14 Q At any point in time, was he denied access to food or
15 water?

16 A No, he was not.

17 Q Okay. Was he able to talk to anyone else during that
18 time?

19 A Yes, he was.

20 Q Okay. So how was that?

21 A He spoke to I believe it was his preacher on a cell
22 phone. He made -- he had other phone calls as well.

23 Q He was allowed to use his phone.

24 A Yes.

25 Q At any point, was he -- I guess let me rephrase that.

1 Was Mr. Durham allowed to leave?

2 A No, he was not.

3 Q Okay. Was he in investigative detention?

4 A He was.

5 Q But did he still wish to speak with y'all?

6 A Yes.

7 Q Did Mr. Durham ever ask to speak with an attorney
8 during this time?

9 A No, he did not.

10 Q In fact, did y'all offer for him to speak with an
11 attorney at that time?

12 A Yes.

13 Q Now, towards the beginning of your conversation or
14 interaction with Mr. Durham, did he ask for y'all to leave
15 at any point?

16 A At one point, yes.

17 Q Okay. But you said that he was in investigative
18 detention?

19 A Correct.

20 Q After that point in time, did he say that he
21 continued to wish to speak with y'all?

22 A He did. Multiple times.

23 Q And for the majority of the incident from that point
24 on, who was initiating the conversation?

25 A He was by continuing to ask us to tell him what was

1 going on.

2 Q Did it appear to you that he was of sound body and
3 mind to be speaking with y'all?

4 A He did.

5 Q Understood everything that was going on?

6 A Yes.

7 Q Didn't appear to have a mental or physical handicap
8 that would impair his ability to understand what was going
9 on?

10 A No, he do not.

11 Q Do you believe throughout your interaction with him
12 that everything he was saying or telling y'all was
13 completely voluntary?

14 A Yes.

15 Q And you mentioned some of the other individuals in
16 the room that spoke with him that were there with you?

17 A Uh-huh.

18 Q Did Sergeant Link speak with him as well?

19 A Yes, she did.

20 Q At any point in time, did you see her threaten
21 him ---

22 A No.

23 Q --- to make a statement, that his interaction with
24 y'all seemed voluntary even when she was asking questions?

25 A Yes. It seemed voluntary.

1 MR. HILL: The State doesn't have any further
2 questions.

3 THE COURT: Thank you.

4 Mr. King?

5 MR. KING: Thank you, Judge.

6 CROSS EXAMINATION

7 BY MR. KING:

8 Q Mr. Ables, I apologize. I forgot your title.

9 A Investigator Ables.

10 Q Investigator Ables.

11 A Yes, sir.

12 Q All right. Investigator Ables, you were on scene
13 with four other officers, correct? I mean three other
14 officers, four total.

15 A Correct. Yes, sir.

16 Q All right. And when the door opened, I believe you
17 were on the right side of the door, correct?

18 A No, sir. I was on the left.

19 Q On the left side. Okay.

20 And Sergeant Link was in front of the door.

21 A Initially, it was Officer Duncan that was at the door
22 with the defendant, and then I walked up. And I was to
23 the left of Officer Duncan.

24 Q Okay. Maybe I was confused. Did Sergeant Link ask
25 to have **Minor** step out of the home?

1 A Yes. Originally, yes. From the very beginning, yes.
2 But when I made contact with him, I was to the left of
3 Officer Duncan.

4 Q So young Ms. Land was already out of the apartment
5 when you approached.

6 A Correct.

7 Q Okay. So it was you and Officer Duncan in front of
8 the doorway, correct?

9 A At the door, yes, sir.

10 Q All right. And Mr. Durham was just inside the
11 threshold of the door, correct?

12 A Yes, sir.

13 Q All right. And you mirandized him, right?

14 A Yes, sir.

15 Q You did not tell him he was under investigative
16 detention, correct?

17 A I did not, no, sir.

18 Q Okay. All right. You did not put him in handcuffs,
19 did you?

20 A No, sir.

21 Q And you did not tell him he was not free to leave,
22 correct? And that's a double negative. I apologize. Let
23 me rephrase. You did not let him leave, correct?

24 A He did not ask if he could leave.

25 Q Okay. But what he did ask you is he said, "Bring me

1 my daughter and get off my property."

2 A Not exactly.

3 Q Not exactly?

4 A No, sir.

5 Q What do you remember he said?

6 A He did say, "Bring me my daughter," and he said, "I'd
7 like for y'all to leave."

8 Q Okay. All right. I misphrased it maybe.

9 So he said, "Bring me my daughter and please leave."

10 A Yes, sir.

11 Q Okay. Did you leave at that point?

12 A No, sir, we didn't.

13 Q Did you tell him he was under investigative detention
14 at that point?

15 A I did not, no.

16 Q Okay. You did not put him in handcuffs at that
17 point.

18 A No, sir.

19 Q Now, you said you offered Mr. Durham an attorney.
20 Was that just during your Miranda card?

21 A I did, yes, during Miranda.

22 Q Okay. So you didn't say, you know, "This is serious.
23 You want an attorney now?" You didn't say that, right?

24 A Me specifically, no.

25 Q No. Did any of the other officers offer an attorney?

1 A I can't -- I don't recollect. I don't remember, to
2 be honest with you.

3 Q Okay. Now, you said Mr. Durham was of a sound mind,
4 correct?

5 A I'd say so, yes, sir.

6 Q He was very upset in the video, correct?

7 A Correct.

8 Q He was yelling, correct?

9 A Yes, sir.

10 Q At one point he was crying.

11 A (Nods head affirmatively.)

12 Q Yes?

13 A Yes, sir.

14 Q He was extremely upset, correct?

15 A Yes.

16 Q Now, at some point, you moved into his home, correct?

17 A That's correct.

18 Q All right. And that's when he moved away from the
19 threshold, correct?

20 A Not when I -- not when I moved in. He had already
21 moved into the living room area. But when Sergeant Link
22 came up, that's when, yes.

23 Q Yeah. And then you and the other officers entered
24 his home, correct?

25 A Correct. Behind Sergeant Link.

1 MR. KING: Okay. All right. No further questions.

2 I do have an argument at the appropriate time.

3 THE COURT: All right. Any other questions from the
4 State?

5 MR. HILL: Just briefly to clarify.

6 REDIRECT EXAMINATION

7 BY MR. HILL:

8 Q Once he asked you to leave, did he continue to talk
9 to you?

10 A He did.

11 Q Did he continue to ask what was going on?

12 A He did.

13 Q And are you required to do anything other than offer
14 Miranda?

15 A No, I'm not.

16 MR. HILL: No further questions.

17 THE COURT: All right. Sir, you can step down.
18 Anything else from the State?

19 MR. HILL: No, Your Honor.

20 THE COURT: Anything from the defense?

21 MR. KING: No, Your Honor.

22 THE COURT: All right. You said you've got some
23 argument?

24 MR. KING: I do, Your Honor.

25 THE COURT: Yes, sir.

1 MR. KING: If you'd like to watch the body-worn
2 camera, I highly suggest you watch it.

3 THE COURT: Then I will.

4 MR. KING: Because there is a point where he says,
5 "Bring me my daughter." I thought it was "get off my
6 property," but the officer said it was, "Please leave."
7 It was something to that effect.

8 He was not informed he was in investigative
9 detention. He was just mirandized. I think at that point
10 when he says, "I need you to leave," that's his -- has
11 invocation that he does not want to talk to law
12 enforcement. Unfortunately, instead of leaving or backing
13 up or saying, "Look, I've got to put you in investigative
14 detention," they just stood there, which was inappropriate
15 for that situation. They needed to either ---

16 THE COURT: I'm stopping your client. Go ahead.

17 MR. KING: All right. They either needed to stop or
18 clearly tell him what was going on, and they did neither.
19 So I think my objection really begins when he says, "I
20 need you to leave," whatever effect that was. So I think
21 everything after that point would be inadmissible. Their
22 behavior does not ---

23 THE COURT: Okay. Mr. Durham, stop. Okay. Okay.
24 You don't need -- I don't need any help. Mr. King is
25 making a great argument and you're being very distracting,

1 okay?

2 DEFENDANT DURHAM: Oh, I'm sorry. I apologize,
3 ma'am. I really do.

4 THE COURT: That's why I keep telling you "stop,"
5 okay?

6 DEFENDANT DURHAM: Okay. Sorry about that.

7 THE COURT: Go ahead.

8 MR. KING: So I think the Jackson v. Denno in
9 particular applies to when he says, "I need you to leave,"
10 to whatever effect and everything after that.

11 THE COURT: Okay. All right. Well, I'm going to
12 watch the video over the lunch break and -- that's okay.
13 That's okay. We're just getting to know one another.
14 That's okay. We're just getting to know one another. I'm
15 a lot more animated in pleas and things like that than I
16 am in a trial. I'm just down to business, okay?

17 Okay. Let us break until 1:30. We'll come back, and
18 I'll rule on Jackson v. Denno. All right.

19 MR. KING: Would you like to take up the issue of
20 custody and the bond?

21 THE COURT: Well, is the State going to oppose him
22 being out on any type of a trial bond?

23 MS. OWEN: We may oppose it this afternoon, but not
24 currently, Your Honor.

25 THE COURT: I'm sorry. What?

1 MS. OWEN: We may oppose it this afternoon, but not
2 currently.

3 THE COURT: Okay. Well, I'm going to leave him out
4 on a trial bond. He's shown up not only for the first
5 trial, but he's also shown up for the retrial. So I'm
6 going to give him a \$25,000 PR bond for a trial. How
7 about that? Okay. Because I think his bond is gone now
8 that the jury's been sworn.

9 MS. OWEN: Thank you, Your Honor.

10 MR. KING: Thank you, Judge.

11 THE COURT: See y'all back at 1:30.

12 (WHEREUPON, a recess is taken at 12:08 p.m.)

13 THE COURT: All right. I had an opportunity to
14 review the video in this case, and if that's all that's
15 going to be presented on either side for the Jackson v.
16 Denno hearing, then I will say, you know, I found that the
17 statements to be freely and voluntarily given after
18 Miranda warnings.

19 And, you know, I can certainly understand Mr. Durham
20 wanted the folks -- wanted the police officers to leave
21 his property. I can understand that, but, of course, they
22 couldn't just do that. So they were in the midst of
23 investigation. So -- and the statements he did make, the
24 things he did make, I guess I'm not entirely sure why
25 anybody would want to keep them out, but he -- but the

1 statements he did make were, for the most part, absolutely
2 just spontaneous, not really even -- not really even
3 elicited through questioning. So I'm going to allow this
4 to be submitted to the jury for their determination of
5 voluntariness. All right.

6 MR. HILL: Thank you, Your Honor.

7 THE COURT: Anything else we need to take up?

8 MR. KING: I'd like some clarification, because I
9 don't know. You said that there was case law that said
10 Judge Cooper's ruling stands. Where is that line drawn?

11 THE COURT: Well, I think -- and I will tell you that
12 I think the Court of Appeals has recently said you've
13 still got to offer -- even on a retrial, you've still got
14 to offer and object to things or they won't be preserved.

15 MR. KING: Okay.

16 THE COURT: So -- and -- but -- all right.

17 MR. KING: If I may.

18 THE COURT: Yeah.

19 MR. KING: Are we supposed to be telling you how
20 Judge Cooper ruled?

21 THE COURT: No.

22 MR. KING: Okay. All right.

23 THE COURT: No, no. Just based on -- based on that
24 Court of Appeals ruling, I'm going to retry this anew.
25 Y'all don't seem to want me to be bound by his ruling, so

1 I probably -- I can't imagine I'd rule much differently,
2 but still . . . All right. Very well.

3 MS. OWEN: I have one thing, Your Honor.

4 THE COURT: Sure.

5 MS. OWEN: My victim is here, and we are in a
6 situation where it's not a very cooperative situation with
7 the State.

8 THE COURT: Sure.

9 MS. OWEN: Mr. Hill and I approached her outside in
10 the hallway. It's the first time we've talked to her in a
11 few months and just explained that she is not supposed to
12 talk about the last time we were here or make statements
13 to that effect.

14 THE COURT: Uh-huh.

15 MS. OWEN: She had some questions about that, and I
16 just told her that if anything came up, we would ask about
17 prior testimony. I would ask that we have her come in
18 before the jury and you just explain that to her. I've
19 explained to her it's a Court ruling and this is per the
20 Court rules, and I just want to make sure she is very
21 clear on that.

22 THE COURT: All right.

23 MS. OWEN: Can you get Minor [REDACTED]

24 (Pause in proceedings.)

25 MS. OWEN: Your Honor, this is Minor [REDACTED]

1 THE COURT: Hi there. All right. And this is the
2 victim in the case?

3 MS. OWEN: Yes, Your Honor.

4 THE COURT: All right. Well, and you wanted me to
5 explain to her about being ---

6 MS. OWEN: Just not mentioning prior testimony.

7 THE COURT: Not mentioning prior testimony. Okay.

8 Ma'am, how old are you?

9 MS. LAND: 15.

10 THE COURT: 15. What grade are you in school?

11 MS. LAND: A sophomore.

12 THE COURT: Okay. All right. Good. Listen, I just
13 wanted to explain to you a little bit about this situation
14 and what's going to be expected of you here, okay? Number
15 one thing is for you just to testify truthfully first and
16 foremost.

17 Secondly, the other thing is, we don't want the jury
18 to know that there has been a trial in this matter before,
19 okay? Because that could make the defendant in this case,
20 your father, look kind of bad that we'd had a trial in
21 this in the past, okay? So I'm not -- I'm not going to
22 allow anybody to mention that there's already been a trial
23 in which a jury couldn't make up their mind, okay? So if
24 you get asked about anything and something comes up about
25 prior testimony, you know, and kind of prior testimony or

1 anything like that, I don't want you to talk about in the
2 last trial I testified, or this went on in the last trial
3 or anything like that, okay? We're just going to forget
4 that that was a trial, and if it has to come up at all,
5 I'm just going to say that it was just a hearing or
6 something, okay, so it doesn't look bad for him. Does
7 that make sense?

8 MS. LAND: Uh-huh.

9 THE COURT: You got any questions for me about that?

10 MS. LAND: No, ma'am.

11 THE COURT: Okay. Anything else?

12 MS. OWEN: No, Your Honor.

13 THE COURT: Anything else from the defense?

14 MR. KING: Nothing from the defense, Your Honor.

15 THE COURT: All right. Thank you.

16 MS. OWEN: **Minor** you can take a seat here, and I'll
17 call you back up when the jury comes out, okay?

18 THE COURT: All right. Are we ready to bring the
19 jury back in?

20 MR. KING: The defense is, Your Honor.

21 THE COURT: Okay. State?

22 MS. OWEN: Yes, Your Honor.

23 THE COURT: Okay.

24 (WHEREUPON, the jury entered the courtroom at 1:35 p.m.)

25 THE COURT: Good afternoon. Ladies and gentlemen,

1 we're now ready to begin with the testimony and evidence
2 in this case.

3 Yes?

4 MS. OWEN: Thank you, Your Honor. The State would
5 call Minor to the stand.

6 THE CLERK: Place your left hand on the Bible and
7 raise your right hand, please.

8 WHEREUPON,

9 Minor

10 After having been duly sworn, testified as follows:

11 THE CLERK: Have a seat, and state your name for the
12 record, please.

13 THE WITNESS: Minor

14 DIRECT EXAMINATION

15 BY MS. OWEN:

16 Q How are you today, Minor?

17 A I'm good.

18 Q Good. Minor, can you tell the jury how old you are?

19 A 15.

20 Q And your birthday?

21 A

22 Q Okay. So you'll be 16 in a few months?

23 A Yes, ma'am.

24 Q Where do you go to school?

25 A Seneca High School.

1 Q What grade are you in?

2 A I'm a sophomore.

3 Q What's your favorite class?

4 A Weightlifting.

5 Q Yeah? How come?

6 A I like to work out.

7 Q Do you play any sports?

8 A I play volleyball.

9 Q Do you like volleyball?

10 A Yes.

11 Q What position do you play?

12 A I haven't actually got my position yet.

13 Q Did y'all just have tryouts?

14 A No. We haven't had tryouts.

15 Q Okay. What position do you want to play?

16 A Any position. I like all of them.

17 Q Very good. Are you good at serving?

18 A No.

19 Q Something to work on?

20 A Yeah.

21 Q Minor what county do you live in currently?

22 A Oconee county.

23 Q Have you always lived in Oconee county?

24 A No.

25 Q Where did you used to live?

1 A Pickens county.

2 Q Okay. Did you used to live in Clemson?

3 A Yes.

4 Q Do you remember what your address was there?

5 A Old Central Road.

6 Q Okay. And when you lived at Old Central Road, is
7 that an apartment?

8 A Huh?

9 Q Did you live in an apartment there?

10 A Yeah.

11 Q And who did you live with in that apartment?

12 A My mom and my dad.

13 Q Okay. Who's your dad?

14 A James Durham sitting over there (indicating).

15 Q Okay. Is he your biological dad?

16 A No.

17 Q But he acts like your dad?

18 A Yes.

19 Q How long has Mr. Durham been in your life?

20 A Since I was like 2 and 3.

21 Q Okay. So your whole life?

22 A Yes.

23 Q And when you lived at Old Central Road, do you
24 know about how long you lived there?

25 THE COURT: Before you answer that, could I ask you

1 to scoot up a little closer to that microphone? I think
2 you've got a real soft voice. Okay.

3 THE WITNESS: I want to say two or three years.

4 BY MS. OWEN:

5 Q Okay. Do you remember where you were in school when
6 you lived there?

7 A At first I was in the elementary school, and then I
8 was in the middle school.

9 Q Okay. What elementary school was that?

10 A Clemson Elementary.

11 Q And what middle school was that?

12 A Edwards.

13 Q Edwards?

14 A (Nods head affirmatively.)

15 Q And when you lived in the apartment, it was you, your
16 mom and your dad; is that right?

17 A Yes, ma'am.

18 Q Okay. Can you tell me what you guys did for fun?

19 A We cooked together, watched TV together, you know,
20 went to the park. I don't know.

21 Q Normal stuff?

22 A Yeah.

23 Q What was your favorite thing to do with your dad?

24 A Watch TV.

25 Q Watch TV. Did y'all have a favorite show you

1 watched?

2 A No.

3 Q Just anything?

4 A Yeah.

5 Q And while you were living in that apartment, did your
6 dad work?

7 A On and off.

8 Q Okay. Did your mom work?

9 A No, ma'am.

10 Q How come?

11 A Because she's disabled.

12 Q Was she in a bad car accident?

13 A Yes, ma'am.

14 Q Is she on pain medicine for that?

15 A I'm not sure.

16 Q Do you know if she takes pain medication sometimes?

17 A I don't think she does.

18 Q Okay. And so your mom hasn't worked since you were
19 how old; do you know?

20 A No, ma'am. I don't know.

21 Q Has she ever worked?

22 A Yes.

23 Q Has she worked while you've been in high school?

24 A No, ma'am.

25 Q In middle school?

1 A No, ma'am.

2 Q Okay. So maybe in elementary school she worked a
3 little bit?

4 A Yeah.

5 Q Okay. And Minor, when you lived in that apartment,
6 can you tell me what your daily routine was like when --
7 on school days?

8 A Either I would wake myself or my mom will wake me up,
9 I would get dressed, get on the bus, go to school, come
10 home, spend time with my mom and my dad and eat dinner and
11 take a shower and go to bed.

12 Q Okay. And did anyone else ever live with y'all in
13 that apartment?

14 A No.

15 Q Okay. And on the weekends, what did you guys do?

16 A I mean, anything. Like we went to church on Sundays,
17 and then Saturdays we either stayed at home or we went
18 somewhere as a family.

19 Q Okay. And can you tell the jury, describe for them
20 what your apartment looked like when you walked in the
21 front door?

22 A There's a couch. We have a sectional, so it's like
23 -- it's like half of a rectangle, basically, and it goes
24 around the whole living room. And then to your left is
25 how you'll go around the couch to get into the full

1 bedroom and actually sit on the couch. The entertainment
2 stand, which had the TV on it, was on the left wall, and
3 then a little bit farther down would be the entrance to
4 the hallway.

5 Q Okay. And down the hallway, were there some
6 bedrooms?

7 A There's one on the left and one on the right.

8 Q Okay. And was there a bathroom in the apartment?

9 A Yes. Between the bedrooms.

10 Q Okay. So to get to the bathroom, you had to walk
11 through the living room?

12 A No. From what direction?

13 Q The front door where the couch was.

14 A Yes.

15 Q I'm going to show you what's been premarked as
16 State's Exhibits 4, 5 and 6, okay? Do you recognize
17 those?

18 A Yes.

19 Q What are they?

20 A Pictures of our living room.

21 Q From the apartment in Clemson?

22 A Yes.

23 Q Okay. Minor, you know why you're here today, right?

24 A Yes, ma'am.

25 Q Okay. On May 14th of 2016, can you tell me what you

1 remember from that morning from the time that you woke up
2 until the police came that day?

3 A I woke up, my mom was leaving, I watched -- she left,
4 I watched TV on the couch for a little bit. The
5 maintenance man came to fix the shower. He left and came
6 back with the piece to fix the shower with. And then I
7 went to go take a shower. And then while I was -- before
8 I got in the shower, the police came.

9 Q Okay. And I'll ask you a couple questions about
10 that.

11 A Okay.

12 Q When you got up, was your mom still home?

13 A Yes, ma'am.

14 Q Where was she going?

15 A To a Mother's Day tea.

16 Q Okay. And after she left -- or before she left, did
17 she tell you the maintenance man was coming?

18 A Yeah. But I wasn't really listening.

19 Q Okay. But she did let you know the maintenance man
20 was coming.

21 A Yes, ma'am.

22 Q Okay. And was your dad home with you?

23 A Yes.

24 Q Okay. And when you say you were watching TV, were
25 you and your dad sitting on the couch?

1 A Yes, ma'am.

2 Q Okay. And when the maintenance man first got there,
3 did he knock on the door?

4 A Yes.

5 Q And do you know if someone answered the door or did
6 he just come in?

7 A When he first came, I answered the door.

8 Q Okay. So you let him in.

9 A Yes.

10 Q Okay. And then he went to look at the shower. Did I
11 understand that correctly?

12 A Yes.

13 Q So he walked through the living room and went into
14 the bathroom.

15 A Yes.

16 Q And were you and your dad still on the couch?

17 A Yes.

18 Q And then after he saw what the problem was, he left
19 to go get a part.

20 A Yes.

21 Q Okay. And when he came back, did he knock the second
22 time or did he just come in?

23 A He just walked in.

24 Q Okay. And what did he do then?

25 A Turned around and went back out.

1 Q Okay. And then ---

2 MR. KING: I'm sorry. I didn't hear that one.

3 THE WITNESS: He turned around and went back out.

4 BY MS. OWEN:

5 Q And were you and your dad still sitting on the couch
6 the second time he came in?

7 A Yes.

8 Q When he -- you say he turned around and went out; is
9 that right?

10 A Yes.

11 Q What happened after that?

12 A I said, "Come in," and my dad said, "Come in," and he
13 never came in, so I went and opened the door.

14 Q Okay. And when he came in the second time, he came
15 in, he goes out, he comes back in.

16 A Uh-huh.

17 Q Did he fix the shower?

18 A Yes.

19 Q Okay. And at any point in time, did he say anything
20 to you or your dad?

21 A The first time he came.

22 Q Okay. What did he say the first time?

23 A He said, "Hi. How are y'all?" And then he told us
24 right before he left to get the shower part that he had to
25 go get a new showerhead and he would be back.

1 Q Okay. But the second time he didn't say anything?

2 A No, ma'am.

3 Q Okay. While he was gone to the store, did you try to
4 get your dad to give you anything?

5 A Yes. Coffee.

6 Q Okay. Can you tell me about that?

7 A What about it?

8 Q Did you do anything to your dad to try to get the
9 coffee?

10 A Oh, I tickled him.

11 Q Okay. When you say you tickled him, what were you
12 doing?

13 A Like tickling your stomach like how you would tickle
14 a baby.

15 Q Okay. And were you still tickling him when the
16 maintenance man came in?

17 A No, ma'am.

18 Q Okay. So you don't know what the maintenance man saw
19 when he walked in the door?

20 A No. But I know what you have told me that he saw.

21 Q Okay. But it's your testimony that he was sitting --
22 you and your dad were just sitting on the couch when he
23 walked in; is that right?

24 A Yes.

25 Q Okay. And after the maintenance man left, you said

1 you went to take a shower; is that correct?

2 A Yes, ma'am.

3 Q Okay. Can you tell me what happened between the time
4 the maintenance man left and the time you went to take a
5 shower?

6 A I sat on the couch for a second, and then I got up
7 and get -- I went to get my clothes, and then I went in
8 the bathroom.

9 Q Okay. And did you hear anyone knock on the door?

10 A Like when the police came?

11 Q Yes.

12 A Yes.

13 Q Okay. Can you tell me about that?

14 A They knocked, and I didn't think my dad heard, so I
15 went to see who it was. And then I see that it was the
16 police. And I told him, and he went and opened the door
17 and I went back to the bathroom.

18 Q Okay. How could you tell it was the police?

19 A Because there's like a window right next to the door,
20 and I just looked out the window.

21 Q Okay. Did you have blinds on the window?

22 A Yes, ma'am.

23 Q Okay. Were they closed?

24 A I'm not sure.

25 Q Okay. Are you able to tell in those pictures that

1 are taken?

2 A They look closed in the picture.

3 Q They're closed in the pictures. Okay.

4 And you saw it was the police and you told your dad;
5 is that right?

6 A Yes, ma'am.

7 Q What happened after that?

8 A I went in the bathroom and I was listening, and then
9 they told him to step out the door. So I grabbed -- I
10 can't remember if it was a towel or a blanket. I wrapped
11 it around myself and went out, and then an officer told me
12 I need to step outside.

13 Q Okay. And did you talk to anyone outside?

14 A I talked -- I attempted to talk to the cop that was
15 near me so that I could get my phone and call my mom, and
16 then I talked to this lady here. I don't really know her
17 name. And my mom.

18 Q And your mom?

19 A Yeah.

20 Q Okay. When you came outside, where were you outside
21 of your apartment?

22 A At the bottom of the stairs.

23 Q Okay. So there's stairs that lead up to your
24 apartment?

25 A Yes, ma'am.

1 Q Okay. And at the bottom of the stairs, were you
2 talking to this lady right here?

3 A No. She was at the door.

4 Q She was at the door. That was when you were talking
5 to a male officer?

6 A Yes.

7 Q Okay. And then a few minutes later, you spoke to
8 Sergeant Link?

9 A Yes, ma'am.

10 Q And did Sergeant Link explain to you why she was
11 there?

12 A Yes, ma'am.

13 Q Okay. Did you acknowledge that anything had happened
14 that day?

15 A What do you mean, acknowledge?

16 Q Did you tell her that anything had happened?

17 A Oh, no, ma'am.

18 Q And after you talked to Sergeant Link, did your mom
19 arrive?

20 A I didn't talk to Sergeant Link until my mom arrived,
21 if I recall correctly.

22 Q Okay. When your mom got there, what happened?

23 A I went to my mom, and then I think a few seconds
24 after, Sergeant Link walked around to -- around the
25 building and spoke to my mom.

1 Q Okay. And what did they decide at that point?

2 A My mom decided that it would be best to just take me
3 to the hospital to get a test done, and Sergeant Link
4 agreed, I guess.

5 Q Okay. Did Sergeant Link take you back upstairs to
6 get some stuff?

7 A Yes.

8 Q She did?

9 A Yes.

10 Q Do you remember telling her about tickling your dad
11 on the couch when you went back in your apartment?

12 A I don't remember.

13 Q I'm going to put these pictures up. I'm going to be
14 pointing at them, okay?

15 A Okay.

16 MR. KING: If you move those into evidence -- okay.

17 MS. OWEN: Do you have any objections?

18 MR. KING: I do not.

19 THE COURT: All right. So these are what?

20 MS. OWEN: Your Honor, I'm going to place State's
21 Exhibits 4, 5 and 6 into evidence.

22 THE COURT: Any objection?

23 MR. KING: No objection.

24 THE COURT: All right. They're admitted without
25 objection.

1 (WHEREUPON, State's Exhibit Numbers 4, 5 and 6 were
2 admitted into evidence.)

3 BY MS. OWEN:

4 Q Minor this is State's Exhibit 4. Is this what --
5 is this the living room at the apartment in Clemson?

6 A Yes, ma'am.

7 Q Okay. I'm going to show you -- well, point to it.
8 Is this (indicating) the front door to your apartment?

9 A Yes, ma'am.

10 Q And is this the door the maintenance man came in and
11 out of?

12 A Yes, ma'am.

13 Q And is this (indicating) the window beside the door
14 that you said you peaked out of?

15 A Yes, ma'am.

16 Q Okay. And the blinds are closed in this photo?

17 A They appear to be.

18 Q Okay. And this (indicating) is the sectional couch
19 that you were talking about, correct?

20 A Yes, ma'am.

21 Q I'm going to show you what's State's Exhibit 5.
22 That's just a closer view of the couch. There's a pointer
23 up there. Could you point with the pointer to where you
24 were sitting on the couch when the maintenance man came?

25 A Right here (indicating).

1 Q Okay. Were you sitting on the first and the second
2 time he came?

3 A Yes, ma'am.

4 Q Okay. And can you point out where your dad was
5 sitting?

6 A Right there (indicating).

7 Q Okay. And where was your dad's head?

8 A Right there (indicating).

9 Q And where was his feet?

10 A Right there (indicating).

11 Q Okay. And was that his blanket he normally used?

12 A I mean, everybody used it.

13 Q Okay. So it was just a couch blanket?

14 A Yeah.

15 Q And is this a zebra blanket?

16 A Yes, ma'am.

17 Q Okay. Is that the blanket you might have been using
18 that day?

19 A It might have been.

20 Q Okay. And when you were tickling your dad, where
21 were you sitting?

22 A I was sitting in the same place.

23 Q Can you show us with the pointer?

24 A Right here (indicating).

25 Q And you were -- you said you were tickling on his

1 stomach?

2 A Yes.

3 Q How did you do that from right there?

4 A Like I leaned across the couch. Because his head is
5 like more up here, because it's like his head was leaning
6 more like right there (indicating).

7 Q Okay. So he was sitting up?

8 A Yeah. Sort of.

9 Q Okay. And you were stretched all the way out across
10 the couch cushion?

11 A No. Like I was sitting in between like these two
12 couch cushions (indicating).

13 Q But he was on this cushion?

14 A Yes.

15 Q Okay. And could you demonstrate for us how you
16 reached across and tickled him like that?

17 A What do you mean?

18 Q Could you show us how you were tickling him? Were
19 you like this or like this (gesturing)?

20 A More like this (gesturing).

21 Q So you were leaned across the couch cushion?

22 A Yes.

23 Q But you're not sure if the maintenance man saw that
24 or not?

25 A Yes.

1 Q Okay. Minor, this is State's Exhibit 6. This is
2 the front door that he came in.

3 A Yes, ma'am.

4 Q Just a closer photo?

5 A Uh-huh.

6 Q Okay. Minor, once you talked to your mom, you got
7 your stuff out of the apartment, did you go to the
8 hospital?

9 A Yes, ma'am.

10 Q Okay. And while you were at the hospital, did you
11 deny that anything had happened to the nurse?

12 A Yes.

13 Q So were any tests taken at that time?

14 A No, ma'am.

15 Q And after you left the hospital, where did you go?

16 A I went to my pastor's house.

17 Q Who is that?

18 A Joe. Joe Holloway.

19 Q Joe Holloway?

20 A Yes.

21 Q Okay. Do you know why you were placed with him?

22 A Yes.

23 Q Why?

24 A I was told that apparently because my mom wasn't home
25 and she's the one who left me in care of my dad when she

1 was gone, that technically she was putting me in danger,
2 so they took me from her and put me either in a foster
3 home or I could go stay with a relative ---

4 Q Okay.

5 A --- or someone close.

6 Q So you went and stayed with a family friend.

7 A Yes.

8 Q Do you know if your dad moved back in with your mom
9 after that day?

10 A No.

11 Q You don't know if he did or not?

12 A No. I wasn't allowed to go home.

13 Q Did your dad move back in with your mom?

14 A I don't think so.

15 Q You don't know if he did or not?

16 A No, I don't.

17 Q So you lived with Mr. and Mrs. Holloway?

18 A Yes.

19 Q Did you want to live with Mr. and Mrs. Holloway?

20 A No.

21 Q Was it a bad situation?

22 A Like was their home environment bad?

23 Q Yes.

24 A No.

25 Q But you would rather be at home with your mom?

1 A Yes.

2 Q Minor, do you still love your dad?

3 A Yes.

4 Q Are you always going to love your dad?

5 A Of course.

6 Q And are you afraid that anything bad would happen to
7 him?

8 A Always.

9 Q Are you afraid that anything bad would happen to your
10 mom?

11 A In this instance, no.

12 Q Are you back at home now?

13 A Yes.

14 Q Has that been a good experience?

15 A Amazing.

16 Q And have you had any contact with your dad since this
17 incident?

18 A Not supposed -- I'm not supposed to, so no, ma'am.

19 Q Do you recall having a conversation with him a few
20 months ago?

21 A No.

22 Q Okay. Minor, you lived in this apartment about
23 three years; is that right?

24 A Yeah.

25 Q Okay. And did you know your neighbors very well?

1 A I knew a few of them very well.

2 Q Okay. Did you know the maintenance man?

3 A No.

4 Q Did you know his name?

5 A No.

6 Q Had you ever had a conversation with him before?

7 A Not that I can recall.

8 MS. OWEN: Thank you. I don't have anything further.

9 THE COURT: Mr. King?

10 MR. KING: Thank you, Judge.

11 CROSS EXAMINATION

12 BY MR. KING:

13 Q All right. Ms. Land, are you doing okay? Do you
14 need a break?

15 A No. I'm good.

16 Q Okay. I'm going to ask you a basic question. You
17 just swore to tell the truth, correct?

18 A Yes, sir.

19 Q Okay. Has your father sexually assaulted you?

20 A No, sir.

21 Q Did he force you to perform oral sex on you -- or on
22 him?

23 A No, sir.

24 Q Okay. Is there anything you could think of from that
25 morning back in 2016 that would make this repairman think

1 something inappropriate was going on?

2 A No.

3 Q I know you were speaking with Ms. Owen about the
4 repairmen. Had you seen him in your apartment before?

5 A I don't know if I've ever seen him in our apartment,
6 but I've seen him working on other apartments near our
7 house. But I've never like actually spoke to him or like
8 seen him up close, you know.

9 Q Okay. Do you think you were ever in the apartment at
10 the same time he was before?

11 A I mean, he could have fixed something and I was
12 asleep and I just didn't know he was there.

13 Q Okay. That makes sense.

14 Okay. I apologize. We're going to have to go
15 through some of the same stuff again, okay?

16 A That's okay.

17 Q Ms. Owen asked if Mr. Durham has been in your life
18 the whole time. Do you remember -- your -- he's been in
19 your life pretty much the whole time since you were 2 or
20 3; do you remember that?

21 A Yes.

22 Q But that's not entirely accurate because you haven't
23 seen him pretty much since 2016.

24 A Yes. Correct.

25 Q Okay. And you had to live with your pastor for a

1 while in 2016, right?

2 A Yes.

3 Q Do you remember how long you had to live with them?

4 A No. It was a while. I just don't know how long.

5 Q Yeah. Okay. Eventually, you got to move back in
6 with your mom, correct?

7 A Yes.

8 Q Okay. So let's go through who you've spoken with
9 about this, okay?

10 A Okay.

11 Q First, I take it you spoke with an officer at the
12 bottom of the stairs that was a guy, not Sergeant Link,
13 correct?

14 A Yes.

15 Q Did he ask you if you had been abused?

16 A No. He didn't really say anything.

17 Q Okay. Do you remember having a conversation in front
18 of him about whether or not your father assaulted you?

19 A I recall saying "this is crazy" because I -- they
20 wouldn't let me go in the house to call my mom. So I may
21 have said something.

22 Q Okay. But then your mom arrived and you spoke with
23 Sergeant Link, correct?

24 A Yes, sir.

25 Q And that's when you told both of them that nothing

1 had happened, correct?

2 A I had told my mom as soon as she arrived, because as
3 soon as she arrived, right after she got out of the car,
4 Sergeant Link walked around. So I had told my mom before
5 I told Sergeant Link.

6 Q What did you tell your mom before you saw Link?

7 A I told her -- she had asked me what was going on and
8 I told her that they had said that he had sexually
9 assaulted me or something in that nature and that I didn't
10 understand what was going on because I -- nothing happened
11 and I was going to get in the shower. And so then she
12 spoke to Sergeant Link.

13 Q Okay. That made me think of something. You're 15
14 now, right?

15 A Yes, sir.

16 Q Okay. Now, I apologize. It's going to be an
17 uncomfortable question. You've had sex education,
18 correct?

19 A Yes.

20 Q And so you understand what Larry King is alleging
21 happened, correct?

22 A Yes.

23 Q Okay. Do you think you understood at that time when
24 they were asking you what was going on?

25 A No.

1 Q No. Okay.

2 Now, you didn't understand exactly what they were
3 talking about, but now, looking back, you understand,
4 correct?

5 A Yes.

6 Q Now, with that understanding, has anything changed?
7 And by that, I mean do you think something happened now
8 that -- since you have new knowledge?

9 A No.

10 Q Okay. So you went to the hospital after you spoke to
11 Sergeant Link and your mom, correct?

12 A Yes.

13 Q Okay. And the nurse decided not to perform any
14 tests, correct?

15 A Yes.

16 Q No evaluation, right?

17 A Yes.

18 Q Because you told the nurse that nothing happened,
19 right?

20 A Yes.

21 Q Okay. So you were taken -- or DSS then placed you
22 with your pastor after that, right?

23 A Yes.

24 Q Did you speak with the DSS caseworker that day?

25 A No. I didn't speak with her that day.

1 Q Okay. I believe you've had three DSS caseworkers
2 over that course of time. Do you remember those?

3 A I only met two of them. I didn't meet the first one.

4 Q Okay. All right. Did the two caseworkers you met,
5 did they ask you about this incident?

6 A The second one I had, she asked me once, but I had
7 only seen her one time. I had never seen her again
8 because I think she went on leave or something. And then
9 my third one, I had talked to her about it.

10 Q Okay. And what did you tell them?

11 A I told them the same thing I've told you guys, that
12 nothing happened.

13 Q Okay. Did your pastor's family, any of them ask you
14 about what happened?

15 A No.

16 Q Okay. But you went to the Julie Valentine Center for
17 an interview, correct?

18 A Not that I -- I might have.

19 Q Okay. Do you remember going into a room with an
20 easel and a woman asking you questions after this?

21 A What is an easel?

22 Q It's the board that's usually on a tripod. It's got
23 a big piece of paper on it. She writes on it. Sometimes
24 they use it at church or school.

25 You don't remember that?

1 A No. I don't remember.

2 Q All right. I apologize. I lost my train of
3 thought.

4 Okay. Now, you also testified at a prior hearing in
5 this case, correct? Do you remember that?

6 A By a prior hearing, you mean ---

7 Q Just a prior hearing in this courtroom, correct, when
8 you were up here?

9 THE COURT: Rephrase your question.

10 BY MR. KING:

11 Q Okay. Have you previously sworn to tell the truth
12 about this case?

13 A Yes.

14 Q Okay. And after you swore to tell the truth, did you
15 -- were you asked did anything happen?

16 A Yes.

17 Q And while you were still under oath and swore to tell
18 the truth, did you say again that nothing happened?

19 A Yes.

20 Q Okay. All right. Thank you.

21 Let's talk about the time period between when the
22 repairmen left and when the police arrived, okay?

23 A Okay.

24 Q So you said the repairman didn't say anything when
25 you left, correct?

1 A Yes.

2 Q All right. Mr. Durham was still on the sofa,
3 correct?

4 A Yes.

5 Q You talked about how you were up getting ready to
6 take a shower, correct?

7 A Yes.

8 Q Was Mr. Durham still on the sofa?

9 A He had actually gotten up before me.

10 Q Okay. Where did he go?

11 A He went into their room, his and my mom's room.

12 Q Okay. Did he close the door?

13 A I don't think so.

14 Q Okay. Did he come -- was that a long period he was
15 in the bedroom?

16 A I mean, he was in the bedroom from maybe like five
17 minutes after the maintenance man. He went in there five
18 minutes after, and then he was in there until the police
19 came to the door.

20 Q Okay. So there was a while where you didn't see him;
21 is that right?

22 A I mean, I still seen him, because like I could like
23 walking throughout the house because I was getting my
24 stuff ready to take a shower.

25 Q Okay. Did it appear that he changed clothes?

1 A No.

2 Q Did he hop in the shower?

3 A No.

4 Q Do you remember if he used the restroom?

5 A No.

6 Q Did he go into the restroom?

7 A Not that I remember.

8 Q Okay. All right. Ms. Land, I understand this has
9 all been tough. Is there anything else you would like to
10 add or tell us about what -- that day?

11 A No.

12 Q Okay. That's all right. That's perfectly fine.

13 Do you feel threatened at all today?

14 A No. I don't feel threatened.

15 Q Okay. You feel safe up there, correct?

16 A Safe is a strong word.

17 Q Okay. What word would you use?

18 A I just wouldn't say "safe."

19 Q Okay. You don't feel like -- how do you feel? Let's
20 ask you that.

21 A I feel unbelievably and very disrespected. That's how
22 I feel.

23 MR. KING: No further questions.

24 THE COURT: Anything else for this witness?

25 MS. OWEN: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. OWEN:

Q Minor, you're 15 now?

A Yes.

Q When this happened, May 14, 2016, you were 11, correct?

A I think so.

Q Okay. And back then you weren't quite sure some of the terms that law enforcement was using, right?

A Actually, if I told him I didn't understand, they explained it to me.

Q Okay. But back then you hadn't had sex education as Mr. King asked; is that right?

A No. I had had sex education. I had just never paid attention to it.

Q Okay. And just briefly, when -- you said just a few minutes ago that your dad went into the bedroom and you stayed on the couch; is that right?

A Yes.

Q Okay. So you stayed on the couch until you got up to gather your things to go take a shower.

A Yes, ma'am.

Q But your dad was in the bedroom by himself.

A Yes.

MS. OWEN: No further questions. Thank you.

1 THE COURT: Anything else, Mr. King?

2 MR. KING: Nothing for Ms. Land.

3 THE COURT: Ma'am, you can step down.

4 THE WITNESS: Thank you.

5 THE COURT: Okay. All right.

6 MS. OWEN: Thank you. Your Honor, the State would
7 call Sergeant Link.

8 THE CLERK: Place your left hand on the Bible and
9 raise your right hand.

10 WHEREUPON,

11 BRENDA LINK

12 After having been duly sworn, testified as follows:

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

15 THE WITNESS: Brenda Link.

16 DIRECT EXAMINATION

17 BY MS. OWEN:

18 Q Sergeant Link, can you tell the jury a little bit
19 about yourself, where you work, how long you've been
20 there?

21 A I work for the Clemson City Police Department. I've
22 been there since 2002. Currently, I'm the sergeant over
23 the road patrol. I'm a K-9 handler. I've had different
24 kinds of training. I've had basic detective, specific
25 skills, elder abuse, narcotics, undercover investigations,

1 forensic investigation. I used to do like forensic
2 processing crime scenes and stuff like that. I don't do
3 that anymore. I've had domestic violence training, gang
4 investigations, as well as response to mental illness,
5 basic operation of child abuse investigation, as well as
6 it's called "desert snow." It's an interdiction class.
7 So quite a few things.

8 Q Okay. You may have already said this and I'm sorry
9 if I missed it. How long have you been in law
10 enforcement?

11 A Since 2002, February of 2002.

12 Q So 17 years?

13 A Yes.

14 Q Okay. And have you always been at Clemson City?

15 A Yes.

16 Q All right. So you started there and worked your way
17 up.

18 A Correct.

19 Q What do you do currently?

20 A Currently, I'm a sergeant over road patrol as well as
21 a K-9 handler.

22 Q What does that mean?

23 A I sign off on reports and stuff for other officers as
24 well as I still answer calls, and I work with a dog.

25 Q Okay. On May 14, 2016, were you working that day?

1 A I was.

2 Q Can you tell me why you are here today?

3 A I'm here today because I had a gentleman come into
4 the lobby of the police department and file a complaint.

5 Q Okay. And who was that?

6 A Larry King.

7 Q And were you informed of a sexual assault?

8 A Yes, I was.

9 Q Okay. At what address did he say that a sexual
10 assault had occurred?

11 A [REDACTED] Old Central Road, Apartment [REDACTED].

12 Q Okay. And was that in the city limits of Clemson?

13 A Yes.

14 Q Okay. And let me back you up. Was it Apartment [REDACTED] or
15 Apartment [REDACTED]?

16 A Apartment [REDACTED].

17 Q Okay. And about how long were you at the police
18 department taking a statement from him?

19 A Mr. King arrived around 12 minutes after 11:00, and
20 then we went back -- we went to the apartment at about
21 11:15.

22 Q Okay. So he arrived approximately 11-ish, and you
23 headed out that way.

24 A A little after 11:00, correct. And I got a written
25 statement and spoke to him, and then we went out to the

1 apartment about a quarter till 12:00.

2 Q Okay. So there was a time lapse between the time
3 that he got to the police station and that you arrived at
4 the apartment.

5 A Correct. A little over half an hour.

6 Q Okay. And when you arrived at the apartment, what
7 did you do?

8 A I knocked at the front door. Officer Duncan and I
9 went to the front. Officer Ross Ables and Officer Patrick
10 Bikas went to the back door to try to make contact with
11 them inside.

12 Q Okay. And I'm just going to ask you a few questions
13 about that. Officer Duncan, was he training that day?

14 A Yes.

15 Q Okay. So would he have worn a body camera?

16 A Yes.

17 Q And would he have done a report or anything or was he
18 just there following people around?

19 A He was pretty much there observing.

20 Q Okay. So his role was just to follow you.

21 A Correct.

22 Q He wasn't supposed to be interviewing or discussing.

23 A Correct.

24 Q And I'm not saying he did. I'm just clarifying that
25 that's why he was there; is that right?

1 A Correct.

2 Q And so you and Officer Duncan went to the front door.
3 Were you wearing a body camera?

4 A I was.

5 Q Can you tell me what happened with your body camera?

6 A The battery died.

7 Q About how long was it on?

8 A Not very long at all. Just a few minutes.

9 Q Okay. But what little you were able to record, you
10 recorded.

11 A Correct.

12 Q Okay. And while you were getting to the apartment,
13 you went to the front and two other officers went to the
14 back?

15 A Correct.

16 Q What happened when you got to the front door?

17 A I knocked at the front door, and it took several
18 minutes for Mr. Durham to come to the door.

19 Q Okay. And when he did come to the door, can you tell
20 me about your interaction with him?

21 A When he finally came to the door, I asked if Ms. Land
22 was there. And he said, "My wife?"

23 And I said, "No. Your stepdaughter."

24 Q Okay. Do you know what his wife's name is?

25 A Vanessa Durham.

1 Q Okay. So not Vanessa Land.

2 A Not Vanessa Land.

3 Q Okay. And was his daughter home?

4 A Yes, she was.

5 Q Was Ms. Durham home?

6 A No, she was not.

7 Q All right. Did you speak to Ms. Land?

8 A I asked her to step outside and speak with me. I let
9 her get her shoes and let her step outside to talk to me.

10 Q Okay. Do you know how old she was that day?

11 A I later found out she was 11.

12 Q Okay. And when you spoke to her, did she acknowledge
13 that anything happened?

14 A She did not.

15 Q Okay. What did you do after that?

16 A I had her step outside and we talked a little bit.
17 And then I did step into the apartment. While I was
18 speaking to her, I heard loud yelling coming from inside
19 the apartment, so I did step inside to see what was going
20 on on the inside, and I left her standing with Officer
21 Duncan.

22 Q Okay. Do you remember what she was wearing that day?

23 A She was wearing pajama pants and a like spaghetti
24 strap white T-shirt type thing.

25 Q Okay. And when you got in the apartment, what was

1 Mr. Durham's demeanor after you had spoken to Ms. Land
2 outside?

3 A Very agitated, very irate.

4 Q While you were in the apartment, was he speaking to
5 anyone?

6 A Officer Ables and Officer Bikas that were in there.

7 Q Okay. And did he make any phone calls while y'all
8 were in the apartment?

9 A He did. He called the pastor.

10 Q Okay. Was that Mr. Holloway that you were aware of?

11 A That's what I was -- I found out later, yes.

12 Q Okay. And after speaking with Ms. Land and
13 Mr. Durham, what did you decide to do?

14 A We did place Mr. Durham under arrest.

15 Q Okay. And did Ms. Durham come?

16 A Yes, she did.

17 Q And what happened then?

18 A I did speak to her on the phone prior to her getting
19 there, and she was pretty upset. And then when she got
20 there, I talked to her, and then she just kind of wasn't
21 as cooperative from that point on.

22 Q Did she take Ms. Land to the hospital?

23 A She did.

24 Q Were any exams performed that you were aware of?

25 A No, they were not.

1 Q And after Ms. Durham and Ms. Land left to go to the
2 hospital, what did you do at the scene?

3 A I left an officer at the scene to secure it, and then
4 I went and spoke with the judge. I emailed her a search
5 warrant. And then I went and met with her, and she
6 reviewed it and granted the search warrant and signed it.

7 Q Okay. What was the search warrant for?

8 A The apartment.

9 Q What was taken?

10 A Several items off of the couch like blankets and that
11 kind of stuff at that time.

12 Q Were photos also taken?

13 A Oh, yes.

14 Q And those photos that you've seen in the courtroom
15 today, were those photos that were taken that day?

16 A Yes.

17 Q Okay. When Ms. Land went with you back into the
18 apartment to get the items that she needed to take with
19 her to the hospital, did she demonstrate for you what she
20 stated maybe the maintenance man had seen?

21 A She did.

22 Q What was that?

23 A She ---

24 Q There is a pointer up there, Sergeant Link.

25 A Oh, I'm sorry.

1 Q This is State's Exhibit 5.

2 A She advised to me that her father was sitting here
3 with his feet stretched out with his head up there, and
4 that she advised to me that she was sitting in this region
5 of the couch, and that while he was sitting there, she was
6 leaned up over and she went close to the couch. She went
7 to that position, and then she was leaned up over her
8 father, where her father would have been sitting before --
9 I mean when the maintenance man walked in and that she was
10 sitting, leaning up over her father (indicating
11 throughout).

12 Q Did she say she was tickling him like that?

13 A Yes. She said she was tickling.

14 Q Okay. And she stated to you that she was on the same
15 side of the couch as him.

16 A Correct.

17 Q That's different from what she testified to today,
18 correct?

19 A Correct.

20 Q Okay. But your body camera was not able to record
21 that at the time.

22 A Correct.

23 Q And, Sergeant Link, after you took photos and y'all
24 processed the scene, was anything else taken from
25 Mr. Durham?

1 A The next day his clothing was collected, and then we
2 did take his phone and do a search warrant on his phone.

3 Q Okay. And when you collected his clothing, was that
4 also sent off for DNA testing?

5 A Yes.

6 Q Did anything relevant in this case come back?

7 A No.

8 Q Sergeant Link, about three months ago, did you
9 observe a conversation between the defendant and the
10 victim in this case?

11 A I did.

12 Q Okay. And do you recall the defendant telling the
13 victim to say anything?

14 A Yes, I did.

15 Q What did he tell her to say?

16 A He was -- he was saying that the maintenance man was
17 outside of the apartment, not inside the apartment when he
18 saw -- when he claimed he saw what happened.

19 Q Okay. And was that through a window? Do you know
20 what that was in reference to?

21 A Yeah, yeah. He was telling her that the maintenance
22 man was outside whenever he observed, like peers in the
23 window, blinds are closed. So -- but yeah. He was
24 telling her -- I'm sorry. Try to make it clear. He was
25 trying to coach her to say that the maintenance man was

1 outside of the apartment when the alleged incident
2 occurred, not that he walked through the door.

3 Q Okay. And looking through the window?

4 A Yes.

5 Q State's Exhibit 4, are the blinds closed?

6 A It appears that way.

7 Q When you got to the apartment, were the blinds
8 closed?

9 A We didn't change anything as far as window blinds or
10 anything inside the apartment.

11 Q Okay. Sergeant Link, were the victim and Mr. Durham
12 supposed to have any contact in this case?

13 A No. They were not to have contact.

14 Q And after Mr. Durham was arrested and Ms. Land was
15 placed in foster care, did Mr. Durham return to
16 Ms. Durham's home to be living with her?

17 A Yes.

18 MS. OWEN: Thank you. I have no further questions.

19 THE COURT: Mr. King?

20 MR. KING: Thank you, Judge.

21 CROSS EXAMINATION

22 BY MR. KING:

23 Q Sergeant Link, I think you just said you started your
24 investigation with the gentleman coming to the police
25 department, correct?

1 A Correct.

2 Q The chief actually called you and gave you a
3 heads-up, though, that he was coming, correct?

4 A Yes, sir. Yes, sir.

5 Q Okay. And the chief actually informed you that this
6 man's employer is the one that called and said that he's
7 coming.

8 A Correct.

9 Q Okay. So to clarify, Larry King didn't call the
10 chief, correct?

11 A Correct.

12 Q Larry King's employer called the chief, correct?

13 A Correct.

14 Q And then the chief called you, right?

15 A Correct.

16 Q Okay. Was there any 9-1-1 call ever logged from
17 Larry King?

18 A Not that I'm aware of.

19 Q Okay. Now, you said that there was a search warrant
20 for Mr. Durham's clothes and his cell phone, correct?

21 A No. I said his clothing was collected.

22 Q Okay. I apologize. So his clothing was collected at
23 the jail, correct?

24 A Correct.

25 Q And you sent it off to the forensics lab in

1 Greenville county, correct?

2 A I didn't personally do it. Our ID tech did it, yes.

3 Q What's an ID tech?

4 A The guy that is assigned to the ID unit that collects
5 the evidence.

6 Q Okay. What is ID?

7 A I'm sorry. The criminal -- the crime scene unit.

8 Q ID, investigative division? I'm not sure what that
9 acronym is.

10 A The ID unit comes out and processes stuff and try to
11 -- I'm not really sure. That's what we call it at the
12 police department. It's the crime scene unit, but we just
13 call them the ID tech.

14 Q Okay. All right. So a tech took his clothes and
15 sent them off.

16 A Correct.

17 Q Okay. I'm with you now.

18 Now, you went to the Julie Valentine Center regarding
19 this case, correct?

20 A I did.

21 Q And you observed via a camera the young Ms. Land
22 being interviewed there, correct?

23 A Correct.

24 Q Okay. And during that interview, she denied these
25 allegations, correct?

1 A She did.

2 Q She repeated the tickling story, correct?

3 A I can't remember that or not.

4 Q Okay. All right. The point is, she said it didn't
5 happen.

6 A That's correct.

7 Q Okay. Now, you went out, at some point, to the young
8 Ms. Land's new home in Seneca, correct?

9 A I did.

10 Q Okay. And you took -- well, I don't think it was
11 you. I think you were with Officer Brown?

12 A Correct. Officer Brown.

13 Q Okay. And Officer Brown took a swab of her mouth,
14 correct?

15 A Correct.

16 Q Is Officer Brown one of the ID techs?

17 A He is. He's the crime scene unit.

18 Q All right. I'm with you.

19 All right. So then Officer Brown took those swabs
20 off to Greenville.

21 A Correct.

22 Q Now, you talked about a conversation you observed
23 between Mr. Durham and the young Ms. Land. Do you
24 remember that?

25 A Yes.

1 Q Okay. That happened out in the hallway, correct?

2 A Correct.

3 Q They were both sitting out there and they ended up
4 talking, correct?

5 A No. Not exactly. She was sitting with her mom, and
6 he was leaning on the opposite side of the -- there's a
7 wall out there.

8 Q Yeah.

9 A He was leaning over there, and she was sitting down.

10 Q Okay. I'm with you.

11 Sergeant Link, the young Ms. Land has always denied
12 the allegations to you, correct?

13 A She has.

14 MR. KING: No further questions.

15 THE COURT: Any other questions for this witness?

16 REDIRECT EXAMINATION

17 BY MS. OWEN:

18 Q Sergeant Link, Mr. Durham is seated at the table over
19 to my right; is that correct?

20 A That's correct.

21 Q Okay. And he was the one that initially answered the
22 door that day.

23 A He is.

24 MS. OWEN: No further questions. Thank you.

25 THE COURT: Any questions?

1 MR. KING: Nothing further, Your Honor.

2 THE COURT: Thank you so much.

3 THE WITNESS: Thank you.

4 MR. HILL: Your Honor, may we briefly approach?

5 THE COURT: Certainly.

6 MR. KING: I couldn't hear.

7 THE COURT: He wants to approach.

8 MR. KING: Okay.

9 (WHEREUPON, a bench conference was held off the record.)

10 THE COURT: All right. Ladies and gentlemen, I don't
11 know that I mentioned this to y'all earlier, but I told
12 the attorneys, a prior commitment that I had that I cannot
13 change, I have to leave a little before 4:00 today, and so
14 I'm very, very sorry. On the positive side, it looks like
15 it's gotten sunny outside, and you'll be out with a few
16 hours of daylight maybe. But we're going to go ahead and
17 take our afternoon break now because we're going to be
18 breaking so early this afternoon. We think we're going to
19 just do one more witness today and then pick up tomorrow
20 morning. But all that being said, if you'll just step to
21 your jury deliberation room, take a quick break, we'll be
22 right back with you.

23 (WHEREUPON, the jury exits the courtroom at 2:24 p.m.)

24 THE COURT: All right. Let's be in recess for ten
25 minutes.

1 (WHEREUPON, a recess is taken at 2:24 p.m.)

2 THE COURT: All right. Anything we need to take up
3 before we bring the jury back in?

4 MR. HILL: Your Honor, just one quick thing. Our
5 next witness will be Officer Ross Ables, who I believe you
6 reviewed his body camera with the defendant's statements
7 on it.

8 THE COURT: I did.

9 MR. HILL: I was just going to offer to put kind of a
10 stipulation in and mark it as a Court's exhibit. It's got
11 about seven seconds worth of redacted periods where it
12 just mutes the video. I've shown it to Mr. King, and I
13 think he's in agreement with it. I think he'll still
14 object to the video, but ---

15 MR. KING: I object to the DVD, but I agree, if we're
16 going to have it in, to these redactions.

17 THE COURT: Okay. Very good.

18 MR. HILL: So I just ask this to be marked as a
19 Court's exhibit.

20 THE COURT: Okay.

21 (WHEREUPON, Court's Exhibit Number 3 was marked for
22 identification.)

23 THE COURT: And what does the stipulation say?

24 MR. HILL: It lists the times ---

25 THE COURT: Oh, okay. Just where it'll be.

1 MR. HILL: --- that the audio will be muted on the
2 video.

3 THE COURT: Okay.

4 MR. HILL: And that's according to the time stamp on
5 the video, not the video player.

6 THE COURT: All right.

7 MR. HILL: Nothing further from the State.

8 THE COURT: All right. Anything from the defense?

9 MR. KING: Nothing from the defense, Your Honor.

10 THE COURT: All right. If they're ready.

11 (WHEREUPON, the jury entered the courtroom at 2:44 p.m.)

12 THE COURT: Ladies and gentlemen, in just a moment I
13 anticipate that you're going to see a video, and that
14 there are just a couple of portions of the video where the
15 video goes mute for a minute. I don't want anybody to
16 speculate what was happening during that time, but I feel
17 like I should explain to you that I have decided that
18 certain things are just irrelevant, they just are not
19 relevant to this case, so I had those portions taken out
20 of the video. So I just didn't want you to think
21 anybody's hiding anything from you, but it's just -- it
22 just had nothing to do with this case.

23 All right. We're ready to proceed?

24 MR. HILL: Thank you, Your Honor. The State would
25 call Ross Ables.

1 THE CLERK: Place your left on the Bible and raise
2 your right hand, please.

3 WHEREUPON,

4 ROSS ABLES

5 After having been duly sworn, testified as follows:

6 THE CLERK: Have a seat and state your name for the
7 record, please.

8 THE WITNESS: Ross Ables.

9 DIRECT EXAMINATION

10 BY MR. HILL:

11 Q And Officer Ables, where are you currently employed?

12 A Currently employed at the Anderson County Sheriff's
13 Office.

14 Q And what's your position there?

15 A I'm a crime scene investigator for the forensics
16 division.

17 Q Okay. And about how long have you been in law
18 enforcement?

19 A Approximately six years.

20 Q Okay. And you've been in Anderson about how long?

21 A Three.

22 Q Okay. And where were you prior to working in
23 Anderson?

24 A Clemson City.

25 Q And when you were with Clemson City, what was your

1 position there?

2 A I was on the uniform patrol.

3 Q And were you employed in that capacity on May 14th of
4 2016?

5 A I was.

6 Q And were you involved in this case?

7 A I was.

8 Q Okay. And what did -- how did this case come to your
9 attention?

10 A I was advised about it through Sergeant Link.

11 Q Okay. And where did you respond?

12 A We responded to [REDACTED] Old Central Road.

13 Q And did you know what the allegations were?

14 A I did.

15 Q Who all responded with you?

16 A It was myself, Officer Link -- excuse me -- Sergeant
17 Link, Officer Bikas and Officer Duncan.

18 Q And what did you do when you were there?

19 A Mainly when I got there, I was tasked with securing
20 the back of the apartment complex.

21 Q Who was with you?

22 A It was myself and Officer Bikas.

23 Q Okay. Where was Sergeant Link?

24 A She was at the front.

25 Q Okay. Was anybody with her?

1 A Yes.

2 Q If you could, briefly tell us what happened once you
3 got to the back door.

4 A Okay. Once I was at the back of the apartment
5 complex, Officer Bikas, approximately about five minutes
6 later, signaled to me that contact had been made at the
7 front door and motioned me to come around to the front.

8 Q So you were at the back door for approximately five
9 minutes?

10 A Roughly, yes.

11 Q And how did you know contact had been made?

12 A Through Officer Bikas gave me a signal.

13 Q And what did you do at that point?

14 A I moved around to the front.

15 Q And what did you observe when you moved around to the
16 front of the apartment?

17 A I saw that Sergeant Link had taken the young girl,
18 and she was to the side of the apartment talking to her,
19 and Officer Duncan was at the front door.

20 Q What did you do from there?

21 A I moved up to the front door.

22 Q Okay. And who was standing at the front door with
23 the officer?

24 A It was Mr. Durham.

25 Q And what was Mr. Durham's demeanor at that point?

1 A Somewhat confused. A little agitated.

2 Q Okay. And did Mr. Durham say anything at that point?

3 A He asked a few questions.

4 Q Did he ask what was going on?

5 A He did.

6 Q And what did you do?

7 A I mirandized him.

8 Q All right. And at that point, was Mr. Durham aware
9 of what the allegation was?

10 A No.

11 Q Did anybody tell him what the allegation was at that
12 point?

13 A No.

14 Q And what did you -- how did you respond to
15 Mr. Durham?

16 A Well, before I spoke to him, I advised him of his
17 Miranda.

18 Q And following that, what did Mr. Durham have to say?

19 A Well, he said he would answer any questions that we
20 may have.

21 Q And did you speak with him and ask him questions?

22 A I did.

23 Q And do you remember what that question was?

24 A The first question was, was the maintenance repair
25 guy there earlier in the day.

1 Q To which he responded?

2 A He said yes, fixing the shower.

3 Q And what was your following question?

4 A I asked him if there was anything that he might have
5 seen when he was there.

6 Q And when you say "he might have seen," who were you
7 referring to?

8 A I was referring to the maintenance repair guy, if he
9 had seen anything when he was there.

10 Q And what was Mr. Durham's response to that?

11 A He responded back with a question, you know, "Might
12 have seen. What are you insinuating?" Immediately jumps
13 to, "That's sick."

14 Q And you said Mr. Durham did not know what the
15 allegation was at that point in time?

16 A No, he did not.

17 Q And did you continue to speak with Mr. Durham?

18 A I did.

19 Q About how long?

20 A Approximately 20, 25 minutes.

21 Q Okay. And where all did you speak with Mr. Durham?

22 A Started off in the doorway, then we moved into the
23 apartment.

24 Q And who all else was with you inside the apartment at
25 that time?

1 A It would have been Sergeant Link and Officer Bikas at
2 some point. He did move over, but yes.

3 Q Okay. And Ms. Land was where at this time?

4 A She was at the bottom of the steps of the porch.

5 Q And you said you had your body-worn camera on?

6 A I did.

7 Q And did you record this whole incident?

8 A I did.

9 Q I'm going to show you what's been marked as State's
10 Exhibit 2. Officer Ables, do you know what that is?

11 A Yes. It's a copy of my body-cam footage.

12 Q And how do you know that that's what that is?

13 A I had my initials on it.

14 Q And you viewed it before?

15 A I have.

16 Q And that's a fair and accurate depiction of the
17 events as they unfolded that day?

18 A Yes.

19 Q And your interaction with Mr. Durham?

20 A Yes.

21 Q While you were speaking to Mr. Durham, what was his
22 general demeanor?

23 A Very upset, very agitated.

24 Q Okay. And was he free to leave at that point in
25 time?

1 A No, he was not.

2 Q Okay. Did he continue to wish to speak with you
3 all?

4 A He did.

5 Q Did he ever ask for an attorney?

6 A He did not.

7 Q And did he continue to voluntarily speak with y'all?

8 A He did.

9 MR. HILL: Your Honor, at this point, the State would
10 ask to publish -- or move State's Exhibit Number 2 into
11 evidence.

12 THE COURT: Any objection?

13 MR. KING: Just over my prior objections.

14 THE COURT: All right. Noted. And I'll allow it.
15 All right.

16 MR. HILL: Permission to publish, Your Honor.

17 THE COURT: Please. Thank you.

18 MR. KING: Judge, just clear for the record, this is
19 the DVD we -- that the stipulation applied to.

20 THE COURT: Yes. All right. Very well, then.

21 And it's marked as what?

22 MR. HILL: State's Exhibit 2, Your Honor.

23 THE COURT: State's Exhibit 2 is admitted.

24 (WHEREUPON, State's Exhibit Number 2 was admitted into
25 evidence and was played in open court.)

1 BY MR. HILL:

2 Q Officer Ables, in that video, were you able to
3 determine -- were you able to notice the blinds?

4 A Yes.

5 Q And were they open or closed?

6 A They were closed.

7 Q And when you walk up to that front door, can you
8 explain to the jury how that door opens?

9 A As soon as you walk up to the entryway of the
10 apartment, the door opens to the right.

11 Q Okay. And about how much room is there in between
12 that doorway and that couch?

13 A Approximately three feet.

14 Q And standing in the doorway, are you able to -- do
15 you have a clear view of what's going on on that couch?

16 A Yes.

17 Q And do you recall what the -- where the defendant
18 said they were or what they did after the maintenance man
19 left for the second time?

20 A Yeah. They said that they went into the bedroom
21 because they were cold.

22 Q And did you notice anything else that the defendant
23 was saying that seemed odd to you?

24 A There was one comment made or statement made about
25 being married to his kid.

1 Q And at what point in time in that video did you tell
2 the defendant what the allegations were?

3 A I didn't.

4 Q Did you or anyone tell him or accuse him of touching
5 his kid?

6 A No, we did not.

7 MR. HILL: No further questions.

8 THE COURT: All right. Mr. King?

9 MR. KING: Thank you, Judge.

10 CROSS EXAMINATION

11 BY MR. KING:

12 Q Officer Ables ---

13 A Yes, sir.

14 Q I apologize. Investigator Ables, Mr. Durham said,
15 "Am I not supposed to make a scene," correct?

16 A Correct.

17 Q And he said, "I don't touch my kid," correct?

18 A Correct.

19 Q He said, "We're going to cooperate," right?

20 A Yes.

21 Q And he actually called three people to try and get
22 Vanessa there as quickly as possible, correct?

23 A Yes.

24 Q First his pastor, right?

25 A Correct.

1 Q And he told his pastor, "I need her here because
2 they're taking the kid away," correct?

3 A Yes.

4 Q And then he called -- I can't remember. Janine or
5 something like that. Some other woman.

6 A Okay.

7 Q Right? And said, "Get Vanessa here. Tell her to
8 leave right now," correct?

9 A Yes.

10 Q And then he got on the phone with Vanessa, right?

11 A Correct.

12 Q And he said, "Get here quickly. They're trying to
13 take **Minor** away," correct?

14 A Correct.

15 Q Said repeatedly, "They're trying to take my kid,"
16 right?

17 A Yes.

18 Q And he said they weren't -- he said, "No drinking,"
19 right, at the apartment?

20 A His statement, yes.

21 Q "No smoking"?

22 A Correct.

23 Q "Nothing going on here," right?

24 A Correct.

25 Q He even asked you, "Why would that guy say that?"

1 right?

2 A Correct.

3 Q "What's going on with that guy?" right?

4 A Correct.

5 Q Now, when you arrived, you -- I believe on the video
6 you're the officer that mirandizes Mr. Durham, correct?

7 A Yes, sir. That's correct.

8 Q Okay. And Mr. Durham's standing right in the
9 threshold of his door, correct?

10 A Correct.

11 Q All right. You do not tell him at that time that
12 he's under arrest, correct?

13 A I do not.

14 Q Did another officer tell him that?

15 A Not to my knowledge.

16 Q You do not tell Mr. Durham he is under investigative
17 detention, correct?

18 A I do not, no.

19 Q Now, Officer Duncan, I think you said, was standing
20 right next to you?

21 A Yes, yes.

22 Q And Officer Bikas showed up at some point.

23 A At one point, yes.

24 Q All right. Was Officer Bikas standing there at the
25 door with you?

1 A At which point? At some point, yes, he did walk up.
2 Correct.

3 Q All right. So at some point, there were three
4 officers standing in front of his front door, correct?

5 A At one point, yes.

6 Q Okay. Now, eventually, you ask Mr. Durham what time
7 the repair guy showed up, correct?

8 A Correct.

9 Q And you asked him what happened after he arrived,
10 correct?

11 A Correct.

12 Q And at that point on the video, he calmed down,
13 right, and told the story?

14 A Later on, yes. Correct.

15 Q Okay. And he said the maintenance man came there the
16 first time, right?

17 A That's correct.

18 Q He looked at the bathroom and the kitchen sink,
19 correct?

20 A That's correct.

21 Q Then he left to go to Ace Hardware, right?

22 A Correct.

23 Q And his story was that the repairman came back,
24 right?

25 A Correct.

1 Q And he seemed fuzzy on the details of how the
2 repairman entered. Is that what you remember?

3 A Correct.

4 Q Okay. But he said the repairman fixed the shower,
5 right?

6 A Correct.

7 Q And the repairman left, correct?

8 A Correct.

9 Q All right. You said Mr. Durham's demeanor was upset
10 and agitated, correct?

11 A That's correct.

12 Q Watching the body-worn camera, that's still your
13 opinion.

14 A That's correct.

15 Q Okay. And he pointed out, am I not supposed to make
16 a scene.

17 A Correct.

18 MR. KING: No further questions.

19 THE COURT: Anything else for this witness?

20 MR. HILL: Just one question, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. HILL:

23 Q Officer Ables, did Mr. Durham ever know while y'all
24 were there what the maintenance man said he saw?

25 A No.

1 MR. HILL: Nothing further.

2 MR. KING: No recross.

3 THE COURT: All right. You can step down.

4 THE WITNESS: Thank you.

5 MR. HILL: Your Honor, may he be excused?

6 THE COURT: Any objection to that?

7 MR. KING: No objection, Your Honor.

8 THE COURT: All right, then. Very well.

9 MS. OWEN: Your Honor, that's our last witness for
10 the day.

11 THE COURT: Okay. Ladies and gentlemen, we come to
12 our breaking point for the afternoon. I'm going to
13 release you for the remainder of the day. Please don't
14 discuss the case with anyone. And we'll start tomorrow
15 morning at 9:30, so if you'll be back in your jury
16 deliberation room at 9:30.

17 All right. I hope you have a good evening. Thank
18 you.

19 (WHEREUPON, the jury exits the courtroom at 3:23 p.m.)

20 THE COURT: All right. We think at least, based on
21 what we know right now, that we've got a jury charge
22 together, assuming there's an expert witness's testimony,
23 and assuming that the defendant testifies. Now, that
24 could all change. I don't know. I mean, I can add or
25 take away. No big deal. But Mr. Maurides has emailed

1 Mr. King, and Ms. Owens, Mr. Hill, has emailed you the
2 proposed verdict form and jury charge. So if y'all would
3 take a look at that over the evening, then hopefully, we
4 can maybe start, let's say get back together about 9:15
5 tomorrow morning if there's anything we need to take up so
6 we can really hit the ground running at 9:30.

7 MS. OWEN: Sure, Your Honor. Our first witness will
8 be -- we are going to be requesting the blind expert, and
9 I know Mr. King will plan on objecting to that.

10 THE COURT: Sure.

11 MS. OWEN: So if you want to do voir dire prior to
12 the jury, she'll be available.

13 THE COURT: Okay. So that sounds good. So we'll
14 plan to start about 9:15 tomorrow morning. All right.

15 MS. OWEN: Your Honor, is Mr. Durham going to remain
16 on bond?

17 THE COURT: Yes. I'm going to leave his trial bond
18 in place. All right. Very well.

19 MR. KING: Judge, I have a slightly modified
20 reasonable doubt charge. Would you like me to hand it up
21 or email it?

22 THE COURT: Sure. I'm probably going to use mine,
23 but I'll look at yours. I think I charge -- I know I
24 charge reasonable doubt both ways.

25 MR. KING: All it is is it -- I don't like the

1 definition of "reasonable doubt," and so I just take it
2 out. That's all it is.

3 THE COURT: All right. I'll take a look at it.

4 MR. KING: All right. Thank you.

5 THE COURT: Okay. Thank you.

6 All right. Anything else we need to take up before
7 we break?

8 MS. OWEN: No, Your Honor.

9 THE COURT: All right. We'll be in recess until
10 9:15.

11 MR. KING: Thank you, Judge.

12 THE COURT: Thank you.

13 (WHEREUPON, proceedings recessed at 3:26 p.m., to be
14 reconvened Tuesday, November 19, 2019.)
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TUESDAY, NOVEMBER 19, 2019

(WHEREUPON, proceedings reconvened at 9:25 a.m.)

THE COURT: Okay. Did y'all have a chance to look at the charge?

MR. KING: I don't have any objection, just ask for my reasonable doubt, Judge.

THE COURT: Okay. All right. Yes, ma'am?

MS. OWEN: I have no objections, Your Honor. And I would ask that you leave your reasonable doubt section in.

THE COURT: Yeah. I'm probably going to leave it as is, but I certainly will mark your request so it's preserved.

MR. KING: Thank you, Judge.

THE COURT: All right. And I cannot remember if I put a copy of the charge in the jury room in that particular charge, but I will tell you this. If both sides want me to send a written copy of the charge back to the jury, I do it. If either side does not want me to do it, I don't do it. And you don't have to decide right now. There's no reason to decide right now, because I know that's a client discussion and some things like that too.

Mr. Durham, and I just wanted to talk with you briefly. I just want to let you know that in a little

1 while, I think I'm going to have some questions for you
2 about whether or not you intend to testify in the trial of
3 this case. I know, I mean, you've got two outstanding --
4 that's okay. I'm good. You've got two outstanding
5 lawyers -- they're closed up in there? Okay. Thank you.
6 You've got two outstanding lawyers standing here with you.
7 They're going to give you great advice about that. You
8 want to listen to their advice. But ultimately, that has
9 to be your decision, okay?

10 DEFENDANT DURHAM: Yes, ma'am.

11 THE COURT: And they're going to tell you that.
12 They're going to tell you it has to be your decision, but
13 we'll take a break before you have to make that decision,
14 okay?

15 DEFENDANT DURHAM: Yes, ma'am.

16 THE COURT: Okay. All right. Good. You look a
17 little peppier today.

18 DEFENDANT DURHAM: Thank you.

19 THE COURT: I'm glad.

20 DEFENDANT DURHAM: I apologize about yesterday.

21 THE COURT: No. That's okay.

22 DEFENDANT DURHAM: I'm just really sick right now. I
23 have pneumonia and I'm really fighting it.

24 THE COURT: I was just -- it's not a problem for me.
25 I worry about it for you. That's all.

1 DEFENDANT DURHAM: Yes, ma'am.

2 THE COURT: Okay. All right. Anything else we need
3 to take up? I know you said we might have a blind expert
4 this morning.

5 MS. OWEN: Yes, Your Honor. She's here.

6 THE COURT: Okay. She's here. And I'm assuming that
7 you've got an objection to that.

8 MR. KING: I do, Your Honor.

9 THE COURT: Yes, sir.

10 MR. KING: It's my understanding they're going to be
11 offering that child sex abuse dynamics expert.

12 THE COURT: Uh-huh.

13 MR. KING: I request an in-camera hearing and then an
14 opportunity to be heard on the objection.

15 THE COURT: Has she already testified in the trial of
16 this case?

17 MS. OWEN: She has not, Your Honor. We called
18 another blind expert because the first expert was no
19 longer blind.

20 THE COURT: Okay. All right. And is the substance
21 of her testimony you believe going to be similar to the
22 substance of the previous testimony?

23 MS. OWEN: Yes, Your Honor.

24 THE COURT: All right. Let's bring her in very
25 briefly and see if we can kind of go through it. I mean,

1 I want you to have an opportunity to examine her, but
2 let's go through it kind of expeditiously, if we could.

3 Hey there. Will you raise your right hand for me?
4 WHEREUPON,

5 ERICA VAN WAGNER

6 After having been duly sworn, testified as follows:

7 THE COURT: All right. Thank you. You can have a
8 seat. Tell us your name, please.

9 THE WITNESS: Erica Van Wagner.

10 THE COURT: All right.

11 MS. OWEN: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MS. OWEN:

14 Q Ms. Van Wagner, we're going to do this as
15 expeditiously as possible. You're here today to testify
16 as a blind expert; is that your understanding?

17 A Yes.

18 Q Okay. I'm just going to go through a quick summary
19 of your qualifications and then we'll do a quick proffer,
20 okay?

21 A Sure.

22 Q Can you tell us where you're currently employed?

23 A I work for the Department of Mental Health at their
24 Greater Greenville Mental Health Center.

25 Q What do you do there?

1 A I am a therapist. I supervise our DSS program.

2 Q How long have you been there?

3 A I've worked for the Department of Mental Health since
4 June of 2000. I transferred to this Greenville Mental
5 Health Center in 2008.

6 Q Okay. So you've been with the Department of Mental
7 Health total of 19 years?

8 A Correct.

9 Q All right. Can you tell me a little bit about your
10 current duties as I think you said supervising for DSS?

11 A Correct. So I supervise a program working primarily
12 with kids involved with DSS or in foster care in a
13 treatment program. I provide individual and family
14 therapy to clients and then supervise three other
15 clinicians who also provide the same services.

16 Q Okay. And currently, what is your official title?

17 A Chief mental health counselor.

18 Q Thank you. Can you tell us a little bit about your
19 educational background?

20 A I got a bachelor's in social work from Winthrop in
21 '99, 1999, and I got my master's degree in social work
22 from the University of South Carolina in 2002.

23 Q Okay. And as part of that program, did you have to
24 do basically clinicals to become a mental health therapist
25 and work with patients supervised?

1 A I did. I also went through a licensing process where
2 I did two years of clinical supervision with another
3 social worker.

4 Q Where was that?

5 A That was in Greenville.

6 Q Greenville. Okay.

7 Do you have any specialized training?

8 A I am rostered in trauma-focused cognitive behavioral
9 therapy, which means that I went through a learning
10 collaborative and then case consultation and completed
11 multiple cases through consultation with the developers of
12 that intervention.

13 Q Okay. And do you hold any professional licenses
14 currently?

15 A I'm a licensed independent social worker with a
16 clinical practice focus, and soon will be a licensed
17 clinical supervisor for other social workers.

18 Q Okay. And do you have to get continuing education
19 credits to maintain your license?

20 A I do. I have to get 40 hours every two years. 20 of
21 those hours are directly from another social worker.

22 Q Okay. And the other 20, are they specialized
23 trainings that you decide to go to?

24 A All of them are trainings that I choose. Based on my
25 specialty working with trauma, most of the trainings that

1 I get or most of the CEUs I get are connected to sexual
2 abuse or trauma in some sort of form.

3 Q Okay. And I believe you said this, but you counsel
4 individuals, correct?

5 A I do.

6 Q And have you been doing that for the 19 years that
7 you have been involved?

8 A I have, yes.

9 Q Do you provide any professional training?

10 A I have started training in the last year or year and
11 a half other clinicians in trauma-focused cognitive
12 behavioral therapy. To date I've trained about 100 other
13 therapists in that intervention.

14 Q And do you provide weekly training? monthly training?
15 How often are you providing training currently?

16 A It's a three-day training that I have provided to
17 five different cohorts, and so it's been about three a
18 year, some in Greenville, some in Spartanburg and some in
19 Simpsonville.

20 Q Okay. And in total, that's been about 100 people
21 that you have trained ---

22 A Correct.

23 Q --- in cognitive behavioral trauma-focused therapy.

24 A TFCBT, your trauma-focused cognitive behavioral
25 therapy.

1 Q Thank you. Can you explain to us a little bit about
2 what that is?

3 A TFEBT is an evidence-based treatment for kids age 3
4 through 17 that have experienced some sort of traumatic
5 event or multiple traumatic events, and it is an
6 intervention that kind of builds on itself to process
7 those experiences of trauma.

8 Q Thank you. And that's all done in a clinical
9 setting; is that correct?

10 A Correct.

11 Q Do you use peer-reviewed journals and articles to
12 keep up with current research?

13 A I do.

14 Q And do you also participate in peer reviews?

15 A I do. We have a weekly treatment team staffing with
16 our psychiatrist where there's a group of other clinicians
17 that meet to staff cases and address, you know,
18 complications in cases as well as participating in the
19 multidisciplinary team meetings and also staffing cases
20 with the team that I supervise.

21 Q Okay. And have you testified in court previously?

22 A I have.

23 Q Do you know about how many times you've been
24 qualified as an expert?

25 A Eight times in General Sessions Court and

1 approximately 15 times in Family Court.

2 MS. OWEN: Okay. Your Honor, this would be the time
3 where I would offer her as an expert in child abuse
4 dynamics.

5 THE COURT: Okay.

6 MR. KING: I do voir dire at this time?

7 THE COURT: Yes.

8 VOIR DIRE

9 BY MR. KING:

10 Q Ms. Van Wagner, what have you been previously
11 qualified as an expert as?

12 A Expert in dynamics of child sexual abuse.

13 Q Okay. Now, you're a social worker, correct?

14 A Correct.

15 Q What's the difference between a social worker and a
16 psychiatrist or a psychologist?

17 A A psychiatrist is a medical doctor that has gone to
18 medical school. A psychologist is -- it's a different
19 discipline than social work, and it's just different
20 training. Psychologists often focus more on testing and
21 evaluation as opposed to necessarily providing that
22 clinical treatment.

23 Q So when you say that, when you say psychologists
24 focus on testing and you focus on clinical, what does that
25 mean?

1 A That means that I don't do like intelligence testing
2 or I don't necessarily do personality testing and things,
3 but that I am a clinician that provides therapy and has
4 been trained to be able to provide individual and family
5 therapy.

6 Q Okay. So you specialize in trauma focused CBT,
7 correct?

8 A Correct.

9 Q Okay. You said that was evidence-based treatment,
10 correct?

11 A Correct.

12 Q And that's evidence-based for that individual child,
13 correct?

14 A No. The intervention itself is empirically
15 supported. It's been researched and done. Clinical
16 trials were completed to show that that is an effective
17 treatment for children who have experienced trauma, and
18 I've been trained in that empirically supported
19 intervention and use that intervention with children.

20 Q Okay. When was that training you received on the
21 empirically supported data?

22 A My first time being trained in TFCBT was in 2007.

23 Q Okay. And you're saying that your continuing
24 education credits are always in those things?

25 A It's not always in TFCBT specific, but I have had

1 continuing education in doing TFCBT, say, with preschool
2 age children, the LGBTQ community. There's been different
3 kind of ways to focus that specific training. But I get
4 CEUs in other topics as well.

5 Q Okay. I apologize. I lost my train of thought.

6 Now, what you said was that TFCBT builds on itself to
7 address the child's issues.

8 A Correct.

9 Q Can you explain that?

10 A That there is a progression that you go through. It
11 begins by providing some psychoeducation to the parent,
12 psychoeducation to the child. It also involves having
13 individual sessions with the child, a parallel session
14 with the parent and then conjoint sessions with both of
15 them together.

16 After psychoeducation and assessment, then we move
17 into relaxation skills, then there is cognitive coping
18 skills, working up to the development of something called
19 a trauma narrative. That's where the kid is telling the
20 story of what happened.

21 Then there's processing of that event, and then
22 safety enhancement.

23 Q Okay. So you talked about how there needs to be
24 services for the parent and services for the child,
25 correct?

1 A TFCBT is an intervention that incorporates a
2 supportive caregiver in the work that the child is doing.
3 So yes, there is work with the parent and the child.

4 Q Okay. And that's primarily what your clinical
5 patients are involved in, correct?

6 A True. Yes.

7 MR. KING: Beg the Court's indulgence.

8 THE COURT: Yeah. And can we kind of move on to what
9 the substance of what she's -- just let her give a summary
10 of what she's going to talk about?

11 MR. KING: Okay.

12 THE COURT: No. That's good. Unless you -- I mean,
13 if you need -- have other qualification questions.

14 MR. KING: No. My concern with her qualification at
15 the moment is that she's focused on a multiperson,
16 trauma-based CBT, and that's not what we have in this
17 situation. So I'm not -- I mean, she's qualified. I just
18 don't see how it applies at the moment.

19 THE COURT: Yeah. Well, it sounds like that her
20 particular skill set includes -- would include what we're
21 talking about, you know, this dynamic, so to speak. I
22 just want to make sure she's not vouching for anybody or,
23 you know, doing anything like that. That's what I want to
24 make sure. Okay.

25 MS. OWEN: Thank you, Your Honor.

DIRECT EXAMINATION (Continued)

BY MS. OWEN:

Q Ms. Van Wagner, do you know anything about this case?

A I do not.

Q Do you know any of the parties in this case?

A I do not.

Q Do you know any of their names?

A I do not.

Q Have you read any witness statements?

A I have not.

Q Have you reviewed any incident reports?

A No.

Q Have you seen any evidence at all in this case?

A I have not.

Q Okay. Can you go into what, in your field, a disclosure means?

A A disclosure is the process of a child giving information or telling information about something that has happened to them. In this context, it would be a child giving information about abuse that has occurred.

Q Are there various types of disclosure?

A Yes.

Q Can you explain what those are, please.

A So a disclosure could be accidental or it could be a purposeful disclosure. Accidental would be maybe a child

1 engaging in a behavior or making a statement without
2 intending to make a disclosure of abuse, and maybe a
3 parent asks a follow-up question or kind of inquires about
4 the incident, the question, the statement that was made.
5 A purposeful disclosure would be one in which the child
6 intentionally communicated about the event that happened.

7 Q Okay. And are there different time frames of when
8 people disclose?

9 A Sure. You know, most often there is a delay in
10 disclosure, you know. There are sometimes where kids
11 would report; however, that delay could be weeks or months
12 or years even.

13 Q Okay. And what are some factors that play a role in
14 a potential delayed disclosure?

15 A Commonly, kind of the experience of the child. So if
16 the child is in an environment where they don't -- there's
17 high conflict or it's unstable or there's concern about
18 what the impact of that disclosure may be, sometimes kids,
19 based on age, don't have information about the necessity
20 of making a disclosure or understanding kind of what is
21 going on with them to know to be able to make that
22 disclosure. Their relationship with their caregiver,
23 their supportive caregiver or the non-offending caregiver
24 makes a difference in a child's ability or willingness to
25 make a disclosure.

1 Q Okay. And could there also be other factors such as
2 guilt or shame that play a role in disclosing abuse?

3 A Sure. So, you know, how that child is experiencing
4 that, the symptoms that they are having as a result of
5 being abused certainly would play a role. If someone
6 feels ashamed of the abuse that's taking place, that would
7 make them more likely to delay in making that disclosure.

8 Q Okay. And are there other circumstances where a
9 child just denies the abuse?

10 A Sure. Similar to the delay, but the dynamics that
11 play, maybe guilt and shame would be a reason to deny
12 that. What other people may think about what is going on
13 would cause that kid to deny that. Maybe they are
14 fearful. Maybe a threat has been made. And if they are
15 reporting that, that they fear their life might be in
16 danger or someone else's life might be in danger.

17 Q Okay. In your clinical practice, have you ever seen
18 a denial that went for years?

19 A Yes.

20 Q Could you tell us about that?

21 A I had an experience where, you know, someone did not
22 report for quite a while because of the dynamics within
23 the family. They were afraid of going into foster care,
24 there was fear of the non-offending caregiver's reaction
25 to that, and so it was something that had not been

1 reported. And even upon kind of directly being asked,
2 that was not something that was disclosed at the time.

3 Q Okay. And over your 19 years in clinical practice,
4 have you had multiple cases in your own experience where
5 you've seen these disclosure processes play out in regards
6 to either someone delaying a report or discussing the
7 factors behind delaying a report and treatment?

8 A It is most common that that process -- you know, in
9 most of the cases that I work with, there is that process
10 plays out, for sure.

11 Q Okay. Erica, now I'm going to ask you a little bit
12 about the dynamics surrounding potential disclosures in a
13 home. What could happen if there is a perpetrator living
14 in a home with the victim?

15 A Well, oftentimes, that would decrease the likelihood
16 of a child making the disclosure. If they're still -- if
17 there is still access -- the perpetrator still has access
18 to the victim, then that would likely increase that
19 child's fear about telling because being unsure,
20 unpredictable about what may play out, or maybe the
21 perpetrator is influential in the family or has -- is
22 contributing financially and is a part of what makes that
23 family more stable. And so -- or the relationship
24 between, say, the non-offending caregiver and the
25 offender, if it's in the family, that the victim may not

1 want to, say, hurt the non-offending caregiver or impact
2 that relationship, and so there are dynamics that would
3 decrease the likelihood of a disclosure.

4 Q Okay. So some of the factors you just said are if
5 they may live in the home, if they may be in a
6 relationship with the non-offending caregiver, and if they
7 may be supporting financially the family.

8 A Correct.

9 Q Is that correct?

10 What about if the perpetrator is a guardian to the
11 child?

12 A That can also play a role in that, you know,
13 oftentimes, perpetrators and their victims have a
14 relationship outside of just the sexual abuse that's
15 taking place, and so maybe there is a positive nature to
16 that relationship but this not so-good thing that's
17 happening. And so that may also influence whether or not
18 a child is able to make that disclosure or not.

19 Q In your experience and based on the research, is it
20 unusual for a child to still love the person that abuses
21 them?

22 A That is not unusual. Oftentimes, it's very
23 conflictual. They may love the person but not love the
24 behavior.

25 Q Are other factors such as the fear of being taken or

1 placed in another home, do those contribute to a
2 disclosure?

3 A Sure. You know, kids that have not experienced these
4 challenges aren't sure what to expect when they are
5 experiencing these challenges, so they may have all kinds
6 of fears about how this will affect them in addition to
7 how it's going to affect the family. Sometimes they're
8 even told if you tell about this abuse, then you might go
9 to foster care, or, you know, that -- that there's been a
10 threat made about that or information that has been given
11 about that that would cause them -- their fear to be
12 bigger.

13 Q And if the perpetrator lives in the home and is a
14 primary person in their life, would they have an
15 opportunity to normalize sexual activity?

16 A Yeah. That's part of a process of being able to gain
17 access to a victim and be able to maintain the secrecy
18 that is involved with child sexual abuse. And part of
19 that might be a normalization of a behavior, you know.
20 Touching that kind of starts out pretty simplistic and
21 then advances sexually over time, that would be normalized
22 because it's just kind of something that has been
23 happening.

24 Q Okay. And Erica, you also mentioned non-offending
25 caregivers. Can you explain what that means?

1 A So the non-offending caregiver is essentially the
2 caregiver or a parent or a person that's providing care
3 for the child that is not the one that's engaging in the
4 abusive behavior.

5 Q How can a non-offending caregiver impact a disclosure
6 made by a child?

7 A Well, if a non-offending caregiver is supportive and
8 has a good relationship, then it may enhance a disclosure
9 or facilitate that disclosure. If there is a conflictual
10 relationship or they're not supportive or non-believing,
11 then that would negatively impact a child's ability to
12 make that disclosure or tell about what's happening.

13 Q Okay. And if a non-offending caregiver isn't
14 believing, could that impact a child's decision on
15 disclosure at all?

16 A Sure. If their primary caregiver is someone that is
17 not supporting their statements or non-believing, then it
18 makes them significantly less likely to kind of progress
19 in the stages of disclosure.

20 Q And fear of hurting the non-offending caregiver could
21 also be a factor in whether a child discloses; is that
22 correct?

23 A Yes. That if hurting the caregiver, that would make
24 them sad or upset, or if it may impact the relationship a
25 non-offending caregiver has with the perpetrator, those

1 are reasons that might decrease the likelihood of a child
2 reporting or even denying that something is happening out
3 of protection of the family.

4 THE COURT: I think we've got the gist of what her
5 testimony would be.

6 Do you have anything?

7 MR. KING: I have no cross on this.

8 THE COURT: Okay.

9 MR. KING: I do have an argument at the appropriate
10 time.

11 THE COURT: Okay. Ma'am, you can step down. Thank
12 you.

13 Yes, sir.

14 MR. KING: Okay. Judge, so the in-camera hearing is
15 to determine if she's vouching for someone else's
16 credibility, but the Court must also -- is the gatekeeper
17 of this evidence. And, of course, the Court must always,
18 as gatekeeper, unlock the relevant lock.

19 THE COURT: Sure.

20 MR. KING: Then if it's relevant, is it more
21 prejudicial versus probative.

22 THE COURT: Right.

23 MR. KING: Right? That's the 403.

24 THE COURT: Right.

25 MR. KING: And then we've got the three steps in for

1 an expert in 702 of beyond the normal understanding of the
2 jury, whether it's a specialized science or expertise
3 based on training or experience and then, three, whether
4 or not that training or experience, expertise, science,
5 whatever is reliable.

6 THE COURT: Right.

7 MR. KING: Right.

8 So first for the credibility issue, the young
9 Ms. Land said this didn't happen, right?

10 THE COURT: Uh-huh.

11 MR. KING: This blind expert is to essentially take
12 the stand and suggest that, based on her behavior, she was
13 lying to the jury yesterday. That's the only possible
14 explanation that that could come out of it. Normally,
15 rape trauma evidence isn't admissible, especially with
16 adolescents or juveniles because adolescents and juveniles
17 have odd behaviors that is outside the normal
18 understanding of the jury.

19 THE COURT: I got you.

20 MR. KING: And that comes down to what I believe the
21 Court in Weaverling described as a strange demeanor.

22 THE COURT: I got you.

23 MR. KING: Yeah. As a strange demeanor.

24 So she's here to explain that strange demeanor, and
25 the only thing she could be doing is saying that the young

1 Ms. Land was lying yesterday, okay?

2 Now, let's talk about whether or not her testimony is
3 relevant.

4 THE COURT: Okay.

5 MR. KING: She talked about two types of disclosure:
6 an accidental or a purposeful disclosure. An accidental
7 disclosure is not someone walking in and seeing this
8 happen. An accidental disclosures is a behavior or
9 statement of a child that is unintentional.

10 THE COURT: Okay.

11 MR. KING: A purposeful disclosure is when the child
12 intentionally communicates the abuse. Neither of those
13 happened here, so that doesn't apply and therefore is not
14 relevant.

15 She then talked about the timeframe of the delay.
16 And yes, it could be weeks, months or years, but we don't
17 have a delayed disclosure at all. We don't have a
18 disclosure; therefore, her timeframe discussion is not
19 relevant.

20 She then starts talking about the process and the
21 factors that would be considered in the delay. A
22 high-conflict home, an unstable home, information about
23 the -- that's necessary to explain what's going on, just a
24 lack of understanding about what happened, the
25 relationships in the home, and then the symptoms of guilt

1 and shame, the symptoms of the abuse. That's what she
2 talked about. Again, we don't have any of those here
3 because young Ms. Land was taken out of the home, she was
4 already in foster care. She still denied this happened.
5 She was not under any sort of pressure to say one way or
6 another. She stuck to her story and been consistent.

7 Now, Ms. Van Wagner then talked about denials of
8 abuse and went back to the guilt and shame discussion and
9 said that the symptoms of the abuse lead to guilt and
10 shame. And again, there was no -- there's no foundation
11 for symptoms of this abuse because the abuse didn't
12 happen. She said it didn't happen. There was no evidence
13 that was brought out yesterday of guilt or shame.

14 Instead, what she said she felt was she was unbelieved and
15 disrespected by being here yesterday. She wasn't fearful
16 because he's been out of her life for years. There's only
17 been one incident where they were out in this courthouse
18 and saw each other. That's the only possible time when
19 the State could even claim she was being fearful, and she
20 was whisked away immediately by Sergeant Link.

21 Now, they talk about -- she then talks about it's the
22 denied abuse that's based on family dynamics and the
23 uncertainty of being put in foster care and other people's
24 reactions. All of that has gone by. That is way over the
25 waterfall and down the stream. That uncertainty is gone.

1 Young Ms. Land took the stand and stuck to her story;
2 therefore that part is not relevant.

3 We get into the dynamics of abuse with the
4 perpetrator at home, which testimony said was not part of
5 it.

6 We get into normalizing abuse. There's no evidence
7 of history of abuse or a pattern of abuse. It's one
8 incident.

9 And then it goes into the non-offending caregiver,
10 and there has been zero testimony about her mother, who's
11 the non-offending caregiver. So that's all irrelevant in
12 this case.

13 So you can't get over the basic lock. Let's say you
14 get over the basic lock. We still have to decide if it's
15 an unfair -- it's a degree of unfair prejudice is ---

16 THE COURT: 403.

17 MR. KING: I can never say that right.

18 THE COURT: Just say 403.

19 MR. KING: 403. All right. We've got that lock
20 because it's not just an unfair prejudice, it's a waste of
21 time because it's not relevant.

22 All right. Now, the last part, the last three locks
23 of 702, we have to determine that it's beyond the normal
24 understanding of the jury.

25 THE COURT: Okay.

1 MR. KING: Here she's denied it's happened. There's
2 no -- there's nothing else for the jury to even consider.
3 There's no basis.

4 THE COURT: Okay.

5 MR. KING: Then it's reliable science or expertise
6 based on training and experience. She's worked with kids,
7 but she's worked with kids in a setting where the parent
8 or guardian, a foster home and possibly DJJ or DSS, all
9 these people are involved to try and help the kid.

10 THE COURT: Understood.

11 MR. KING: That's not this situation.

12 THE COURT: Okay.

13 MR. KING: There's been no basis or foundation laid
14 for this situation.

15 And then finally, we've got to say that it's a
16 reliable science. At this point, she says that it's -- I
17 think the word she used, she felt that it was credible. I
18 think you've got the other five locks you can't get
19 through. I'm kind of worn out. I don't know what the
20 reliable argument is at this point. But it's essentially
21 a feel-good based on what everybody says, and at this
22 point, she -- she said it hasn't happened; therefore,
23 there's no foundation for any of this.

24 THE COURT: Okay. All right. Thank you.

25 I'm going to allow her testimony. I'm not going to

1 allow her to talk about the specific example from her
2 practice. There was a specific example in there, and I'm
3 uncomfortable with that. And I want to limit her
4 testimony to, you know, we went into a lot into delayed
5 disclosure. There's no evidence here that, you know, the
6 victim in this case or the stepdaughter is going to make
7 any kind of disclosure, and so so far as denying abuse,
8 and I don't mind her explaining briefly about delayed
9 disclosure, but we went into a lot to that, and there's
10 just no evidence of that here at this point. So I'm
11 going allow her testimony but with those sort of
12 parameters.

13 Yes, sir?

14 MR. KING: What about the non-offending caregiver,
15 that -- and there's no discussion about the mother?

16 THE COURT: You know, I don't -- I don't know. I
17 think we're speculating if we're talking about a
18 non-offending caregiver at that point. I have not heard.

19 MS. OWEN: Well, Your Honor, I would disagree with
20 what Mr. King said yesterday. Sergeant Link testified
21 that when mom got on scene, she was not cooperative at
22 all, and then Mr. Durham moved back in the home when the
23 victim went to live in foster care. And the victim
24 herself said that she believed that she was placed in
25 foster care because of the fact that her mom left her in

1 that situation. But Sergeant Link also testified
2 regarding the fact that mom let him move back in.

3 THE COURT: All right. I'll allow that very briefly,
4 but we went into it too deeply. But I'm going to allow it
5 very briefly. All right.

6 MS. OWEN: May I have just a moment, Judge, to make
7 sure we understand that?

8 THE COURT: Yeah.

9 MS. OWEN: Thanks.

10 (Pause in proceedings.)

11 THE COURT: All right. Are we ready to bring the
12 jury back in?

13 MS. OWEN: Yes, Your Honor.

14 MR. KING: Yes, Your Honor.

15 THE COURT: All right.

16 (WHEREUPON, the jury entered the courtroom at 9:59 a.m.)

17 THE COURT: Good morning. Ladies and gentlemen, I am
18 so sorry to have kept you waiting. My absolute pet peeve
19 in this world is to keep a jury waiting. We came upon a
20 legal matter that we couldn't have anticipated and we had
21 to deal with it this morning before you came in.
22 Otherwise, we would have had you come in for a little
23 while and then leave immediately, so I really appreciate
24 your patience with us.

25 All right. Ms. Owen?

1 MS. OWEN: Thank you, Your Honor. The State would
2 call Erica Van Wagner to the stand.

3 THE COURT: Okay.

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

7 ERICA VAN WAGNER

8 After having been duly sworn, testified as follows:

9 THE CLERK: Have a seat and state your name for the
10 record, please.

11 THE WITNESS: Erica Van Wagner.

12 DIRECT EXAMINATION

13 BY MS. OWEN:

14 Q How are you today, Ms. Van Wagner?

15 A Good. How are you?

16 Q Good.

17 Can you tell the jury a little bit about yourself,
18 where you work, what you do?

19 A I work for the Department of Mental Health. I am a
20 therapist, that I've been employed there for 19 years.
21 I've worked at the Greenville Mental Health Center since
22 2008.

23 Q What do you do there?

24 A I supervise our DSS program, which is three
25 clinicians plus myself that work with children and

1 adolescents involved in services with the Department of
2 Social Services. Generally, that means they have a higher
3 incident of trauma, and so that is something I specialize
4 in.

5 Q And can you tell the jury what your official title
6 is?

7 A I am chief mental health counselor at Greenville
8 Mental Health.

9 Q Okay. And do you provide services yourself?

10 A I do.

11 Q And are those individual, family or collaborative
12 efforts?

13 A I provide individual therapy, family therapy with
14 biological families, family therapy with foster families,
15 sometimes group therapy.

16 Q Can you tell the jury about your education?

17 A I have a bachelor's degree in social work that I got
18 in 1999 from Winthrop University as well as a master's
19 degree in social work that I received from USC in 2002.

20 Q Do you have any specialized training?

21 A I am rostered in an intervention called TFCBT, or
22 trauma-focused cognitive behavior therapy, which is an
23 empirically supported or researched intervention for kids
24 age 3 through 17 that have experienced some sort of
25 traumatic event that is considered an evidence-based

1 treatment for trauma.

2 Q Okay. And do you get continuing education credits?

3 A I do. As part of my license in the State of South
4 Carolina, I'm required to get a certain number of
5 continuing education hours. It's 40 every two years.

6 Q And you mentioned your license. What are you
7 licensed in?

8 A I'm a licensed independent social worker with a
9 clinical practice focus.

10 Q Okay. And you've been doing this for 19 years?

11 A Correct.

12 Q Do you provide any training yourself?

13 A I train other clinicians in TFEBT as well as in
14 mandated reporting and trauma informed care.

15 Q Ms. Van Wagner, do you participate in peer reviews?

16 A I do. Weekly I have a treatment team meeting with a
17 psychiatrist where we -- myself and the psychiatrist and a
18 team of other therapists all meet to discuss cases and
19 staff those cases. I'm part of a multidisciplinary team
20 as well where there's doctors and other professionals that
21 meet to staff cases as well as providing supervision and
22 staffing with the clinicians I supervise.

23 Q Okay. Are your opinions and any testimony you're
24 going to give today supported by peer-reviewed articles
25 and journals?

1 A Yes.

2 Q And, Ms. Van Wagner, can you tell me, have you
3 previously been qualified as an expert?

4 A I have.

5 Q How many times?

6 A Eight times in General Sessions Court as well as
7 approximately 15 times in Family Court.

8 Q Okay. Do you know why you're here today?

9 A I am here to testify to dynamics of child sexual
10 abuse.

11 Q Okay. Have you met anyone in this case?

12 A I have not.

13 Q Have you read any incident reports?

14 A I have not.

15 Q Have you read any statements?

16 A No, ma'am.

17 Q Do you know anyone's name in this case?

18 A I do not.

19 Q Are you being paid to be here today?

20 A I am not.

21 MS. OWEN: Your honor, at this time, I'd offer
22 Mrs. Van Wager as an expert in child sex abuse dynamics.

23 MR. KING: Judge, brief voir dire?

24 THE COURT: Certainly.

25 MR. KING: Thank you, Judge.

VOIR DIRE

BY MR. KING:

Q Ms. Van Wagner, you said your clinical practice focuses on trauma-focused CBT, correct?

A I have a license that is clinical practice focused, and the interventions that I provide are trauma focused, are based on the client needs. But I specialize in trauma, which means most of the clients I see receive some sort of trauma intervention.

Q Okay. How much of your practice revolves around this trauma intervention?

A About 100 percent.

Q Okay. And tell me more about this trauma-based practice.

A The TFCBT?

Q Uh-huh.

A Okay. So TFCBT is -- it's empirically supported. There's been clinical trials. There's been research that has gone in to determine if this is an effective treatment for children that have experienced trauma, and the research supports that it is. And so it's an intervention where we meet with the child and the family, the supportive caregivers, and provide education. We teach information about relaxation skills, and we work to be able to process their experience of trauma and then

1 provide safety-enhancement information at the end of
2 treatment.

3 Q Okay. So you need family members to be part of this
4 treatment.

5 A It's best done when you have a supportive family
6 member, but it doesn't require a caregiver to be a part of
7 that treatment. It is something that can be done with an
8 individual if they don't have a supportive caregiver to
9 participate.

10 Q Now, you said you're the supervisor for the DSS
11 program, correct?

12 A Correct.

13 Q All right. And so if the actual parent is not
14 supportive, do you bring in a guardian or someone else?

15 A Ideally, we would bring in a supportive caregiver.
16 But there are also ways to include the biological parent
17 even if they're not the custodial parent, ideally,
18 generally, with DSS reunification as part of a plan. And
19 if so, we would want that potential caregiver to have the
20 same sort of information or be able to support that victim
21 in the same sort of way.

22 MR. KING: No further questions, and renew my former
23 objection, Judge.

24 THE COURT: All right. Ladies and gentlemen,
25 normally, an expert -- excuse me -- normally, a witness

1 cannot testify to opinions. They can only testify as to
2 things they've actually seen or heard, something like
3 that. An exception for that exists for witnesses we call
4 expert witnesses. Those are witnesses who, by some
5 training or education, have developed an expertise in some
6 area and may be qualified to give their opinion and the
7 reasons for those opinion in court -- those opinions in
8 court. This witness is qualified in the area of child sex
9 abuse dynamics. She can give her opinion in that area and
10 the reasons for it. You can use that opinion any way you
11 see fit.

12 MS. OWEN: Thank you, Your Honor.

13 DIRECT EXAMINATION (Continued)

14 BY MS. OWEN:

15 Q Ms. Van Wagner, can you please explain to the jury in
16 your area of work what a disclosure is.

17 A A disclosure is a person making a statement or
18 communicating about abuse that has occurred.

19 Q Okay. Are there different types of disclosures?

20 A Yeah.

21 Q What are those?

22 A There are like accidental disclosures. Examples of
23 accidental disclosures would be maybe a child makes a
24 statement that is outside of their developmental level or
25 is playing or, you know, engages in a behavior where it

1 creates a concern with a parent. An accidental disclosure
2 could be a parent witnessing something and then following
3 up on that by asking a question to get more information,
4 and therefore, the child is kind of accidentally now
5 talking about versus a purposeful disclosure which would
6 be more where a person is intentionally giving information
7 or details about what has occurred.

8 Q Okay. And is there also a term called "delayed
9 disclosure"?

10 A Yes.

11 Q What does that mean?

12 A Delayed disclosure would be when someone doesn't
13 report about abuse immediately or right away. They may
14 delay in a couple of days or weeks or months or even
15 years. It's most common when children are used that there
16 is a delay in them talking about what happened.

17 Q Okay. And is there also a term called "denial"?

18 A Yes.

19 Q What is that?

20 A Denial is when maybe someone is directly asked about
21 a history of abuse and they don't make a report of what
22 happened.

23 Q Okay. Can you tell the jury what are some factors
24 that influence disclosure?

25 A Factors that influence disclosure may be the age of

1 the victim, the gender of the victim, it could be the
2 relationship that they have with the perpetrator, the
3 relationship that they have with the non-offending
4 caregiver or the person that is taking care of them that
5 is not the one that is doing the abuse. Even the
6 relationship between the offender and their caregiver
7 could influence whether or not a child makes a disclosure
8 of abuse.

9 Q Okay. Are factors such as guilt or shame, do those
10 play a role in whether somebody might tell?

11 A Sure. If someone is feeling ashamed or guilty about
12 what happened, that would influence whether or not they
13 would want others to know about what happened or be able
14 to talk about their experience of what happened.

15 Q Okay. And is there also a factor of fear of
16 disbelief or punishment that can come into play?

17 A Yes. So, you know, child sexual abuse is something
18 that could often involve threats that are made by the
19 offender or being told to keep it a secret are ways in
20 which the offender helps to maintain the secrecy. And so
21 if, say, maybe a kid believes they would end up going into
22 foster care or, you know, we may be homeless or our family
23 is going to be split apart, that those are all things that
24 would influence whether or not a kid felt free to discuss
25 what's going on in their life.

1 Q Okay. And Ms. Van Wagner, if the perpetrator lives
2 in the home and is a provider and a stable part of their
3 life, would that influence whether they tell or not?

4 A Sure. Kind of along the same lines, if there is this
5 disbelief that that stability may be impacted or that the
6 non-offending caregiver would be negatively impacted, say
7 their relationship may not work out or, you know, they
8 would be upset about hearing about that abuse, then that
9 would influence the child not to disclose.

10 Q Ms. Van Wagner, is it common or uncommon that a child
11 would have a relationship with the offender?

12 A It's common. And, you know, if a -- for example, if
13 a stranger were to sexually assault a child, they would be
14 more likely to tell about that versus someone that does
15 have a relationship. And so in order to kind of maintain
16 this type of behavior, there most often is a good
17 relationship or at least a relationship with the offender.
18 The offender has to establish a trusting relationship with
19 the victim, they have to establish a trusting relationship
20 with the caregiver of that victim in order to carry out
21 the actions of abuse, and so most often, the victim does
22 have a relationship with that offender.

23 Q Would it be normal for them to still love the
24 offender?

25 A Absolutely. They may love the offender but not love

1 the behavior that's taking place, that they may still
2 maintain a positive relationship with that offender
3 despite the abuse that's taking place.

4 Q And if the offender lives in the home with the
5 victim, could normalization of sexual activity take place?

6 A Sure. You know, things -- you know, yes. That
7 behaviors graduate, you know. They may start out pretty
8 simplistic, and then sexualized behaviors increase over
9 time. And those are things that are often normalized
10 within the family setting. Hugging and touching or, you
11 know, sitting close to each other, that those things --
12 the comfort level of those things increase over time can
13 become normalized.

14 Q Okay. And you referenced earlier a term
15 "non-offending caregiver." Can you explain to the jury
16 what that means?

17 A The non-offending caregiver is the person providing
18 care for the child that is not the one that's doing the
19 offensive behavior. You know, oftentimes, in a family,
20 there may be those two caregivers, and the offender is
21 the one that's carrying out the abuse and the
22 non-offending caregiver would be the one that is not doing
23 the abuse.

24 Q And if the non-offending caregiver and the offender
25 are in a relationship, can that affect a child's

1 disclosure?

2 A That generally negatively impacts whether a child
3 will make a disclosure. The more impact their disclosure
4 has, the less likely they are to make that disclosure. If
5 that's going to cause that relationship to split up, then
6 that would be excess pressure on the child. If the
7 non-offending caregiver is not supportive or doesn't
8 encourage that disclosure, then it would oftentimes even
9 lead to a denial.

10 MS. OWEN: No further questions, Your Honor.

11 THE COURT: All right. Mr. King, any questions for
12 this witness?

13 MR. KING: We do not, Your Honor.

14 THE COURT: All right. Ma'am, you can step down.

15 Ms. Owens?

16 MS. OWEN: Thank you, Your Honor. The State would
17 call Larry King.

18 THE CLERK: Place your left hand on the Bible and
19 raise your right hand, please.

20 WHEREUPON,

21 LARRY KING

22 After having been duly sworn, testified as follows:

23 THE CLERK: Have a seat and state your name for the
24 record, please.

25 THE WITNESS: My name is Larry King.

DIRECT EXAMINATION

BY MS. OWEN:

Q How are you today, Mr. King?

A Good morning, ma'am.

Q You're doing all right?

A Yes, ma'am.

Q Good.

A A fine day.

Q Mr. King, can you tell the jury a little bit about yourself?

A Well, I'm 61 years old and married 40 years. I have six children, five daughters, a son, and presently I'm employed with the Advantage Property Management. I am a maintenance manager for a property management firm down at Clemson University, and we have various properties that I supervise and, you know, take care of all the maintenance calls and service calls for them. I've been here in South Carolina and graduated six kids here.

Q How long have you been at Advantage Management?

A I've been at Advantage Property Management as their maintenance manager the last four years.

Q Where were you before then?

A I was at Andover Park apartments in Greenville, South Carolina. I was their maintenance manager there for nine years, simultaneously a chief engineer at the Days Inn on

1 Roper Mountain Road.

2 Q Okay. And you said you've got six children; is that
3 correct?

4 A Yes, ma'am.

5 Q Can you tell us a little bit about them?

6 A Well, I have five daughters. My oldest daughter is
7 42 years old, my youngest is 24. He's the boy. We
8 managed to keep going till we finally got a son. And as a
9 matter of fact, he just turned 24. And been currently
10 married with the same woman for the last 40 years. She's
11 been a better part of my stability, put it that way.

12 Q At Advantage Property Management, can you tell us a
13 little bit about what you do there?

14 A Well, we -- 90 percent of all of our tenants are
15 students, and so we -- I managed close to 400 units for
16 the college students there, and I am -- have maintenance
17 staff that I supervise the maintenance staff and I
18 coordinate with all of our outside vendors, all of our
19 owners for the properties and office staff. I coordinate
20 all the maintenance that comes through our office there,
21 and so I pretty much have hands on in all the aspects of
22 the maintenance in there with the property management
23 company.

24 Q On May 14, 2016, were you on call that day?

25 A Yes, ma'am. That's correct.

1 Q Can you explain to the jury what "on call" is in your
2 line of work?

3 A Well, we have 24-hour maintenance service, and for
4 emergency calls, they have -- we have an answering service
5 that we will respond to the answering service anytime
6 anyone calls for emergency or maintenance. And I am --
7 whether it's 4:00 in the morning or 3:00 in the afternoon,
8 Saturdays and Sundays, and this particular Saturday I had
9 -- I was on call that week because we kind of rotate with
10 some other maintenance individuals. And I was on call
11 that week, and I got an emergency call that I responded
12 to.

13 Q Where was that at?

14 A The emergency call was Old Central Road, [REDACTED] Old
15 Central Road in Clemson.

16 Q It's in Clemson?

17 A It's in Clemson. Yes, ma'am.

18 Q What was that emergency call?

19 A It was a plumbing emergency call that I responded to.
20 And usually, when we have plumbing, fire, water, or
21 emergency calls, that we usually go to and try to respond
22 to as quickly as possible because it could be, you know,
23 lives or safety or property damage. So nothing short of
24 that. So we try to get them within 15, 20 minutes.
25 Someone needs to be there at least to make an assessment

1 or see what needs to be done. And that was my task that
2 morning.

3 Q Okay. Do you know approximately what time you went
4 out to [REDACTED] Old Central Road?

5 A It was approximately about 10:30. I think I got the
6 call over the answering service probably about a little
7 after 10:00. And I live in Liberty, so it was about 10:30
8 when I arrived at the tenant's, [REDACTED] Old Central Road.

9 Q When you arrived, what did you do?

10 A I knocked on the door and -- and I was told to come
11 in. And I was informed that they had a leak in the
12 bathroom. And so I went to the bathroom and went and made
13 an assessment of what was I needed to do or did I need
14 parts. A lot of times I have stuff in my truck, and this
15 particular time, I did not have stuff in my work van, so I
16 had to go and get shower part assemblies for the bathroom.
17 And I proceeded to go to Ace Hardware to get those shower
18 parts, so I informed the resident that I'll be back in a
19 few minutes because Ace Hardware is five minutes from
20 where I went. So I went and got the parts.

21 Q Let me stop you right there. I'm going to show you
22 what's been premarked as State's Exhibit 3.

23 A Yes, ma'am. That is my receipt from Ace Hardware,
24 and it is 10:28, the time that I purchased this showerhead
25 assembly.

1 Q Okay. And is the date on there?

2 A Yes, ma'am. 5/14, May 14, 2016.

3 Q And the time?

4 A And it's been signed because we are -- I'm on account
5 there. Everything that we receive from Ace Hardware I put
6 on our charge and we sign for it.

7 Q Okay. So you signed for that at 10:28 a.m.; is that
8 correct?

9 A That's correct.

10 MS. OWEN: Okay. Your Honor, I ask that this be
11 moved in as State's Exhibit 3.

12 THE COURT: Any objection?

13 MR. KING: No objection.

14 THE COURT: It's so admitted.

15 (WHEREUPON, State's Exhibit Number 3 was admitted into
16 evidence.)

17 BY MS. OWEN:

18 Q So at 10:28 you purchased a showerhead; is that
19 correct?

20 A That's correct.

21 Q And then what did you do after that?

22 A I proceeded back to [REDACTED] Old Central Road, and upon
23 proceeding there, I got tools out of my truck and then I
24 proceeded to enter the unit. And being that I was
25 expected, I just -- you know, it's typical to just come

1 right in because you're just going to -- usually, I'm just
2 going to the truck to get parts.

3 So I walked in the door. And at the time I walked in
4 the door, I noticed a gentleman, young lady having oral
5 sex on the sofa. The sofa is right there at the door.
6 I'm six feet tall so I could see right over everything.
7 And I immediately just put my head down and proceeded to
8 the bathroom and processed what I just witnessed. And at
9 that time, I was pretty much in shock because, you know,
10 I've been doing this for over 40 years, and that's the
11 first time I walked in and just got blindsided like that.

12 So I went to the bathroom, started proceeding to do
13 what -- put the showerhead in, and in the meantime, I was
14 contemplating how to respond to this incident that I just
15 been made aware of. So when I went back out to -- I left.
16 I came back out of the bathroom. The young lady was no
17 longer there. The gentleman was still sitting on the
18 sofa. And I just immediately went to my truck, got in my
19 truck, and I had -- I had by that time made the decision
20 that I needed to report this. So, you know, the first
21 thing I did was call my boss and told him what had
22 happened and where I was headed and what my intentions
23 were of going to file a police report. And at that time,
24 I went immediately over and I filed a police report.

25 Q Did you go directly to Clemson Police Department?

1 A Yes, I did. Yes, ma'am.

2 Q Did you talk to Sergeant Link, who's sitting right
3 here?

4 A Yes, ma'am.

5 Q Mr. King, I'm going to back you up and ask you a
6 couple more pointed questions, okay? I believe there's a
7 pointer right here. You should be able to use this.
8 Yeah. Okay. Just use that button.

9 All right. Mr. King, is this the living room of
10 [REDACTED] Old Central Road?

11 A That's correct.

12 Q Is this the apartment that you were working on that
13 day?

14 A That's correct.

15 Q And could you please point out where the front door
16 is.

17 A The front door, this is the front door (indicating),
18 the entrance door.

19 Q Okay.

20 A And this is the sofa going across the entrance door
21 (indicating).

22 Q All right.

23 A And coming in, I had to come around to go this way
24 (indicating) to the bathroom unit.

25 Q So you had to walk through the living room to get to

1 the bathroom.

2 A That's correct.

3 Q Can you explain to the jury what the setup is once
4 you get through the living room where the bathroom is and
5 the bedrooms?

6 A Yes, ma'am. When you come in, I immediately went to
7 this area here, came this way. And the kitchen is back
8 towards this end, and there's a hall bath -- bathroom and
9 bedroom (indicating throughout).

10 Q Okay.

11 A And then the other two bedrooms are in the rear on
12 the same side, this same side here (indicating). So
13 they've got bedrooms.

14 MS. OWEN: And that's State's Exhibit 4, just for the
15 record, Your Honor.

16 THE COURT: All right.

17 BY MS. OWEN:

18 Q I'm going to show you a closer photo, Mr. King.

19 A Yes, ma'am.

20 Q State's Exhibit 5. That's a close-up view of the
21 couch.

22 A That's correct.

23 Q Can you use your pointer and describe for the jury
24 the first time you came in where the child and the man
25 were sitting?

1 A The gentleman was sitting on -- that would be coming
2 in the door. That would be on my right side, and the
3 child was sitting here on the left side (indicating
4 throughout).

5 Q Okay.

6 A At which time that I walked in, acknowledged what I
7 seen. And then they threw the blanket over, and I was
8 just focused on getting to the bathroom, I reckon. And
9 that's when I -- that's where I got my visual from. And
10 being that this (indicating) sofa is, I'm going to say,
11 less than four feet from the door and me being 6'3", I got
12 a clear visual of what I seen.

13 Q Mr. King, the first time you walked in the door, were
14 the child and the man on the couch ---

15 A No.

16 Q --- before you came back the second time?

17 A It was the second time.

18 Q That they were both on the couch?

19 A Yes, ma'am.

20 Q And when you walked in the door that second time ---

21 A Yes, ma'am.

22 Q --- they were expecting you to come in.

23 A Yes, ma'am.

24 Q Because you had told them you were ---

25 A I told them I was going to get parts. I would assume

1 they -- so I did not knock when I came in. I just knocked
2 -- well, I knocked and walked in simultaneously, click and
3 walked in. That's what I usually do.

4 Q Okay. And I'm going to just point out on here, you
5 said the man was sitting here (indicating).

6 A Yes, ma'am. Right in that (indicating). And the
7 child was there (indicating).

8 Q She was sitting towards the end of the couch.

9 A Yes.

10 Q Can you explain ---

11 A And that -- and that blanket was there (indicating).

12 And what I acknowledged was her with him, and I seen
13 his penis out. And they tried to jump -- threw the
14 blanket over, and that was all I seen was the blanket, her
15 jump up, and I went on to the bathroom.

16 Q All right. Mr. King, the jury wasn't there that day,
17 so I'm just going to ask you a couple pointed questions.

18 A Yes, ma'am.

19 Q We've seen the picture of the couch and the door.
20 You opened the door, you see the child. In what position
21 was she over the defendant?

22 A She was leaned over the defendant.

23 Q So her head was near where?

24 A Yes.

25 Q No. I'm asking, where was her head near?

1 A Over his penis.

2 Q And then when she jumped up, you saw his penis.

3 A Yes.

4 Q You're a man. You know what a penis looks like; is
5 that right?

6 A Yes, ma'am.

7 Q And you know that you saw that man's penis.

8 A Yes, ma'am. I'm -- I mean, it's -- it's not
9 something that you don't see, you know. And it's still
10 there, you know, that visual. It was just locked in,
11 so . . .

12 Q Mr. King, you saw a child performing oral sex on the
13 defendant; is that correct?

14 A That is correct. That's my statement, and that's
15 what I seen.

16 Q Mr. King, can you still visualize that to this day?

17 A Yes, ma'am. Yes, ma'am. And it's -- the main reason
18 why it's so vivid for me today, you know, raising five
19 daughters, I -- it's -- it became very, very shocking to
20 me, and it's traumatic and it's sad.

21 Q Mr. King, you said you've been doing this 40 years.

22 A Yes, ma'am.

23 Q You've never seen anything like that before, have
24 you?

25 A No, ma'am.

1 Q Were you expecting to see that that day?

2 A No, ma'am. No, ma'am. I -- I -- being that I have
3 been doing -- you know, in this profession, I've been
4 doing building maintenance since I left the army, and I
5 have always developed -- I've developed over the years a
6 certain decor of professionalism. So usually when I go
7 into a person's house, I'm coming in there focusing on
8 what I need to address. And so, you know, I've been in
9 people's house, other things go on and stuff like that,
10 but I'm coming in there to be -- address the issue that's
11 on my work order or assessing the situation the
12 maintenance needs to handle. So I don't go in there with
13 no preconceived trying to get up in everybody's business
14 when I go in there. I go in there to do what I go in
15 there, and this just happened to be in my face when I went
16 in there.

17 Q The only thing better would have been if you had a
18 camera and you recorded it, right?

19 A Yes.

20 Q Mr. King, do you know these people?

21 A No, ma'am. No, ma'am. I have been there and done a
22 work order before.

23 Q But you don't know their names.

24 A No. I don't know their names, don't know them
25 personally, haven't had any personal conversations with

1 any of them or nothing of the sort.

2 Q So you have no reason to continue telling this story
3 other than the fact that it's true; is that correct?

4 A Yes, ma'am. And I do -- and -- and my motivation for
5 that is because it's, I think -- it's a moral issue to me
6 that I feel as is my civic duty to report this and to
7 follow up on it, and -- you know, and that parties be held
8 accountable for something to me that goes against the core
9 of my moral fibers. So I have no other motive than to do
10 the right thing.

11 Q You don't want to date Ms. Durham, do you?

12 A No, ma'am. I've been happily married over 40 years.

13 Q And you're not trying to get a child removed from a
14 home just because, are you?

15 A No, ma'am. No, ma'am. That's the least thing I
16 would want to do is to see anyone released from their
17 home. But I do have, I'm going to say, a conviction that
18 children need to be protected.

19 MS. OWEN: Thank you, Mr. King. Please answer any
20 questions Mr. King has.

21 THE COURT: Mr. King?

22 MR. KING: Thank you, Judge.

23 CROSS EXAMINATION

24 BY MR. KING:

25 Q Mr. King, you said that you walked into the

1 apartment, you did a walk-and-knock when you came back
2 from Ace Hardware, correct?

3 A Yes. That's usually how -- that's usually my . . .

4 Q And you said you got a glance of what was going on in
5 front of you and you put up your hand, correct?

6 A I had a visual, yes, sir.

7 Q Okay.

8 A And I just . . .

9 Q Now, I take it that the sofa was in front of you like
10 this bench is in front of me, correct?

11 A That's correct.

12 Q And so you threw up your hands, and you, I guess, had
13 to turn left, right?

14 A No. That's not right.

15 Q Okay.

16 A What's correct is I came in seeing the visual. After
17 I got a visual, I turned my head, exactly.

18 Q And you walked left around the sofa.

19 A Yes.

20 Q Around the little 11-year-old girl.

21 A Right.

22 Q Yes?

23 A And my hand wasn't still up at all that time.

24 Q Okay.

25 A You know, I -- I just did that (gesturing) and then

1 I, you know, just kept my eyes forward.

2 Q Okay. So let's retract. You had your hand up, you
3 walked left to the edge of the sofa, right? At that
4 point, you think your hand was down?

5 A Yes, sir.

6 Q Okay. With an 11-year-old sitting right on your
7 right, yes? And you walked to the bathroom.

8 A Yeah.

9 Q Yes. Okay.

10 Now, you said once you were in the bathroom, you
11 processed what you witnessed, correct?

12 A Yes. That's correct.

13 Q And you fixed a showerhead, correct?

14 A Yes. I went in and fixed the showerhead.

15 Q Okay. Did you have a phone on you in the bathroom?

16 A Yes. I did have a phone.

17 Q Okay.

18 A And a bluetooth.

19 Q Yeah. Did you call 9-1-1 from the bathroom?

20 A No, I didn't.

21 Q Okay. But you decided that you witnessed an
22 11-year-old girl performing oral sex in the other room.

23 A Yes, sir.

24 Q Okay. After you fixed the showerhead, you left the
25 apartment, correct?

1 A Yes.

2 Q Yes. You left an apartment with an 11-year-old girl
3 in it, correct?

4 A Yes, I did.

5 Q That you claimed just witnessed performing oral sex
6 on a grown man.

7 A Yes, sir.

8 Q I take it you opened the front door, right?

9 A Yes, sir.

10 Q You said nothing to either the 11-year-old or the
11 grown man.

12 A The 11-year-old -- let's get this correct now. I
13 want you to see what happened. The 11-year-old was no
14 longer in the -- in the living room when I came out of the
15 shower. As a matter of fact, when I -- she jumped. He
16 covered himself up. She jumped up, and she was exiting as
17 I was exiting, I guess, to go to the bedroom. But I know
18 when I came back out of the shower, she was not there. So
19 at that time before we take it on -- I assume that -- no,
20 no. I'm going to let you ask a question. Go ahead.

21 Q You didn't go looking for the 11-year-old girl in the
22 apartment, did you?

23 A No, sir. No, sir. That's not -- that would have
24 been inappropriate for me to take law enforcement in my
25 own hands, I thought. So I needed to do the protocol for

1 a situation like that. I did not see that she was in any
2 physical danger, she wasn't being beat up or her life
3 wasn't in danger, and she was no longer in that position
4 that I seen her in when I walked in when I was walking
5 out.

6 Q Okay.

7 A So that's why I had time to process and make a
8 judgment call other than going -- I -- individual could
9 have had a gun and I might have been being a superhero
10 here and got hurt.

11 Q Okay. I understand. But at one point, you were
12 still -- when you first walked in, you were in the room
13 with an 11-year-old girl and a grown man that just
14 performing oral sex on.

15 A Yes, sir.

16 Q Okay. And did you say anything to that 11-year-old
17 girl?

18 A No, sir.

19 Q No. Did you say, "Time out. We need to separate you
20 two"?

21 A No.

22 Q No. Okay. All right. After you left the apartment,
23 you went to your car, correct?

24 A Yes. I went to my vehicle.

25 Q Did you call 9-1-1 and say, "You need to be here

1 ASAP"?

2 A No, I didn't.

3 Q Okay. You called your boss, correct?

4 A I called my boss to let him know that I was going to
5 file a report.

6 Q Okay. I believe you said while you were fixing the
7 showerhead, you had to contemplate how to handle the
8 situation, correct?

9 A Yes, sir. Because to elaborate on that, walking in
10 on a situation like that, especially being that it's a
11 situation that's out of the ordinary, I don't think
12 everybody just had an immediate response to how to handle
13 that. So . . .

14 Q Right. And that contemplation happened after you
15 processed what you'd seen, correct?

16 A Say that again?

17 Q You had to contemplate how to handle the situation
18 after you had processed what you had seen. You processed
19 it first.

20 A I guess that would be -- I would think that would be
21 fair to say that, yeah. I seen what I seen, and now I
22 decided on how to handle this.

23 Q Okay. Now, you had been in that apartment previous,
24 correct?

25 A Yes, sir.

1 Q I'm not just talking about that morning. On prior
2 dates.

3 A I've been there before.

4 Q And you had told Sergeant Link that you had seen this
5 11-year-old girl sitting in the older man's lap, correct?

6 A Yes, sir.

7 Q Right. And you shared with Sergeant Link that you
8 felt there was an inappropriate relationship going on in
9 that apartment.

10 A I just said that -- I just thought for me to have --
11 being raising daughters and having an 11-year-old sitting
12 in your lap, I thought that was inappropriate. Yes, sir.

13 Q Okay.

14 A And I still think that would be inappropriate.

15 Q All right. You said to Sergeant Link that it
16 appeared to be an inappropriate relationship, but I saw it
17 for sure today, correct?

18 A I don't recall -- remember saying that.

19 Q All right. Okay. All right. Mr. King ---

20 A Yes, sir.

21 Q --- your testimony here today is that you opened an
22 apartment door and saw an 11-year-old performing oral sex,
23 correct?

24 A Yes, sir.

25 Q And when you witnessed that, you walked around the

1 sofa and fixed a showerhead, correct?

2 A Yes, sir.

3 MR. KING: No further questions.

4 THE COURT: Anything else for this witness?

5 MS. OWEN: Oh, yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. OWEN:

8 Q Mr. King, I'm going to expound on what Mr. King just
9 asked you.

10 You've been in that apartment before, right?

11 A Yes, ma'am.

12 Q Okay. Why don't you tell the jury what you had seen
13 that you thought was inappropriate.

14 A I had came -- I had been there prior doing a work
15 order, and when I came in prior doing the work order, the
16 gentleman and the young lady were in there, and they were
17 -- I was working on the kitchen at this time doing the
18 plumbing issue in the kitchen, and they were sitting there
19 at the kitchen table area. And she was sitting on his lap
20 just laughing and giggling, and it creeped me out because
21 after my children -- I'm basing this based on my moral
22 fiber that, you know, when my daughters got a certain age,
23 that stopped. And so when I seen that with them, you
24 know, I was like, wow. That's inappropriate. And ---

25 Q What kind of clothing was she wearing?

1 A And I -- I digested it, and I didn't -- you know,
2 it's still -- it's still -- it's inappropriate for me, the
3 way I look at it.

4 Q Mr. King, the incident that you're talking about, do
5 you remember what clothing the child was wearing?

6 A She was in a nightgown, definitely.

7 Q Okay. And sitting on this defendant who is seated
8 over here, in his lap.

9 A That's correct. And it was -- I'm going to say I
10 believe this was early afternoon time. It wasn't like it
11 was in the morning, you know. This was early afternoon
12 time, so . . .

13 Q Okay. And you said you'd been there previously other
14 than the date in question. About how many times had you
15 been there to do work orders?

16 A I believe that's my third or fourth time being at
17 that unit. It was an older unit, so we have -- we had
18 older units that we managed, especially on Old Central
19 Road, and those units were -- we would call them our
20 nightmare units because -- you know, but by the age of the
21 unit, there was always something needed in repair there.
22 So I've been back and forth in that unit.

23 Q Okay. So in that unit, you'd been there three or
24 four times, approximately?

25 A Yes, ma'am.

1 Q Okay. The times that you'd been there previously,
2 who was in the apartment?

3 A Well, I have -- I know three times definitely: the
4 time of the incident. And one time I went there and there
5 was a female there, older female. And I would assume --
6 I'm not sure because, like I said, I didn't know anybody
7 personally, I would just assume that that was the mother
8 there. But for the most part, you know, she -- I would
9 assume she -- from what I understand and, you know, from
10 being back and forth in that apartment, that she was the
11 leaseholder and worked -- and working most of the time.
12 So it was just him and her when I went in there a couple
13 of times.

14 Q When you say "him and her," you mean the child and
15 the defendant?

16 A The child and the defendant. Yes, ma'am.

17 Q Okay. And the time that you just mentioned where she
18 was on his lap in the kitchen, did you call the police?

19 A No, ma'am.

20 Q Did you have any reason to call the police?

21 A No, ma'am. I didn't -- you know, I just thought it
22 was, you know, that was their preference at the time, and
23 I didn't feel that she was in any danger or I didn't see
24 anything other than me feeling uncomfortable that this is
25 inappropriate. I didn't ---

1 Q But you had no reason to call the police because
2 there was nothing going on.

3 A No.

4 Q But this time, on May 14, 2016, you walked in that
5 door and ---

6 MR. KING: Objection. Leading.

7 THE COURT: Sustained. If you'll rephrase.

8 BY MS. OWEN:

9 Q What did you see when you walked in the door the
10 second time on May 14, 2016?

11 A On May 14th, I seen them having oral sex, which was
12 the reason why I went and filed a report. Because I had
13 reason, you know, to do so then.

14 Q And I just want to be very clear. You saw that man's
15 penis?

16 A Yes, ma'am.

17 MR. KING: Objection. Leading.

18 MS. OWEN: Thank you.

19 THE COURT: Overruled.

20 All right. Any questions?

21 MR. KING: Briefly.

22 RECROSS EXAMINATION

23 BY MR. KING:

24 Q Mr. King, you said the incident in the kitchen you
25 saw a girl sitting on the older man's lap, correct?

1 A Yes, sir.

2 Q Okay. And you digested that for a while and decided
3 it was inappropriate, correct?

4 A No. I didn't -- I didn't digest it to see that that
5 was inappropriate. That just automatically hits me as
6 inappropriate, sir.

7 Q Well, you just testified that you had to digest it.

8 A Well, when I say "digest it," I took it in as being
9 inappropriate.

10 MR. KING: No further questions.

11 THE COURT: Any other questions for this witness?

12 MS. OWEN: No, Your Honor.

13 THE COURT: Sir, you can step down.

14 THE WITNESS: All right. Thank you.

15 THE COURT: Thank you.

16 Ms. Owens?

17 MS. OWEN: Your Honor, may this witness be excused?

18 THE COURT: Any objection?

19 MR. KING: No objection.

20 THE COURT: All right. Thank you for being here.

21 MS. OWEN: Your Honor, at this time the State rests.

22 THE COURT: All right. Ladies and gentlemen, we've
23 come to the conclusion of the State's case. I need to ask
24 you to step to your jury deliberation room for a moment
25 while I take up a legal matter with the attorneys. Thank

1 you.

2 (WHEREUPON, the jury exits the courtroom at 10:47 a.m.)

3 THE COURT: All right. Do y'all need a break to talk
4 with Mr. Durham about whether or not he intends to testify
5 in the trial of this case?

6 MR. KING: We will, Your Honor.

7 THE COURT: All right. Let's be in recess for ten
8 minutes.

9 Yes, sir?

10 MR. KING: Would you like me to make my directed
11 verdict motion now?

12 THE COURT: Sure. You can now. Yeah. That's fine.

13 MR. KING: Judge, we'd respectfully ask for a
14 directed verdict in this case. The State, in our opinion,
15 has failed to provide competent evidence tending to prove
16 the charge in the indictment. Essentially, the young
17 Ms. Land testified yesterday. She kept to her story,
18 which she has previously sworn under oath that it did not
19 happen. She said yesterday it did not happen and that she
20 felt disrespected and -- or unbelieved and disrespected.
21 There's no other competent evidence that the State has
22 presented. Mr. King has told what he believes happened,
23 but that is not competent evidence compared to what the
24 young Ms. Land said; therefore, we feel the State has not
25 met their burden and there is not sufficient evidence that

1 would allow the jury to more than speculate at a verdict.

2 Thank you.

3 THE COURT: All right. Thank you for your motion.

4 Your motion is respectfully denied.

5 All right. Let's be in recess, like I said -- I
6 thought you had something to add. We'll be in recess for
7 ten minutes. All right. Thank you.

8 THE COURT: Oh, do y'all have any convictions that
9 you intend to use against Mr. Durham for purposes of
10 impeachment?

11 MS. OWEN: Your Honor -- Your Honor, he's got some --
12 he does have quite a record, but the most recent thing
13 would be -- no, Your Honor. Not at this time.

14 THE COURT: Okay.

15 MS. OWEN: But I may get back with you in a few
16 minutes, if that's okay.

17 THE COURT: Okay. All right. And y'all can talk
18 about it. Did y'all consider his record in the last
19 trial?

20 MR. KING: I honestly don't remember. I'll be
21 honest. I would assume we did, but I don't remember.

22 MS. OWEN: It didn't come up, Your Honor.

23 THE COURT: Okay. All right. Very well.

24 (WHEREUPON, a recess is taken at 10:50 a.m.; Court's
25 Exhibit Number 4 was marked for identification.)

1 THE COURT: Are we ready to talk to Mr. Durham?

2 MS. OWEN: Yes, Your Honor. And I do want to mention
3 a couple things. In reviewing 609 and Mr. Durham's prior
4 record, he's got a lengthy prior record, but in regards to
5 the two that I would feel would be most relevant, he's got
6 a possession of a stolen firearm from 2013 and two
7 shopliftings from 2015.

8 THE COURT: Okay. All right. All right then. And
9 Mr. King, anything you'd like to say?

10 MR. KING: Not as regards to that.

11 THE COURT: Okay.

12 MR. KING: We've come to a conclusion, so I don't
13 think it ---

14 THE COURT: All right. Mr. Durham, will you stand
15 and raise your right hand, please.

16 WHEREUPON,

17 JAMES ANTHONY DURHAM

18 After having been duly sworn, testified as follows:

19 THE COURT: All right. You can put your hand down,
20 Have you had an opportunity to discuss with your
21 attorneys whether or not you intend to testify in the
22 trial of this case?

23 DEFENDANT DURHAM: Yes, ma'am.

24 THE COURT: Have you understood those conversations
25 with your attorneys, you believe?

1 DEFENDANT DURHAM: Yes, ma'am.

2 THE COURT: Have they impressed upon you that this
3 has to be your decision and your decision alone?

4 DEFENDANT DURHAM: Absolutely.

5 THE COURT: You heard that if you were to testify at
6 the trial of this case, that the State would use three
7 convictions for impeachment purposes against you; you
8 understand that?

9 DEFENDANT DURHAM: Yes, ma'am.

10 THE COURT: And has anyone forced you into this
11 decision today?

12 DEFENDANT DURHAM: Absolutely not.

13 THE COURT: Has anyone promised you anything to get
14 you to make this decision today?

15 DEFENDANT DURHAM: Absolutely not.

16 THE COURT: You understand that you have an absolute
17 right to remain silent.

18 DEFENDANT DURHAM: Absolutely.

19 THE COURT: Okay. I would -- I would tell the jury
20 they could not consider the fact that you did not testify
21 in any way whatsoever, they couldn't even discuss it in
22 the jury deliberation room. You know that?

23 DEFENDANT DURHAM: Yes, ma'am.

24 THE COURT: By the same token, this is your
25 opportunity to tell your side of the story if you so

1 choose, and you have a right to do that. You understand
2 that?

3 DEFENDANT DURHAM: Yes, ma'am.

4 THE COURT: Do you need any further time to talk to
5 your attorneys about whether or not you'll testify in the
6 trial of this case?

7 DEFENDANT DURHAM: Not at all.

8 THE COURT: Mr. King, do you feel like your client's
9 understood his conversations with you about this?

10 MR. KING: I do, Your Honor.

11 THE COURT: All right. And what is your decision,
12 sir?

13 DEFENDANT DURHAM: Absolutely not.

14 THE COURT: Okay. All right. Very well then.

15 Okay. All right. Then Mr. King, do you intend on
16 putting up any evidence in this case?

17 MR. KING: I do, Your Honor. I have two forensic
18 techs that I'm going to be putting up, and if it please
19 the Court, I'd like to take a lunch after that, and then I
20 will most likely be putting up a child sex abuse dynamics
21 expert as well after lunch.

22 THE COURT: What time will the child sex abuse
23 dynamics person be here?

24 MR. KING: She'll be here around noon.

25 THE COURT: Around noon?

1 MR. KING: Uh-huh.

2 THE COURT: All right. Well, I'm going to push to
3 try to get that testimony done and try to get that -- try
4 to get the testimony done before lunchtime.

5 MR. KING: Before lunch.

6 THE COURT: Yes.

7 MR. KING: Okay.

8 THE COURT: All right.

9 MR. KING: I'm going to need a brief recess to talk
10 to her beforehand.

11 THE COURT: Okay. All right. I mean, whatever you
12 need to do, but very briefly.

13 MR. KING: Okay.

14 THE COURT: All right.

15 MR. KING: Can I premark some stuff?

16 THE COURT: Sure.

17 (WHEREUPON, Defendant's Exhibit Numbers 1 through 3 were
18 marked for identification.)

19 THE COURT: All right. Let's bring the jury back in.
20 (WHEREUPON, the jury entered the courtroom at 11:08 a.m.)

21 THE COURT: All right. Mr. King?

22 MR. KING: Thank you, Judge. The defense would call
23 Mr. Timothy Nafziger.

24 THE COURT: Okay.

25 THE CLERK: Place your left hand on the Bible and

1 raise your right hand, please.

2 WHEREUPON,

3 TIMOTHY NAFZIGER

4 After having been duly sworn, testified as follows:

5 THE CLERK: Have a seat and state your name for the
6 record, please.

7 THE WITNESS: Timothy Nafziger, Junior.

8 DIRECT EXAMINATION

9 BY MR. KING:

10 Q Are you comfortable, Mr. Nafziger?

11 A Sir?

12 Q Are you comfortable?

13 A Yes.

14 Q Okay. Make sure to speak into the microphone. You
15 might want to pull it a little closer.

16 Mr. Nafziger, where do you work?

17 A I work for the Greenville County Department of Public
18 Safety Forensic Division in the DNA lab.

19 Q And what is your job specifically?

20 A I'm a serologist. I'm currently a DNA analyst.

21 Q Okay. What's serologist?

22 A I -- forensic serology, I identify human bodily
23 fluids on evidence and process evidence that's brought in
24 the lab for -- to prepare for DNA analysis.

25 Q Okay. What's your education that set you up as a

1 serologist?

2 A I have a bachelor's degree in biological sciences
3 from Clemson University, and a master's degree in
4 entomology from Auburn University.

5 Q Do you require additional training to be a
6 serologist?

7 A I was trained for about six months in the DNA lab
8 before I started casework.

9 Q And was that a DNA lab in Greenville county?

10 A It's the one I currently work at.

11 Q Okay. How long have you worked at the Greenville
12 county lab?

13 A About six years.

14 Q How long were you a serologist there?

15 A About six years. Most of that time.

16 Q Okay. Do you complete any sort of regular training
17 or retraining?

18 A Yes. We keep up with the current scientific
19 literature. We also -- I've attended conferences and
20 various training events.

21 Q Are you specifically licensed as a serologist or have
22 any licenses?

23 A Our lab is accredited, yes. So you have to follow
24 the -- under the accreditation of the lab.

25 Q Okay. And you meet all those accreditations?

1 A Yes, I do.

2 MR. KING: Judge, at this time, we'd offer
3 Mr. Nafziger as an expert in serology.

4 THE COURT: Any objection or further voir dire?

5 MS. OWEN: No objection.

6 THE COURT: All right, then. Ladies and gentlemen, I
7 explained an expert witness to you. This witness is
8 qualified to give his opinion in the area of serology and
9 his reasons for that opinion. You can use it any way you
10 see fit.

11 Yes, sir.

12 MR. KING: Thank you, Judge.

13 BY MR. KING:

14 Q Mr. Nafziger, as part of your job as a serologist,
15 what do you do on a daily basis?

16 A Well, I process evidence to prepare for DNA analysis.

17 Q Where do you get the evidence from?

18 A The evidence I pick up from our Property and Evidence
19 Department.

20 Q Okay. And how does it -- do you know how it ends up
21 in the Property and Evidence Department?

22 A The people who collect it submit it there.

23 Q Okay. All right. Were you tasked with examining
24 some property in evidence in this case?

25 A Yes, I was.

1 Q Okay. Do you remember what date you examined it?

2 A December 5, 2016.

3 Q And did you generate a report on it?

4 A Yes, sir.

5 Q Okay. I'm going to show you a report. I want you to
6 look at it.

7 A (Reviews exhibit.)

8 Q Do you recognize that report?

9 A I do.

10 Q Take a good look at it. Has there been any
11 alterations to it?

12 A It doesn't look like it.

13 Q Okay. So that's your report, correct?

14 A Uh-huh.

15 MR. KING: Okay. Judge, at this time, we'd offer
16 this -- it's marked -- previously marked as Defense
17 Exhibit 1 into evidence.

18 THE COURT: Any objection?

19 MS. OWEN: No objection.

20 THE COURT: It's so admitted.

21 (WHEREUPON, Defendant's Exhibit Number 1 was admitted into
22 evidence.)

23 BY MR. KING:

24 Q Mr. Nafziger, can you -- let me look at it for a
25 second. I apologize.

1 How many items did you examine on that report?

2 A Three items.

3 Q What was the first item?

4 A Well, the one that I numbered as Item 1 was a blue
5 Hanes underwear in a sealed package.

6 Q Okay. When you received the blue Hanes underwear in
7 a sealed package, what do you normally do?

8 A Well, whenever I pick up items from Property and
9 Evidence, I make sure they're in a sealed container of
10 some sort before I pick them up. I don't pick them up if
11 they're not sealed. I bring them back to the lab.
12 They're stored in the lab until I'm able to work on them,
13 and the lab is a secure lab, key card access, video
14 cameras, alarm system.

15 I -- when I go to work a case, I wear a lab coat,
16 gloves and a mask. I sterilize my work surfaces and my
17 tools before I work them. So that's what leads -- and I
18 only open one item at a time. I work only the questioned
19 items, the evidence items first and then clean everything
20 before I work any known samples.

21 Q And when you get an item, what are you, a serologist,
22 supposed to -- what are you looking for?

23 A It depends on the circumstances of the case. We have
24 to read the incident reports to find out what we're
25 looking for that makes sense, and depending on the nature

1 of whatever's alleged.

2 Q So are you looking for bodily fluids? specific DNA?
3 What is it you generally look for?

4 A It really depends on the case. In this case, we were
5 looking for saliva, primarily. I mean, it depends on the
6 case. Some cases we're looking for blood, some cases
7 we're looking for semen, sometimes saliva. It just
8 depends on the circumstances.

9 Q And in serology, what does saliva get you?

10 A Bodily fluids have a higher level of DNA than -- have
11 a very high level of DNA. Sometimes there can be DNA
12 without bodily fluids, but typically, bodily fluids have a
13 lot of DNA, and so that's an easy way to find a good
14 sample.

15 Q So are bodily fluids a form of direct DNA, I guess,
16 would you call it?

17 A Well, DNA is found in the cells. And so your bodily
18 fluids will contain cells, and whenever there's -- someone
19 loses some bodily fluids, cells are left with it.

20 Q And your job as a serologist is to try and find those
21 bodily fluids; is that correct?

22 A Yes. Basically.

23 Q Okay. With Item Number 1, what did you do? What did
24 you find?

25 A So with the blue Hanes underwear, I examined it with

1 an alternate light source, which is basically kind of like
2 a black light. It makes things -- certain bodily fluids,
3 for example, semen and saliva will fluoresce under -- sort
4 of glow under that -- those wavelengths of light. So in
5 this case, I examined it with an alternate light source,
6 and it revealed two fluorescent areas. A large
7 fluorescent area in forward crotch area of the underwear
8 was tested for saliva with weak positive results. The
9 entire stained area was sampled for DNA analysis as
10 Item 1-A.

11 A bright fluorescent stain in the rear crotch area of
12 the underwear was tested for saliva with negative results.
13 But I sampled that stain as well as Item 1-B.

14 Q So there were two fluorescent stains in the
15 underwear, correct?

16 A That's right.

17 Q All right. And not to be crude, how were you
18 defining front and back of the underwear?

19 A I mean, basically, the tag or logo is typically in
20 the back, so that's usually how I determine.

21 Q And in the front area, I apologize, what were your
22 results in the front area?

23 A The large fluorescent area in the forward crotch area
24 was tested for saliva with weak positive results.

25 Q Okay. Now, that saliva, can you tell whose saliva

1 that is, you, as a serologist?

2 A Not from these tests. It's a presumptive test for
3 saliva. It detects amylase, which is an enzyme that's
4 found in saliva.

5 Q Okay. Were you looking for semen as well?

6 A Not in this case.

7 Q Okay. What was Number 2 or Item 2 that you looked
8 at?

9 A Orange and gray shorts.

10 Q And did you find any fluorescent spots in the shorts?

11 A Examination with alternate light source revealed
12 several fluorescent stains. The fluorescent stain inside
13 the front left crotch area was tested for saliva with
14 negative results. The stained area was sampled for DNA
15 analysis as Item 2-A. Several small fluorescent stains in
16 the inside front crotch area were tested for saliva with
17 negative results. The entire stained area was sampled for
18 DNA analysis as Item 2-B. And then several close linear
19 fluorescent stains in the inside lower left front crotch
20 area were tested for saliva with weak positive results.
21 The entire stained area was taken for -- was sampled for
22 DNA analysis as Item 2-C.

23 Q Okay. And what about Item 3? What was that?

24 A That was a white shirt. I examined it with alternate
25 light source and it revealed the shirt to be covered in

1 fluorescent stains. A fluorescent stain on the lower
2 front of the shirt was tested for saliva with negative
3 results. The entire stain was sampled for DNA analysis as
4 Item 3-A.

5 MR. KING: Okay. All right. Thank you. No further
6 questions, Your Honor.

7 THE COURT: Any questions for this witness?

8 MS. OWEN: Just briefly Your Honor.

9 THE COURT: Sure.

10 CROSS EXAMINATION

11 BY MS. OWEN:

12 Q Hey, Tim. How are you?

13 A Good.

14 Q Good to see you again.

15 You said that you read incident reports in order to
16 figure out what's going on, right?

17 A That's right.

18 Q Did you read the incident report in this case?

19 A I did.

20 Q Okay. So you're aware that an eyewitness walked in
21 and saw a child performing oral sex on an adult.

22 A Yes.

23 Q Okay. And it's your understanding that these
24 underwear were collected by the police at the jail; is
25 that correct?

1 A I don't remember specifically, but ---

2 Q But they came from the defendant.

3 A I understood they came from the defendant.

4 Q Okay. So between the time that the eyewitness sees
5 this and the underwear are collected, we don't know what
6 underwear the defendant had on.

7 MR. KING: Objection. Speculation.

8 THE COURT: Overruled.

9 BY MS. OWEN:

10 Q We don't know what underwear the defendant had on at
11 the time of the incident, do we?

12 A I have no way of knowing.

13 Q No one has any way of knowing; is that correct?

14 MR. KING: Objection. Speculation.

15 THE COURT: Overruled.

16 THE WITNESS: I guess so.

17 BY MS. OWEN:

18 Q So if these are not the underwear the defendant was
19 wearing at the time of the incident, we wouldn't expect to
20 find any of the victim DNA in the underwear; would that be
21 correct?

22 A Generally. I mean, there's many different scenarios.
23 But yeah. If he changed his underwear, probably not.

24 MS. OWEN: Thank you. No further questions.

25 THE COURT: Mr. King, anything else?

1 MR. KING: Nothing further.

2 THE COURT: Sir, you can step down.

3 MR. KING: May this witness be excused, Your Honor?

4 THE COURT: Any objection to that?

5 MS. OWEN: No, Your Honor.

6 THE COURT: All right. Thank you.

7 All right. Mr. King?

8 MR. KING: Thank you, Judge. The defense next calls
9 Dr. Kandala.

10 THE CLERK: Place your left hand on the Bible and
11 raise your right hand.

12 WHEREUPON,

13 JAGANNADHA KANDALA

14 After having been duly sworn, testified as follows:

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

17 THE WITNESS: My name is Jagannadha Kandala.

18 DIRECT EXAMINATION

19 BY MR. KING:

20 Q Dr. Kandala, where do you currently work?

21 A I work for the Greenville County Department of Public
22 Safety DNA lab.

23 Q And what is your job there?

24 A I'm the technical leader. I started the lab for
25 Greenville County, and I take care of the lab. At the

1 same time, I also do analysis, DNA analysis.

2 Q Okay. What sort of education do you have?

3 A I have a bachelor's degree in biology and chemistry,
4 and I have a master's degree in chemistry, and I have a
5 master's degree in microbiology and a PhD in biochemistry.

6 Q You said you started the lab in Greenville; is that
7 right?

8 A Yes.

9 Q How long have you -- how long has the lab been there?

10 A I came to Greenville in 2008, May, and started the
11 lab. And we got accredited in 2011, March.

12 Q Okay. Did you work in a different lab before that?

13 A Yes.

14 Q Where was that?

15 A I started my forensics in 1997 at St. Louis
16 Metropolitan Police Department.

17 Q Okay. What were you doing for the St. Louis
18 Metropolitan Police Department?

19 A I was a DNA analyst.

20 Q Okay. Did you come from St. Louis to Greenville?

21 A No. I moved to California, to San Bernardino
22 Sheriff's Department, and I worked as a senior DNA analyst
23 there. And then that was between 2005 and 2008. And then
24 from there and I came to Greenville. They were looking
25 for somebody to start the lab, and I came as a DNA

1 technical leader.

2 Q So if I did my math right, you've got 22 years of
3 experience?

4 A Yes.

5 Q Okay.

6 A Before that I was in academics doing research using
7 DNA anatomy for 25 years.

8 Q And that was before your 22 years with law
9 enforcement.

10 A Yes.

11 Q Okay. Are you -- do you have to be licensed to do
12 your job?

13 A I have quite a good experience in the DNA. So when I
14 got to St. Louis, I was trained there to do the forensic
15 work. As far as the subject is concerned, I knew
16 everything. So what is done for forensics, I have learned
17 in the first six months, and then started working there as
18 an analyst.

19 Q Okay. Do you have to do any continuing education
20 credits or anything?

21 A Well, I have attended probably several meetings after
22 that starting in '97, almost 25, 35 meetings, at least,
23 several international meetings and stuff like that, yes.

24 Q Okay. Do you publish anything or have any sort of
25 peer review?

1 A I did not really publish in forensics, but I have
2 done a lot of DNA research, which I have published. I
3 have 40 publications in international journals.

4 MR. KING: Judge, at this time, we offer Dr. Kandala
5 as an expert in forensic DNA ---

6 THE COURT: Analysis.

7 MR. KING: --- analysis.

8 THE COURT: Okay. Yeah.

9 MS. OWEN: No objection.

10 THE COURT: Okay. Ladies and gentlemen, this witness
11 is qualified in the area of forensic DNA analysis. I've
12 explained an expert witness to you. He can give his
13 opinion in an area and the reasons for that opinion. Of
14 course, once again, you can use that opinion in any way
15 you see fit.

16 Yes, sir.

17 BY MR. KING:

18 Q Dr. Kandala ---

19 A Yes.

20 Q --- tell us, what's the definition of "forensic"?

21 A Forensics is the science that is used for criminal
22 justice.

23 Q Okay. For investigations?

24 A For investigations.

25 Q Okay. And as a forensic DNA analyst, what do you do

1 on a daily basis?

2 A In the lab, the serologist first gets the evidence,
3 and he looks for the -- he tests for all the bodily fluids
4 and he does presumptive tests to show that there is
5 something indicating either saliva, urine, semen,
6 something like that, blood. And once he realizes that
7 there is something there as in evidence, he takes samples
8 and then passes it on to a DNA analyst.

9 Q Okay. So you, as the DNA analyst, can you do your
10 job without the serologist?

11 A I can do that, but as a convenience, the -- it's
12 because DNA analysts needs much more qualification than a
13 serologist, and the training for serology is much less,
14 and then they can do that. And so we can take somebody
15 with a lower qualification who can do that part of the job
16 and then separate the samples for the DNA analyst to
17 proceed on.

18 Q Okay. Do you recall, did you receive any DNA swabs
19 from Mr. Nafziger?

20 A In this case, yes.

21 Q Okay. I'm going to show you what's been previously
22 marked as Defendant's Exhibit 2. Would you look at that,
23 please, for a second.

24 A (Reviews exhibit) Yes.

25 Q Do you recognize it?

1 A Yes.

2 Q What is it?

3 A This is the report I generated on 5/3/2017.

4 Q Okay. And is this a fair and accurate report of what
5 you did?

6 A Yes.

7 MR. KING: Judge, at this time, we offer Defendant's
8 Exhibit 2 into evidence.

9 THE COURT: Any objection?

10 MS. OWEN: No objection.

11 THE COURT: So admitted.

12 (WHEREUPON, Defendant's Exhibit Number 2 was admitted into
13 evidence.)

14 BY MR. KING:

15 Q Dr. Kandala, can you tell me, what did you receive on
16 that report that you needed to analyze?

17 A The lab is secured. Nobody can enter the lab except
18 the analysts and our director, and so everything is safe
19 in the lab. And the serologist, when he gets the samples,
20 he prepares them for the DNA analyst to directly go and
21 analyze it. So he takes the samples and keeps them in the
22 freezer in the lab. So I take the samples from the
23 freezer because they are marked ---

24 Q Okay.

25 A --- with all the relevant information.

1 Q What do you do once you remove the samples from the
2 freezer?

3 A When I get the samples, what I do is the samples have
4 cells and the cells have DNA. So in order to get the DNA
5 out of the cells, we have to break the cells open. So
6 what we do is we process them for that purpose first and
7 then take the cells and get the DNA out. Once we get the
8 DNA out, we have to get an idea how much DNA is there
9 because the analysis is done with 1 nanogram of DNA, so we
10 have to know how much DNA is there. Approximately
11 1 nanogram is the thing. A little bit more or less, we'll
12 still use it.

13 A nanogram is 1 billionth of a gram, so we only take
14 that much DNA. And what we do is we copy certain parts of
15 the DNA. These parts are called loci. So these loci,
16 what we do is compare them between the known sample and
17 the unknown sample that is the evidence sample. And if
18 they match, having both the samples the same result that
19 comes up, then we say it's a match.

20 Q Okay. Did you have a nanogram worth of DNA in this
21 evidence?

22 A We have.

23 Q Okay. And a nanogram, even though it's very small,
24 is that sufficient, according to the scientific
25 literature, to do a testing?

1 A Yes. These are all published, and they're --
2 everybody uses that throughout the country, all the public
3 labs and the private labs, and we also do the same thing.
4 These are called -- the system is called "short tandem
5 repeats" in the DNA, STRs. So we use the same system in
6 the lab, too. And we follow all the set procedures that
7 are allowed by the accreditation, so we do the work in the
8 same fashion.

9 Q Okay. Now, on Defense Number 2, how many reference
10 items do you have on there?

11 A There's no reference item on this particular ---

12 Q Okay. How were they identified?

13 A They are given item numbers.

14 Q Okay. Right. So how many item numbers are there?

15 A Six.

16 Q All right. What's the first item number called? Is
17 it Item 1?

18 A Item 1-A.

19 Q 1-A. Okay. And what's the description for Item 1-A?

20 A Large fluorescent area in forward crotch area of the
21 underwear.

22 Q Okay. Did you test Item 1-A?

23 A Yes.

24 Q What was that result?

25 A The DNA profile is from an unknown male individual.

1 Q I'm sorry?

2 A The DNA profile that we got from that sample is from
3 an unknown male individual.

4 Q An unknown male individual?

5 A Yes.

6 Q Okay. All right. What about the second item on your
7 list, what's that number?

8 A It is 1-B, a bright fluorescent stain in rear crotch
9 area of the underwear.

10 Q Okay. And what was the DNA result for that?

11 A The DNA that we got from 1-B is a mixture of two
12 people, a male and a female.

13 Q Okay.

14 A So we tried to separate them out as the male part and
15 the female part.

16 Q Okay.

17 A So we had -- we do some calculation and we can show
18 that -- the male part and female part. Here in this case,
19 most of the ADS we could separate, but not all of them.

20 Q Okay. So I believe I heard you say Item 1-B had male
21 and female DNA, correct?

22 A Yes, yes.

23 Q All right. Looking at Defense Number 2, are there
24 any other results where there are male and female DNA?

25 A Yes. The 1-B, the mixture has got more of the female

1 compared to this second sample which is 2-B.

2 Q What's a description for 2-B?

3 A 2-B is several small fluorescent stains in the inside
4 front crotch area of the shorts.

5 Q Okay.

6 A But that one has given mostly the male, but the
7 female is a trace amount.

8 Q Okay.

9 A Yes.

10 Q What does a trace amount mean?

11 A That means you cannot really say what is there. Very
12 specifically, you cannot separate it out.

13 Q Okay.

14 A Yes.

15 Q Is that ---

16 A But the -- whatever we got from 1-B and 2-B, the same
17 similarly shifts, but that quantity of the female DNA is
18 more in the 1-B sample than in 2-B.

19 Q Okay. And where did the 1-B sample come from? What
20 was that description?

21 A It is a -- from the rear crotch area of the
22 underwear. It's a fluorescent stain.

23 Q Okay. All right. Did you have any known samples
24 when you ran that report for any females?

25 A I don't have any reference samples in this particular

1 report.

2 Q Okay. Do you recall, did you receive a reference
3 sample at some point?

4 A Later, yes.

5 Q Okay. I'm going to show you what's been marked as
6 Defense Number 3. Do you recognize Defense Number 3?

7 A Yes.

8 Q All right. What is it? Is it another one of your
9 reports?

10 A Yes. This is a sealed yellow envelope containing
11 buccal swabs of Minor .

12 Q Okay. Is that a fair and accurate representation of
13 your report?

14 A Yes, yes.

15 Q All right. There are no alterations to it.

16 A No alteration.

17 MR. KING: Okay. Judge, at this time, we would offer
18 Defense 3 into evidence.

19 THE COURT: Any objection?

20 MS. OWEN: No objection, Your Honor.

21 THE COURT: So admitted.

22 (WHEREUPON, Defendant's Exhibit Number 3 was admitted into
23 evidence.)

24 BY MR. KING:

25 Q So Dr. Kandala, you said that was a -- Defense 3 was

1 -- has an item number. Is it Item Number 4 on it?

2 A It is Item Number 4, and when -- because I took the
3 sample, I sampled it as 4-A for the DNA process.

4 Q Okay. And Item Number -- you tested Item Number 4, I
5 take it?

6 A Yes.

7 Q All right. I believe on your -- on Defense 3 it says
8 it's a buccal swab; is that right?

9 A Yes.

10 Q All right. What's a buccal swab?

11 A Buccal swab is something -- the area -- the cavity
12 that is inside the mouth is buccal area, so what we do is
13 to get a known sample, you take a swab and then just rub
14 it on the sides of the cheek inside. And that gives quite
15 a good number of samples from the -- along with the
16 saliva, you get a lot of cells in it from the cheek, and
17 then it's a perfect example for a reference.

18 Q Would you get a different DNA sample from the swab --
19 from the cells on the buccal swab than the saliva?

20 A Any organism, any cell will give the same DNA,
21 because on all the DNA of that person in every cell in
22 that body, any cell that you do.

23 Q All right. And did you -- well, let's back up. What
24 is a standard in DNA talk? What's the definition of a
25 standard sample?

1 A We don't call it nothing like standard. We call it
2 reference sample, or a known sample.

3 Q Okay.

4 A Known sample is something you know the person from
5 where the sample has come.

6 Q Okay.

7 A An evidence sample you do not know where it has come
8 from.

9 Q Okay. So on a known sample, the sample you used in
10 Defense 3 was a known sample because you know the
11 individual it came from; is that right?

12 A This Number 4 sample, yes.

13 Q Okay. What were your test results -- or what did you
14 compare Item Number 4 to on Defense Exhibit 3?

15 A The -- this sample is from a female, so we compared
16 this sample to the female that is present in 1-B, because
17 that is where we could see more of the female DNA. So the
18 profile that we got, the female profile from the 1-B, is
19 compared to this known sample.

20 Q Okay. And how did it compare?

21 A It did not match.

22 MR. KING: Okay. All right. No further questions.

23 THE COURT: Any questions for this witness?

24 MS. OWEN: Just briefly, Your Honor.

25 THE COURT: Yes.

CROSS EXAMINATION

BY MS. OWEN:

Q Dr. Kandala, do you also read the incident reports in this case or any case to understand what you're looking for?

A Pardon?

Q Do you read the incident reports in cases to understand what you were looking for?

A Yes, yes.

Q Okay. Did you get ---

A Also a difference on what we get also from the -- in the types of evidence or in terms of the known samples, we can only do that much. Here, we got only a known sample from a female, and we could only compare that DNA only for anything that we got.

Q I understand. Did you read the incident report in this case prior to doing the testing?

A Yes.

Q So you're aware of the situation in this case.

A Yes.

Q There was testimony yesterday that there were some other items collected in the house: blankets and pillows. Were those tested by the DNA lab?

A Nothing -- other than what we have said here, we have not tested anything.

1 Q And those wouldn't be tested because if those people
2 live in the home, we expect their DNA to be on those
3 items, correct?

4 A Yes.

5 Q Okay. And in this case in particular, are you aware
6 that there is an eyewitness to this crime?

7 A Yes.

8 Q Okay. And that that eyewitness left and went to the
9 police department?

10 A Yeah. That is what is read in there, in the report,
11 yes.

12 Q Okay. And so there's a time lapse between the time
13 the police come and they collect this underwear from the
14 defendant.

15 A Yes. That is what they have done when they have gone
16 there, yes.

17 Q And we have no idea if this is the pair of underwear
18 Mr. Durham was wearing at the time of the crime.

19 A That, I do not know, really.

20 Q No one knows, do they?

21 A Yes.

22 MS. OWEN: Thank you. No further questions.

23 THE COURT: Anything else?

24 MR. KING: Nothing further.

25 THE COURT: Thank you, Doctor, for being here.

1 THE WITNESS: Thank you.

2 MR. KING: May this witness be excused, Your Honor?

3 THE COURT: Any objection?

4 MS. OWEN: No objection.

5 THE COURT: Thank y'all.

6 MR. KING: Judge, we'd ask for a brief recess.

7 THE COURT: All right. Ladies and gentlemen, I'll
8 ask you to step to your jury deliberation room for just a
9 moment. Thank you.

10 (WHEREUPON, the jury exits the courtroom at 11:40 a.m.)

11 MR. KING: Judge, may I be excused to meet with my
12 witness for a minute?

13 THE COURT: Sure. Certainly.

14 All right. Let's be in recess for ten minutes.

15 (WHEREUPON, a recess is taken at 11:41 a.m.)

16 MR. KING: Ready to rest.

17 THE COURT: Okay. Well, we'll bring the jury back
18 in. I'll let you rest on the record, then we'll take a
19 break for lunch, then come back after lunch and do closing
20 arguments.

21 MR. KING: Sounds good. Thank you, Judge.

22 THE COURT: Unless the State intends on calling a
23 reply witness.

24 MS. OWEN: We do not, Your Honor.

25 THE COURT: Okay. All right. Very well.

1 MR. KING: I don't know how you handle it. Do you
2 want me to rest and renew my directed verdict at the same
3 time?

4 THE COURT: You can just rest in front of them, and
5 then we'll let you renew it once they walk out.

6 MR. KING: Thank you, Judge.

7 THE COURT: Do you want to renew your motion right
8 now?

9 MR. KING: All right. Judge, at this time, we would
10 renew our directed verdict. It's slightly prematurely,
11 but I think we're all in agreement it's the right time.

12 We presented the DNA evidence that does not match.
13 Again, our argument is that whatever Mr. Larry King's
14 testimony is, it is only speculation because there are two
15 other sources of extremely credible evidence that makes
16 his allegations not even in existence of the evidence, so
17 we'd ask you to direct a verdict.

18 THE COURT: And it's respectfully denied.

19 MR. KING: Thank you, Judge.

20 THE COURT: All right. Just whenever they're ready.

21 We -- and although it's hard to know what the state
22 of the law at present is, my understanding is and what I
23 follow is that the State would close in its entirety, that
24 the defense would then close, and the State would have the
25 opportunity to reply to that closing specifically.

1 Certainly, no new material, but I know y'all are familiar
2 with all that. All right.

3 MS. OWEN: Thank you, Your Honor.

4 THE COURT: And while we're on this topic, just one
5 more thing. Mr. King, in closing argument, in case I
6 forget to say it, I don't want any reference to
7 Mr. Durham's emotions or anything like that. He chose not
8 to take the stand and I don't want any reference to how he
9 was -- how his emotions were. There was a reference to
10 that in opening statements, and I assumed and let it go
11 because I assumed that he was going to testify, but now
12 that he has not, I don't want any reference to that.

13 MR. KING: Okay.

14 THE COURT: Thank you.

15 MR. KING: All right. Thank you, Judge.

16 (WHEREUPON, the jury entered the courtroom at 12:01 p.m.)

17 THE COURT: Mr. King?

18 MR. KING: Judge, at this time, the defense rests.

19 THE COURT: All right. Ladies and gentlemen, we've
20 now come to the conclusion of the testimony and the
21 evidence in this case. The next thing that's going to be
22 up are closing statements from the attorneys, which we
23 don't anticipate to be lengthy, and then my charge on the
24 law.

25 And so what we're going to do, I don't know about

1 y'all, but I'm a little bit hungry, so let's break for
2 lunch, ask you to be back in your jury deliberation room
3 at 1:15 and then we will -- the case will be in your hands
4 not long after that.

5 So I thank you so much. Although we have finished
6 all the testimony and evidence, we're not quite there. We
7 still do have to have final arguments on the law, so
8 please don't discuss the case with anyone.

9 Hope you have a good lunch. Thank you.

10 (WHEREUPON, the jury exits the courtroom at 12:02 p.m.)

11 THE COURT: All right. Unless there's anything else
12 we need to take up, we're in recess until 1:15.

13 Yes, sir?

14 MR. KING: I have a slight clarification question.

15 THE COURT: Yes, sir.

16 MR. KING: Did you mean I can't talk about his
17 emotions during trial but the body-worn camera emotions
18 are okay?

19 THE COURT: Oh, yeah. No. I mean his emotions
20 during trial.

21 MR. KING: Okay. All right.

22 THE COURT: Yeah. And maybe that's what you were
23 referencing in opening statements, but I thought you were
24 saying to take a look at him ---

25 MR. KING: Right.

1 THE COURT: --- throughout the course of the trial,
2 and I don't think that's appropriate for closing argument.
3 All right?

4 MR. KING: Okay. All right. I just wanted
5 clarification. Thank you.

6 THE COURT: Yeah. Thank you.

7 MS. OWEN: Thank you, Your Honor.

8 (WHEREUPON, a recess is taken at 12:03 p.m.)

9 THE COURT: Are we ready to bring the jury back in?

10 MS. OWEN: Yes, Your Honor.

11 MR. KING: Yes, Your Honor.

12 THE COURT: All right, then. Very well.

13 Oh, did y'all think about whether or not you want the
14 charge to go to them?

15 MS. OWEN: I'm fine with it, Your Honor.

16 (WHEREUPON, the jury entered the courtroom at 1:18 p.m.)

17 THE COURT: All right. Good afternoon. We're now
18 ready to begin with closing arguments.

19 Yes.

20 CLOSING ARGUMENTS

21 MS. OWEN: Thank you, Your Honor.

22 Ladies and gentlemen, it's been a short trial. You
23 didn't come in here in a vacuum. You brought all of your
24 life experience, you brought all of your outside knowledge
25 into this courtroom. You didn't come in here having no

1 life experience and no prior opinions about anything.

2 Mr. Hill, when he first talked to you yesterday,
3 asked you to think about throughout this case who has a
4 dog in the fight. You've heard everything in this case
5 that you're going to hear. And as he told you, you're
6 going to hear it all from the witness stand, and this is
7 the conclusion of this case. Ladies and gentlemen, as I
8 talk to you, I want you to continue to think about that.
9 Who has a dog in this fight?

10 Mr. Durham has been charged with criminal sexual
11 conduct with a minor in the second degree. The judge is
12 going to talk to you about the law on that. But
13 essentially, we have to prove beyond a reasonable doubt to
14 you that Mr. Durham committed a sexual battery with **Minor**
15 **██████████**, who was 11 years old, on May 14th of 2016. A sexual
16 battery is defined in a multitude of ways, but in this
17 case in particular, it's oral sex.

18 Ladies and gentlemen, we heard from a few people, not
19 a ton, but you heard from everybody who was a party to
20 this case.

21 Who has a dog in this fight? **Minor** **██████████** does.
22 She's 15 now, and she's back home with her mom. But James
23 Durham is her dad. She still calls him dad. She loves
24 him, and she will always love him, and she told you that.
25 He has raised her since she was 2 years old, as far back

1 as she can remember. She loves her dad because he was her
2 dad. He did things that she may not have liked. That is
3 our contention. But she loves her dad, and she loves her
4 mom, and for all those years, it was just the three of
5 them: her, mom and dad. She told you mom is disabled
6 from a car accident and doesn't work. They all lived
7 together, just the three of them. They relied on
8 Mr. Durham for support financially and emotionally. She
9 is always going to love her dad, and she is going to
10 protect her family. And in this case, she can protect her
11 family by denying that sexual abuse happened to her.

12 And I ask you to think about the little inconsistency
13 in her statement. Yesterday we showed you some pictures.
14 You'll get to take those back in the jury room. And she
15 described sitting on a couch cushion far away from her
16 dad. But at the day of the incident, Sergeant Link, that
17 she demonstrates for Sergeant Link to be on the same couch
18 cushion as her father leaned over to clean him, and she
19 told Sergeant Link the day of the incident that's maybe
20 what the maintenance man had seen. But three years later
21 her story has changed because she's protecting her dad.

22 Ladies and gentlemen, we all agree on a few things in
23 this case. **Minor** and her dad were home alone on
24 May 14, 2016. **Minor** and her dad were sitting on the
25 couch watching TV on May 14, 2016. Everyone agrees,

1 including Mr. Durham, because you saw it in the body
2 camera video, that we're all on the same page, that the
3 maintenance man comes to their apartment twice.

4 The first time he comes in and tells them he's going
5 to Ace Hardware to get some parts. He leaves. It's that
6 second arrival when the stories go haywire.

7 Mr. King was very clear. He is 6'3". He walked in
8 that door the second time and saw Mr. Durham's penis. He
9 saw an 11-year-old child performing oral sex on her
10 father. We may not all agree with how he handled that
11 situation. Could he have done things differently? Sure.
12 But he was in shock, and he was in this man's home. So at
13 that time, he did what he thought was best because the
14 child jumped up and ran. The defendant covers himself
15 with a blanket. He fixes the showerhead and then he
16 leaves.

17 **Minor** denies that all this happened because she
18 is protecting her mom and dad. But she doesn't have to
19 tell you what happened because Mr. King does. Mr. King
20 all these years later maintains what he saw.

21 The defense attorney is going to get up here and try
22 to tell you that Mr. King's biased, he had seen these
23 other things before, he wants to just believe these things
24 happened, and I believe in his opening statement he
25 actually said that he saw something he didn't expect.

1 I'll agree with him on that. He was not expecting to walk
2 back into that apartment and see this child performing
3 oral sex on her dad and see a grown man's penis. He was
4 shocked, as he should be. He's been doing that for
5 40 years. Never seen that before.

6 But Mr. King has no bias. Everyone has told you they
7 don't know each other. They don't know each other's
8 names. They've never even had a conversation. He's been
9 at their house to do work two times prior to this. And he
10 saw something previously he thought was weird. But he
11 didn't call the police. He had no reason to call the
12 police. He didn't file a report, he didn't write a
13 complaint. He didn't even say anything to them about it.
14 He was not walking in that apartment to create some crazy
15 story and come up here and tell you about it three years
16 later. That would be a waste of time and quite the
17 exaggeration.

18 Sergeant Link told you that when she got to the door
19 that day -- let me back up. She said that Mr. King came
20 to the police station about 10:50, and she thinks that she
21 and three other officers left somewhere between 11:15 and
22 11:20. That means that the defendant and **Minor** are home
23 alone for approximately 30 minutes. In that 30 minutes,
24 there is a litany of possibility of what could have taken
25 place. Did someone shower? Did they go to the bathroom?

1 Did they clean themselves off? Did they put on the dirty
2 underwear they had on the night before? We don't know
3 because we weren't there.

4 Mr. King thinks that he's got this DNA evidence.
5 There is no DNA evidence because it's not the same
6 underwear. We don't even know if Mr. Durham had on
7 underwear. Our eyewitness says the first time he walked
8 in, he had a blanket on, was watching TV, and the next
9 time he saw him exposed and then he flipped a blanket
10 over. We don't know what he had on, if anything. The DNA
11 evidence in this case is irrelevant because it's not the
12 same.

13 Sergeant Link told you, took them probably
14 30 minutes. That's about the time that we've got. And
15 then they get to the door, and it takes about four minutes
16 for them to answer the door. **Minor** tells you she looks
17 out the window and sees them knocking and tells her dad,
18 who's somewhere in the back, not still on the couch. In
19 those last four minutes, we don't know what was said, but
20 that child is going to protect her dad because she loves
21 him.

22 You heard from Sergeant Link when Mr. Durham answered
23 the door, she asked for Ms. Land and he said, "Who, my
24 wife?" which is an interesting comment because his wife is
25 Ms. Durham.

1 And you got to see for yourself the body camera video
2 of Mr. Durham. You got to see the interaction from the
3 moment that Officer Ables starts speaking to him until the
4 end. Officer Ables mirandizes him, says, "Was the
5 maintenance man here today?"

6 "Yes."

7 "Could he have seen anything?"

8 And at that point, Mr. Durham just goes off. "What
9 are you insinuating? That's sick." And he continues on
10 like that for approximately 20 minutes. At no point in
11 time does Officer Ables, Sergeant Link or any other
12 officer say, "The maintenance man, he said he saw your
13 daughter performing oral sex on you." But Mr. Durham
14 immediately jumps to "that's sick." And I agree with him.
15 It is sick. But at no point in time has anyone had a
16 conversation with him about what the allegations in this
17 case are. And they could have been anything. It could
18 have been he was watching porn. It could have been he was
19 drinking. It could have been he was doing drugs. He
20 doesn't know, but he does know because now he's covering
21 his tracks.

22 Ladies and gentlemen, who has something to lose? We
23 had a blind expert testify in this case, knows nothing
24 about this case, never met these people, hasn't read the
25 incident reports, no witness statements. She knows

1 nothing about this case. Well, except she does now
2 because she's still in here. But when she testified, she
3 did not.

4 And she told you that denial is common. She also
5 gave you a litany of other factors about delayed
6 disclosure, accidental versus purposeful disclosure and
7 factors that relate to child abuse in general, why a child
8 might not disclose. She highlighted some of those for us.

9 When the perpetrator lives in the home, if they're a
10 financial supporter, if they're in a relationship with
11 their parent, how common it is for a victim to still love
12 the person that hurt them, how common it is for a victim
13 to be in a relationship of some sort with the person that
14 hurt them, and how, when a non-offending caregiver is not
15 supportive, they're more likely to not tell. And Sergeant
16 Link told you there was no contact -- supposed to be
17 contact between Mr. Durham and the victim in this case,
18 and then after the victim was put in another home, which
19 she told you she did not like and she did not want to be
20 there, the defendant moved back home, in with her mom.

21 Ladies and gentlemen, **Minor** is a victim. She
22 is a victim of sexual assault. She does not have to tell
23 you because Mr. King does, and he has no dog in this
24 fight. He doesn't know these people. He didn't want to
25 break up a family. He doesn't want to come spend his

1 Tuesday morning in here reliving what he saw that day.
2 And he told you he's never going to forget it. And he
3 won't. But he felt like it was his moral obligation to
4 report it, and I applaud him for doing so.

5 So I'm going to ask you when you go back in that jury
6 room to take your common sense with you. Don't leave it
7 out here. Take it back there and apply your common sense,
8 your life experiences to what you saw up there and what
9 you heard. I'm going to ask you to find James Durham
10 guilty of criminal sexual conduct with a minor in the
11 second degree.

12 Thank you.

13 THE COURT: Mr. King?

14 MR. KING: Thank you, Judge, Ms. Owen.

15 Unbelieved and disrespected, that's what young
16 Ms. Land said over here on the witness stand yesterday.
17 Unbelieved and disrespected, that's how she felt in this
18 courtroom because she told you she's told the same story
19 over and over again from day one, first to the police,
20 then the nurse at the hospital, her mother, then with
21 other people, another foster family, DSS caseworkers.
22 She's told it time and time again, her truth, this didn't
23 happen. And like I said at the beginning, she says it
24 didn't happen, and science says it didn't happen.

25 We heard from Dr. Kandala and Mr. Nafziger. They're

1 the forensic techs in Greenville. Like Ms. Owen said,
2 who's got a dog in the fight? They Don't. They do the
3 science, the hard, cold science that says her DNA was not
4 in his underwear.

5 You also heard from the young Ms. Land talk about the
6 time period when Larry King left and when law enforcement
7 arrived, and she said she didn't see him change clothes,
8 he didn't have different clothes on, he never went to the
9 restroom, never washed. He didn't change clothes. He
10 didn't wash.

11 What's in his underwear, as silly as that sounds, is
12 the same that was in there when Larry King left the
13 apartment. And hopefully, it's not odd to have another
14 woman's -- or a woman's DNA in a married man's underwear,
15 but in this case, it's not the young Ms. Land, and that's
16 the key to the whole case.

17 She said she felt disrespected and -- I guess it's
18 the other way around. She said unbelieved and
19 disrespected. Fortunately, we have the science that can
20 tell us in this day and age it didn't happen, so we can
21 now all believe her finally. After three years we can
22 believe her, and we can give her the proper respect. We
23 won't have to drag her out of school to come testify.

24 Now, the mystery in the whole trial is why would
25 Larry King say something happened when science tells us it

1 didn't happen? As he told you this morning, he had been
2 in the apartment previously. When he was in there
3 previously, he had seen the young Ms. Land sitting in
4 Mr. Durham's lap, and he had to digest it, but he felt
5 like something inappropriate was going on in that
6 apartment. That meant whenever he went back to that
7 apartment, he still had that feeling that something
8 inappropriate was going on. And when he went in there and
9 saw them right in front of him, that gut feeling of
10 something inappropriate mixed and processed, as he said,
11 when he was in the bathroom to come up with that she was
12 performing oral sex on him.

13 As Ms. Owen said, you all have experience. You came
14 here with experience. And what he told us his conduct was
15 he opened the door, saw an 11-year-old performing oral sex
16 on a grown man, he threw up his hand, walked past him,
17 went into a bathroom and fixed a showerhead. That's not
18 what reasonable people do. There's -- there's just no
19 explanation for that, because he didn't see it. He had to
20 process it and put his gut feeling with not knowing what
21 he actually saw. His conduct tells us this didn't happen.
22 A reasonable person would say, "Whoa," and get out of the
23 apartment, or if you're focused, you go to the bathroom,
24 and you say, "Oh, man, I just saw something really bad.
25 Police need to get here and I'm going to call 9-1-1." He

1 said he had a phone in the bathroom. He was protecting
2 the bathroom. He didn't have a confrontation with
3 Mr. Durham in the bathroom. He could have done it right
4 then and there, but he didn't. It's his conduct shows it
5 didn't happen.

6 Not only does the young Ms. Land say it didn't
7 happen, but cold, hard science says it didn't happen, and
8 Larry King's conduct says it didn't happen.

9 Now, you all heard from Mr. Durham during the
10 body-worn camera footage. Let me make sure I get this
11 quote right. He said, "Am I not supposed to make a
12 scene?" The State wants you to speculate that when he
13 jumped to the conclusion that he was touching his child,
14 that he was actually touching his child. But as he
15 explained to you in the body-worn camera, there was no
16 drinking, no smoking, no drugs, nothing wrong going on.
17 It was just him and his daughter. They had already taken
18 his daughter out of the apartment away from him. There
19 was only one assumption for him to make, and that was that
20 he was touching his daughter.

21 But you also notice in the body-worn camera video,
22 while he was upset, he was concerned about one thing. He
23 was concerned about his daughter. Was his daughter going
24 to be taken away and go into some DSS system with a foster
25 family she didn't know? He was doing what a reasonable

1 parent would do. He was worried about his child. That's
2 not the characteristic of an abuser. He was worried about
3 his child. He called three different people to get her
4 there to protect her.

5 Now, the State presented Ms. Van Wagner to you this
6 morning. She talked about these factors of child sex
7 abuse and how the child wants to maintain the family, have
8 a stable environment, is uncertain and scared about what
9 would happen, could end up in foster care, doesn't know,
10 wants to be believed and is afraid she will not be
11 believed. The exception of afraid that she's not going to
12 be believed, all the other stuff Ms. Van Wagner talked
13 about doesn't apply anymore because she's not in a home
14 with Mr. Durham, she's not in foster care. She's been
15 through all of that. All of those problems that
16 Ms. Van Wagner says causes a person to deny what happened,
17 they don't apply anymore. She's at home with her mother.
18 Mr. Durham is nowhere in the picture. She takes the
19 witness stand today where she says she feels unbelievably
20 and disrespected, and she told the truth.

21 Now, as the State explained and the judge explained
22 earlier, the State has the burden of proving him guilty
23 beyond a reasonable doubt. We've got the young Ms. Land's
24 story saying it didn't happen. We've got cold science
25 through the DNA evidence saying it didn't happen. We've

1 got Larry King's conduct that says it didn't happen. And
2 you heard from Mr. Durham on the body-worn camera it
3 didn't happen. The State cannot meet their burden with
4 that evidence. They have not submitted anything to you
5 beyond a mere suspicion that something might have
6 happened; therefore, we ask you to return a verdict of not
7 guilty.

8 And thank you for your service.

9 THE COURT: Thank you, Mr. King.

10 Anything in reply?

11 MS. OWEN: Just briefly, Your Honor.

12 Ladies and gentlemen, you're going to go back and
13 make a decision. And Mr. King just said something that
14 reminded me that I didn't mention something a few minutes
15 ago. **Minor** got up here and tells you she remembers
16 everything of this morning, May 14, 2016, from three years
17 ago, yet when I ask her about a conversation she had with
18 her dad three months ago that was witnessed and overheard
19 by Sergeant Link, she doesn't remember that. Sergeant
20 Link remembers. It was right out here in this hallway as
21 Mr. King asked her. And the defendant was telling her to
22 tell a different version of that story.

23 Ladies and gentlemen, it's the little inconsistencies
24 and who has something to gain and who has something to
25 lose. Mr. Durham may not be back in her home, but she

1 still loves him. She told you she always will.

2 Thank you.

3 CHARGE ON THE LAW

4 THE COURT: Mr. Foreperson, ladies and gentlemen of
5 the jury, you have seen and heard the evidence presented
6 as well as the arguments of counsel. It now is my duty
7 and obligation to instruct you on the law applicable in
8 this case. It will then be your duty and obligation to
9 begin your deliberations through which you will decide the
10 facts to determine whether the State has met its burden of
11 proof in this case.

12 It is your exclusive duty to determine the facts in
13 this case. You do that based upon your own common sense
14 examination and evaluation of the testimony and other
15 evidence received during the trial of the case. You
16 12 jurors alone will decide what weight, value and effect
17 that is to be given to any particular testimony or other
18 evidence received. Your ultimate goal is to determine
19 whether the State has met its burden of proof in this
20 case, and in doing so, you will have fulfilled your
21 obligation as jurors.

22 In this case, the State of South Carolina, through
23 the circuit solicitor, has charged the defendant with a
24 criminal offense known as criminal sexual conduct with a
25 minor second degree. The allegations charging the

1 defendant with this crime is set forth in the indictment
2 that has been explained to you at the start of this trial.
3 As I explained, the indictment is not evidence in this
4 case, and you may not consider it as evidence against the
5 defendant.

6 As to the charges set forth in the indictment, the
7 defendant has entered a plea of not guilty, and that plea
8 of not guilty places upon the State the burden of proving
9 the allegations that are set forth in the indictment, the
10 burden of proving each of the essential elements of the
11 crime charged, and, therefore, the burden of proving the
12 guilt of the defendant to the satisfaction of each of you
13 12 jurors beyond a reasonable doubt before a verdict of
14 guilty could be returned as to the charge. The burden is
15 never upon the defendant to prove that he is not guilty or
16 to prove that he is innocent because in some cases, that
17 may not be possible. The burden is always upon the State
18 because they have made the allegations to prove the
19 defendant guilty beyond a reasonable doubt.

20 You are further instructed that no matter how serious
21 the offense for which the defendant stands charged might
22 be, it is a vital and important and cardinal rule of law
23 that every defendant in a criminal trial shall always be
24 presumed innocent of those charges, and that presumption
25 of innocence shall be with the defendant from the moment

1 of his arrest, throughout the course of the criminal
2 process, and even throughout the course of the actual
3 trial.

4 The presumption of innocence shall be with the
5 defendant even as you go into the jury room to begin your
6 deliberations, and the presumption of innocence shall be
7 with him there and be with him forever unless you
8 12 jurors determine that he is no longer entitled to that
9 presumption of innocence. It is only if, unless and until
10 you are satisfied of the defendant's guilt beyond a
11 reasonable doubt that he would be no longer entitled to
12 the presumption of innocence.

13 And I apologize. I'm at that stage of my life where
14 I'm half in and half out. Sometimes I feel like I can do
15 it, but today is not one of them.

16 Okay. I remind you that during this trial, you and I
17 have certain duties to perform. As the judge it is my
18 responsibility to preside over the trial of this case and
19 to rule on the admissibility of the evidence offered
20 during this trial. You are to consider only the competent
21 evidence before you. If there was any testimony ordered
22 stricken from the record during this trial, you must
23 disregard that testimony. You are to consider only the
24 testimony that has been presented from this witness stand,
25 any exhibits that have been made part of the record in

1 this case, and any stipulations of counsel.

2 I have the additional duty to charge you the law
3 applicable to this case. As the presiding judge, I'm the
4 sole judge of the law of the case and it's your duty as
5 jurors to accept and apply the law as I now state it to
6 you. If you have any idea as to what the law is or what
7 the law ought to be and it is different from what I tell
8 you the law is, you must abandon that idea because you're
9 sworn to accept the law and apply the law exactly as I
10 state it to you.

11 It is your duty as jurors to decide the facts in this
12 case. In every case tried in this court before a jury,
13 the jury is the sole and exclusive judge of the facts. A
14 trial judge cannot comment on or make any statement about
15 the facts to the jury. Since you the jury are the sole
16 judge of the facts in this case, you are not to infer from
17 what I have said during the progress of this trial while
18 ruling on the admissibility of evidence or from anything
19 that I say during the course of these instructions to you
20 that I have an opinion about the facts in the case. I do
21 not. The law does not allow me to have an opinion about
22 the facts in the case. The facts are solely for you the
23 jury to determine. As jurors, it is also your duty to
24 determine the effect, value, weight and truth of all
25 evidence presented during this trial.

1 The State has the burden of proving the defendant
2 guilty beyond a reasonable doubt. Some of you may have
3 served as jurors in civil cases where you were told that
4 it is only necessary to prove that a fact is more likely
5 true than not true by the greater weight or a
6 preponderance of the evidence. In a criminal case, the
7 State's proof must be more powerful than that. It must be
8 beyond a reasonable doubt. Proof beyond a reasonable
9 doubt is proof that leaves you firmly convinced of the
10 defendant's guilt. Reasonable doubt is the kind of doubt
11 that would make a person -- reasonable person hesitate to
12 act.

13 There are very few things in this world that we know
14 with absolute certainty. In a criminal case, the law does
15 not require proof that overcomes every possible doubt. It
16 requires that if, based on your consideration of all the
17 evidence, you are firmly convinced that the defendant is
18 guilty of the crime charged, you must find the defendant
19 guilty. If, on the other hand, you think there is a real
20 possibility the defendant is not guilty, you must give the
21 defendant the benefit of the doubt and find him not
22 guilty.

23 There are two types of evidence which are generally
24 presented during a trial: direct evidence and
25 circumstantial evidence. Direct evidence is the testimony

1 of a person who claims to have actual knowledge of a fact
2 such as an eyewitness. It is evidence that immediately
3 establishes the main fact to be proved.

4 Circumstantial evidence is proof of a chain of facts
5 and circumstances indicating the existence of another
6 fact. It is evidence which immediately establishes
7 collateral facts from which the main fact may be inferred.
8 Circumstantial evidence is based on inference and not on
9 personal knowledge or observation.

10 The law makes absolutely no distinction between the
11 weight or value to be given to direct and circumstantial
12 evidence. You should weigh all of the evidence presented
13 in this case. If you find that there is a real
14 possibility that the defendant is not guilty, then you
15 must find him not guilty.

16 Necessarily, you must determine the credibility of
17 the witnesses who have testified in this case.
18 Credibility simply means believability. It becomes your
19 duty as jurors to analyze and evaluate the evidence and
20 determine which evidence you believe to be true.

21 In determining the believability of witnesses who
22 testified in this case, you may believe one witness over
23 several witnesses or, of course, several witnesses over
24 one witness. You may believe a part of the testimony of a
25 witness and reject the remaining part of the testimony of

1 that same witness. You may believe the testimony of a
2 witness in its entirety or reject the testimony of a
3 witness in its entirety. You may consider whether any
4 witness has exhibited to you any interest, bias, prejudice
5 or other motive to testify in this case. You may also
6 consider the appearance and manner of a witness while on
7 the witness stand. In other words, you are to judge a
8 witness's credibility the same way you judge a person's
9 credibility in your daily life.

10 The rules of evidence ordinarily do not permit
11 witnesses to testify to opinions or conclusions. An
12 exception to this rule exists for witnesses we call expert
13 witnesses. A witness who, by education and experience,
14 has become an expert in some art, science, profession or
15 calling, may state an opinion as to relevant and material
16 matter in which the witness claims to be an expert and may
17 also state the reasons for that opinion.

18 You should consider any expert opinion received in
19 evidence in this case, and like any other evidence, give
20 it the weight you think it deserves. If you decide that
21 the opinion of an expert witness is not based on
22 sufficient education and experience, or if you conclude
23 that the reasons given in support of the opinion are not
24 sound, or that the opinion is outweighed by other
25 evidence, you may disregard the opinion entirely. An

1 expert witness's testimony is to be given no greater
2 weight than that of other witnesses simply because the
3 witness is an expert. Further, you are not required to
4 accept an expert's opinion even though it is not
5 contradicted.

6 A statement alleged to have been made by the
7 defendant has been admitted into evidence in this case.
8 However, you must make the ultimate decision whether or
9 not the defendant made each statement. If the defendant
10 did make the statement, you must determine whether the
11 statement was made by the defendant voluntarily and of his
12 own free will. This means that the statement was not
13 caused by pressure, force, fear, threats, coercion or
14 intimidation or by hope or promise of leniency or reward
15 of any kind.

16 In determining whether the statement was voluntary,
17 you should consider both the characteristics of the
18 defendant and the details of the questioning. Some of the
19 factors that you must consider are, one, the age of the
20 defendant; two, the defendant's education or lack of
21 education; three, the defendant's mental ability or
22 capacity; four, the defendant's IQ or intelligence; five,
23 the defendant's background and environment; six, the place
24 and length of detention; seven, the nature of the
25 questioning; and eight, the advice or lack thereof to the

1 defendant of his constitutional rights including but not
2 limited to the right to remain silent, that any statement
3 could be used against him in a court of law, the right to
4 have a lawyer present, that if he could not afford a
5 lawyer, a lawyer will be appointed to represent him
6 without any cost, and that he could stop making a
7 statement at any time. The State must prove beyond a
8 reasonable doubt that the defendant made a knowing,
9 intelligent and voluntary waiver of his rights and that
10 the statement of the defendant was voluntary.

11 You must carefully consider all of the surrounding
12 circumstances before you give any weight to an alleged
13 statement. The State has the burden of proving beyond a
14 reasonable doubt that the alleged statement was voluntary.
15 If you determine it was, you may give the statement any
16 further consideration that you deem proper. You must
17 decide what weight, if any, should be given to each of the
18 alleged statements. If you determine the alleged
19 statement was not the free and voluntary statement of the
20 defendant, you should not consider the statement at all.

21 I instruct you and emphasize that the fact the
22 defendant did not testify is not a factor to be considered
23 by you, in any way, in your deliberation and in your
24 consideration on the question of the guilt or innocence of
25 the defendant. It must not be considered by you in any

1 manner whatsoever. A defendant has the constitutional
2 right to remain silent, and the assertion of this right
3 must not be considered by you in your deliberations. I
4 repeat, under your oath, you are to draw no conclusion
5 whatsoever from the fact that the defendant in this case
6 did not testify. The fact that the defendant did not
7 testify should not even be discussed in the jury room.
8 The burden of proof, as I have stated it to you, is on the
9 State. The defendant is not required to prove his
10 innocence. The burden of proof remains on the State to
11 prove guilt beyond a reasonable doubt.

12 In order to establish criminal liability, the State
13 must also prove criminal intent. For a particular crime,
14 the mental state required might be purpose, intent,
15 knowledge, recklessness or criminal negligence. The State
16 must prove criminal intent beyond a reasonable doubt.
17 Criminal intent is a matter that must be determined by the
18 jury from the facts of the case. There is no way to prove
19 criminal intent to a mathematical certainty, so the law
20 says that criminal intent may be inferred from the
21 circumstances shown to have existed. This is how you
22 determine whether or not the element requiring intent was
23 present.

24 It is not necessary to establish intent by direct
25 evidence. Intent may be established by circumstantial

1 evidence or by taking into consideration the acts of the
2 parties and all the facts and circumstances of the case.

3 Criminal intent is a mental state of conscious
4 wrongdoing. It is up to you to determine what the
5 defendant intended to do based on the circumstances shown
6 to have existed. Criminal intent can arise from action or
7 failure to act. It can arise from negligence,
8 recklessness or an indifference to duty or consequences
9 which is considered by the law to be the equivalent of
10 criminal intent.

11 The defendant is charged with criminal sexual conduct
12 with a minor second degree. The State must prove beyond a
13 reasonable doubt that the defendant engaged in a sexual
14 battery with the victim. A sexual battery is sexual
15 intercourse, cunnilingus, fellatio, anal intercourse or
16 any intrusion, however slight, of any part of a person's
17 body or of any object into the genital or anal openings of
18 another person's body except when the intrusion is
19 accomplished for medically recognized treatment or
20 diagnostic purposes.

21 The State must then prove beyond a reasonable doubt
22 the victim was at least 11 years old but not more than 14
23 years old at the time of the sexual battery. Consent,
24 willingness, indifference or ignorance on the part of the
25 minor, if any, as to what was taking place does not, in

1 any way, affect the charge of sexual conduct with a minor
2 because an unmarried woman under the age of 14 cannot
3 legally consent to sexual intercourse of any kind.

4 I will give you -- excuse me. Ladies and gentlemen,
5 your verdict must be a unanimous one. Mr. Foreperson,
6 when the jury agrees on the verdict, you'll mark the
7 verdict on the verdict form, sign your name as the
8 foreperson, and then knock on the jury room door and
9 inform the bailiff that you've got a verdict. At that
10 time, we'll receive you back in the courtroom.

11 I ask that you now return to your jury deliberation
12 room, but do not begin deliberating quite yet. It will be
13 your signal to begin deliberating when you receive the
14 verdict form and the exhibits in this case. Thank you so
15 much.

16 (WHEREUPON, the jury exits the courtroom at 1:56 p.m.)

17 THE COURT: All right. Any objection to my charge on
18 the law, from the State?

19 MS. OWEN: No, Your Honor.

20 THE COURT: From the defense?

21 MR. KING: None from the defense, Your Honor.

22 THE COURT: All right. With the exception of your
23 reasonable doubt charge, which I've marked as a Court's
24 exhibit.

25 MR. KING: Thank you, Judge.

1 THE COURT: All right. Thank you.

2 (WHEREUPON, a recess is taken at 1:57 p.m., and the
3 jury starts deliberating.)

4 THE COURT: All right. It's my understanding we've
5 got a verdict. And let me just say to everybody involved
6 in the case, I don't know what the outcome is going to be
7 in this case. I don't have any idea. But I will say this
8 much. We all know this for sure. This jury didn't ask to
9 be involved in this case, and so there's going to be order
10 in this courtroom, there's going to be decorum in this
11 courtroom, or as you can see, we've got some folks who are
12 planning on handling it.

13 So all right. We'll go ahead and bring the jury back
14 in.

15 (WHEREUPON, the jury entered the courtroom at 2:15 p.m.)

16 VERDICT

17 THE COURT: You had the right idea. That's exactly
18 what I'm going to ask you to do is hand it to this man
19 right here.

20 It's my understanding you've reached a verdict.
21 That's right?

22 JURY FOREPERSON: That's right.

23 THE COURT: Okay. If you'll hand the verdict form.
24 All right. Thank you.

25 All right. Madam Clerk, if you will please publish

1 it.

2 THE CLERK: In the case of Indictment Number
3 2016-GS-39-1419, the State of South Carolina vs. James
4 Anthony Durham, we the jury unanimously find the defendant
5 guilty of criminal sexual conduct with a minor second
6 degree.

7 If this was your verdict and still your verdict,
8 please raise your right hand.

9 (WHEREUPON, all jurors raised their right hand.)

10 THE CLERK: Thank you.

11 THE COURT: All right. Anything further from the
12 State before I release the jury?

13 MS. OWEN: No, Your Honor.

14 THE COURT: Anything further from the defense before
15 I release them?

16 MR. KING: Nothing from the defense, Your Honor.

17 THE COURT: Thank you so much.

18 All right. Ladies and gentlemen, thank you so much
19 for your service in this case. I'm going to step back and
20 say goodbye to you before you leave, but I'm certainly not
21 going to hold you up. All right. Thank you.

22 (WHEREUPON, the jury exits the courtroom at 2:16 p.m.)

23 THE COURT: We'll move to sentencing, but I'm going
24 to step back and speak to the jury first.

25 (Pause in proceedings.)

1 THE COURT: All right. The jury didn't have a whole
2 lot to say. Just felt confident. I will say that much.
3 They felt confident in their decision. That's about it.

4 SENTENCING

5 THE COURT: All right. Are we ready to move to
6 sentencing?

7 MS. OWEN: Yes, Your Honor.

8 THE COURT: Let me just say before you get started,
9 Mr. King, I thought you did a very good job and
10 represented your client well. Tried -- I think tried
11 everything that you could and every angle that you could
12 including calling DNA experts. I don't know that I've
13 seen the defense call DNA experts in a long time, and I
14 thought that was a very wise move on your part.

15 Anything from the State as to sentencing?

16 MS. OWEN: Yes, Your Honor. I'd like to go over
17 Mr. Durham's prior record ---

18 THE COURT: Please.

19 MS. OWEN: --- and talk to you a little bit about the
20 situation.

21 He has a 1999 burglary second and a strong-arm
22 robbery; a 2000 driving under suspension; a 2008 grand
23 larceny, a public disorderly conduct, driving under
24 suspension, two shopliftings; 2009, driving under
25 suspension, an habitual traffic offender; 2012, CDV first;

1 2013, carrying a firearm in a public building and
2 possession of a stolen weapon; and then 2015, two more
3 shopliftings.

4 Your Honor, Mr. Durham has -- I believe he and
5 Ms. Durham are still married. He still does maintain
6 contact with them. And I would just ask for the maximum
7 sentence allowed under this penalty, Your Honor, for
8 20 years. Mr. Durham lived with this child and pretended
9 to be her father. And we don't know how long the abuse
10 went on, and it would have continued if Mr. King hadn't
11 witnessed what he had witnessed and step forward.

12 THE COURT: All right. Thank you.

13 Mr. King?

14 MR. KING: Thank you, Judge. Judge, I've had the
15 pleasure of representing Mr. Durham since August.
16 Mr. Dejong originally had this case and I stepped in. So
17 I've not known Mr. Durham for very long, but the little
18 bit I've known with him, he's been an active participant
19 in his case he's called he's one of the vocal clients that
20 wants to know what's going on throughout the whole case.
21 He's been -- I say that to say he's been responsible.
22 We've tried this case before where his first bond was
23 expired. He got a second bond. He bonded out. He showed
24 up here today. He's been absolutely perfectly
25 responsible.

1 So, Judge, he's 41 now. He went to Daniel High
2 School. He actually graduated. He played track, football
3 and wrestling. After high school, he had his first
4 daughter, and he has a total of seven children. His
5 mother is still alive and she lives in Georgia with one of
6 his older brothers. He's actually a seventh son, Judge.
7 He's the youngest of seven boys.

8 Now, after high school, he went into construction,
9 and he's been doing that pretty much his whole life. And
10 before this all came down, he was actually taking online
11 classes in business and accounting. He was trying to
12 better himself.

13 Since this incident, while he's been responsible on
14 his legal side, he has had significant problems in his
15 personal life. He has not had a stable residence for the
16 last three years, nor has he had stable employment. But
17 he's been trying. He's definitely been trying, and he's
18 shown up and had his notices. He was last working with
19 Labor Finders in Greenville to try and make ends meet.

20 Judge, this is always the very hardest part of a
21 trial for me, because I've been arguing the opposite the
22 whole time. I share with Mr. Durham that I thought, at
23 this point, since I spoke with him, we're intending to
24 appeal the trial -- the case, he most likely probably
25 needs to remain silent at this time, okay?

1 We would ask for mercy on his behalf, and if the
2 Court needs to imprison him and separate him from society,
3 we'd ask for a minimal amount of time. He's been on
4 probation before. He can do probation. He's going to be
5 a sex offender for the rest of his life, and there's just
6 nothing we can do about that. His life is different from
7 this day forward. We would ask for the Court's mercy in
8 the sentencing.

9 Thank you.

10 THE COURT: All right. Thank you.

11 Ms. Johnson, anything you want to add?

12 MS. JOHNSON: Your Honor, I've previously known
13 Mr. Durham, and I've known him to be a kind man, like
14 Mr. King said, a very good client, very responsive client.
15 We don't have that a lot in our job. I think he was under
16 a tremendous amount of stress here today. I think he's
17 very sick. He's had -- he's been coughing. He's got
18 pneumonia. And we've advised him not to say anything to
19 maintain his innocence. But again, Your Honor, I think
20 standing before you is a good, kind-hearted man, and I'm
21 asking the Court also for mercy here. Certainly, not the
22 max, just based on the nature of the case. And, again, I
23 would ask for mercy.

24 THE COURT: All right. Thank you.

25 How long did Mr. Durham spend in jail, if any time?

1 MS. OWEN: Your Honor, he spent one day and then --
2 67 days, Your Honor.

3 THE COURT: 67 days. Does that sound about right to
4 y'all?

5 Well, I will say this much, Mr. Durham, for you. At
6 the beginning of the trial, I thought there was going to
7 be a problem or two. You seemed to be agitated. And I
8 will say that after you and I spoke, you complied with my
9 directions, and I'm going to really hold that in your
10 favor. I also don't hold it against you that you had
11 dropped off to sleep a few times. You know, as your
12 attorney said and I think we could all hear from the
13 coughing in the courtroom, that you're sick. There's no
14 doubt in my mind that you are not feeling well at all.

15 I do have to take into consideration, however, you've
16 got a bad record you're dragging behind you. Not the
17 worst. Not by any stretch of the imagination the worst
18 I've heard. And this charge is extremely serious. She
19 was literally, you know, probably a year from this being
20 the most serious of charges, first degree. So very much
21 on the lower end of second degree.

22 I know that your attorneys have told you not to say
23 anything, and I really don't want you to say anything
24 because they -- and I'm not holding it against you in any
25 way that you're not saying anything because you've got

1 excellent attorneys that are planning an appeal for you.

2 All right. All things taken together, I don't think
3 the maximum is appropriate, but I also don't think a
4 minimal sentence is appropriate. The sentence of the
5 Court is 13 years.

6 Good luck. Credit for 67 days.

7 MS. OWEN: Thank you, Your Honor.

8 (WHEREUPON, proceedings concluded at 2:26 p.m.)
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25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF PICKENS)

5
6
7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 General Sessions for Pickens County, South Carolina, on
14 the 18th and 19th day of November, 2019.

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

17
18 February 10, 2020
19
20

21 *Cheryl A. Smith*

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 JAMES ANTHONY DURHAM,)
)
 DEFENDANT.)
 _____)

2016-GS-39-01419

TRANSCRIPT OF RECORD

AUGUST 19 - 21, 2019
PICKENS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JR.

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

ATTORNEY FOR PLAINTIFF:

MEGAN OWEN, ASST. SOL.
DURHAM HILL, ASST. SOL.

ATTORNEY FOR DEFENDANT:

JOHN DeJONG, PUBLIC DEFENDER
DANIEL KING, ASST. PUBLIC DEFENDER

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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Pickens County Clerk of Court RANDOM STRIKE SHEET

JUDGE NAME : Cooper Thomas G. Jr.

TRIAL TYPE : Criminal

PANEL ID : COOPER 8/19/19

COURTROOM CRT1

DESCRIPTION : STATE V. JAMES DURHAM

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
✓ White, Bethany C	194	W	F	()	()	()	WF
DX 2 Whitlock, Rhonda G	196	W	F	()	()	()	WF
DX 3 Bishop, Odessa A	14	W	F	()	()	()	WF
✓ 14 Nix, John K	144	W	M	()	()	()	NM
✓ 5 Finley, Mickey A	68	W	M	()	()	()	WM
DX 6 Slann, Tal D	174	W	M	()	()	()	WM
DX 7 McMahan, Robert C	133	W	M	()	()	()	WM
✓ 8 Xu, Yahong	205	A	F	()	()	()	AF
SX 9 Gamble, Angela L	70	B	F	()	()	()	BF
DX 10 Willimon, Kelli T	198	W	F	()	()	()	WF
✓ 11 McCoy, Michael L (F)	131	W	M	()	()	()	NM
DX 12 Edens, Mary J	62	W	F	()	()	()	WF
DX 13 Banks, Harold G Jr.	5	W	M	()	()	()	WM
DX 14 Rosenberger, Kathi O	162	W	F	()	()	()	WF
✓ 15 Murphy, James D Jr.	138	W	M	()	()	()	WM
✓ 16 Knight, Mary A	114	W	F	()	()	()	WF
✓ 17 Broome, Brandon L	28	W	M	()	()	()	WM
✓ 18 Durham, William E II	58	W	M	()	()	()	WM
✓ 19 Lesley, Teresa E	119	W	F	()	()	()	WF
DX 20 Thomas, Scott E	179	W	M	()	()	()	WM
✓ 21 Case, Rodney T	36	W	M	()	()	()	WM
SX 22 Rose, David M II	161	W	M	()	()	()	WM
✓ 23 Cronk, Paul B	49	W	M	()	()	()	WM
DX 24 Stancil, Monty R	177	W	M	()	()	()	WM

Pickens County Clerk of Court
RANDOM STRIKE SHEET

JUDGE NAME : Cooper Thomas G. Jr.

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COURTROOM CRT1

DESCRIPTION : STATE V. JAMES DURHAM

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
✓ 25 Sawyer, Karen R (A)	166	W	F	()	()	()	WF
26 Lollis, Roger D JR	123	W	M	()	()	()	

Total Number of Jurors: 26

** END OF REPORT **

1 Monday, August 19, 2019:

2 (Whereupon State's exhibits 1 and 2 were marked for
3 identification)

4 **THE COURT:** Be seated. Thank you. Good morning.
5 Welcome to the Court of General Sessions. This is the
6 criminal division of our court system. We call the civil
7 division the Court of Common Pleas. But those of you who are
8 selected today on a jury will be sitting on a criminal case.

9 And I'm going to tell you something about it in a few
10 minutes to find out if any of you know anything about it, or
11 know any of the participants in the case, or if you've heard
12 anything about it. It's going to be a pretty general
13 questionnaire.

14 But at some point this morning I'm going to hand out a
15 short questionnaire to each of you. The bailiffs are going to
16 do that. You'll have a minute to answer those questions. And
17 I think you'll understand what I'm talking about when we get
18 to that point in the process.

19 Now you've been through what's called a voir, I mean, a
20 general qualification. This is a separate qualification as to
21 this case.

22 As the bailiff told you, my name is Tom Cooper. I'm a
23 semi-retired circuit court judge from the Fifth Judicial
24 Circuit, which includes Richland and Kershaw Counties. I
25 actually live in Kershaw County, but my office for the primary

1 bulk of my career has been in Columbia.

2 But I'm always happy to be back in Pickens County. I've
3 been here several times over the years. It's always a -- it's
4 kind of a delight to get out of Columbia to tell you the
5 truth. And probably more people who go down there ought to
6 say that.

7 But, anyway, I always like to just make sort of an
8 opening comment to jurors because I think it's important. And
9 that is the importance of jury service under our Constitution,
10 the Constitution of the United States.

11 And I'd ask you to just imagine for a moment that in
12 every county in South Carolina, every county in the United
13 States jurors at this hour or this hour in their time zone,
14 are coming to sit as jurors to decide cases in that community.
15 And that's -- to me that's an overwhelming thought of the
16 number of people, citizens of this country who come and sit
17 willingly, sort of, to hear these matters and decide these
18 matters in our community. This doesn't happen anywhere else
19 in the world.

20 Whether it's a civil case with damages or wrecks
21 involving death -- life and death in the criminal court
22 system, too, to turn it over to 12 citizens because we, for
23 the last 250 years, have believed that that's -- this is the
24 finest system that's ever been developed in the world,
25 forever. And it's kind of a -- to me it's an overwhelming

JURY QUALIFICATION

10

1 thought and process.

2 So I do want to thank you for your service before we even
3 get started today. And as I say, I'm going to tell you a
4 little bit about the case, and let's get started.

5 Now, in any criminal case the prosecuting entity -- some
6 places they call it the district attorney, some places it's
7 the State's attorney, but in South Carolina the prosecuting
8 entity is the State's solicitor's office. Your State
9 Solicitor is Mr. Walt Wilkins out of Greenville. He's the
10 Solicitor over this circuit, the Thirteenth Circuit. And his
11 office prosecutes all cases, sort of like the Law and Order
12 thing you might see on TV. It's the Order part of the Law and
13 Order.

14 So I need to know -- and I'm going to ask you -- I'm
15 going to ask you some questions. If you respond today to
16 these questions, please stand and give me your juror number.
17 I don't -- I don't want to know anybody's name. I've found
18 over the years that jurors in criminal cases prefer being
19 known as -- by their number instead of by their name. Don't
20 mean any disrespect by that, but that's just our process.

21 So I need to know if any member of the jury panel or any
22 member of your family is acquainted with, related to, or close
23 personal acquaintance of Mr. Walt Wilkins, the State
24 Solicitor. Anybody know him or have any connection with him?

25 (No response)

JURY QUALIFICATION

11

1 **THE COURT:** All right. Mr. Wilkins will not be actually
2 trying the case, but two of the assistant solicitors who work
3 in his office will be trying the case. And I'll ask them to
4 stand, please, Ms. Megan Owen and Mr. Durham Hill.

5 Now, I need to know if any member of the jury panel is
6 related by blood, connected by marriage, or employment, or
7 close personal acquaintance of either of these two attorneys
8 who work in the State Solicitor's Office. If so, please
9 stand.

10 (No response)

11 **THE COURT:** Thank you very much.

12 Now, because the State Solicitor's Office works very
13 closely with law enforcement to develop cases for trial, I
14 need to know if any member of the jury panel or any member of
15 your family is involved in law enforcement. And that can mean
16 anything from the Pickens Police Department, the Pickens
17 County Sheriff's Department, SLED, any military police
18 department or any other police entity that either you, any
19 member of your family, or a close personal acquaintance is
20 involved with. Anybody? Just remain standing for a minute.

21 And gentleman on the front row, what's your number,
22 please?

23 **JUROR 179:** 179, Your Honor.

24 **THE COURT:** 179. Got to find you on my list. Okay. And
25 tell me who's involved with law enforcement?

JURY QUALIFICATION

12

1 **JUROR 179:** I am, Your Honor. I am actually retired law
2 enforcement, however, I do consulting with violent crimes. I
3 do cold cases in different parts of the country. So I am
4 somewhat still involved in it. So that's basically it.

5 **THE COURT:** Okay. Well, let me ask you, Mr. 179, based
6 on your experience do you feel that you could be fair and
7 impartial to both the State and the defendant in a case?

8 **JUROR 179:** Yes, I do, Your Honor.

9 **THE COURT:** I haven't told you anything about it, but I
10 just need that as kind of a preliminary question to ask you.
11 You do?

12 **JUROR 179:** I do.

13 **THE COURT:** Thank you very much, Mr. 179. Gentleman with
14 the tiger paw.

15 **JUROR 131:** Juror number 131.

16 **THE COURT:** 131. Yes, sir. Tell me.

17 **JUROR 131:** Well, I have a first cousin who's a deputy or
18 a detective for the County.

19 **THE COURT:** For the County?

20 **JUROR 131:** Yes, for Pickens County.

21 **THE COURT:** All right. What's the name?

22 **JUROR 131:** His name?

23 **THE COURT:** Yeah.

24 **JUROR 131:** Art Taylor.

25 **THE COURT:** Mr. Solicitor, is Mr. Art Taylor involved in

JURY QUALIFICATION

1 the trial of this case?

2 MS. OWEN: He is not, Your Honor.

3 THE COURT: All right. Mr. 131, would that fact in any
4 way keep you from giving both the State and the defendant a
5 fair and impartial trial?

6 JUROR 131: No, sir.

7 THE COURT: Thank you very much, Mr. 171 [sic]. Lady
8 over here.

9 JUROR 198: Juror 198.

10 THE COURT: 198. Yes, ma'am.

11 JUROR 198: I work in the school system. And I work with
12 school resource officers throughout the County. So -- in
13 Pickens and Oconee. My husband is actually in Pickens County.
14 I'm in Oconee County.

15 THE COURT: Your husband what?

16 JUROR 198: He's also an educator, an ---

17 THE COURT: Okay. He's not an officer, ---

18 JUROR 198: No, ---

19 THE COURT: --- law enforcement?

20 JUROR 198: --- he's not. No, he's a principal.

21 THE COURT: All right. Ms. 198, would that fact in any
22 way interfere with your ability to give both the State and the
23 defendant a fair and impartial trial?

24 JUROR 198: No, Your Honor.

25 THE COURT: Thank you very much. Lady with the flower

JURY QUALIFICATION

1 dress.

2 **JUROR 162:** Number 162.

3 **THE COURT:** Yes, ma'am.

4 **JUROR 162:** My son-in-law works for the Oconee County
5 Sheriff's Department.

6 **THE COURT:** All right.

7 **JUROR 162:** He's a deputy, Brandon O'Kelly.

8 **THE COURT:** Okay. This is a Pickens County case,
9 correct? Is this a Pickens City or County?

10 **MS. OWEN:** Pickens County. Or, I'm sorry, Your Honor,
11 Clemson Police Department.

12 **THE COURT:** Clemson Police Department.

13 **MS. OWEN:** Deputy O'Kelly is not involved in this case.

14 **THE COURT:** He's not involved in this case. All right.

15 Ms. 170 ...

16 **JUROR 162:** 162.

17 **THE COURT:** 162, would that fact in any way interfere
18 with your ability to give both the State and the Defendant a
19 fair and impartial trial?

20 **JUROR 162:** No, sir.

21 **THE COURT:** Thank you very much. Lady with the gray
22 sweater.

23 **JUROR 159:** 159.

24 **THE COURT:** Yes, ma'am.

25 **JUROR 159:** My son-in-law works for Pickens County Police

JURY QUALIFICATION

1 Department.

2 **THE COURT:** Pickens County?

3 **JUROR 159:** (Affirmative nod).

4 **THE COURT:** What's his name, please?

5 **JUROR 159:** Kevin Durham.

6 **THE COURT:** Mr. Durham. Solicitor?

7 **MS. OWEN:** Your Honor, he is not involved in this case.

8 **THE COURT:** He's not involved in this case. Ma'am, Ms.
9 159, would that fact in any way interfere with your ability to
10 give both the State and the defendant a fair and impartial
11 trial?

12 **JUROR 159:** No, sir.

13 **THE COURT:** Thank you very much. Yes, sir.

14 **JUROR 58:** Number 58. My nephew is a State trooper,
15 South Carolina Highway Patrol.

16 **THE COURT:** All right.

17 **JUROR 58:** Leroy Kelly.

18 **THE COURT:** Say what?

19 **JUROR 58:** Leroy Kelly.

20 **THE COURT:** Mr. Kelly. All right. Mr. 58, would that
21 fact in any way interfere with your ability to give both the
22 State and the defendant a fair and impartial trial?

23 **JUROR 58:** No, sir.

24 **THE COURT:** All right. Thank you very much. Oh, yes,
25 I'm sorry. Number?

JURY QUALIFICATION

1 **JUROR 174:** 174.

2 **THE COURT:** All right.

3 **JUROR 174:** I'm in property management within the City
4 limits of Clemson and interact with the Clemson Police
5 Department, they do a fine job, very frequently and know some
6 of the officers on a personal basis.

7 **THE COURT:** All right. Just for information, is this a
8 Clemson Police Department?

9 **MS. OWEN:** She is, Your Honor, Sergeant Link.

10 **THE COURT:** Name?

11 **MS. OWEN:** Sergeant Link.

12 **THE COURT:** Presently?

13 **MS. OWEN:** Yes.

14 **THE COURT:** Sir, do you know this lady here?

15 **JUROR 174:** I do not.

16 **THE COURT:** She works for the Clemson City Police
17 Department.

18 **JUROR 174:** Yes, sir.

19 **THE COURT:** You've not had any contact with her?

20 **JUROR 174:** If I have, it's been some time ago.

21 **THE COURT:** All right. Well, would that fact that you do
22 work with that department, would that fact in any way
23 interfere with your ability to give both the State and the
24 defendant a fair and impartial trial?

25 **JUROR 174:** No, sir.

JURY QUALIFICATION

1 **THE COURT:** All right. Thank you very much.

2 Now, let me go one step further and ask if any member of
3 the jury panel or any -- particularly any member of the jury
4 panel that has -- supports organizations which have as their
5 primary function the support of law enforcement.

6 And that can mean anything from sending contributions to
7 the Sheriffs' Association, or the Troopers Association, or
8 working with neighborhood watch groups, or explorer groups
9 that work with the sheriff's department, or groups like
10 Mothers Against Drunk Driving, or Students Against Drunk
11 Driving, or Citizens Against Violent Crimes and even things
12 like the Sister Care where you might deal with victims of
13 crime. Any member of the jury panel either support any of
14 these groups either financially or as a volunteer, I think I
15 -- what I want to ask? Any member of the jury panel? I'll
16 bet you do.

17 **JUROR 58:** I'm 58. I'm a volunteer fireman for Six Mile
18 Fire Department. I know several different members of law
19 enforcement.

20 **THE COURT:** You support Troopers Association?

21 **JUROR 58:** I do. Yes, sir, I do.

22 **THE COURT:** You'd better. Let me ask you this, when you
23 send a donation to the Troopers Association do you get a
24 little sticker to put on your car?

25 **JUROR 58:** Yes, sir.

JURY QUALIFICATION

1 **THE COURT:** You put it on there?

2 **JUROR 58:** Sometimes I do. I'm pretty particular about
3 stickers on my vehicle.

4 **THE COURT:** Well, you know if you put it on there it
5 might be good. Isn't that right?

6 **JUROR 58:** Could be.

7 **THE COURT:** All right. Thank you very much. Anybody
8 else?

9 (No response)

10 **THE COURT:** Any member of the jury panel ever served on a
11 criminal jury before? All right. And maroon shirt?

12 **JUROR 49:** 49, Your Honor.

13 **THE COURT:** 49? And can you tell me what kind of case it
14 was?

15 **JUROR 49:** It was a bank robbery case out of Greenville.

16 **THE COURT:** Okay. All right. Thank you very much. Let
17 me ask you, would that experience in any way interfere with
18 your ability to give both the State and the defendant ---

19 **JUROR 49:** No, Your Honor.

20 **THE COURT:** --- a fair and impartial trial? Thank you
21 very much, Mr. 49. Yes, ma'am.

22 **JUROR 62:** Juror 62.

23 **THE COURT:** 62? Yes, ma'am. What kind of case was it?

24 **JUROR 62:** It was right here for a murder trial.

25 **THE COURT:** Here?

JURY QUALIFICATION

1 JUROR 62: Yes.

2 THE COURT: How long ago?

3 JUROR 62: It's been probably 15, 20 years.

4 THE COURT: 15, 20 years ago?

5 JUROR 62: (Affirmative nod).

6 THE COURT: Do you think you could sit and be fair and
7 impartial in this case?

8 (Pause)

9 JUROR 62: (No response).

10 THE COURT: I haven't -- you think about that. I mean, I
11 haven't told you anything about the case. It's not a murder
12 case, I'll tell you that. So ---

13 JUROR 62: Okay. My grandchildren were murdered by their
14 mother in 2017 in Easley.

15 THE COURT: In 2017?

16 JUROR 62: So if it's not a murder case, I'll be all
17 right.

18 THE COURT: If it's not -- all right. Well, you might --
19 don't speak too quickly.

20 JUROR 62: Okay. I'll hold that thought.

21 THE COURT: Thank you. Thank you very much, Ms. -- and
22 what was it? 62?

23 JUROR 62: Yes, sir.

24 THE COURT: Yes, ma'am.

25 JUROR 114: I'm juror 114. Could you state the question

JURY QUALIFICATION

1 again?

2 **THE COURT:** I said anybody ever served on a jury in
3 criminal court? In this court? Maybe not here, but ---

4 **JUROR 114:** No. Not in this court, no.

5 **THE COURT:** Okay. We're not talking about a traffic case
6 or something like that.

7 **JUROR 114:** No.

8 **THE COURT:** Yes, sir. Number?

9 **JUROR 58:** Number 58 again. I served on a felony DUI in
10 this courtroom about 20 plus years ago.

11 **THE COURT:** Okay. Would that fact in any way interfere
12 with your ability to give both the State and the defendant a
13 fair and impartial trial?

14 **JUROR 58:** No, sir.

15 **THE COURT:** All right. Thank you very much. All right.
16 Ladies and gentlemen, that's sort of the general questions I
17 wanted to ask you.

18 Now, what I hold in my hand is a piece of paper. That's
19 obvious. It's what's known as an indictment. It is the
20 formal charge which brings a case to the court. It's not
21 evidence of anything.

22 And when I read it to you you're not to assume anything
23 about the facts of the case from the indictment. Any person
24 in South Carolina in this United States is presumed innocent
25 of the charges brought by the State unless and until proved

JURY QUALIFICATION

21

1 guilty to a jury of, as we say, of their peers by evidence
2 convincing that jury of guilt beyond a reasonable doubt. Now
3 that's -- that's what this is.

4 Now the indictment charges Mr. James Anthony Durham --
5 Mr. Durham, will you stand and face the jury, please. Any
6 member of the jury panel related by blood, connected by
7 marriage or employment, or close personal acquaintance of Mr.
8 James Anthony Durham? Anybody know Mr. Durham?

9 (No response)

10 **THE COURT:** All right. Thank you very much.

11 Mr. Durham is represented in this matter today by Mr.
12 Durham, I'm sorry, Daniel King, Mr. Daniel King and Mr. John
13 DeJong. Any member of the jury panel know either of these
14 attorneys or been represented by them at some time in the
15 past? Anybody know -- DeJong, I'm sorry. My pronunciation
16 was -- that's the up country pronunciation of Mr. DeJong's
17 name.

18 (No response)

19 **THE COURT:** All right. Thank you very much, counsel.

20 Mr. DeJong, I'm sorry, Mr. Durham -- this is the
21 indictment which charges Mr. Durham. Mr. James Anthony Durham
22 did in Pickens County on or about May 14th, 2016 commit a
23 sexual battery on a minor who was 14 years of age or less, but
24 who was at least 11 years of age in violation of the code of
25 laws of the State of South Carolina.

JURY QUALIFICATION

22

1 Now, I need to know if any member of the jury panel knows
2 anything about this case, May 14th, 2016. Solicitor, what
3 location is this alleged to have taken place?

4 **MS. OWEN:** City limits of Clemson, Your Honor.

5 **THE COURT:** Within the City limits of Clemson. I don't
6 know if there's any publicity. I don't know if there was any
7 TV coverage. I don't know anything about what -- other than
8 what I have just read on this document. May 14th, 2016.

9 (No response)

10 **THE COURT:** Now, because this -- well, let me -- no,
11 let's do it right now. Because this is a criminal sexual
12 conduct with a minor case I'm going to ask the bailiffs -- you
13 ready?

14 **THE BAILIFF:** Yes, sir.

15 **THE COURT:** Pass out a short -- a very short
16 questionnaire. Two questions. I'm going to ask that each of
17 you privately mark on this questionnaire two questions, yes or
18 no. We've got pencils for you.

19 I want you to think about it. I don't want you to share
20 it with your fellow jurors. But these are sensitive cases,
21 and it's important for the Court to know if any member of the
22 jury panel or any member of your family has ever been involved
23 in any type of -- sexually activity.

24 And we don't -- I don't want to -- and you'll understand
25 why, I don't want to question you in front of your fellow

JURY QUALIFICATION

1 jurors, but these responses that you give me are going to be
2 confidential. And that's why I'm asking you to fill them in
3 without your fellow jurors knowing what you're putting on
4 there. I just need you to hand them up, and then we'll
5 proceed with the rest of the questionnaire.

6 (Pause)

7 **THE COURT:** Fold them up. Fold them up and hand them
8 back to the bailiffs. And then I want the bailiffs to hand
9 them to me. Everybody done it?

10 (Whereupon the bailiffs handed the questionnaires to the
11 Court)

12 **THE COURT:** All right. Ladies and gentlemen, I've got a
13 list of potential witnesses in this case. And I'm going to
14 ask if any member of the jury panel knows any of these people
15 who are potentially witnesses in this case. And if any
16 witness is present, will you please stand so the jury can
17 identify you. **Minor** -- is it **Minor**?

18 **MS. OWEN:** **Minor**.

19 **THE COURT:** **Minor** **Minor** This is **Minor**
20 ladies and gentlemen. Any member of the jury panel know this
21 lady? Have any connection with this lady?

22 (No response)

23 **THE COURT:** All right. Thank you. Thank you, Miss Land.
24 Ross Ables, Anderson County Sheriff's Office, Brenda
25 Link, Clemson PD, Patrick Bikas or -- yeah, Bikas with the

JURY QUALIFICATION

24

1 probation office, John Brown, Clemson PD, Jonathan Duncan,
2 Clemson PD, Larry King, Linda [sic] Massey with DSS, Christine
3 Carlberg with the Julie Valentine Center, Shauna Galloway with
4 the same center, Jennifer Coley, Greenville evidence
5 custodian, Timothy Nafziger, Greenville DNA Lab, Jagannadaha
6 Kandala, Greenville DNA Lab, Jennifer Winch, Lee Black,
7 Pickens County DSS, Khristy Chapman, who works as a guardian
8 ad litem.

9 (No response)

10 **THE COURT:** Any member of the jury panel or any member of
11 your family, close personal acquaintance been -- happened to
12 have been arrested by the Clemson City Police Department or
13 other -- any other agency in Pickens County? And I don't need
14 a whole lot of information about that. I just need to know if
15 you happen to have had the unfortunate experience to have been
16 arrested by either of those two agencies.

17 (No response)

18 **THE COURT:** Anything further at this time?

19 **MS. OWEN:** Nothing further, Your Honor.

20 **MR. KING:** Judge, we'd just ask that a copy of our
21 proposed voir dire would be made a Court's exhibit.

22 **THE COURT:** Sorry?

23 **MR. KING:** We'd just ask a copy of our proposed voir dire
24 be made a Court's exhibit.

25 **THE COURT:** Made a Court exhibit. That's fine.

JURY QUALIFICATION

1 (Whereupon Court's exhibit 1 was marked)

2 **THE COURT:** All right. Ladies and gentlemen, what we're
3 going to do now, I'm going to take these responses to the
4 questionnaire I gave you and go to the jury deliberation room.
5 I'm going to call you one at a time and just talk with you
6 briefly about your response, every one. All right. It'll
7 take a few minutes, but just be at ease, and we'll start the
8 process now. All right. Thank you for your cooperation,
9 ladies and gentlemen.

10 (Whereupon a hearing was held on the record in the jury
11 room with the Court, individual jurors, and the attorneys
12 beginning at 12:18 pm)

13 (Whereupon juror 36 entered the jury room)

14 **THE COURT:** Come on in and have a seat. This is juror
15 number 36. Mr. 36, you've answered no to both questions on
16 the questionnaire. Anything other than that you want to tell
17 me why you could not sit on a case like this?

18 **JUROR 36:** No, sir.

19 **THE COURT:** Okay. Fine. Thank you very much. Go back
20 to the jury [sic] room.

21 (Whereupon juror 36 exited the jury room)

22 (Whereupon juror 70 entered the jury room)

23 **THE COURT:** How are you?

24 **JUROR 70:** Fine. How are you?

25 **THE COURT:** Fine. Have a seat. I've got your

JURY QUALIFICATION

1 questionnaire here and you've indicated yes.

2 **JUROR 70:** Yes.

3 **THE COURT:** How long ago?

4 **JUROR 70:** My daughter was like about 14.

5 **THE COURT:** It was your daughter?

6 **JUROR 70:** Yes.

7 **THE COURT:** The perpetrator was -- who was -- I don't
8 want a name.

9 **JUROR 70:** He was a family member -- well, not a family
10 member, but he was going with a family member.

11 **THE COURT:** Okay.

12 **JUROR 70:** And the young lady, I don't know her, but I
13 know her mother.

14 **THE COURT:** What's the mother's name?

15 **MS. OWEN:** Vanessa Durham.

16 **THE COURT:** Vanessa Durham.

17 **JUROR 70:** Yes. I know her because I have kids by her
18 cousin.

19 **THE COURT:** Okay. Well, with these connections and your
20 answers on this questionnaire do you think you can be fair and
21 impartial in a case like this?

22 **JUROR 70:** Yes, sir.

23 **THE COURT:** Okay. All right. Thank you. That's what I
24 need to know. Thank you very much.

25 (Whereupon juror 70 exited the jury room)

JURY QUALIFICATION

1 (Whereupon juror 173 entered the jury room)

2 **THE COURT:** Good morning. Have a seat. How you doing?

3 **JUROR 173:** Fine.

4 **THE COURT:** You indicated yes on this questionnaire. Was
5 this you or a member of your family?

6 **JUROR 173:** It was me.

7 **THE COURT:** All right. How long ago?

8 **JUROR 173:** 1992.

9 **THE COURT:** '92? How old were you?

10 **JUROR 173:** I was ---

11 **MADAM COURT REPORTER:** I'm sorry, I can't hear you.

12 **THE COURT:** Mid what?

13 **JUROR 173:** Early to mid 30s.

14 **THE COURT:** Early to mid 30s. Okay. You weren't a minor
15 at that time.

16 **JUROR 173:** (Negative nod).

17 **THE COURT:** Given that experience do you think you could
18 sit on a case like this and be fair and impartial to both
19 parties?

20 **JUROR 173:** Uh-uh (negative). Like right now, it's
21 bringing back a lot of bad memories.

22 **THE COURT:** I know. I know. I don't want to -- I don't
23 mean to do that to you, but I had to know, all right?

24 (Juror crying)

25 **THE COURT:** I'm going to excuse you from this jury. You

JURY QUALIFICATION

1 don't have to sit here. You're going to be released.

2 (Pause)

3 **THE COURT:** You're free to go. You don't have to go back
4 out there.

5 (Pause)

6 **THE COURT:** Did you bring all your stuff with you?

7 **JUROR 173:** (Affirmative nod).

8 **THE COURT:** All right. Thank you for coming in.

9 (Whereupon juror 173 exited the jury room)

10 (Whereupon juror 123 entered the jury room)

11 **JUROR 123:** Hey.

12 **THE COURT:** Hey. How you doing? Have a seat. Just
13 looking over your questionnaire, you have no on both of these
14 questions, is that correct?

15 **JUROR 123:** Assuming I read them right.

16 **THE COURT:** Any reason why you know that you couldn't be
17 fair and impartial in a case like this?

18 **JUROR 123:** No. I honestly don't have any. I have a
19 vacation planned next week. I'd rather -- don't want to take
20 a chance, ---

21 **THE COURT:** Yeah.

22 **JUROR 123:** --- you know?

23 **THE COURT:** Okay. Hey, I got ---

24 **JUROR 123:** This is my first time, so ...

25 **THE COURT:** I got a vacation planned next week, so you're

JURY QUALIFICATION

1 safe. Return to the courtroom.

2 **JUROR 123:** All right.

3 **THE COURT:** Thank you very much.

4 **JUROR 123:** Appreciate it.

5 (Whereupon juror 123 exited the jury room)

6 (Whereupon juror 49 entered the jury room)

7 **THE COURT:** Good morning.

8 **JUROR 49:** Hello.

9 **THE COURT:** How are you?

10 **JUROR 49:** Doing all right.

11 **THE COURT:** Have a seat. Just briefly, you answered no
12 to both of these questions.

13 **JUROR 49:** Right.

14 **THE COURT:** Is there any reason that you know of why you
15 could not be fair and impartial in a case like this?

16 **JUROR 49:** No.

17 **THE COURT:** You could be comfortable?

18 **JUROR 49:** Yes.

19 **THE COURT:** Okay. Thank you very much.

20 **JUROR 49:** Okay.

21 (Whereupon juror 49 exited the jury room)

22 (Whereupon juror 22 entered the jury room)

23 **THE COURT:** Hello. How are you? Have a seat.

24 **JUROR 22:** Yes.

25 **THE COURT:** Ms. 22, you answered no to both questions on

JURY QUALIFICATION

1 the questionnaire, is that correct?

2 **JUROR 22:** Um-hum (affirmative).

3 **THE COURT:** Do you know of any reason -- is that you?

4 **JUROR 22:** No. No.

5 **THE COURT:** Okay. Any reason why you could not be fair
6 and impartial sitting on a case like this?

7 **JUROR 22:** I really do -- I'm just -- I've been a school
8 teacher for 40 years. And my heart is just right with those
9 children.

10 **THE COURT:** Yes, ma'am.

11 **JUROR 22:** And I just -- I think it would be hard for me
12 to ...

13 **THE COURT:** Sit in judgement ---

14 **JUROR 22:** Sit in judgement of this.

15 **THE COURT:** Okay. I'd love to have you. All right. I
16 understand that. You're free to go.

17 **JUROR 22:** Thank you.

18 **THE COURT:** You got all your stuff?

19 **JUROR 22:** Yes, sir.

20 **THE COURT:** Okay.

21 (Whereupon juror 22 exited the jury room)

22 **THE COURT:** Any -- I've done it now, but any objection to
23 excusing her?

24 **MS. OWEN:** No.

25 **MR. KING:** No.

JURY QUALIFICATION

1 **THE COURT:** She clearly didn't want to, I mean, -- all
2 right. Let's move on.

3 (Whereupon juror 162 entered the jury room)

4 **THE COURT:** Have a seat. Ms. 162, I see you answered yes
5 to the first -- you didn't answer the second question.

6 **JUROR 162:** Oh, no, I realized that after, but it's no on
7 the second one.

8 **THE COURT:** Okay. I saw it -- was it you or a member of
9 your family?

10 **JUROR 162:** Two members of my family.

11 **THE COURT:** Two members of your family. How long ago?

12 **JUROR 162:** Both of them were children, so 30 years ago.

13 **THE COURT:** Thirty years ago.

14 **JUROR 162:** Or 40.

15 **THE COURT:** Okay. Did it result in any criminal
16 activity?

17 **JUROR 162:** No.

18 **THE COURT:** Okay.

19 **JUROR 162:** No -- I don't know.

20 **THE COURT:** Okay. Were they your children?

21 **JUROR 162:** No.

22 **THE COURT:** Oh, I see.

23 **JUROR 162:** One was my husband and one was my brother.

24 But in my husband's case, it was a family member. And that

25 family member was later murdered by his mother, supposedly for

JURY QUALIFICATION

1 this activity.

2 **THE COURT:** Okay.

3 **JUROR 162:** So criminally, she didn't serve any time or
4 anything, so ...

5 **THE COURT:** Okay. Well, with that family experience do
6 you think you can sit on a case like this and be fair and
7 impartial?

8 **JUROR 162:** I think I could be as far as, you know, I
9 think everybody deserves a right to have their innocence, you
10 know, you're not guilty until you've been proven to be guilty.

11 **THE COURT:** You're absolutely right.

12 **JUROR 162:** I do think it's a very serious charge, but
13 that if you are -- if there is evidence that proves you're
14 guilty that you should be held accountable.

15 **THE COURT:** All right. But you could do -- in doing that
16 ---

17 **JUROR 162:** I feel like I could.

18 **THE COURT:** --- you feel like you could be fair and
19 impartial?

20 **JUROR 162:** Yes, sir.

21 **THE COURT:** Okay. Thank you very much. Please return to
22 the courtroom.

23 **JUROR 162:** Thank you.

24 (Whereupon juror 162 exited the jury room)

25 (Whereupon juror 11 entered the jury room)

JURY QUALIFICATION

1 **THE COURT:** Good morning.

2 **JUROR 11:** Good morning, Your Honor.

3 **THE COURT:** How are you?

4 **JUROR 11:** Doing well.

5 **THE COURT:** Have a seat.

6 **JUROR 11:** Thank you.

7 **THE COURT:** Mr. 11, ---

8 **JUROR 11:** Yes, sir.

9 **THE COURT:** --- you marked a yes on this questionnaire.

10 Can you tell me -- was this a member -- you or a ---

11 **JUROR 11:** My granddaughter was sexually assaulted in a
12 daycare center in Broward County, Florida.

13 **THE COURT:** How long ago?

14 **JUROR 11:** Twenty years ago.

15 **THE COURT:** Did that result in any criminal activity?

16 **JUROR 11:** It did.

17 **THE COURT:** It did?

18 **JUROR 11:** Um-hum (affirmative).

19 **THE COURT:** Well, let me ask you, based on that family
20 experience that you've had, do you think you could be fair and
21 impartial to ---

22 **JUROR 11:** I can't be a hundred percent sure on that,
23 sir. I mean, I know it was a long time ago, but it was -- it
24 was horrible to the family.

25 **THE COURT:** I understand that. Well, that's our purpose

JURY QUALIFICATION

34

1 in doing this is just to make sure that the defendant is
2 guaranteed -- and the State is guaranteed a full trial, and
3 the jurors are not predisposed going into it. And I know it's
4 hard. You haven't heard any of the facts of the case ---

5 **JUROR 11:** No, I sure -- I sure have not.

6 **THE COURT:** Well, I just -- do you feel you could be fair
7 and impartial?

8 **JUROR 11:** I can't say that a hundred percent. I mean, I
9 ---

10 **THE COURT:** Okay. All right. That's a fair answer.

11 **JUROR 11:** I'm just being honest with you.

12 **THE COURT:** Well, that's -- that's fine. That's all I
13 want. Thank you for being candid. Just have a seat in the
14 courtroom.

15 **JUROR 11:** Thank you.

16 (Whereupon juror 11 exited the jury room)

17 **MR. KING:** Judge, can we talk about juror 11?

18 **THE COURT:** Yeah, we are. I'm setting him aside.

19 **MR. KING:** Okay.

20 (Whereupon juror 177 entered the jury room)

21 **THE COURT:** Good morning.

22 **JUROR 177:** Hello, sir.

23 **THE COURT:** How you doing? Have a seat.

24 **JUROR 177:** I'm fine. And you?

25 **THE COURT:** I'm well. Mr. 177, ---

JURY QUALIFICATION

1 JUROR 177: Yes, sir.

2 THE COURT: --- you answered no to both questions ---

3 JUROR 177: That's correct.

4 THE COURT: --- on this questionnaire. Is there any
5 reason that you know of in your family or any other reason why
6 you could not be fair and impartial to both ---

7 JUROR 177: No, sir.

8 THE COURT: You think you can?

9 JUROR 177: I think I can.

10 THE COURT: All right. That's all I need.

11 JUROR 177: All right.

12 THE COURT: Thank you very much.

13 JUROR 177: Thank you.

14 (Whereupon juror 177 exited the jury room)

15 (Whereupon juror 107 entered the jury room)

16 THE COURT: Come in. Have a seat. How you doing?

17 JUROR 107: Good.

18 THE COURT: Mr. 107, you answered yes to this question
19 about a sexual assault. Can you tell ---

20 JUROR 107: When my mom was a little girl her step-father
21 actually molested her for about three years straight ---

22 THE COURT: Okay.

23 JUROR 107: --- until he was finally convicted of it.

24 THE COURT: That's your mother?

25 JUROR 107: Yes.

JURY QUALIFICATION

1 **THE COURT:** And he was eventually convicted?

2 **JUROR 107:** Yes.

3 **THE COURT:** All right. Let me ask you this, because of
4 that family history that you have, you think you could be fair
5 and impartial in a case ---

6 **JUROR 107:** Make it kind of tough because it sickens me
7 thinking about somebody touching a little girl like that.

8 **THE COURT:** You feel strongly about that?

9 **JUROR 107:** (Affirmative nod).

10 **THE COURT:** All right. I'm going to excuse you then.

11 **JUROR 107:** Thank you, sir.

12 **THE COURT:** You're free to go. Go out this door. You
13 got all your stuff?

14 **JUROR 107:** Yes, sir.

15 **THE COURT:** Okay.

16 (Whereupon juror 107 exited the jury room)

17 (Whereupon juror 133 entered the jury room)

18 **THE COURT:** Good morning, sir. Come in and have a seat
19 just for a minute. I see you're 133.

20 **JUROR 133:** Yes, sir.

21 **THE COURT:** You answered no to both questions on this
22 questionnaire.

23 **JUROR 133:** Yes.

24 **THE COURT:** Correct?

25 **JUROR 133:** I did. But I got to thinking, nobody's ever

JURY QUALIFICATION

1 been accused. I had two of my cousins that were molested by
2 their mother's step-dad.

3 **THE COURT:** Okay.

4 **JUROR 133:** Is that -- I didn't ---

5 **THE COURT:** Well, ---

6 **JUROR 133:** I didn't know how that factored in.

7 **THE COURT:** Were they accused criminally?

8 **JUROR 133:** No, sir.

9 **THE COURT:** They weren't?

10 **JUROR 133:** No, sir.

11 **THE COURT:** Okay. All right. Well, that's -- that's
12 fine. That's what I -- we need to know. Would that fact --
13 they were your nephews?

14 **JUROR 133:** No, they were ---

15 **THE COURT:** Cousins.

16 **JUROR 133:** They were cousins.

17 **THE COURT:** Would that fact in any way influence your
18 judgement in a case like -- do you think you could be fair and
19 impartial in a case like this?

20 **JUROR 133:** Well, I don't know anything about the case,
21 but ---

22 **THE COURT:** I've told you -- I told you all I know.

23 **JUROR 133:** Yes, sir. I would try to be fair. I just
24 feel very strongly against child -- I've got seven kids and
25 ten grandkids. And I know how I'd feel if it was mine. So, I

JURY QUALIFICATION

1 mean, if I'm being fair, ---

2 **THE COURT:** Of course, you're being fair to this -- in
3 this case after hearing these facts, you think you can?

4 **JUROR 133:** I'll try.

5 **THE COURT:** All right. Good. Thank you very much, Mr.
6 133. You can go back to the jury [sic] room.

7 (Whereupon juror 133 exited the jury room)

8 **THE COURT:** I'm going to set him aside.

9 (Whereupon juror 28 entered the jury room)

10 **THE COURT:** Good morning. Have a seat. Number 28?

11 **JUROR 28:** Yes, sir.

12 **THE COURT:** You answered no to both questions.

13 **JUROR 28:** Yes, sir.

14 **THE COURT:** Do you know of any other reason why you think
15 you could not be fair and impartial to both parties in a case
16 like this?

17 **JUROR 28:** No, sir.

18 **THE COURT:** You think you can?

19 **JUROR 28:** Yes, sir.

20 **THE COURT:** All right. Thank you very much. Have a seat
21 in the jury [sic] room.

22 (Whereupon juror 28 exited the jury room)

23 (Whereupon juror 68 entered the jury room)

24 **THE COURT:** Hey. Good morning. Have a seat. Mr. 68,
25 you answered no to both questions on the questionnaire.

JURY QUALIFICATION

1 **JUROR 68:** Yes, sir.

2 **THE COURT:** Do you know of any other reason why you think
3 you could not be fair and impartial -- any reason why you
4 could not be fair and impartial ---

5 **JUROR 68:** No, sir.

6 **THE COURT:** --- to both parties in this case?

7 **JUROR 68:** No, sir.

8 **THE COURT:** Okay. Good. Thank you very much.

9 **JUROR 68:** All right.

10 **THE COURT:** Have a seat in the courtroom.

11 (Whereupon juror 68 exited the jury room)

12 (Whereupon juror 179 entered the jury room)

13 **THE COURT:** Good morning, sir. How you doing?

14 **JUROR 179:** I'm good. Thank you.

15 **THE COURT:** Have a seat. Mr. 179, you answered no to
16 both questions.

17 **JUROR 179:** That's correct.

18 **THE COURT:** Based on what you know about this case, and
19 that's as much as I do, you think you could be fair and
20 impartial to both parties ---

21 **JUROR 179:** Yes, I do, Your Honor.

22 **THE COURT:** The State and the defendant?

23 **JUROR 179:** Yes.

24 **THE COURT:** All right. Thank you very much. Have a seat
25 in the courtroom.

JURY QUALIFICATION

1 (Whereupon juror 179 exited the jury room)

2 (Whereupon juror 161 entered the jury room)

3 **THE COURT:** Come in.

4 **JUROR 161:** How's it going?

5 **THE COURT:** How you doing?

6 **JUROR 161:** Good.

7 **THE COURT:** Have a seat. Mr. 161, those your answers to
8 these questions?

9 **JUROR 161:** Yes.

10 **THE COURT:** All right. You indicated yes to both
11 questions.

12 **JUROR 161:** Um-hum (affirmative).

13 **THE COURT:** Can you tell me -- you or a member of your
14 family?

15 **JUROR 161:** Both members' family. Technically, step-
16 grandfather and my niece. And this happened maybe 15 years
17 ago.

18 **THE COURT:** Okay.

19 **JUROR 161:** I was young, like 11. But -- and she was
20 nine and he was in his 60s. So, yeah.

21 **THE COURT:** Okay. Do you remember if any criminal case
22 came out of that?

23 **JUROR 161:** It did. And ---

24 **THE COURT:** Where was it?

25 **JUROR 161:** I'm sorry? What year?

JURY QUALIFICATION

1 **THE COURT:** No. Where?

2 **JUROR 161:** Oh, Seneca.

3 **THE COURT:** Seneca?

4 **JUROR 161:** Um-hum (affirmative).

5 **THE COURT:** Okay.

6 **JUROR 161:** And it was found not guilty, not enough
7 evidence. So -- and how I feel about that is he was a good
8 man. He was. And I think the situation was just not right
9 for him. He was with my grandmother for 20 years. And it
10 just didn't go right. So -- but overall it's just kind of
11 tough, I guess. But I don't know if it even applies because
12 it's so long ago, 15 to 20 years.

13 **THE COURT:** Well, yeah, you know, these things go back to
14 childhood. So I have to ask about it. Let me ask you this,
15 based on that family situation that you had, do you think you
16 could be fair and impartial in a case like this?

17 **JUROR 161:** I can -- I can try, definitely, because, like
18 I said, until proven guilty and there's always sides to the
19 story. And with his story it was a tickle fight that went a
20 little too far. So I don't know. But, yes, I could be ---

21 **THE COURT:** You can be fair?

22 **JUROR 161:** --- fair. Yes, sir.

23 **THE COURT:** Have a seat in the courtroom. Thank you very
24 much.

25 (Whereupon juror 161 exited the jury room)

JURY QUALIFICATION

1 (Whereupon juror 194 entered the jury room)

2 **THE COURT:** Hello. How are you?

3 **JUROR 194:** Good.

4 **THE COURT:** Have a seat. Ms. 194, you answered no to
5 both of these questions, correct?

6 **JUROR 194:** Yes.

7 **THE COURT:** And let me ask you this, based on that, your
8 answers, do you think -- I'm sorry, based on what you know
9 about the case, I don't know anymore than you do, do you think
10 you could be fair and impartial to both parties in this case,
11 ---

12 **JUROR 194:** Yes, sir.

13 **THE COURT:** --- both the State and the defendant?

14 **JUROR 194:** Yes, sir.

15 **THE COURT:** All right. Thank you very much. Have a seat
16 in the courtroom.

17 (Whereupon juror 194 exited the jury room)

18 (Whereupon juror 14 entered the jury room)

19 **THE COURT:** Come in. How you doing?

20 **JUROR 14:** I'm fine.

21 **THE COURT:** Have a seat. Ms. 14, are those your answers
22 to those questions?

23 **JUROR 14:** Yes.

24 **THE COURT:** Okay. Based on what you know about the case
25 so far, which is very little, do you think you could be fair

JURY QUALIFICATION

1 and impartial to both parties, both the State and the
2 defendant, given the nature of these charges?

3 **JUROR 14:** Yes.

4 **THE COURT:** You can?

5 **JUROR 14:** Um-hum (affirmative).

6 **THE COURT:** All right. Thank you very much.

7 **JUROR 14:** Thanks.

8 **THE COURT:** Have a seat in the courtroom.

9 (Whereupon juror 14 exited the jury room)

10 (Whereupon juror 144 entered the jury room)

11 **THE COURT:** Good morning.

12 **JUROR 144:** Good morning.

13 **THE COURT:** Have a seat. Mr. 144, ---

14 **JUROR 144:** Yes, sir.

15 **THE COURT:** --- are those your answers?

16 **JUROR 144:** Yes, sir.

17 **THE COURT:** All right. Given the nature of this case,
18 what you know about it so far, very little, ---

19 **JUROR 144:** Just what you -- what you said out there.

20 **THE COURT:** You know as much as I do.

21 **JUROR 144:** Okay. We in good shape then.

22 **THE COURT:** Yeah. Let me ask you this, do you think
23 based on the kind of case this is that you could be fair and
24 impartial ---

25 **JUROR 144:** Yes, sir.

JURY QUALIFICATION

1 **THE COURT:** --- to the State and the defendant?

2 **JUROR 144:** Yes, sir.

3 **THE COURT:** All right. Good. Thank you very much.

4 That's all I needed to know.

5 (Whereupon juror 144 exited the jury room)

6 (Whereupon juror 198 entered the jury room)

7 **THE COURT:** Good morning.

8 **JUROR 198:** Good morning.

9 **THE COURT:** How are you?

10 **JUROR 198:** Good.

11 **THE COURT:** Have a seat. 198?

12 **JUROR 198:** Yes.

13 **THE COURT:** Those your answers to ---

14 **JUROR 198:** Yes, sir.

15 **THE COURT:** Let me ask you, based on the nature of this
16 case, the kind of case it is, do you think you could be fair
17 and impartial to both sides, both the State and the defendant
18 in a case like this?

19 **JUROR 198:** Yes, Your Honor.

20 **THE COURT:** You can?

21 **JUROR 198:** Yes, sir.

22 **THE COURT:** Okay. Thank you very much, ma'am. Have a
23 seat in the courtroom.

24 (Whereupon juror 198 exited the jury room)

25 (Whereupon juror 166 entered the jury room)

JURY QUALIFICATION

1 **THE COURT:** Hello.

2 **JUROR 166:** Hi there.

3 **THE COURT:** How are you?

4 **JUROR 166:** I'm good.

5 **THE COURT:** Just have a seat.

6 **JUROR 166:** Okay.

7 **THE COURT:** 166?

8 **JUROR 166:** Yes, sir.

9 **THE COURT:** Those your answers there?

10 **JUROR 166:** Um-hum (affirmative).

11 **THE COURT:** All right. Given the nature of this case, I
12 know -- I know about as much about it as you do, I don't know
13 any of the facts of the case, but do you feel at this point
14 that you could be fair and impartial to both parties?

15 **JUROR 166:** Yes, sir.

16 **THE COURT:** The State and the defendant?

17 **JUROR 166:** Yes, sir.

18 **THE COURT:** Okay. Thank you very much. Have a seat in
19 the courtroom.

20 (Whereupon juror 166 exited the jury room)

21 (Whereupon juror 138 entered the jury room)

22 **THE COURT:** Morning.

23 **JUROR 138:** How you doing?

24 **THE COURT:** Fine. Have a seat. Mr. 138, ---

25 **JUROR 138:** Yes, sir.

JURY QUALIFICATION

1 **THE COURT:** --- those your answers?

2 **JUROR 138:** Yes, sir.

3 **THE COURT:** Based on the type of case this is, and I
4 don't know anything about the facts no more than you do at
5 this point, do you think you could be fair and impartial to
6 both parties, both the State and the defendant?

7 **JUROR 138:** Yes, sir.

8 **THE COURT:** You can?

9 **JUROR 138:** Yes, sir.

10 **THE COURT:** All right. Good. Thank you very much.

11 **JUROR 138:** Thank you.

12 **THE COURT:** Go back to the courtroom.

13 (Whereupon juror 138 exited the jury room)

14 (Whereupon juror 196 entered the jury room)

15 **THE COURT:** Hello.

16 **JUROR 196:** Hey there.

17 **THE COURT:** Have a seat.

18 **JUROR 196:** Okay.

19 **THE COURT:** Ms. 196, are those your answers?

20 **JUROR 196:** Yes.

21 **THE COURT:** Based on what you know about the case, the
22 nature of the case, do you think you could be fair and
23 impartial to both parties, ---

24 **JUROR 196:** Yes, sir.

25 **THE COURT:** --- the State and the defendant?

JURY QUALIFICATION

1 **JUROR 196:** Yes, sir.

2 **THE COURT:** Okay. Thank you very much.

3 **JUROR 196:** You're welcome.

4 **THE COURT:** Please return to the courtroom.

5 **JUROR 196:** All right. Thank you.

6 (Whereupon juror 196 exited the jury room)

7 (Whereupon juror 159 entered the jury room)

8 **THE COURT:** Good morning.

9 **JUROR 159:** Good morning.

10 **THE COURT:** How are you?

11 **JUROR 159:** Good.

12 **THE COURT:** Have a seat in that chair there. Ms. 159,
13 you answered yes to both questions.

14 **JUROR 159:** Yes.

15 **THE COURT:** Can you tell me if the assault was to you or
16 a member of your family?

17 **JUROR 159:** To me.

18 **THE COURT:** And how long ago?

19 **JUROR 159:** Fifty-five years ago. It's been a long time.

20 **THE COURT:** Okay. You were young?

21 **JUROR 159:** Yeah.

22 **THE COURT:** And is this some -- a member of your family
23 was accused of it? Who was accused?

24 **JUROR 159:** No, in fact, I've never even told anybody
25 about it. So I probably should have said no to that.

JURY QUALIFICATION

1 **THE COURT:** All right. That's a no.

2 **JUROR 159:** Okay.

3 **THE COURT:** Now, based on your personal experience do you
4 think you can sit and listen to this case and be fair and
5 impartial to both parties?

6 **JUROR 159:** I can try.

7 **THE COURT:** Put that behind you?

8 **JUROR 159:** Yes.

9 **THE COURT:** You sure? Look me right in the eye, ---

10 **JUROR 159:** Well, I guess it's because I've never faced
11 it myself. Like, I've never been through accusing the person
12 that done it, so I don't know. Just to be honest, I don't
13 know.

14 **THE COURT:** Okay. All right.

15 **JUROR 159:** It's ---

16 **THE COURT:** I know it's -- it's hard just to say what you
17 will do when you're here after hearing the facts of the case.
18 But I guess the question has got to be would you be prejudiced
19 based on your own experience?

20 **JUROR 159:** No. I'd hope not.

21 **THE COURT:** Okay. You can put it all behind you?

22 **JUROR 159:** Yeah.

23 **THE COURT:** Okay. Thank you very much. You can return
24 to the courtroom.

25 (Whereupon juror 159 exited the jury room)

JURY QUALIFICATION

1 (Whereupon juror 114 entered the jury room)

2 **THE COURT:** Hello. How are you?

3 **JUROR 114:** I'm good.

4 **THE COURT:** Have a seat. Ms. 114, are those your answers
5 to the questions?

6 **JUROR 114:** Yes.

7 **THE COURT:** All right. Based on what kind of case this
8 is, you know as much as I do at this time, do you think you
9 could be fair and impartial to both parties?

10 **JUROR 114:** Yes.

11 **THE COURT:** The State and the defendant?

12 **JUROR 114:** Yes.

13 **THE COURT:** Okay. Thank you very much. You can return
14 to the courtroom.

15 (Whereupon juror 114 exited the jury room)

16 (Whereupon juror 174 entered the jury room)

17 **THE COURT:** Good morning. Mr. 174, have a seat.

18 **JUROR 174:** Yes, sir.

19 **THE COURT:** How you doing?

20 **JUROR 174:** I'm all right.

21 **THE COURT:** You the Clemson guy, right?

22 **JUROR 174:** Clemson guy.

23 **THE COURT:** Okay. Those your answers to the questions?

24 **JUROR 174:** Yes, sir.

25 **THE COURT:** As far as the yes is concerned, yeses, you or

JURY QUALIFICATION

1 a member of your family?

2 **JUROR 174:** Member of my family.

3 **THE COURT:** And how long ago?

4 **JUROR 174:** Twenty years ago.

5 **THE COURT:** Twenty years ago. Any criminal charges
6 involved?

7 **JUROR 174:** I don't think it ever went to trial or
8 anything.

9 **THE COURT:** Okay.

10 **JUROR 174:** But there was -- maybe I did not read it
11 carefully. A family member was a victim. It was not from
12 within the family.

13 **THE COURT:** Okay.

14 **JUROR 174:** It was -- my niece had an incident, if you
15 will. But I don't -- I don't recall it ever coming to
16 fruition ---

17 **THE COURT:** No court case?

18 **JUROR 174:** Correct.

19 **THE COURT:** Okay. And it's your niece? You say your
20 niece?

21 **JUROR 174:** Yes, sir.

22 **THE COURT:** All right. And sometime ago. Let me ask you
23 this, based on what you know about this case, and you know
24 about as much as I do at this point, ---

25 **JUROR 174:** Okay.

JURY QUALIFICATION

1 **THE COURT:** --- do you feel like you could be, based on
2 that family experience, do you think that would sort of color
3 your judgement or do you think you can be fair and impartial
4 to both the State and the defendant in a case like this?

5 **JUROR 174:** I feel that I can be impartial with regards
6 to this.

7 **THE COURT:** Right.

8 **JUROR 174:** Right or wrong, when I told you that I deal
9 with the Clemson Police, I mean, ---

10 **THE COURT:** Right.

11 **JUROR 174:** --- all of my customers are students.
12 Students get in a lot of trouble. So I'm always dealing with
13 Clemson police officers.

14 If I'm being completely honest, for it to get to court,
15 based on that never getting to court, and based on knowing
16 what I know with how the Clemson Police Department does
17 things, the fact that we're in court is -- it's not for me to
18 decide, right? But I think that means it's a strong case. If
19 I'm being honest.

20 **THE COURT:** No, no, no. I mean, that's -- that's a
21 perception.

22 **JUROR 174:** Right.

23 **THE COURT:** And everybody's entitled to that. Okay.
24 You've seen some pretty bad ones over there, too, haven't you?

25 **JUROR 174:** Yeah. I've ---

JURY QUALIFICATION

1 **THE COURT:** Well, let me ---

2 **JUROR 174:** --- had some tenants expire in my properties.

3 And I've had -- something bad happens every year on Clemson's
4 campus. Every year.

5 **THE COURT:** My granddaughter just started.

6 **JUROR 174:** My son -- my son just finished. My
7 daughter's a junior. The odds are in your favor.

8 **THE COURT:** All right. Let's get back to what we're
9 doing here. I don't -- it's not a simple thing, but I sort of
10 need a simple answer. Do you think you could be fair and
11 impartial in a case like this?

12 **JUROR 174:** I do. I would hope so.

13 **THE COURT:** Thank you very much. Return to the
14 courtroom.

15 **JUROR 174:** Now, that may change if we don't break for
16 lunch sometime soon.

17 **THE COURT:** Oh, you're going to be ---

18 **JUROR 174:** Do I go this way?

19 **THE COURT:** No, go back the same -- we're going to lunch
20 as soon as we finish this little exercise.

21 **JUROR 174:** All right.

22 (Whereupon juror 174 exited the jury room)

23 (Whereupon juror 25 entered the jury room)

24 **THE COURT:** Hello. Ms. 25, how are you?

25 **JUROR 25:** Good.

JURY QUALIFICATION

53

1 **THE COURT:** Have a seat. These your answers?

2 **JUROR 25:** Um-hum (affirmative).

3 **THE COURT:** Okay. Can you tell me about this?

4 **JUROR 25:** Yes. I have an uncle -- I think he might be a
5 great uncle. And his name is Junior. I'm not sure what his
6 last name is now, but he got put on house arrest for a sexual
7 charge.

8 **THE COURT:** How long ago?

9 (Pause)

10 **THE COURT:** Ten years? Twenty years? Five years?

11 **JUROR 25:** It would more likely be between ten years than
12 twenty years.

13 **THE COURT:** Okay. And where -- where does he live?

14 **JUROR 25:** I'm not sure of that anymore.

15 **THE COURT:** Okay. In South Carolina?

16 **JUROR 25:** Uh-huh (affirmative).

17 **THE COURT:** Okay. Well, given that family history and
18 the fact -- what you know about this case, do you feel that
19 you could be fair and impartial to both parties, both the
20 State and the defendant?

21 **JUROR 25:** Well, I would love to be fair, but since my
22 health has gone down, ---

23 **THE COURT:** I'm sorry.

24 **JUROR 25:** --- I would just want to make it quick so that
25 ---

JURY QUALIFICATION

1 **THE COURT:** What's your health problem?

2 **JUROR 25:** Panic disorder, sugar problems, and I have
3 spine issues.

4 **THE COURT:** Spine issues. Did you tell the first judge
5 about that?

6 **JUROR 25:** (Affirmative nod).

7 **THE COURT:** And they wouldn't let you go?

8 **JUROR 25:** (Negative nod).

9 **THE COURT:** Do you have a doctor's statement or anything?

10 **JUROR 25:** No.

11 **THE COURT:** You don't? Okay. Do you think it'd be hard
12 for you to sit through a trial like this?

13 **JUROR 25:** (Affirmative nod).

14 **THE COURT:** Okay. All right. I'm going to excuse you,
15 ma'am.

16 **JUROR 25:** Okay.

17 **THE COURT:** I'm going to let you go. Just go out this
18 door right here. Could you come back later in the week for
19 me? The bailiff will talk to you about it.

20 (Whereupon juror 25 exited the jury room)

21 (Whereupon juror 5 entered the jury room)

22 **THE COURT:** Good morning.

23 **JUROR 5:** Good morning.

24 **THE COURT:** How are you?

25 **JUROR 5:** All right.

JURY QUALIFICATION

1 **THE COURT:** I know you're probably hungry.

2 **JUROR 5:** Not as hungry as some of them out there.

3 **THE COURT:** I know. I'm trying to get through this list

4 ---

5 **JUROR 5:** Ladies are getting restless, angry and hangry.

6 **THE COURT:** Well, number 5, are those your answers?

7 **JUROR 5:** Yes.

8 **THE COURT:** Tell me about that. Was it you or a member
9 of your family?

10 **JUROR 5:** It was me as a teenager.

11 **THE COURT:** Okay. And how long ago was it? I hate to
12 ask you your age.

13 **JUROR 5:** I'm 60. So it was 40 plus years ago.

14 **THE COURT:** Were there any criminal charges?

15 **JUROR 5:** No. The number in this room more than doubles
16 the number of people that know about it.

17 **THE COURT:** All right. Well, based on that history that
18 you have, do you think you could be fair and impartial in a
19 case like this?

20 **JUROR 5:** Yes, I think I can.

21 **THE COURT:** To the defendant and the State?

22 **JUROR 5:** Yeah, 'cause I've dealt with it and ---

23 **THE COURT:** Put it behind you?

24 **JUROR 5:** Yeah.

25 **THE COURT:** Okay. Thank you very much, sir. You can

JURY QUALIFICATION

1 return to the classroom -- courtroom.

2 **JUROR 5:** It feels like a classroom.

3 (Whereupon juror 5 exited the jury room)

4 (Whereupon juror 58 entered the jury room)

5 **THE COURT:** Good morning.

6 **JUROR 58:** Good morning.

7 **THE COURT:** How are you?

8 **JUROR 58:** Good.

9 **THE COURT:** Are those your answers to the questions?

10 **JUROR 58:** Yes, Your Honor.

11 **THE COURT:** Any reason you can think of why you could not
12 be fair and impartial to both parties in this case?

13 **JUROR 58:** The only thing that's not entirely correct
14 about that is my wife and I were foster parents for several
15 years until she came down with breast cancer five years ago.
16 So I am familiar with ---

17 **THE COURT:** This kind of stuff.

18 **JUROR 58:** Yes, sir.

19 **THE COURT:** This kind of activity.

20 **JUROR 58:** We had a couple of girls in our care that ---

21 **THE COURT:** Had been abused?

22 **JUROR 58:** Had been abused. They weren't directly
23 members of my family, but ---

24 **THE COURT:** No, I understand. All right. Based on that
25 experience that you've had, that life experience, do you think

JURY QUALIFICATION

1 you can be fair and impartial to both parties ---

2 **JUROR 58:** I'll do my very best.

3 **THE COURT:** All right. Thank you very much.

4 (Whereupon juror 58 exited the jury room)

5 (Whereupon juror 29 entered the jury room)

6 **THE COURT:** Good morning. How are you?

7 **JUROR 29:** Good.

8 **THE COURT:** Ms. 29, those your answers to the questions?

9 **JUROR 29:** Yes.

10 **THE COURT:** Can you tell me about it?

11 **JUROR 29:** It was ---

12 **THE COURT:** You or a member of your family?

13 **JUROR 29:** Both. I have -- we have a large family. And
14 when we were young, my niece, the day before her fifth
15 birthday was raped by a ---

16 **THE COURT:** By a family member?

17 **JUROR 29:** It was by a family friend. It was everywhere.

18 **THE COURT:** All right. I won't go ---

19 **JUROR 29:** She's 40 now, but it's messed her up so bad.

20 I mean, this weekend she sent me a text saying she wanted to
21 kill herself. She's lost her children. It's just been really
22 bad.

23 And several of my nieces and myself were groomed by a
24 family member and molested. So ...

25 **THE COURT:** Okay. It'd be kind of hard ---

JURY QUALIFICATION

1 **JUROR 29:** A lot of emotional stuff that I kind of ---

2 **THE COURT:** I understand. But I didn't mean -- don't
3 mean to do that. I need to know if you can be fair and
4 impartial to both parties in this case.

5 **JUROR 29:** I want to say yes, but I don't know. And I
6 can't, you know?

7 **THE COURT:** I don't think you can.

8 **JUROR 29:** I don't think so.

9 **THE COURT:** All right. You're free to go. I'm going to
10 excuse you. And I think she's going to ask you to call back,
11 but I'm going to excuse you for this case.

12 (Whereupon juror 29 exited the jury room)

13 (Whereupon juror 205 entered the jury room)

14 **THE COURT:** Hello. How are you? Have a seat. You're
15 205. Are those your answers?

16 **JUROR 205:** Yes.

17 **THE COURT:** Let me ask you, based on what you know about
18 the facts of this case do you think you can be fair and
19 impartial to both parties? Do you think you can listen to the
20 evidence and be fair both to the defendant and the State?

21 **JUROR 205:** I'm not sure about the terminology and all,
22 but, yeah.

23 **THE COURT:** It would be a fairly -- you'll understand as
24 we go along. But you think you could be fair and impartial?

25 **JUROR 205:** Yes.

JURY QUALIFICATION

1 **THE COURT:** Okay. Thank you very much. You can return
2 to the courtroom.

3 (Whereupon juror 205 exited the jury room)

4 (Whereupon juror 131 entered the jury room)

5 **THE COURT:** How you doing? Come in. I like your shirt.
6 Are those your answers?

7 **JUROR 131:** Yes, sir.

8 **THE COURT:** All right. Based on the facts that you know
9 at this point, you don't know anymore than I do, ---

10 **JUROR 131:** Yeah.

11 **THE COURT:** --- do you think you can be fair and
12 impartial to both parties, both the State and the defendant?

13 **JUROR 131:** The only thing I'm worried about the deal is
14 I'm kind of like, one of these deals, I don't like, you know,
15 grown people hurting kids. You know, ---

16 **THE COURT:** You're not by yourself.

17 **JUROR 131:** Because I'm fixing to turn my wife's nephew
18 in to DSS because she's doing drugs. And we've got custody of
19 his little two year old.

20 **THE COURT:** Well, in this case, you're here, ---

21 **JUROR 131:** Yeah, I'm here. And, I mean, I'll do the
22 best job I can do.

23 **THE COURT:** You think you can be fair and impartial to
24 both parties? That's the question.

25 **JUROR 131:** Yeah.

JURY QUALIFICATION

1 **THE COURT:** Okay. Thank you very much.

2 **JUROR 131:** All right.

3 **THE COURT:** Have a seat in the courtroom.

4 (Whereupon juror 131 exited the jury room)

5 (Whereupon juror 119 entered the jury room)

6 **THE COURT:** Hello. Have a seat. Ms. 19 -- 119, those
7 your answers to that question?

8 **JUROR 119:** Yes, sir.

9 **THE COURT:** All right. Do you know of any other reason
10 that you could think of why you could not be fair and
11 impartial to both parties in a case like this?

12 **JUROR 119:** No, sir.

13 **THE COURT:** You could be fair and impartial?

14 **JUROR 119:** Yes, sir.

15 **THE COURT:** All right. Thank you very much.

16 **JUROR 119:** Thank you.

17 **THE COURT:** Have a seat in the courtroom.

18 (Whereupon juror 119 exited the jury room)

19 (Whereupon juror 62 entered the jury room)

20 **THE COURT:** Hello.

21 **JUROR 62:** Hi.

22 **THE COURT:** How are you?

23 **JUROR 62:** I'm good.

24 **THE COURT:** Have a seat. Ms. 62 -- you're 62?

25 **JUROR 62:** I'm 62.

JURY QUALIFICATION

1 **THE COURT:** Yeah, I didn't say you were 62.

2 **JUROR 62:** No, I'm 59.

3 **THE COURT:** I said you're Ms. 62.

4 **JUROR 62:** But, hey, I can draw Social Security at 62, so
5 bring it on.

6 **THE COURT:** Those your answers ---

7 **JUROR 62:** Yes.

8 **THE COURT:** --- to those questions? Based on the facts
9 as you know them, and I don't know anymore than you do at this
10 point, do you think you can be fair and impartial to both
11 parties, ---

12 **JUROR 62:** I think so.

13 **THE COURT:** --- the State and the defendant?

14 **JUROR 62:** Yes, I think so. It's not a murder trial.

15 **THE COURT:** It's not a murder trial.

16 **JUROR 62:** I could be fair.

17 **THE COURT:** Thank you very much, ma'am. Return to the
18 courtroom.

19 (Whereupon juror 62 exited the jury room)

20 (Whereupon juror 9999 entered the jury room)

21 **THE COURT:** Come in. How you doing?

22 **JUROR 9999:** All right.

23 **THE COURT:** Have a seat. Are you Mr. Greenwood?

24 **JUROR 9999:** Yes, sir.

25 **THE COURT:** Did they call your name or -- you've got a

JURY QUALIFICATION

62

1 number, but it's 999 -- you didn't have a number on there?

2 **JUROR 9999:** No.

3 **THE COURT:** You sure don't. Okay. Are these your
4 answers to the questions?

5 **JUROR 9999:** Yes, sir.

6 **THE COURT:** All right. Mr. Greenwood, based on the facts
7 as you know them right now, do you think you could be fair and
8 impartial to both parties in this case?

9 **JUROR 9999:** Yes, sir.

10 **THE COURT:** If you listen to the evidence, listen to my
11 instructions and make a decision based on those facts ---

12 **JUROR 9999:** Yes, sir.

13 **THE COURT:** --- be fair and impartial?

14 **JUROR 9999:** Yes, sir.

15 **THE COURT:** All right. Have a seat in the courtroom.
16 Thank you.

17 **JUROR 9999:** Thank you, sir.

18 (Whereupon juror 9999 exited the jury room)

19 (Whereupon juror 101 entered the jury room)

20 **THE COURT:** How you doing?

21 **JUROR 101:** Good, sir.

22 **THE COURT:** Come on and have a seat. Mr. 101. You Mr.
23 Hughes?

24 **JUROR 101:** Yes, sir.

25 **THE COURT:** These questions -- I'm going to tell you what

JURY QUALIFICATION

1 the question is. Have you or any member of your family ever
2 been the victim of any type of sexual assault? You or any
3 member of your family?

4 **JUROR 101:** Well, actually I've got several members of my
5 family that's been sexually assaulted.

6 **THE COURT:** All right. How long ago? Can you remember?

7 **JUROR 101:** The 80s.

8 **THE COURT:** The 80s?

9 **JUROR 101:** Yes, sir.

10 **THE COURT:** And did they result in criminal ---

11 **JUROR 101:** No, they didn't never ---

12 **THE COURT:** --- assault ---

13 **JUROR 101:** They were assaults. They never got tried or
14 charged or anything.

15 **THE COURT:** Okay.

16 **JUROR 101:** It was just a lot to do with family.

17 **THE COURT:** History.

18 **JUROR 101:** Yes, sir.

19 **THE COURT:** All right. Never happened to you?

20 **JUROR 101:** No, sir.

21 **THE COURT:** Okay. Do you think based on what you know
22 about this case so far that you could be fair and impartial to
23 both the State and the defendant in this case?

24 **JUROR 101:** Maybe one, but maybe not the other. I've
25 seen a lot of this bad -- a lot of it's bad stuff ---

JURY QUALIFICATION

1 **THE COURT:** I know it's bad stuff. That's why we --
2 that's why we're here. You're saying it'd be hard to be fair
3 to both parties?

4 **JUROR 101:** Yes, sir. Honestly between me and you, it'd
5 be hard to be honest, I mean, being honest it'd be hard to
6 stand for both.

7 **THE COURT:** Well, that's what I want you to be, honest.
8 That's all I can ask of you. All right. I'm going to excuse
9 you from this case. I'm going to excuse you just from this
10 case.

11 **JUROR 101:** Yes, sir.

12 **THE COURT:** I'm going to ask you to call back in after
13 6:00. We might need you tomorrow.

14 **JUROR 101:** Okay.

15 **THE COURT:** All right. You can go out this door right
16 here.

17 **JUROR 101:** Thank you, sir.

18 **THE COURT:** You're free to go this afternoon. Yeah, call
19 that number. The lady's -- she's going to -- she'll talk to
20 you.

21 **JUROR 101:** Thank you, sir.

22 (Whereupon juror 101 exited the jury room)

23 **THE COURT:** All right. The ones I have not excused --
24 well, I did not excuse number 11, number 133 and 159. The
25 only one I really want to talk about is the teacher, number

JURY QUALIFICATION

65

1 11, who said she was not sure. She's a teacher and she ---

2 MR. KING: I think 11 was -- his granddaughter was in a
3 daycare.

4 THE COURT: Um-hum (affirmative). I wrote on number 11
5 ---

6 (Whereupon the Court was speaking to the law clerk)

7 THE COURT: Oh, I excused her. I'm sorry. 133, he said
8 I'll try.

9 MS. OWEN: He has seven children. And he has strong
10 feelings.

11 THE COURT: How about 159? I think she says she could --
12 she said she could be fair and impartial.

13 MR. KING: And then she said I don't know.

14 THE COURT: She said she put it behind her. All right.
15 The question is any motion to exclude for cause? And the only
16 two I have is ---

17 MR. KING: It should be 11, 133 and 159.

18 THE COURT: Right. That's it. But I've already excused
19 11. That's what you just told me.

20 (Whereupon the Court was speaking to the law clerk)

21 MR. KING: I'll move then to exclude for cause number 11,
22 133 and 159. All of them had serious problem with saying they
23 could be fair and impartial in this case. And I think it's
24 everybody's duty here, especially the Court's duty, to have a
25 fair and impartial jury. And if we can't get jurors that say

JURY QUALIFICATION

66

1 they can be sure or hesitate, then I'm not sure we can have a
2 fair and impartial jury/trial.

3 (Pause)

4 **THE COURT:** All right. We've got 11, 133 and 159,
5 correct? Those are the three. All right. Tell me what you
6 remember about 11. Well, let me ask you this, does the State
7 oppose these?

8 **MS. OWEN:** I oppose -- yes, Your Honor. I would oppose
9 number 11 and 159 because they are not victims of sexual
10 assault. 133 was, I mean, 159 was, 133 was not. And I
11 understand that she is so closely connected, but she is a
12 victim. But 133 just said he had some cousins. And then
13 number 11, it was his granddaughter, and that was in Florida.
14 And those are just my thoughts on that.

15 **THE COURT:** What did you say about 159?

16 **MS. OWEN:** Said she is the victim of sexual assault. She
17 was unsure how she would react to this. I don't oppose
18 striking her.

19 (Pause)

20 **THE COURT:** All right. I'm going to deny the motion as
21 to number 133 and grant your motion as to number 11.

22 **MR. CLEVELAND:** And 159 is out by consent?

23 **THE COURT:** 159 is already out by consent.

24 **MADAM CLERK:** Do I need to go back over these numbers?

25 **THE COURT:** Yeah, let's -- let's make sure everybody's

JURY QUALIFICATION

1 ---

2 **MADAM CLERK:** All right. I'll start at the top. So I'm
3 taking out number 11, 22, 25, 29, 101, 107, 159, 173 and then
4 the 9999.

5 **THE COURT:** All right. Send me -- we got a deputy out
6 there?

7 **MADAM CLERK:** Yes.

8 **THE COURT:** Send him in, please.

9 **MADAM CLERK:** A deputy?

10 **THE COURT:** Yeah. I'm going to test number 9999.

11 **MS. OWEN:** Okay.

12 **MR. KING:** Sounds like a plan, Judge.

13 **THE COURT:** Hum?

14 **MR. KING:** Sounds like a plan.

15 (Pause)

16 (Whereupon the Court was speaking to the officer off
17 record)

18 (Pause)

19 **THE COURT:** All right. Mr. DeJong, ---

20 **MR. DeJONG:** Yes, Your Honor.

21 **THE COURT:** --- it's apparent, based on the list of
22 jurors, ---

23 **MR. DeJONG:** Yes, Your Honor.

24 **THE COURT:** --- that if you use all your strikes, we will
25 not seat a jury. The question is do you want to go forward

JURY QUALIFICATION

1 knowing that you can't strike all the -- of course, the State
2 might not use all their strikes, but if both of you use all
3 your strikes, we don't have enough for a jury.

4 **MR. CLEVELAND:** The State would have to waive three
5 strikes as we sit right now to ensure a jury gets seated,
6 assuming they use all theirs. That's not including
7 alternates. That is just ---

8 **THE COURT:** That's just the flat-ass jury. Excuse my
9 French. No alternates.

10 **MR. DeJONG:** I wish I could, Your Honor, but there are a
11 lot of people on here that I would use strikes for. There was
12 ---

13 **THE COURT:** Well, you don't have to tell me ---

14 **MR. DeJONG:** Okay.

15 **THE COURT:** I'm just looking at the big picture.

16 **MR. DeJONG:** Yes, sir. And looking down the road for PCR
17 and knowing my client, I can't, with all due respect, I can't
18 waive any.

19 **THE COURT:** All right. Y'all need to talk about it.

20 **MR. CLEVELAND:** We'll talk about it.

21 **THE COURT:** I'm going to -- I want to send the jury out
22 and tell them to go to lunch and come back. I'm not going to
23 draw the jury now. Y'all going to have to figure something
24 out between now and 2:30 -- 3:00. That'll give you plenty of
25 time. All right?

JURY QUALIFICATION

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1 **MR. DeJONG:** Okay. Thank you, Your Honor.

2 **THE COURT:** Let me dismiss the jury first. And then
3 y'all can do what you're going to do. We'll go back in the
4 courtroom.

5 (Whereupon the conference in the jury room ended at 1:40
6 pm and court reconvened in the courtroom with the jury pool)

7 **THE COURT:** All right. Ladies and gentlemen, I apologize
8 to you for taking so long, but on the other hand we had the
9 qualification and then they had to go through the selecting
10 the first jury. We're now down to a number that we've
11 probably just got enough -- enough to ---

12 (Whereupon the Court was speaking to the clerk)

13 **THE COURT:** Okay. I don't want to hold you right now.
14 I'm going to ask you -- ask you -- I'm going to let you go to
15 lunch. I'd ask you to be back at a quarter til three. That's
16 an hour. Can you be back in an hour? Okay. You're excused.

17 I'm going to ask you to be back in the -- back right
18 here. We're going to be taking -- trying to figure some stuff
19 out about the numbers of jurors that we've got. I'm going to
20 ask you to be back in the courtroom at a quarter til three, an
21 hour from now. Thank you very much for your patience.

22 (Whereupon the jury pool exited the courtroom at 1:41 pm)

23 (Whereupon a bench conference was held off the record)

24 (Whereupon the bench conference was ended)

25 **THE COURT:** All right. We've got 26 jurors remaining.

ROSS ABLES - DIRECT EXAMINATION BY MR. HILL

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1 And it's my fault. Mr. 9999 is clear as a bell. He's on
2 heavy medication, but none of it's, I mean, it's all
3 prescription. Sorry to -- I hope I didn't embarrass him.

4 Number 70 said she thinks she knows the mother of the
5 victim, but she said she could be fair and impartial. So I'll
6 leave her in. All right.

7 With 26 -- I think the State had -- you want to break and
8 y'all talk and see what you can work out?

9 **MS. OWEN:** Yes, Your Honor.

10 **THE COURT:** I think that's the best thing. All right.
11 I'll see you back here at 2:30, 45 minutes.

12 (Whereupon court was in recess at 1:45 pm)

13 (Whereupon court reconvened at 2:37 pm)

14 (Whereupon State's exhibits 3, 4 and 5 were marked for
15 identification)

16 **THE COURT:** All right. Be seated. Thank you.
17 Solicitor, the State ready to proceed?

18 **MS. OWEN:** Yes, Your Honor.

19 **THE COURT:** Defense ready to proceed?

20 **MR. KING:** We are, Your Honor.

21 **THE COURT:** We're going forward. It kind of slipped my
22 mind about that Denno. Call your first witness.

23 **MS. OWEN:** Would you like to do the Jackson v. Denno
24 hearing?

25 **THE COURT:** Yeah.

ROSS ABLES - DIRECT EXAMINATION BY MR. HILL

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1 **Jackson v. Denno Hearing:**

2 **MR. HILL:** The State would call Ross Ables.

3 **MADAM CLERK:** Place your left hand on the Bible and raise
4 your right hand, please.

5 **Ross Ables,** being duly
6 sworn testified as follows;

7 **MADAM CLERK:** Have a seat and state your name for the
8 record, please.

9 **MR. ABLES:** Ross Ables.

10 **Direct Examination by Mr. Hill:**

11 Q. And, Mr. Ables, where are you employed?

12 A. Currently employed at the Anderson County Sheriff's
13 Office.

14 Q. Okay. And how long have you been in law enforcement?

15 A. Approximately six years.

16 Q. Okay. Prior to your time with Anderson where were you
17 employed?

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

19 Q. Where were you employed prior to your time with Anderson?

20 A. Clemson City.

21 Q. Okay. And about how long were you there?

22 A. Approximately three years.

23 Q. Okay. Were you employed there on May 14th of 2016?

24 A. Yes.

25 Q. And in what capacity were you employed there?

ROSS ABLES - DIRECT EXAMINATION BY MR. HILL

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1 A. Road patrol.

2 Q. And on that date did you respond to this incident?

3 A. I did.

4 Q. And where did you respond?

5 A. I believe it was [REDACTED] Old Central Road. I don't remember
6 the exact apartment, but it was on Old Central Road.

7 MR. KING: Judge, could the witness speak into the
8 microphone?

9 Q. And you should be able to move it a little bit if you
10 need to.

11 A. All right.

12 Q. You said [REDACTED] Old Central Road?

13 A. Correct.

14 Q. And while you were on the scene did you have an encounter
15 with a Mr. James Durham in this case?

16 A. I did.

17 Q. Okay. And did you speak with Mr. Durham?

18 A. I did.

19 Q. Okay. When you responded did you initially meet with Mr.
20 Durham?

21 A. Well, after -- shortly after, yes.

22 Q. Okay. And when you met -- physically met up with Mr.
23 Durham, where was he?

24 A. Inside the residence.

25 Q. Okay. Can you kind of describe that residence briefly?

ROSS ABLES - DIRECT EXAMINATION BY MR. HILL

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1 A. The -- it's a town home. We were in the bottom -- I
2 think it was the bottom left. Walk into the door, the door
3 opens from left to right. And then inside there's just a
4 living room area of the apartment and I believe a couch
5 directly in front of the door.

6 Q. Okay. And who all was present with you at that time?

7 A. At the time I made contact with him it was myself, and
8 Officer Duncan and the defendant.

9 Q. Okay. And did Mr. Durham appear to be intoxicated to the
10 point where -- or impaired to the point where he didn't know
11 what was going on that day?

12 A. No, he did not.

13 Q. Okay. Did you notice any mental or physical disabilities
14 with Mr. Durham at that time that would affect his
15 understanding of what was going on?

16 A. No, I did not.

17 Q. Okay. And where exactly was the defendant when you
18 walked up to the apartment?

19 A. He was right at the doorway. Just inside the doorway.

20 Q. Okay. And about how long did you speak with him?

21 A. Approximately 20, 25 minutes.

22 Q. Did anyone else speak with him?

23 A. Yes.

24 Q. Okay. Who else would that have been?

25 A. It would have been pretty much everybody that was there,

ROSS ABLES - DIRECT EXAMINATION BY MR. HILL

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1 Officer Bikas, Sergeant Link and, of course, myself. And I
2 believe Officer Duncan may have said something. I'm not
3 really sure.

4 Q. Okay. Before you spoke with him did you Mirandize him?

5 A. I did.

6 Q. Okay. Why did you Mirandize him?

7 A. Due to investigating of the allegations and didn't want
8 him to incriminate himself.

9 Q. Okay. And how did you advise him of his rights?

10 **THE COURT:** Hold -- jurors are not coming in, are they?

11 **THE BAILIFF:** No, sir, these are not jurors. That's not
12 jurors.

13 **THE COURT:** I know that. But have they been told they're
14 not to come in?

15 **THE BAILIFF:** No, sir. You don't want them in here?

16 **THE COURT:** No.

17 **THE BAILIFF:** The jurors know that -- we're holding them
18 out there.

19 **THE COURT:** Okay. That's what I wanted to know.

20 **THE BAILIFF:** Yeah, we're holding the jurors.

21 **THE COURT:** Okay. That's fine.

22 **THE BAILIFF:** Well, how about these folks?

23 **THE COURT:** They're okay. This is not going to be too
24 long, I don't think. Go ahead.

25 **Direct Examination by Mr. Hill Continued:**

ROSS ABLES - DIRECT EXAMINATION BY MR. HILL

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1 Q. So, I guess, back to my question. How did you Mirandize
2 Mr. Durham?

3 A. I have a card.

4 Q. Okay. Is that a Miranda card?

5 A. Correct.

6 Q. Okay. And do you keep a Miranda card on you at all
7 times?

8 A. I do.

9 Q. Okay. Do you have a Miranda card with you here today?

10 A. I do.

11 Q. Okay. Does that have the same rights on it that you
12 would have read to Mr. Durham?

13 A. Yes, sir.

14 Q. Okay. If you don't mind, could you please read from that
15 card?

16 A. It says you have the right to remain silent. Anything
17 you say can and will be used against you in a court of law.
18 You have the right to talk to a lawyer and have him or her
19 present with you while you are being questioned. And if you
20 cannot afford or hire -- if you cannot afford to hire a
21 lawyer, one will be appointed to represent you before any
22 questioning, if you wish. You can decide at any time to
23 exercise these rights and not answer any questions or make any
24 statements.

25 Q. And after advising Mr. Durham of these rights did he wish

ROSS ABLES - DIRECT EXAMINATION BY MR. HILL

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1 to speak with you?

2 A. He did.

3 Q. And did he appear to understand all of his rights?

4 A. He did.

5 Q. At any point did you or any other officers there with you
6 make any threats toward Mr. Durham or coerce him in any way to
7 give a statement or speak with y'all?

8 A. No.

9 Q. Was he denied access to food or water?

10 A. No, he was not.

11 Q. Throughout the time period when you spoke with him, was
12 he just standing there in that doorway? Where all was he?

13 A. Doorway, the living room area, pretty much the majority
14 of the time was in the living room area.

15 Q. Okay. Was he able to sit down?

16 A. Yes.

17 Q. Was he able to make a phone call?

18 A. Yes.

19 Q. Was the defendant under arrest at that time?

20 A. No, he was not.

21 Q. Was he in investigative detention at that time?

22 A. He was.

23 Q. And after all this he wished to speak with you?

24 A. Yes.

25 Q. Did he ever ask to speak with an attorney?

ROSS ABLES - DIRECT EXAMINATION BY MR. HILL

77

1 A. No, he did not.

2 Q. Did he ever change his mind and say that he did not wish
3 to speak with you?

4 A. No, he did not.

5 Q. Did you have your body camera on at this time?

6 A. I did.

7 Q. And was it recording everything that was going on?

8 A. Yes, it was.

9 Q. Did it appear that everything he was saying to you was
10 voluntary?

11 A. Yes.

12 Q. At any point in time did he acknowledge that he
13 understood his rights?

14 A. He did.

15 **MR. HILL:** Your Honor, may I approach the witness?

16 **THE COURT:** Sure.

17 (Whereupon Court's exhibit 2 was marked)

18 Q. Mr. Ables, I'm asking you -- showing you what's been
19 marked as Court's exhibit 1 for the purposes of this Jackson
20 hearing -- 2, I apologize, Court's exhibit 2. Do you know
21 what that is?

22 A. I'm assuming my body-cam video.

23 Q. Okay. Have you watched a copy of your body-cam video?

24 A. I have.

25 Q. Okay. And is everything on that disk and on that video a

ROSS ABLES - CROSS-EXAMINATION BY MR. KING

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1 fair and accurate depiction of what went on that day in your
2 interaction with Mr. Durham?

3 A. Yes.

4 **MR. HILL:** Your Honor, at this time, I guess for the
5 record, my purpose for marking this as Court's exhibit number
6 2, I don't intend to play it during the Jackson hearing, but
7 if Your Honor would like to view it after any defense motion,
8 it would be available to the Court.

9 **THE COURT:** All right. Thank you.

10 **MR. HILL:** No further questions.

11 **THE COURT:** Cross-examination.

12 **Cross-examination by Mr. King:**

13 Q. Officer Ables, at the beginning of this conversation you
14 were outside the apartment, correct?

15 A. Yes, sir.

16 Q. So you were standing in the threshold of the door,
17 correct?

18 A. Correct.

19 Q. And the door was open, right?

20 A. Correct.

21 Q. And Mr. Durham was just on the inside of the apartment,
22 correct?

23 A. Correct.

24 Q. On the other side of the threshold?

25 A. Correct.

ROSS ABLES - CROSS-EXAMINATION BY MR. KING

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1 Q. All right. And at that point, that's when you Mirandized
2 him, right?

3 A. Correct.

4 Q. All right. Now, after -- I don't remember how long, but
5 after a few minutes he asked you is he under arrest, correct?

6 A. Correct.

7 Q. And you told him no, correct?

8 A. Correct.

9 Q. Now at this point was Officer Duncan standing next to
10 you?

11 A. I can't recall.

12 Q. Okay. Is it -- on the body camera it appears someone's
13 standing next to you.

14 A. Um-hum (affirmative).

15 Q. Do you have a feeling if it would be Bikas or Duncan?

16 A. It would be one or the other, yes.

17 Q. Okay. So there was a second officer standing next to
18 you, ---

19 A. Yeah.

20 Q. --- right? In front of his apartment door, correct?

21 A. Um-hum (affirmative). Or right in the -- in the doorway,
22 yes.

23 Q. All right. So when you told him that he was not under
24 arrest, he said, bring me my daughter, correct?

25 A. Correct.

ROSS ABLES - REDIRECT EXAMINATION BY MR. HILL

80

1 Q. Right. And he said, get off my property, correct?

2 A. No.

3 Q. No? You don't remember that?

4 A. I don't remember him saying get off my property.

5 Q. Okay. Incidentally you did not leave, correct?

6 A. Correct. We did not leave.

7 Q. Okay. Y'all actually went into his apartment at that
8 point?

9 A. Correct.

10 Q. All right. And he started making phone calls, correct?

11 A. He made a phone call, yes.

12 Q. Okay. He called his pastor, correct?

13 A. Correct.

14 Q. And his wife, right?

15 A. Correct.

16 Q. Because y'all told him that he had to call his wife,
17 correct?

18 A. I believe Sergeant Link did, yes.

19 Q. Right. Because y'all were going to be taking his
20 daughter away, correct?

21 A. Correct.

22 **MR. KING:** I beg the Court's indulgence for a moment.

23 (Pause)

24 **MR. KING:** No further questions.

25 **THE COURT:** Anything further?

ROSS ABLES - REDIRECT EXAMINATION BY MR. HILL

81

1 **Redirect Examination by Mr. Hill:**

2 Q. Officer Ables, were you aware that you were investigating
3 a sexual assault at that time?

4 A. I was.

5 Q. And that the alleged victim would have been the
6 defendant's step-daughter?

7 A. Yes.

8 **MR. HILL:** No further questions.

9 **THE COURT:** Anything further?

10 **MR. KING:** Nothing on redirect, Your Honor.

11 **THE COURT:** All right. You can come down.

12 A. Thank you, sir.

13 **THE COURT:** Thank you so much. Next witness.

14 **MR. HILL:** No further witnesses, Your Honor.

15 **THE COURT:** All right. From the defense?

16 **MR. KING:** Judge, our only issue is ---

17 **THE COURT:** You want to call any witnesses?

18 **MR. KING:** We're not going to call any witnesses ---

19 **THE COURT:** Okay.

20 **MR. KING:** We might like to publish the body-worn camera.

21 There is a section that says -- where Mr. Durham says on the
22 body-worn camera, get off my property. So if Your Honor would
23 like ---

24 **THE COURT:** Well, I'd take your word for it.

25 **MR. KING:** Okay. But no further witnesses from us. We'd

1 just have an argument at the appropriate time.

2 **THE COURT:** You have argument?

3 **MR. KING:** I do.

4 **THE COURT:** You may proceed.

5 **MR. KING:** Okay. Thank you, Your Honor. So the issue of
6 the Jackson v. Denno was the voluntariness of the statements.
7 There's essentially two sections to his body-worn camera and
8 the statements. There's the first section that happens at the
9 doorway where Mr. Durham's Mirandized. We're not contesting
10 the voluntariness of that section.

11 But there is a section where he does say get off my
12 property. He clearly wants to end the conversation and law
13 enforcement refuses that. So our position is everything after
14 he says you need to leave is no longer voluntary because they
15 insisted on continuing the questioning.

16 **THE COURT:** State's position?

17 **MR. HILL:** Your Honor, the State doesn't recall the time
18 in the video where he says get off my porch. However,
19 throughout the encounter with law enforcement he's
20 continuously asking to speak with law enforcement. He was, as
21 I think Officer Ables said, he was in investigative detention.

22 He kept asking to speak with law enforcement. He wasn't
23 denied access to food or water. He was sitting down on the
24 couch. He was allowed to use the phone to call people to try
25 to help figure out what was going on. I believe ---

1 **THE COURT:** What was his statement?

2 **MR. HILL:** He doesn't really give a full detailed account
3 as to what happened. It's more of his reaction to everything
4 ---

5 **THE COURT:** To the situation.

6 **MR. HILL:** --- as it was taking place. And how he -- I
7 mean, he did speak with law enforcement. And he wanted to
8 speak with law enforcement and said numerous times that he
9 wanted to speak with law enforcement.

10 **THE COURT:** Did he say that on the body-cam?

11 **MR. HILL:** Yes, Your Honor. All of which is recorded on
12 there. And, again, I don't remember specifically where he
13 would have told law enforcement to get off his porch. I do
14 remember him making the comment that he wanted law enforcement
15 to bring him his daughter, which, I guess, is not his
16 biological daughter, however, it is his step-daughter.

17 But I think all the statements made to law enforcement
18 are -- were voluntary. I don't think he was under any
19 coercion, or threats, or intoxicated, or impaired or anything
20 ---

21 **THE COURT:** Well, what does -- what effect does, if any,
22 does a suspect, for lack of a better word, asking police to
23 leave his property, what effect does that have? I mean, does
24 that -- does that create -- I mean, he's not asking for
25 counsel.

1 **MR. HILL:** Right. And, Your Honor, I know that I've said
2 that I'm not aware of that exact point in the video. However,
3 throughout that entire exchange Mr. Durham is continuously
4 talking to law enforcement. He never really ceases talking to
5 law enforcement.

6 And throughout the entire encounter he's asking for law
7 enforcement to speak with him and to talk with him. So at
8 that point in time I think the entire portion of his
9 communication with law enforcement would be voluntary.

10 **THE COURT:** All right. Anything further?

11 **MR. HILL:** No, Your Honor, not from the State.

12 **MR. KING:** Nothing from the defense, Your Honor.

13 **THE COURT:** All right. Well, as to the statement or
14 statements, and I, frankly, don't see how they enter into the
15 case other than the fact that he was talking to law
16 enforcement.

17 I find that the defendant was advised of his right to
18 remain silent. He was advised of his right that anything --
19 that he did say to law enforcement could possibly be used
20 against him in a court of law. I find that he was advised of
21 his right to counsel. I find that he was advised that he at
22 any time could terminate the questioning.

23 I find that no pressure or coercion was used on the
24 defendant. He was not -- apparently not deprived of any
25 creature comforts. And the length of the interchange was not

1 an unreasonable amount of time.

2 So I, therefore, by the preponderance of the evidence
3 find that the statement, whatever statements he did make,
4 would be admissible in front of this jury. All right.
5 Anything further of a pretrial nature?

6 **MS. OWEN:** Nothing from the State, Your Honor.

7 **MR. KING:** Nothing from the defense, Your Honor.

8 **THE COURT:** Ready for the jury?

9 **MS. OWEN:** Yes, Your Honor. The only thing I'd ask is if
10 we could mention ---

11 **THE COURT:** Ms. Durham?

12 **MS. OWEN:** Yes, sir.

13 **THE COURT:** I'll do that.

14 **MS. OWEN:** Thank you.

15 **THE COURT:** Bring the jury, please.

16 (Whereupon the jury pool entered the courtroom at 2:57
17 pm)

18 **THE COURT:** All right. Ladies and gentlemen, again,
19 thank you for your patience. There's one question I forgot --
20 I overlooked. I didn't forget, I just overlooked asking you
21 -- and this is a potential witness in this case. Her name is
22 Vanessa Durham. And, Ms. Durham, will you please stand. Ms.
23 Durham, will you please stand up.

24 **MS. DURHAM:** I wasn't a witness.

25 **THE COURT:** No, I know you're not.

1 **MS. DURHAM:** Okay.

2 **THE COURT:** I know you're not. This is Ms. Durham, who
3 may or may not be a witness in this case. It's my
4 understanding she's the mother of the victim. Anybody know
5 Ms. Durham? Yes, ma'am. And your number was 70?

6 **JUROR 70:** 70.

7 **THE COURT:** Yeah, it was 70. How about that? I
8 remembered. How well do you know Ms. Durham?

9 **JUROR 70:** Well, I have two kids by her cousin.

10 **THE COURT:** Okay. So you know her pretty well?

11 **JUROR 70:** Yes.

12 **THE COURT:** Okay. Based on that fact, Ms. 70, would that
13 fact in any way interfere with your ability to give both the
14 State and the defendant a fair and impartial trial?

15 **JUROR 70:** No, sir.

16 **THE COURT:** Okay. Thank you very much, Ms. 70. Thank
17 you. All right. Madam Clerk, give us a jury, please.

18 Just so y'all know, the computer's now scrambling up your
19 numbers. And we're going to draw 12 jurors from your midst.
20 And we may draw an alternate if we have enough jurors to do
21 that.

22 (Pause)

23 **THE COURT:** You know, we used to draw jurors -- we used
24 to have a barrel and everybody's name got put in a little
25 capsule. And the law says, it did, that you had to have a

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1 blind person or a child under the age of six to draw the names
2 out of the box. Now we do it on an app, I think.

3 **MADAM CLERK:** When I call your name and number, if you
4 will, come forward and turn around and face the attorneys.
5 You can stand in front of the counter.

6 Juror number 194, Bethany White.

7 (Whereupon the Court was speaking to the clerk)

8 (Whereupon juror 194, a white female, came forward)

9 **MADAM CLERK:** What says the State?

10 **MS. OWEN:** Please present this juror.

11 **MADAM CLERK:** The defense?

12 **MR. KING:** Please swear Ms. White.

13 **MADAM CLERK:** Please have a seat in the jury box.

14 Juror number 196.

15 (Whereupon juror 196, a white female, came forward)

16 **MADAM CLERK:** What says the State?

17 **MS. OWEN:** Please present this juror.

18 **MADAM CLERK:** The defense?

19 **MR. KING:** Please excuse Ms. Whitlock.

20 **MADAM CLERK:** Please have a seat.

21 **THE COURT:** Just refer to jurors by number, please.

22 **MR. KING:** I apologize, Judge.

23 **MADAM CLERK:** Juror number 14.

24 (Whereupon juror 14, a white female, came forward)

25 **MADAM CLERK:** What says the State?

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1 **MS. OWEN:** Please present this juror.

2 **MADAM CLERK:** The defense?

3 **MR. KING:** Please excuse juror 14.

4 **MADAM CLERK:** Please have a seat.

5 Juror number 144.

6 (Whereupon juror 144, a white male, came forward)

7 **MADAM CLERK:** What says the State?

8 **MS. OWEN:** Please present this juror.

9 **MADAM CLERK:** The defense?

10 **MR. KING:** Please swear Mr. 144.

11 **MADAM CLERK:** Please have a seat in the jury box.

12 Juror number 68.

13 (Whereupon juror 68, a white male, came forward)

14 **MADAM CLERK:** What says the State?

15 **MS. OWEN:** Please present this juror.

16 **MADAM CLERK:** The defense?

17 **MR. KING:** Please swear Mr. 68.

18 **MADAM CLERK:** Please have a seat in the jury box.

19 Juror number 174.

20 (Whereupon juror 174, a white male, came forward)

21 **MADAM CLERK:** What says the State?

22 **MS. OWEN:** Please present this juror.

23 **MADAM CLERK:** The defense?

24 **MR. KING:** Please excuse Mr. 174.

25 **MADAM CLERK:** Please have a seat.

JURY SELECTION

1 Juror number 133.

2 (Whereupon juror 133, a white male, came forward)

3 **MADAM CLERK:** What says the State?

4 **MS. OWEN:** Please present this juror.

5 **MR. KING:** Please excuse Mr. 133.

6 **MADAM CLERK:** Please have a seat.

7 Juror number 205.

8 (Whereupon juror 205, an Asian female, came forward)

9 **MADAM CLERK:** What says the State?

10 **MS. OWEN:** Please present this juror.

11 **MADAM CLERK:** The defense?

12 **MR. KING:** Please swear Ms. 205.

13 **MADAM CLERK:** Please have a seat in the jury box.

14 Juror number 70.

15 (Whereupon juror 70, a black female, came forward)

16 **MADAM CLERK:** What says the State?

17 **MS. OWEN:** Please excuse this juror.

18 **MADAM CLERK:** Please have a seat.

19 Juror number 198.

20 (Whereupon juror 198, a white female, came forward)

21 **MADAM CLERK:** What says the State?

22 **MS. OWEN:** Please present this juror.

23 **MADAM CLERK:** The defense?

24 **MR. KING:** Please excuse Ms. 198.

25 **MADAM CLERK:** Juror number 131.

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1 (Whereupon juror 131, a white male, came forward)

2 **MADAM CLERK:** What says the State?

3 **MS. OWEN:** Please present this juror.

4 **MADAM CLERK:** The defense?

5 **MR. KING:** Please swear Mr. 131.

6 **MADAM CLERK:** Please have a seat in the jury box.

7 Juror number 62.

8 (Whereupon juror 62, a white female, came forward)

9 **MADAM CLERK:** What says the State?

10 **MS. OWEN:** Please present this juror.

11 **MADAM CLERK:** The defense?

12 **MR. KING:** Please excuse Ms. 162 [sic].

13 **MADAM CLERK:** Juror number 5.

14 **THE COURT:** That was 62, wasn't it?

15 **MADAM CLERK:** Yeah, it was 62.

16 **MR. KING:** Oh, it was 62. I apologize.

17 **JUROR 5:** Did you call 5?

18 **MADAM CLERK:** Yes.

19 **MR. KING:** What number are we on now?

20 **MADAM CLERK:** Number 5.

21 (Whereupon juror 5, a white male, came forward)

22 **MADAM CLERK:** What says the State?

23 **MS. OWEN:** Please present this juror.

24 **MADAM CLERK:** The defense?

25 **MR. KING:** Please excuse Mr. 5.

JURY SELECTION

1 **MADAM CLERK:** Juror number 162.

2 (Whereupon juror 162, a white female, came forward)

3 **MADAM CLERK:** What says the State?

4 **MS. OWEN:** Please present this juror.

5 **MADAM CLERK:** The defense?

6 **MR. KING:** Please excuse Ms. 162.

7 **MADAM CLERK:** Juror number 138.

8 (Whereupon juror 138, a white male, came forward)

9 **MADAM CLERK:** What says the State?

10 **MS. OWEN:** Please present this juror.

11 **MR. KING:** What's the number?

12 **MADAM CLERK:** 138.

13 **MR. KING:** 138. I'm having trouble hearing. Please

14 swear Mr. 138.

15 **MADAM CLERK:** Please have a seat in the jury box.

16 Number 114.

17 (Whereupon juror 114, a white female, came forward)

18 **MADAM CLERK:** What says the State?

19 **MS. OWEN:** Please present this juror.

20 **MADAM CLERK:** The defense?

21 **MR. KING:** Please swear Ms. 114.

22 **MADAM CLERK:** Please have a seat in the jury box.

23 Number 28.

24 (Whereupon juror 28, a white male, came forward)

25 **MADAM CLERK:** What says the State?

JURY SELECTION

1 **MS. OWEN:** Please present this juror.

2 **MADAM CLERK:** The defense?

3 **MR. KING:** Please swear Mr. 28.

4 **MADAM CLERK:** Please have a seat in the jury box.

5 Number 58.

6 (Whereupon juror 58, a white male, came forward)

7 **MADAM CLERK:** What says the State?

8 **MS. OWEN:** Please present this juror.

9 **MADAM CLERK:** The defense?

10 **MR. KING:** Please swear Mr. 58.

11 **MADAM CLERK:** Please have a seat in the jury box.

12 Number 119.

13 (Whereupon juror 119, a white female, came forward)

14 **MADAM CLERK:** What says the State?

15 **MS. OWEN:** Please present this juror.

16 **MADAM CLERK:** The defense?

17 **MR. KING:** Please swear Ms. 119.

18 **MADAM CLERK:** Please have a seat in the jury box.

19 Number 179.

20 (Whereupon juror 179, a white male, came forward)

21 **MADAM CLERK:** What says the State?

22 **MS. OWEN:** Please present this juror.

23 **MADAM CLERK:** The defense?

24 **MR. KING:** Please excuse Mr. 179.

25 **MADAM CLERK:** Number 36.

JURY SELECTION

1 (Whereupon juror 36, a white male, came forward)

2 **MADAM CLERK:** What says the State?

3 **MS. OWEN:** Please present this juror.

4 **MADAM CLERK:** The defense?

5 **MR. KING:** Please swear Mr. 36.

6 **MADAM CLERK:** Please have a seat in the jury box.

7 Number 161.

8 (Whereupon juror 161, a white male, came forward)

9 **MADAM CLERK:** What says the State?

10 **MS. OWEN:** Please excuse this juror.

11 **MADAM CLERK:** Please have a seat.

12 Number 49.

13 (Whereupon juror 49, a white male, came forward)

14 **MADAM CLERK:** What says the State?

15 **MS. OWEN:** Please present this juror.

16 **MADAM CLERK:** The defense?

17 **MR. KING:** Please swear Mr. 49.

18 **MADAM CLERK:** Please have a seat in the jury box.

19 **THE COURT:** All right. Draw one alternate.

20 **MADAM CLERK:** Number 177.

21 (Whereupon juror 177, a white male, came forward)

22 **MADAM CLERK:** What says the State?

23 **MS. OWEN:** Please present this juror.

24 **MR. KING:** Please excuse Mr. 177.

25 **MADAM CLERK:** Number 166.

JURY SELECTION

1 (Whereupon juror 166, a white female, came forward)

2 **MADAM CLERK:** What says the State?

3 **MS. OWEN:** Please present this juror.

4 **MADAM CLERK:** The defense?

5 **MR. KING:** Please seat Ms. 166.

6 **MADAM CLERK:** Please have a seat in the jury box.

7 **THE COURT:** Any objections to the jury selection process?

8 From the State?

9 **MS. OWEN:** None from the State, Your Honor.

10 **THE COURT:** From the defendant?

11 **MR. KING:** None from the defense, Your Honor.

12 **THE COURT:** All right. Thank you very much, counsel.

13 How about that? Who was the only person who didn't get

14 called?

15 (Whereupon a few jurors raised their hand)

16 **THE COURT:** We were down to one juror. All right.

17 Ladies and gentlemen, those of you who were not selected on
18 this jury, there are other cases scheduled to be tried this
19 week. I don't know how long this case is going to last or the
20 other cases are going to last, but in the spirit of caution,
21 I'm going to ask all of you to please call in after 6:00
22 tonight to find out if we need you tomorrow.

23 And in all likelihood we will ask you to call in tomorrow
24 after 6:00 to see if we need you on Wednesday. But by
25 Wednesday or so we probably wouldn't be picking another jury

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1 anyway, but that's not my call.

2 So thank you for coming. Thank you for your patience.

3 This is -- these kind of cases, they take a little longer than
4 other kinds of cases. But you were patient with me, and I
5 appreciate that. Thank you all. You're now dismissed for the
6 day. Please call in after 6:00 this evening.

7 (Whereupon the remaining jurors exited the courtroom)

8 **THE COURT:** All right. Thank you very much, ladies and
9 gentlemen. We're now -- the State ready to proceed?

10 **MS. OWEN:** The State's ready, Your Honor.

11 **THE COURT:** Defense ready to proceed?

12 **MR. KING:** We're ready, Your Honor.

13 **THE COURT:** All right. Madam Clerk, swear the jury,
14 please.

15 **MADAM CLERK:** Please stand and raise your right hand.

16 And then after the oath is administered, if you will say I
17 will. You shall well and truly try the issue joined in this
18 case of the State versus James Anthony Durham and a true
19 verdict rendered according to the law and evidence so help you
20 God.

21 **THE JURY:** I will.

22 **MADAM CLERK:** Thank you.

23 **THE COURT:** All right. Ladies and gentlemen, before the
24 trial begins I want to talk to you for just a few minutes and
25 explain a little bit about our procedure. But before we begin

1 this trial, I want to tell you this trial may be different
2 from what you may expect. Many people do not have the chance
3 to attend actual court sessions as you're now doing and may
4 think from watching television, or movies or reading in books
5 that trials are always full of a lot of drama, intense action,
6 things of that nature. While all these things may be true at
7 times, this trial is not for entertainment. It's a
8 fundamental part of our democracy, an effort to make sure that
9 justice is done between the parties before the court.

10 That process, making sure that justice is done, is often
11 a slow, deliberate, and repetitive process, the opposite of
12 what you may have seen or read in -- seen in movies or read in
13 books. This courtroom is a place of honor dedicated to the
14 protection and preservation of citizen's rights through what
15 many have called the greatest justice system ever created.

16 The attorneys appearing before you are advocates for the
17 parties they represent, but first and foremost they're
18 officers of this court, sworn to uphold the integrity and
19 fairness of our judicial system and to help you evaluate this
20 case. You should expect them to be professional, competent
21 and ethical in the representation of their client's interest.
22 And remember that you've just taken an oath to try this case
23 to reach a fair and just verdict. And you are also expected
24 to be professional, reasonable and equitable.

25 Now as I advised you at the beginning of this session,

1 this is the formal document by which the case is brought into
2 court. It's not evidence of anything. But the defendant in
3 this case, I'll remind you, James Anthony Durham, did in
4 Pickens County on or about the 14th of May, 2016 commit a
5 sexual battery on a minor, who was 14 years of age or less,
6 but who was at least 11 years of age in violation of the laws
7 of the State of South Carolina.

8 Now you've been selected as fair and impartial jurors
9 whose purpose is to find and determine the facts in this case.
10 You are the sole judges of the facts. At any time I make any
11 comment regarding the facts of the case, please disregard what
12 I say. As I say, the indictment is simply the charge by which
13 the case is brought into court.

14 The defendant has pled not guilty to this indictment.
15 And that puts the burden on the State to prove each of the
16 elements of the indictment beyond a reasonable doubt. It'll
17 be your duty, ladies and gentlemen, to decide whether the
18 State has met that burden.

19 It's especially important that you perform your duty of
20 determining the facts diligently and conscientiously because
21 ordinarily there's no way to correct an erroneous
22 determination of the facts by a jury. When you comply with
23 your oath to impartially determine the facts of this case you
24 will have fulfilled your duties as jurors and no one will have
25 a right to criticize your verdict.

1 And on the other hand and with equal emphasis, the same
2 law that makes you the judges of the facts makes me the judge
3 of the law. You must accept and follow the law, even though
4 you may disagree with it. Now, I cannot tell you what the
5 facts are. You should not disagree with me about what the law
6 is or what the law should be.

7 Your job is to take the law as I explain it to you and
8 apply it to the facts as you find them from the testimony of
9 the witnesses and any other evidence that's introduced during
10 the course of this case. And after doing that you will render
11 your verdict under the solemn oath you just took as jurors.

12 Now the procedure that we'll follow is basically that the
13 State will present its evidence first in the form of witness
14 testimony and/or exhibits that may be part of the record. The
15 defendant will then have the opportunity to present his
16 defense bearing in mind, however, there's absolutely no burden
17 on the defendant to present any evidence at all.

18 Following that, the attorneys will be allowed to sum up
19 their case, and I'll instruct you on the law of South Carolina
20 as it applies to this case. And after that the case will be
21 turned over to you for a decision.

22 Now let me remind you or call your attention to two legal
23 principles that we'll use during the course of this trial.
24 The first is the legal yardstick, I call it, you will use in
25 judging or measuring the evidence in this case. That legal

1 yardstick is known as the burden of proof, the responsibility
2 for proving the case.

3 And in a criminal case the burden of proof is on the
4 State to prove guilt beyond a reasonable doubt. Should the
5 State fail to meet that burden, it would be your duty to find
6 the defendant not guilty. As I said earlier, there's
7 absolutely no burden whatsoever on the defendant to prove or
8 disprove anything. There's no burden on the defendant to
9 testify or present any evidence in this case because the
10 burden is and remains on the State to prove guilt beyond a
11 reasonable doubt.

12 And secondly I call -- ask you to recall my earlier
13 comment to the entire jury panel concerning the presumption of
14 innocence. This is a cardinal and fundamental rule of law
15 that a defendant will always be presumed innocent of the crime
16 or crimes for which he or she is indicted. This presumption
17 of innocence is not just a simple legal phrase or a simple
18 legal theory. It's a substantial right to which any accused,
19 including this defendant, is entitled.

20 Now until I advise you to begin your deliberations I'll
21 ask you not to discuss this case with anyone including your
22 fellow jurors, friends, or family members or anyone involved
23 in the case. And after the case is submitted to you I'll ask
24 you to discuss it only in the jury room with your fellow
25 jurors.

1 Now in just a moment the attorney for the State will make
2 what's called an opening statement. The attorney will explain
3 to you what the issues in this case are or at least what the
4 attorney thinks the issues in this case are. The attorney for
5 the defendant will also make an opening statement.

6 What the attorneys tell you during their opening
7 statements is not evidence in this case. It's only their
8 contention as to what the issues are and what the evidence
9 will show. The evidence in this case will be presented to you
10 by testimony from sworn witnesses from this witness stand and
11 any exhibits that may be introduced during the course of the
12 trial.

13 In determining what the true facts are you must decide
14 whether or not the testimony of a witness is believable in
15 deciding whether or -- whether a witness -- whether to believe
16 a witness. You have a right to consider whether the witness
17 has an interest in the result of the trial, whether the
18 witness is prejudiced toward either the State or the
19 defendant, and the opportunity for the witness to have seen
20 the matters and things about which the witness may testify and
21 the way the witness acts on the witness stand.

22 Ladies and gentlemen, you and I do not ask questions of
23 the witnesses. We do not offer any exhibits. This is not
24 CSI. Your duty is to listen openly and honestly to the
25 evidence. Keep an open mind. Do not form any conclusions or

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1 judgments until you've received and considered all the
2 evidence in the case, the arguments of the attorneys and my
3 final instructions to you on the law.

4 If you cannot hear a particular witness, or myself, or
5 one of the attorneys, please let us know so that we can speak
6 up more clearly. If your view of an exhibit is obstructed for
7 any reason, please let me know. We can correct that.

8 If you need to bring something to my attention during the
9 course of the trial, you may notify one of the bailiffs. If
10 you do need to contact me, it may be necessary for the bailiff
11 to require that you put such a question or concern in writing
12 so we'll have a record of it. I will respond to you as
13 quickly as I can to the extent the law permits me to do so.

14 I thank you for your kind attention, ladies and
15 gentlemen. I trust you will now give the same kind and
16 undivided attention to the attorneys and the parties in this
17 case. And we'll now begin with opening statements.
18 Solicitor, you may proceed.

19 **MR. HILL:** Thank you, Your Honor. May it please the
20 Court? Counsel?

21 Ladies and gentlemen of the jury, as you now know, today
22 you are here for the trial of Mr. James Durham, who is charged
23 with criminal sexual conduct with a minor. That's a crime we
24 take very seriously here in Pickens County. And one of the
25 reasons we take it so seriously is because of how unique it

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1 is.

2 And what makes it unique? Well, it's because this isn't
3 something that typically happens out in public. Rather, this
4 is something that typically occurs behind closed doors. And
5 that's because of the nature of it as well as the
6 relationships of those involved. But in this case we have
7 something different, because we have someone different, who
8 saw it, who knew it was wrong and who was willing to do
9 something about it.

10 Now the Judge just told you that we have the burden of
11 proof and that our burden is to prove to you beyond a
12 reasonable doubt that the defendant committed this crime.
13 What is proof beyond a reasonable doubt? It's not proof
14 beyond all doubt. It's not proof beyond any doubt. Rather,
15 when you listen to the Judge in his closing instructions, it's
16 proof that leaves you firmly convinced of the defendant's
17 guilt. It's proof that doesn't cause you to hesitate to act
18 when finding the defendant guilty.

19 This is not an impossible burden. In fact, this is a
20 burden that we gladly accept. And it's the same burden that's
21 been present in every other criminal case in this country
22 where a jury of yourselves has found the defendant guilty of a
23 crime.

24 So what is your job here today? As the Judge says,
25 you're the finder of the fact. You get to determine what

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1 happened in this case. And everything that you're going to
2 need to do that is going to come from this witness stand right
3 here, whether that's through a witness' testimony or it's
4 through exhibits that are entered into evidence and published
5 to you.

6 And we ask that you listen carefully to each of those
7 witnesses. And we know that you will. And we know that you
8 take your oath seriously.

9 And when listening to these witnesses we ask you to think
10 about a couple of things. Think about who has a dog in this
11 fight. Think about who has something to gain here and who has
12 something to lose.

13 Myself and Megan on behalf of the solicitor's office
14 thank each and every one of you for being here today. We know
15 that it can be an inconvenience. But without individuals like
16 yourselves who are willing to come in here and sacrifice of
17 your own time to serve on a jury, our justice system simply
18 would not function.

19 And we believe that at the end of this trial when we
20 stand back up before you in closing and ask for you to find
21 the defendant guilty of criminal sexual conduct with a minor
22 you'll be firmly convinced of that and you will find Mr. James
23 Durham guilty of that crime. Thank you.

24 **THE COURT:** Mr. King.

25 **MR. KING:** May it please the Court? A lie that got out

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1 of hand, that's what you're going to hear about today. A lie
2 that got out of hand, simple gossip they couldn't control
3 anymore.

4 You're going to hear about how Mr. Durham, Mr. James
5 Durham was at home with his step-daughter, **Minor** she
6 was about 11 at the time, close to be turning 12. They were
7 at home and the maintenance man was going to come and fix the
8 shower head.

9 Now the maintenance man, his name is Larry King. He had
10 been there previously and he'd seen them previously. He'll
11 tell you that he felt that their relationship wasn't proper.
12 He didn't like how they acted around each other, all right?
13 He went into that apartment that day with a preconceived
14 notion about what he would see.

15 He first showed up there, decided he needed to go buy a
16 new shower head. He went to Ace Hardware, came back from Ace
17 Hardware and entered the apartment without knocking. This is
18 the magic incident we to try to -- we're here today for, okay?
19 He came back into the apartment and surprised both **Minor** and
20 Mr. Durham. And this is when he's going to tell you that he
21 saw something inappropriate happen, okay?

22 But you will not hear that he shouted and screamed and
23 caused a scene about it. You won't hear about how he turned
24 around out of the apartment and called the police. The
25 evidence will show that what he actually did was he walked

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1 through the apartment and fixed the shower head. After he
2 fixed the shower head, he left.

3 At that point he didn't call police. He didn't attempt
4 to get **Minor** to a safe location. If he thought -- because he
5 just saw something -- he didn't attempt to do anything. What
6 the evidence will show is that he went to his boss. He went
7 to his boss and he gossiped. And he said, guess what I just
8 saw in this apartment? That's when the boss said, whoa, whoa,
9 whoa, hold up, you've got to go report this. The lie got out
10 of hand. Simple gossip.

11 Now, once law enforcement came to the house, they asked
12 **Minor** what happened. She said, nothing happened. None of
13 this, what this guy is saying, happened. She'll take the
14 witness stand, she'll tell you.

15 She told law enforcement that multiple times. She told
16 her mother nothing happened. She told the nurse at the
17 hospital nothing happened. She told the interviewers later
18 who asked her what happened. She said this didn't happen.
19 She talked to DSS, the Department of Social Services, talked
20 to their caseworker, it didn't happen. She said over and over
21 again it didn't happen.

22 The question is why are we here today? It's because it
23 was a simple gossip, a lie that just got away from Larry King.
24 That's why we're here today.

25 Now, let me talk to you about Mr. Durham's constitutional

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1 rights. As the Judge said, he is presumed innocent. It means
2 that man over -- he's way over here. Mr. Durham, stand up.
3 This man right here, Mr. Durham, Mr. James Durham, is
4 innocent. He's innocent while we all look at him, every one
5 of us in this courtroom throughout the trial, he's the
6 innocent James Durham, okay?

7 So to see him otherwise throughout this trial would be a
8 violation of your oath you just took, okay? We'd ask you to
9 keep to your oath. It's fine to look over there through the
10 trial. It's just -- it's natural. It's part of your job.
11 Look over there and see the innocent Mr. Durham because that's
12 what he is through this whole -- this whole case.

13 The second constitutional right I want to talk to you
14 about is the right that he has to remain silent and not
15 present a defense. Everybody wants to hear from all the
16 witnesses. That's usually -- that's just human nature. They
17 want as much evidence as possible.

18 In our justice system, the defendant, Mr. Durham, does
19 not have to present any evidence. He does not have to take
20 the witness stand. And to hold that against him, hold any
21 silence against him would be a violation of your oath, okay?
22 Those are essential constitutional rights.

23 We all have the right to pick which church we want to go
24 to or to carry a firearm, to say we like the President, to say
25 we don't like the President. Those are all of our rights that

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1 we have every day. And we'd ask you not to take those rights
2 away from Mr. Durham.

3 Now the last right is the burden of proof. The State,
4 this table, has to prove to you beyond a reasonable doubt that
5 Mr. Durham is guilty. Now the evidence in this case will not
6 meet that burden. It will fall far short from that burden
7 because all they have is one witness who told a gossipy lie.
8 At the end of the case we'd ask you to hold the State to their
9 burden and return a verdict of not guilty. Thank you.

10 **THE COURT:** All right. Solicitor, call your first
11 witness.

12 **MS. OWEN:** Thank you, Your Honor. May I also request
13 that all witnesses that have been named in the witness list be
14 sequestered?

15 **MR. KING:** No objection.

16 **THE COURT:** Well, without objection.

17 **MS. OWEN:** Your Honor, the State would call Minor
18 to the stand.

19 **MADAM CLERK:** Place your left hand on the Bible and raise
20 your right hand.

21 Minor being duly
22 sworn testified as follows;

23 **MADAM CLERK:** Have a seat and state your name for the
24 record, please. If you will, speak into the microphone.

25 Minor Minor

1 **THE COURT:** You're going to have to pull up a little
2 closer.

3 Minor Minor

4 Direct Examination by Ms. Owen:

5 Q. How are you today, Minor ?

6 A. Okay.

7 **MR. KING:** Can you speak into the microphone? We can't
8 hear you over here.

9 A. I'm good.

10 **THE COURT:** Can you pull that chair up? That's good.

11 Q. Minor, can you tell the jury how old you are?

12 A. Fifteen.

13 Q. When did you turn 15?

14 A.

15 Q. So you just had your 15th birthday?

16 A. Yes.

17 Q. Happy birthday.

18 A. Thank you.

19 Q. Minor where do you live?

20 A. I live at home with my mom.

21 Q. Okay. And what county is that in?

22 A. Oconee County.

23 Q. Have you always lived there?

24 A. No.

25 Q. Where do you go to school?

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- 1 A. Seneca High School.
- 2 Q. Seneca High School?
- 3 A. Yeah.
- 4 Q. What grade are you in?
- 5 A. I'm going to 10th.
- 6 Q. Tenth grade?
- 7 **THE COURT:** You have to speak up, ma'am.
- 8 A. I'm 10th.
- 9 **THE COURT:** Everybody's got to hear you. I've got to
- 10 hear you. You can't whisper.
- 11 A. Okay.
- 12 **THE COURT:** Okay?
- 13 Q. You're going into 10th grade?
- 14 A. Yes.
- 15 Q. Do you have a favorite subject in 10th grade?
- 16 A. Math.
- 17 Q. **Minor** where did you used to live before you moved to
- 18 Oconee County?
- 19 A. I used to live in Clemson.
- 20 Q. Do you know the address?
- 21 A. **Minor** Old Central Road, apartment -- I don't know the
- 22 apartment.
- 23 Q. Okay. How long did you live there?
- 24 A. Maybe two years, three, maybe.
- 25 Q. I'm going to move this mike just a little bit closer.

- 1 A. Two or three years.
- 2 Q. Who'd you live in that apartment with?
- 3 A. My mom and my step-father.
- 4 Q. Your step-dad and your mom?
- 5 A. Yes.
- 6 Q. Okay. How long has your step-dad been a part of your
- 7 life?
- 8 A. Since I was like three.
- 9 Q. Do you call him step-dad?
- 10 A. No.
- 11 Q. What do you call him?
- 12 A. Dad.
- 13 Q. Is that because he's been around since you were three?
- 14 A. Yes.
- 15 Q. Has he always lived with you and your mom?
- 16 A. Yes.
- 17 Q. Does he raise you like his own child?
- 18 A. Yes.
- 19 Q. Okay. Can you tell me some things that you used to like
- 20 to do with your dad?
- 21 A. We used to play all the time and just spend time with me,
- 22 him, and my sisters, and go outside and just have fun
- 23 together.
- 24 Q. Okay. Did your sisters live with you in this apartment?
- 25 A. No, ma'am.

Minor - DIRECT EXAMINATION BY MS. OWEN

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1 Q. Who lived there?

2 A. Me, and my mom and my step-father.

3 Q. Is your step-father in the courtroom today?

4 A. Yes.

5 Q. Where is he?

6 A. Over there.

7 (Whereupon the witness pointed to the defendant)

8 Q. Minor, when you were living at Old Central Road
9 where did you go to school?

10 A. I went to Clemson Elementary, and then I went to Edwards
11 Middle.

12 Q. Okay. Can you tell the jury a little bit what your
13 routine was like from -- on school days, what would happen
14 from the time you got up until you went to bed?

15 A. I would wake up. Normally my mom would wake me up. And
16 sometimes I would eat breakfast. I'm not really a breakfast
17 person. And then I would, you know, get dressed, use the
18 bathroom, all that, and go to school.

19 Then I would spend time with like my friends on the bus.
20 And sometimes I would go outside and hang out with my friends.
21 And then I would come home and a lot of times I would watch TV
22 with my mom and my dad and just, you know, have fun with my
23 family.

24 Q. Did you spend a lot of time with your mom and dad?

25 A. Yes.

1 Q. Did your mom work back then?

2 A. No, ma'am.

3 Q. Why not?

4 A. Because my mom was in a car accident a while back and it
5 injured her back, so she's disabled. But she can still move.

6 Q. Okay.

7 **THE COURT:** Keep speaking up.

8 A. Okay.

9 Q. Did she have to take some pain medicine for that?

10 A. Yes.

11 Q. **Minor**, can you describe to the jury a little bit about
12 what the apartment that you lived in looked like?

13 A. So you walked in the front door and there's the living
14 room. And then you have the couch to the right. It was a
15 sectional. So it was kind of like wrapped around the living
16 room. And then you had the TV on the left and then the
17 closet.

18 And then if you kept going straight you would have the
19 kitchen and then there's the back door. And then from the
20 living room you would look down the hallway, and to the left
21 would be my room. And then in the middle was the bathroom.
22 And to the right was my parents' room.

23 Q. Okay. And did you guys spend a lot of time in your
24 apartment?

25 A. Yes.

1 Q. Okay. Minor you know why you're here today, correct?

2 A. Yes.

3 Q. Okay. On May 14th of 2016, do you remember that day?

4 A. Yes.

5 Q. Okay. Do you know how old you were that day?

6 A. Eleven.

7 Q. Eleven? And why do you remember that day?

8 A. Because that day I had to go live with a different family
9 that wasn't mine.

10 Q. Can you tell the jury what you remember from the time you
11 woke up until the time that you had to go live with a
12 different family, what happened that day?

13 A. I woke up and my mom told me she was going to a Mother's
14 Day Tea. So I was like, okay. And normally I'd tell her like
15 my day, like what I plan on doing that day. So I told her I
16 was going to chill out for a little bit and then take a
17 shower.

18 And then she told me that the maintenance guy was going
19 to come and fix the shower, so I'd have to wait. And I said,
20 okay. So I went in the living room and I started watching TV
21 with my dad.

22 And she had left. And he had -- the maintenance man
23 knocked on the door. And I went and opened it, and he came
24 in. And my step-dad, I think, if I'm not mistaken he told him
25 what the problem was. And then he went in the bathroom and he

1 decided that he needed to go get a new shower head or
2 whatever, so he left.

3 And we were sitting there watching TV. And I had asked
4 if I could have coffee. And I wasn't really supposed to have
5 coffee. So we were talking about if I could or not. And he
6 said that I couldn't. And then eventually he did give me
7 some, like a little bit.

8 And then the maintenance man walked in and then he turned
9 around and walked back out. And then I said, come in, and he
10 didn't come in. So I went to the door and opened it and let
11 him in. And then he went into the bathroom, fixed the shower,
12 and he left.

13 And then -- do you want me to continue or ...

14 Q. Can I ask you a couple of questions about that?

15 A. Sure.

16 Q. Okay. So you woke up and your mom was leaving to go to a
17 luncheon, is that right?

18 A. Yes.

19 Q. And she told you that the maintenance man was coming?

20 A. Yes.

21 Q. Okay. And you and your dad got on the couch, is that
22 right?

23 A. Yes.

24 Q. Okay. And while y'all were on the couch, the maintenance
25 man came? And did you say he knocked on the door the first

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1 time?

2 A. Yes.

3 Q. And did you let him in?

4 A. Yes.

5 Q. Okay. And then he went and looked at the shower and said
6 he was going to be back with a part?

7 A. Yes.

8 Q. Okay. And while he was gone your step-dad let you have
9 some coffee. Did I understand that correctly?

10 A. Yes.

11 Q. Okay. And then you said that you tickled him?

12 A. Yes.

13 Q. Okay. Did the maintenance man see you tickling him?

14 A. I'm not sure.

15 Q. Okay. When you say you were tickling your dad, can you
16 tell the jury how you were doing that?

17 A. Like his stomach. Like my mom, and my dad, and like my
18 brothers and stuff, they used to do that to me when I was
19 little. It was like a thing that we do in our family. Like
20 we're a big, like, tickling family and stuff. We just love to
21 laugh. So ...

22 Q. Okay. And was this while you were sitting on the couch?

23 A. Yes.

24 Q. I'm going to show you what's been premarked as State's
25 exhibit 3, 4 and 5, okay? This is State's exhibit 3, 4 and 5.

1 Do you recognize those?

2 A. Yes.

3 Q. Can you tell me what they are?

4 A. Pictures of our living room.

5 Q. Is that pictures of the living room from your apartment
6 in Clemson?

7 A. If I'm not -- if I'm not mistaken, yes.

8 Q. Okay.

9 **MR. KING:** I can't hear that answer. I'm sorry.

10 A. If I'm not mistaken, yes.

11 **MR. KING:** Thank you.

12 Q. That day, is this the couch you were sitting on?

13 A. Yes.

14 Q. It is?

15 A. (Affirmative nod).

16 Q. Okay. And this was your living room that day, is that
17 correct?

18 A. Yes.

19 Q. Okay.

20 **MS. OWEN:** Your Honor, I'd request to move these into
21 evidence as State's exhibit 3, 4 and 5.

22 **THE COURT:** Any objection?

23 **MR. KING:** No objections, Your Honor.

24 **THE COURT:** Without objection.

25 (Whereupon State's exhibits 3, 4 and 5 were admitted into

1 evidence)

2 Q. Minor is this the living room?

3 A. Yes.

4 Q. Okay.

5 MS. OWEN: Do we have a pointer? I'm going to see if

6 this works. I don't know if that's working.

7 Q. Minor can you explain to the jury where your dad was
8 sitting and where you were sitting from where you are? Can
9 you see that?

10 A. Yes. The white blanket, where the white blanket is,
11 that's where he was. And I was somewhere between where the
12 blue blanket -- the blue and white blanket is, between that
13 couch cushion and the one beside it.

14 Q. Okay. I'm going to give you State's 4. It's a little
15 bit closer. Would that be a better angle?

16 A. Yes.

17 Q. Okay. So it looks like the couch is a sectional, is that
18 right?

19 A. Yes.

20 Q. And it goes into a corner?

21 A. Yes.

22 Q. Was your dad sitting in that corner?

23 A. Yes.

24 Q. Where was his head?

25 A. In the corner.

- 1 Q. And where were his feet?
- 2 A. At the end of the couch.
- 3 Q. Over top of the white blanket or near the white blanket?
- 4 A. A little past the white blanket, but, yes.
- 5 Q. Okay. And when you said you were tickling your dad on
- 6 his stomach, where were you?
- 7 A. I was between the -- I was where the blue and white
- 8 blanket is.
- 9 Q. This blanket?
- 10 A. Yes.
- 11 Q. Okay. And you were here?
- 12 A. No. I was where the blue and white blanket is.
- 13 Q. You were -- you were here?
- 14 A. Yes.
- 15 Q. Okay. And were you leaning over your dad?
- 16 A. No, not really.
- 17 Q. Okay. Can you explain to the jury how you were tickling
- 18 him?
- 19 A. I was sitting like this and like that.
- 20 Q. Okay. Did you demonstrate that for anyone else?
- 21 A. No, ma'am.
- 22 Q. You didn't demonstrate that for Officer Link that day?
- 23 A. Not that I recall.
- 24 Q. Okay. Let me show you what's been marked as State's
- 25 exhibit 5. Is that the front doorway to the apartment?

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1 A. Yes.

2 Q. Okay. And that's the door the maintenance man came in
3 and out of?

4 A. Yes.

5 Q. Both times?

6 A. Yes, I think so.

7 Q. Okay. So you stated to law enforcement -- I'm sorry, let
8 me back up. You just stated you tickled your dad, but you
9 weren't sure if the maintenance man saw that or not?

10 A. Yes.

11 Q. Okay. But when you came back in or when the maintenance
12 man came back in the second time, you and your dad were still
13 on the couch, is that correct?

14 A. Yes.

15 Q. And he saw you on the couch?

16 A. Yes.

17 Q. Do you remember what you and your dad were watching that
18 day?

19 A. No.

20 Q. Okay. And after the maintenance man left the second time
21 did he ever say anything?

22 A. No. I said hi when he walked in. He didn't say
23 anything. I thought that was weird, but he didn't say
24 anything when he left either.

25 Q. Okay. Do you know why he didn't say anything?

1 A. No.

2 Q. Okay. And after he left what happened?

3 A. I went in my room and I got my clothes that I was -- for
4 like to take my shower. And then I went in the bathroom. And
5 when I went in the bathroom I was fixing to turn on the
6 shower, and then I heard a knock on the door.

7 And I went to see who it was. And so I wasn't going to
8 open it because I didn't know who it was. So I told my dad
9 who it was, and he went and opened the door. And I went back
10 in the bathroom because I was going to take my shower. So I
11 didn't think anything of it.

12 Q. Okay. How did you know who it was?

13 A. I'm a very nosy person. So before I got in the shower I
14 was just listening in.

15 Q. So you didn't see anybody outside?

16 A. Oh, sorry. I misunderstood your question. Yes. When I
17 looked out the window, I seen that there was a police.

18 Q. Okay. And you told your dad the police were at the door?

19 A. Yes.

20 Q. Okay. What happened after that?

21 A. He went to the door, and I went to the bathroom. And
22 then I listened in. And then I heard one of the officers say
23 that he needed to step outside. So I came out the bathroom.
24 And then another officer or maybe the same officer told me to
25 come and step outside.

1 Q. Okay. Did you go outside?

2 A. Yes.

3 Q. What happened then?

4 A. Right before I went outside I grabbed a blanket because I
5 didn't really have on any like clothes. I had on like a tank
6 top and some shorts. And I went outside. And I tried to come
7 back in the house so I could get my phone and call my mom, but
8 the officer wouldn't let me in the house.

9 Q. She wouldn't let you in the house?

10 A. No, it was a he. But I'm not sure who it was.

11 Q. Okay. He wouldn't let you in the house?

12 A. Yes.

13 Q. Okay. And what happened after that?

14 A. Then when I tried to walk up the stairs to go get my
15 phone, the officer told me that I needed to walk around the
16 house. And then I had to wait over there for my mom.

17 Q. Did your mom come?

18 A. Yes.

19 Q. What happened when she got there?

20 A. I went to her and I explained to her that I didn't know
21 what was going on. And then this woman right here told --
22 explained to her what was going on. And my mom told her that
23 that would be best to take me to the hospital to get an
24 examination. And then we went to the hospital.

25 Q. Okay. What happened at the hospital?

1 A. I spoke to a doctor and some other lady from Victims
2 Advocacy. And I explained to her what happened. And then she
3 asked my mom to step out so that I could be alone with just
4 her. And then I explained to her what happened again. And if
5 I'm not mistaken, I think she made me take a urine test, but
6 she didn't do any other type examination.

7 Q. Okay. And did you tell her that anything different had
8 happened?

9 A. No.

10 Q. Okay. And after you went to the hospital where did you
11 go?

12 A. After I left I went to Joe and Janelle's house.

13 Q. Okay. And are Joe and Janelle your pastors?

14 A. Yes.

15 Q. Did you just stay with them for a little while?

16 A. Yes.

17 Q. On May 31st of 2016 do you remember going to the Julie
18 Valentine Center?

19 A. No.

20 Q. Do you remember talking to somebody that asked you some
21 questions about what may have happened that day?

22 A. No.

23 Q. You don't remember that?

24 A. No.

25 Q. Okay. Minor, did you have to move out of your home for

Minor **CROSS-EXAMINATION BY MR. KING**

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1 a little bit?

2 A. Yes.

3 Q. Do you love your dad?

4 A. Yes.

5 Q. Do you still deny that this happened?

6 A. Yes.

7 Q. Do you know the maintenance man?

8 A. I don't know him as a person, but I know that he's a
9 maintenance man.

10 Q. Do you know his name?

11 A. No.

12 Q. Had you seen him before?

13 A. I may have seen him working at another apartment or he
14 may have came to our apartment before, but I'm not real sure.

15 Q. Have you liked -- did you like being separated from your
16 family?

17 A. No.

18 **MS. OWEN:** Thank you, Your Honor. I have no further
19 questions for this witness.

20 **THE COURT:** Cross-examination.

21 **MR. KING:** Thank you, Judge.

22 **Cross-examination by Mr. King:**

23 Q. **Minor**, right? Did I say that right?

24 (Pause)

25 Q. It's all right. Take your time. You want some water?

- 1 A. It's Minor
- 2 Q. Minor. I apologize. You okay?
- 3 A. Um-hum (affirmative).
- 4 Q. You need to take a break?
- 5 A. (No response)
- 6 Q. So when Officer Link, Sergeant Link took you out of the
- 7 house, you told her that you were tickling your step-dad,
- 8 right?
- 9 A. Yes.
- 10 Q. And there was another officer there on the scene?
- 11 A. There were two other officers.
- 12 Q. Okay. Was one standing with Sergeant Link at the same
- 13 time?
- 14 A. Not when she spoke to me and my mother, but when she was
- 15 at the door.
- 16 Q. Okay. I appreciate that. And if I'm not saying
- 17 something right, please let me know, okay?
- 18 A. (Affirmative nod).
- 19 Q. All right. And then -- as you said, your mom took you to
- 20 the hospital, right?
- 21 A. Yes.
- 22 Q. Okay. And you went in the room with a doctor or a nurse,
- 23 right?
- 24 A. Yes.
- 25 Q. Okay. And the nurse, she was very nice to you, right?

Minor - CROSS-EXAMINATION BY MR. KING

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1 A. Yes.

2 Q. And she just asked you what happened, right?

3 A. Yes.

4 Q. And you told her that nothing happened, correct?

5 A. Yes.

6 Q. And she let you go home after that, right? Well, let me
7 correct that. She sent you to Joe and Janelle's house,
8 correct?

9 A. Yes.

10 Q. Okay. How long were you at Joe and Janelle's house?

11 A. Six months, maybe.

12 Q. Was it all right there?

13 A. Yeah.

14 Q. Did you move in with your mom after that?

15 A. Yes.

16 Q. But that was happy for you to do that?

17 A. Very much so.

18 Q. All right. Have you been living with your mom since
19 then?

20 A. Yes.

21 Q. Okay. Has your dad ever moved back in with y'all?

22 A. No.

23 Q. Have you seen him much in the last three years?

24 A. No.

25 Q. Okay. You said that you haven't seen him or ...

1 A. Yes.

2 Q. Now, you met with DSS caseworkers over the years,
3 correct? Since this happened?

4 A. I remember meeting with two of them.

5 Q. Okay. Did they ask you what happened?

6 A. Yes.

7 Q. And what did you tell them?

8 A. The same thing I told everyone else.

9 Q. That it didn't happen, right?

10 A. Yes.

11 Q. Okay. Has your mom forced you to say anything?

12 A. No.

13 Q. Has your dad, Mr. Durham, ever forced you to say
14 anything?

15 A. No.

16 Q. Okay. Do you want to be able to move back in with your
17 dad?

18 A. I like it better when it's just me and my mom, but that's
19 nothing against him.

20 Q. Well, that's -- that's fair enough. Sounds like a normal
21 teenage girl to me. All right. Do you feel safe here today?

22 A. What do you mean by safe?

23 Q. Do you feel like anything's going to -- bad going to
24 happen to you based on what you say today?

25 A. Not to me, but to him, yes.

Minor CROSS-EXAMINATION BY MR. KING

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1 Q. To him?

2 A. Yes.

3 Q. Okay. What about your mom?

4 A. I feel like it's going to hurt her, too, if it doesn't go
5 the right way.

6 Q. Okay. Is there anything else you'd like to tell the jury
7 about what happened?

8 A. No.

9 Q. Okay. All right. Give me a second, okay?

10 (Pause)

11 Q. All right. Miss Land, I'm going to show you State's 5.
12 There's a door here, right? That's the front door to the
13 apartment, is that right?

14 A. Yes.

15 Q. Okay. And you said your dad, Mr. Durham, was on the
16 sofa, correct?

17 A. Yes.

18 Q. And his back was to the front door, correct?

19 A. No. He was laying on his back.

20 Q. So he was laying on his back?

21 A. Yes.

22 Q. Okay. All right.

23 **MR. KING:** No further questions.

24 **THE COURT:** Redirect.

25 **MS. OWEN:** No redirect, Your Honor.

3 **MR. HILL:** The State would call Ross Ables.

6 **Ross Ables**, being duly
7 sworn testified as follows;

10 **MR. ABLES:** Ross Ables.

12 (Whereupon State's exhibit 6 was marked for
13 identification)

15 A. Currently I'm at the Anderson County Sheriff's Office.

17 A. Approximately three years.

19 A. Yes.

21 A. Yes.

23 A. Yeah, sure. Currently I'm at the Anderson County

24 Sheriff's Office where I'm a crime scene investigator. Before
25 that I was employed at the Clemson City Police Department as a

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1 road patrol officer.

2 Q. Okay. And when you were with Clemson, how long were you
3 there?

4 A. About three years.

5 Q. And during your time with Clemson what was your position
6 there?

7 A. Road patrol officer.

8 Q. Okay. That was your position the entire time you were
9 with Clemson?

10 A. Yes.

11 Q. Okay. And as a road patrol officer what were some of
12 your duties?

13 A. Traffic enforcement, investigate any type of incident
14 that may come forward, burglaries, sexual assaults, anything
15 of that matter.

16 Q. Okay. And you were employed in that capacity on May 14th
17 of 2016?

18 A. Yes.

19 Q. And you were on duty that day?

20 A. Yes.

21 Q. Did you respond to this case that day?

22 A. Yes, I did.

23 Q. Okay. And do you recall where you responded?

24 A. Yes. It was [REDACTED] Old Central Road.

25 Q. Okay. And what County is that in?

ROSS ABLES - DIRECT EXAMINATION BY MR. HILL

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1 A. That's in Pickens County.

2 Q. And why did you respond out there?

3 A. I responded to assist Sergeant Link with an investigation
4 that she had at that address.

5 Q. Okay. And who all responded out there with you?

6 A. It was myself, Sergeant Link, Officer Duncan and Officer
7 Bikas.

8 Q. Okay. And what did you do when you first arrived on-
9 scene?

10 A. When I first arrived on-scene I was tasked with securing
11 the rear of the apartment building.

12 Q. Okay. And who was at the rear of the building with you?

13 A. It was myself and Officer Bikas.

14 Q. Okay. So where was Officer Duncan and Sergeant Link?

15 A. They were at the front.

16 Q. And about how long were you at the rear entrance?

17 A. Anywhere from -- about five minutes, I'd say. Five, ten
18 minutes tops.

19 Q. Okay. What was going on during those five minutes?

20 A. Nothing. I was just standing there securing it. At one
21 point another neighbor from another top level apartment came
22 down. I spoke with him for -- very briefly. But other than
23 that, just standing there.

24 Q. Okay. And after those five minutes passed what happened?

25 A. I was given the signal by Officer Bikas to come around

ROSS ABLES - DIRECT EXAMINATION BY MR. HILL

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1 front because contact had been made by the subjects inside.

2 Q. Okay. And what did you observe when you walked around to
3 the front of the house?

4 A. I walked around to the front and Sergeant Link had
5 already pulled the defendant's daughter off the porch and to
6 the side. She was speaking with her. And Officer Duncan was
7 at the front door speaking to the defendant.

8 Q. And what did you do at that point?

9 A. At that point, when I saw it was just Officer Duncan at
10 the front door, I went up there and assisted him.

11 Q. Okay. And when you first appeared at the front door did
12 you see Mr. Durham?

13 A. I did.

14 Q. Okay. And what was his demeanor like?

15 A. A little hostile, a little upset.

16 Q. Okay. Did you speak with Mr. Durham?

17 A. I did.

18 Q. Okay. And at that point in time who was standing there
19 with you?

20 A. Officer Duncan.

21 Q. And where was Officer Bikas?

22 A. I believe he was -- I believe he was standing down there
23 with Sergeant Link and the daughter.

24 Q. Okay. When you first encountered Mr. Durham did he
25 appear to be intoxicated to the point he didn't understand

ROSS ABLES - DIRECT EXAMINATION BY MR. HILL

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1 what was going on?

2 A. No, he did not.

3 Q. Did he appear to have any mental or physical handicaps
4 that affected his understanding?

5 A. No, he did not.

6 Q. Okay. And where exactly -- I don't know if you can
7 explain where the defendant was standing -- where the major
8 encounter was.

9 A. When I first encountered him he was just -- he was right
10 inside the doorway of the apartment.

11 Q. Okay. And did you speak with Mr. Durham?

12 A. I did.

13 Q. And about how long did you speak with him?

14 A. Approximately 15, 20 minutes.

15 Q. Okay. And you said who all else was there when you spoke
16 with him?

17 A. Officer Duncan, Officer Bikas and Sergeant Link.

18 Q. Okay. And what did you do before you spoke with him?

19 A. I Mirandized him.

20 Q. And why did you Mirandize him?

21 A. Just due to the investigation of the allegations and
22 information that may be provided.

23 Q. Okay. And how did you do that?

24 A. I read him his Miranda rights off of a card I have.

25 Q. Okay. And do you keep a Miranda card on you?

ROSS ABLES - DIRECT EXAMINATION BY MR. HILL

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1 A. I do.

2 Q. Okay. Do you have that card with you today?

3 A. I do.

4 Q. And can you read off what you read Mr. Durham?

5 A. It says you have the right to remain silent. Anything
6 you say can and will be used against you in a court of law.
7 You have the right to talk to a lawyer and have him or her
8 present with you while you're being questioned. If you cannot
9 afford to hire a lawyer, one will be appointed to represent
10 you before any questioning if you wish. You can decide at any
11 time to exercise these rights and not answer any questions or
12 make any statements.

13 Q. And after you read him those rights did he appear to
14 understand them?

15 A. He did.

16 Q. Did he wish to speak with you?

17 A. He did.

18 Q. Did he say he wanted to speak with you?

19 A. He did.

20 Q. Did you then go on to have some conversation with Mr.
21 Durham?

22 A. I did.

23 Q. At any time did you promise Mr. Durham anything to speak
24 with you?

25 A. No, I did not.

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- 1 Q. Did he speak to Sergeant Link when she was there?
- 2 A. He did.
- 3 Q. Did she ever promise him anything?
- 4 A. No.
- 5 Q. Did you ever threaten him?
- 6 A. No.
- 7 Q. Did you ever coerce him to speak with you?
- 8 A. No, I did not.
- 9 Q. Was he denied any food or access to water at the time?
- 10 A. No.
- 11 Q. Did you let him move freely around the apartment?
- 12 A. We did to a certain extent.
- 13 Q. Okay. Was he under arrest at that time?
- 14 A. At that time, no.
- 15 Q. Was he in investigative detention at that time?
- 16 A. Yes.
- 17 Q. But Mr. Durham did wish to speak with you?
- 18 A. Yes, he did.
- 19 Q. Did he ever ask to speak with an attorney?
- 20 A. No, he did not.
- 21 Q. Did he ever wish to stop speaking with you?
- 22 A. No, he did not.
- 23 Q. And throughout your encounter with Mr. Durham did you
- 24 have your body camera on?
- 25 A. I did.

ROSS ABLES - DIRECT EXAMINATION BY MR. HILL

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1 Q. And was it recording everything that was going on?

2 A. Yes.

3 Q. And did he -- did it appear that everything he was saying
4 to you was voluntary?

5 A. Yes.

6 Q. So you're initially at the front door with Mr. Durham?

7 A. Correct.

8 Q. At that point did he have any indication of why y'all
9 were there?

10 A. Not -- not initially, no.

11 Q. So you didn't inform him of what the allegation was?

12 A. I did not.

13 Q. Could it have been for anything?

14 A. Yes.

15 Q. And what was the first thing you asked Mr. Durham?

16 A. After being Mirandized I asked him if the maintenance
17 repair guy had been there earlier.

18 Q. Okay. And what was his response?

19 A. He said, yes, to fix the shower.

20 Q. Okay. And after that what was the next thing you asked
21 him?

22 A. I asked him if there was anything that he might have
23 seen.

24 Q. Okay. And what was Mr. Durham's demeanor when you asked
25 that question?

ROSS ABLES - DIRECT EXAMINATION BY MR. HILL

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1 A. Became very upset and hostile towards us or angry.

2 Q. Okay. And what did Mr. Durham say?

3 A. He said, what he might have seen, very loudly. And then
4 said -- just automatically changed and said, that's sick.

5 Q. Did you give Mr. Durham an opportunity to tell you what
6 happened that day?

7 A. Yes, several times.

8 Q. And about how long were y'all out there with Mr. Durham?

9 A. In total, probably about 30 minutes. Twenty-five, 30
10 minutes.

11 Q. And throughout that time what was Mr. Durham doing?

12 A. He was inside the living room. We were trying to
13 converse, investigate the incident.

14 Q. Okay. Did he ever speak with anybody other than law
15 enforcement?

16 A. Yes, he did.

17 Q. Okay. And do you know who that was?

18 A. He stated it was his pastor on his cell phone.

19 Q. At any point in time in the 20 or so minutes you were
20 with Mr. Durham did he ever say that they were on the couch
21 when the maintenance man walked in?

22 A. Yes.

23 Q. Did he ever say anything about his daughter tickling him?

24 A. No, he did not.

25 Q. Let me show you what's been premarked as State's exhibit

ROSS ABLES - DIRECT EXAMINATION BY MR. HILL

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1 number 6.

2 **MR. HILL:** May I approach the witness, Your Honor?

3 **THE COURT:** Sure.

4 Q. Officer Ables, do you know what that is?

5 A. I believe so.

6 Q. Okay. And what is that?

7 A. I believe it to be my body-cam video footage.

8 Q. Okay. And how do you know that that is your body-cam
9 footage?

10 A. Because it's got my initials on it.

11 Q. Okay. And you've watched and reviewed your body-cam
12 footage?

13 A. Yes, sir.

14 Q. And this is a fair and accurate depiction of your
15 interaction with the defendant and what was going on that day?

16 A. Yes.

17 **MR. HILL:** Your Honor, at this time the State would move
18 State's exhibit number 6 into evidence.

19 **MR. KING:** Judge, we'd renew our prior objection. I
20 think -- it's just the one video on there?

21 **MR. HILL:** Correct.

22 **MR. KING:** We do have an additional objection to the part
23 after, where we addressed at pretrial, ---

24 **THE COURT:** I understand.

25 **MR. KING:** --- as to relevance, essentially, at this

ROSS ABLES - DIRECT EXAMINATION BY MR. HILL

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1 point.

2 **THE COURT:** All right.

3 **MR. KING:** And for rule of evidence, Rule 403.

4 **THE COURT:** Overruled. Go ahead.

5 (Whereupon State's exhibit 6 was admitted into evidence)

6 **MR. HILL:** Permission to publish the video at this time,
7 Your Honor.

8 **THE COURT:** That's fine.

9 (Whereupon State's exhibit 6, DVD, was published for the
10 jury)

11 (Whereupon State's exhibit 6, DVD, was ended)

12 Q. Officer Ables, you just watched that body-cam, correct?

13 A. Correct.

14 Q. And just briefly, when you approached that front door,
15 how does it open?

16 A. To the right -- in and to the right.

17 Q. Okay. And when you're standing there in that door -- in
18 that doorway can you clearly see over the edge of that couch?

19 A. Yes.

20 Q. And did Mr. Durham ever know what the actual allegations
21 were at that point?

22 A. No, he did not.

23 **MR. HILL:** No further questions.

24 **THE COURT:** Cross-examination.

25 **MR. KING:** Thank you, Judge.

ROSS ABLES - CROSS-EXAMINATION BY MR. KING

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1 **Cross-examination by Mr. King:**

2 Q. Is it Deputy Ables or Investigator ---

3 A. Investigator.

4 Q. Investigator Ables. Okay. And Investigator Ables, you
5 are here today to talk about your investigation, correct?

6 A. Yes, sir.

7 Q. As you said on the body camera, you're not here to say
8 today that Mr. Durham did this, right?

9 A. That's correct.

10 Q. Okay. All right. Now you arrived on-scene with Sergeant
11 Link, right?

12 A. Yes, sir.

13 Q. And I believe you said Officers Duncan and Bikas were
14 there as well, right?

15 A. Yes.

16 Q. Were you ever -- well, as in -- this body camera is all
17 the time you were on the scene, is that right?

18 A. My body-cam, it had all the time that I was there, yes.

19 Q. So you never talked to the young Miss Land, correct?

20 A. No. The daughter? No, I did not.

21 Q. Okay. And did you meet with, mother, Ms. Vanessa Durham,
22 at some point?

23 A. I think towards the end after Mr. Durham was taken off I
24 may have been there. I don't think I actually spoke to her.

25 I may have standing with her and Sergeant Link at the time.

ROSS ABLES - CROSS-EXAMINATION BY MR. KING

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1 Q. Now did you drive Mr. Durham to the police department?

2 A. No, I did not.

3 Q. Okay. Did you later go to the police department to meet
4 with Mr. Durham?

5 A. I did not, no.

6 Q. Okay. All right. Investigator Ables, you watched the
7 body camera this time. Mr. Durham told you to leave, didn't
8 he?

9 A. At one point, yes.

10 Q. Okay. And he did answer questions for you?

11 A. Yes.

12 Q. Yeah. He said the maintenance man got there, right?

13 A. Correct.

14 Q. And Ms. Vanessa Durham called the maintenance man, right?

15 A. Correct.

16 Q. She left and the maintenance man came, right?

17 A. Correct.

18 Q. The maintenance man then left to go to Ace Hardware,
19 right?

20 A. Correct.

21 Q. Okay. Then what you were told by Mr. Durham was that the
22 maintenance man then came back, right?

23 A. Correct.

24 Q. On the body camera Mr. -- well, he didn't really remember
25 if the maintenance man knocked or not, is that correct?

ROSS ABLES - CROSS-EXAMINATION BY MR. KING

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1 A. Correct.

2 Q. Okay. And Mr. Durham did say repeatedly on the body worn
3 camera that he did not touch his daughter, correct?

4 A. He -- yeah.

5 Q. Yeah. He did not molest his daughter, right?

6 A. Correct.

7 Q. He did nothing to his daughter, correct?

8 A. Correct.

9 Q. Investigator Durham [sic], basically you were around back
10 when the front door was open, is that correct?

11 A. That's correct.

12 Q. Okay. It's your understanding that there was no
13 discussion before you showed up and Mirandized Mr. Durham,
14 right?

15 A. I can't -- I mean, I can't speak to that. Obviously, I
16 wasn't there, so I don't know what was discussed and whatnot.

17 Q. It's your understanding that the young Miss Land was
18 removed from the apartment right away, correct?

19 A. Correct.

20 Q. And at no time Mr. Durham had no opportunity to influence
21 what she told law enforcement, correct?

22 A. Correct.

23 Q. Because he was always in the apartment, right?

24 A. Correct.

25 Q. And she was always outside?

ROSS ABLES - REDIRECT EXAMINATION BY MR. HILL

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1 A. Correct.

2 Q. All right.

3 **MR. KING:** No further questions.

4 **THE COURT:** Redirect.

5 **Redirect Examination by Mr. Hill:**

6 Q. Investigator Ables, were you on patrol as a back-up
7 officer that day?

8 A. I was.

9 Q. Were you the lead officer in the investigation?

10 A. No, I was not.

11 Q. And at what point did you tell the defendant what the
12 allegations were?

13 A. I never told him what the allegation was the entire time.

14 Q. Did you or anyone else ever ask him if he touched his
15 daughter or molested his daughter?

16 A. No, we did not.

17 **MR. HILL:** No further questions.

18 **MR. KING:** No recross.

19 **THE COURT:** All right. You may come down. Thank you
20 very much. This witness be excused?

21 **MS. OWEN:** Yes, Your Honor.

22 **THE COURT:** Without objection?

23 **MR. KING:** Without objection.

24 **THE COURT:** Good. Approach the bench, counsel.

25 (Whereupon a bench conference was held off the record in

1 the presence of the jury, but out of their hearing)

2 (Whereupon the bench conference was ended)

3 **THE COURT:** All right. Ladies and gentlemen, I'm just
4 trying to measure our time. I've been told by the attorneys
5 the next witness may be lengthy. So it's a quarter til five.
6 I'm going to -- you've had a long day. So I'm going to
7 release you now for the day and ask you to be back in the jury
8 room. The bailiffs are going to show you where your jury room
9 is. Come back to the jury -- your jury room in the morning.
10 You don't need to come in here. We'll call you from the jury
11 room when we're ready.

12 Now, a couple of things I'm going to mention to you.
13 First off I'm going to ask you when you return to the jury
14 room in the morning if you'll select one of your members, it
15 doesn't matter who it is, I'm going to ask you to select one
16 member of your panel as the foreperson of the jury.

17 The foreperson of the jury doesn't get paid anymore than
18 anybody else. It's just that I need somebody to write the
19 verdict at the end of the case and preside in the courtroom, I
20 mean, in the jury room. So, if you will, do that and let the
21 bailiff know who you've selected to be your foreperson, I
22 would appreciate it.

23 The second thing I'm going to ask you to do, as I
24 mentioned earlier in the -- in my opening remarks, I'm going
25 to ask you not to discuss this case with anyone else over the

1 evening hours, including family and friends. I know it's --
2 and there's a reason for that, at least I try to explain a
3 reason, but the reason ought to be obvious.

4 But if you get into a discussion and your wife said,
5 what'd you do today? Or your best friend said, what did you
6 do today? Oh, I was on jury duty down at the courthouse. Oh,
7 did you get on a -- yeah, I got on a jury.

8 And they said, well, what's it about? Tell me about it.
9 And all of the sudden you're in a discussion with somebody and
10 they say, I'll tell you what I'd do. Or this is what I
11 wouldn't do. It's just so easy to possibly be influenced by
12 somebody outside the courtroom, doesn't know anything about
13 the case.

14 And the best thing to do is just tell anybody that
15 inquires -- don't even bring the subject up. That judge said
16 they're going to put me in jail if I tell it, if I talk about
17 the case, which is not true, but I might. I had to do it one
18 time. But nevertheless, just deflect the conversation if you
19 can. Just pass on -- I want you to not worry about it. So
20 the easiest thing to do is just say you can't talk about it.

21 And the third thing I'm going to ask you to do is have a
22 pleasant evening. Be back in the jury room at 9:30 in the
23 morning and we'll get fired up and going day two, all right?
24 Thank you very much. Take them to the jury room.

25 (Whereupon the jury exited the courtroom at 4:46 pm)

1 **THE COURT:** All right.

2 **MS. OWEN:** Your Honor, may I make a request?

3 **THE COURT:** Certainly.

4 **MS. OWEN:** I'm sorry to do this. My next witness
5 tomorrow morning is only available first thing in the morning.
6 And she is what we would call the blind expert witness. And I
7 believe they're probably going to object and may want some
8 proffered testimony. Is there any way we could all start at
9 nine and proffer her and ---

10 **THE COURT:** Oh, sure.

11 **MS. OWEN:** --- make that ruling ---

12 **THE COURT:** Before the jury?

13 **MS. OWEN:** Yes.

14 **THE COURT:** Oh, no problem.

15 **MS. OWEN:** Okay. Thank you.

16 **THE COURT:** All right. Is it -- are you going to require
17 a proffer?

18 **MR. KING:** I am, Your Honor.

19 **THE COURT:** Okay. That's fine. 9:00?

20 **MS. OWEN:** Yes, Your Honor.

21 **THE COURT:** All right.

22 **MS. OWEN:** I'm going to let her know right now. Thank
23 you.

24 **THE COURT:** See you at 9:00.

25 **MS. OWEN:** Your Honor, the bond matter.

1 **THE COURT:** Sorry?

2 **MS. OWEN:** Bond.

3 **THE COURT:** Yeah. What'd you find out?

4 **MR. KING:** The bondsman says that they do not consent to
5 trial bonds, said they would not provide us anything in
6 writing.

7 **THE COURT:** All right. Sorry, but your client's going to
8 have to stay with us. Did you explain that to him?

9 **MR. KING:** I did. Do you want to talk about the bond
10 issue? Mr. DeJong prepared it.

11 **MR. DeJONG:** I'm sorry, Your Honor, I had to bolt.

12 **THE COURT:** Well, that's all right.

13 **MR. DeJONG:** I apologize to the Court for that. I'm
14 going to stand here so Madam Court Reporter can hopefully hear
15 me.

16 The only thing I would say, Your Honor, is we had a time
17 that we had some problems, but recently he's been very
18 cooperative. He's come in ---

19 **THE COURT:** Just hold on, ma'am. They're talking back
20 there. Ms. Owen, why don't you come on up so you can hear
21 this.

22 **MR. DeJONG:** I would just ask you to leave him out, Your
23 Honor. I suspect Mr. King shared with you that he had called
24 the bondsman over the lunch break. So I'm not going to rehash
25 that, Your Honor. I just wanted to share that with the Court.

1 **THE COURT:** What's his record look like?

2 **MS. OWEN:** Your Honor, he has a fairly lengthy record.
3 The most recent -- he was recently arrested in Georgia. I
4 don't know that he is -- those charges have been resolved for
5 possession of paraphernalia. It's my understanding he
6 actually resides in Georgia currently. So ---

7 **THE COURT:** Resides in Georgia?

8 **MS. OWEN:** We would oppose bond. He has a 2015
9 shoplifting. And then prior to that he did go to prison, I
10 believe, for carrying a firearm in a public building and
11 possession of a firearm, convicted by a violent felon [sic].
12 That was from 2015. He has a breaking into a motor vehicle.
13 I'm sorry. That was not a conviction, just an arrest. A CDV,
14 first, from 2012. And that was ---

15 **THE COURT:** What do you know about his place of
16 residence?

17 **MR. DeJONG:** Place of residence, Your Honor?

18 **THE COURT:** Yeah.

19 **MR. DeJONG:** He was currently living -- I'm not sure who
20 he is living with. I went to Greenville Saturday because we
21 had to meet, I mean, Friday, I'm sorry, my days are mixed up,
22 and I delivered him to a residence. Now I will be honest with
23 the Court, I don't think he owns or rents that residence, Your
24 Honor, but he was staying there, I can share that ---

25 **THE COURT:** Well, he might -- it's getting weaker. It's

1 getting weaker.

2 **MR. DeJONG:** I understand, Your Honor, but I'm not going
3 to lie to the Court.

4 **THE COURT:** Well, I don't -- I certainly don't expect
5 that, but I have a responsibility. And, you know, the issue
6 of danger to the community may be minor, but a previous
7 circuit judge required a surety bond to ensure his appearance.
8 And if he leaves this courtroom now, there's nothing that I
9 can rely on to ensure his appearance.

10 **MR. DeJONG:** And I certainly understand that.

11 **THE COURT:** If -- I try to bend over backwards when I
12 can. And that's why I say if the bondsman says that I'll
13 assure his presence, I mean, for all I know the bondsman may
14 have had some problems. I don't know anything about it. But
15 if a bondsman -- it's pretty unusual when a bondsman says they
16 will not stay on a bond. That's been my experience.

17 **MR. DeJONG:** Yes, sir.

18 **THE COURT:** So I'm afraid we're going to have to keep him
19 in custody overnight. It might only be one night, but that's
20 my decision.

21 **MR. DeJONG:** Thank you, Your Honor.

22 **THE COURT:** Yes, sir.

23 **MS. OWEN:** Thank you, Your Honor.

24 (Whereupon Court's exhibit 3 was marked)

25 (Court Ended at 4:54 pm)

1 **Tuesday, August 20, 2019:**

2 (Whereupon court reconvened at 9:03 am)

3 **THE COURT:** Mr. King tells me he would have a motion
4 regarding the testimony of one of your witnesses, namely who?

5 **MS. OWEN:** Shauna Galloway-Williams, Your Honor.

6 **THE COURT:** Shauna Galloway-Williams?

7 **MS. OWEN:** Yes, sir. She's number 10.

8 **THE COURT:** All right. Mr. King, what's your motion? Or
9 what will be your motion?

10 **MR. KING:** Okay. Yes, sir. First, Your Honor, I was
11 just handed Ms. Galloway-Williams' curriculum vitae. I've got
12 a problem with that.

13 It's my understanding Rule 5 says that as soon as the
14 State intends to call an expert, they need to provide the CV
15 as part of discovery. We're just -- received it today.

16 The only other notice was you should expect her to
17 testify, but there was no actual notice or discussion about
18 what she's going to be testifying. All I've got to go on,
19 Your Honor, are assumptions. So at this point I think there's
20 a due process violation under Rule 5 that should exclude her
21 testimony.

22 **THE COURT:** All right.

23 **MS. OWEN:** Your Honor, just in response to that. Mr.
24 King met with Mr. Hill and I two -- a week and a half ago
25 almost and watched some videos. I let him know at that point

1 that Shauna Galloway-Williams was going to be testifying.
2 She's testified in this circuit multiple times. Mr. King had
3 ample opportunity to request her CV. He has had her CV
4 previously. If I had known that was going to be an issue ---

5 **THE COURT:** He's had her CV previously?

6 **MS. OWEN:** Yes.

7 **MR. KING:** I personally have never received her CV.

8 **MS. OWEN:** Your Honor, Ms. Galloway-Williams has
9 testified in this court numerous times over the past few
10 years. Their office has access to it.

11 I made him aware that she was going to testify. I didn't
12 say possibly, I said she will be testifying. This was in a
13 meeting with Mr. Hill and I as we watched videos on this case.
14 So I believe he has had adequate notice that she is going to
15 testify.

16 **THE COURT:** Mr. King, how about your co-counsel?

17 **MR. KING:** I believe he has received the CV in the past,
18 Judge, but a ---

19 **THE COURT:** Well, I'm not going ---

20 **MR. KING:** --- current, updated CV ---

21 **THE COURT:** I'm not going ---

22 **MR. KING:** --- is always better.

23 **THE COURT:** I'm not going to split up the counsel and
24 take a position that one of you received it and the other one
25 didn't, therefore, it must be excluded. I can't do that.

1 Your office has it.

2 **MR. KING:** Right. Well, we don't have -- we never
3 received an updated one. And we never received proper notice
4 in discovery ---

5 **THE COURT:** Okay. Overruled.

6 **MR. KING:** Thank you, Judge.

7 So then my next motion as to her testimony would be to
8 exclude it based upon essentially Rule 702 of the Rules of
9 Evidence qualifying an expert and Watson v. Ford Motor
10 Company. That's 389 S.C. 434. It's a 2010 case. And it lays
11 out the three requirements for an expert qualification.

12 First, that the circuit court must find that the subject
13 matter is beyond the ordinary knowledge of the jury and that
14 that knowledge would then require -- requires an expert to
15 explain it.

16 Second, the expert need not be a specialist in a
17 particular branch or field. The circuit court must find that
18 the proper expert has indeed acquired the requisite knowledge
19 and skill to qualify as an expert in a particular subject
20 matter. And finally, the court must evaluate the substantive
21 testimony and determine whether it is reliable.

22 So essentially we need three findings; One, that it's
23 beyond the normal understanding of the jury, two, that it's a
24 specific science, and, three, that it's reliable.

25 **THE COURT:** Well, let's find out what she's supposedly

1 qualified, ---

2 **MR. KING:** Yes, sir.

3 **THE COURT:** --- as an expert, in what field.

4 **MS. OWEN:** Thank you, Your Honor. The State intends to
5 call Shauna Galloway-Williams as a blind expert in regards to
6 child abuse dynamics. There is numerous case law, and I would
7 cite them for you.

8 In regards to the criminal realm, in this very
9 specialized area, I would state for the record State v. Brown,
10 Your Honor. That was where the case law for blind experts
11 starts.

12 And then we go to State v. Jones. And you can continue
13 on from there down the line, Your Honor. But most relevant, I
14 think, in this case and the last case to come forward would be
15 State v. Jones, Your Honor.

16 And it has held that ---

17 **THE COURT:** What's the cite on that?

18 **MS. OWEN:** I'm going to have to print it out.

19 **MR. KING:** It's 417 -- well, do you want the Supreme
20 Court or the Court of Appeals one?

21 **MS. OWEN:** You can do the Supreme Court.

22 **MR. KING:** The Supreme Court one is 423 S.C. 631.

23 **THE COURT:** You don't have a South Carolina cite?

24 **MR. KING:** Yes. You want the South East 2nd one --

25 **THE COURT:** No.

1 **MR. KING:** --- or the South Carolina one?

2 **THE COURT:** South Carolina.

3 **MR. KING:** It's 423 S.C. 631.

4 **THE COURT:** 631. Okay.

5 **MS. OWEN:** And, Your Honor, in regards to State v. Jones
6 it was held that -- and this was, I believe, Ms. Galloway-
7 Williams' testimony in that case as well, Your Honor, that
8 there were distinct concepts that she discussed, that was
9 delayed disclosure by sexual abuse victims and behavior of
10 nonoffending caregivers.

11 Your Honor, the court in that case held that this was a
12 specialized area and that not all jurors would be aware of why
13 children act the way they do after they are sexually abused,
14 Your Honor. Specifically they state, while the court
15 acknowledged there's no formulaic approach for determining
16 reliability in non-scientific areas, evidence of mere
17 procedural consistency does not ensure reliability without
18 some evidence demonstrating that the individual expert is able
19 to draw reliable results from the procedures of which he or
20 she consistently applies. That is in regards to Chavis.

21 And they go on to state unlike Chavis her testimony
22 focused on explaining the concept of delayed disclosure and
23 the role of nonoffending caregivers in the dynamics of sexual
24 abuse. Although she did not identify any names or articles as
25 her opinion, she indicated she could provide citations, that

1 she gave opinions that were peer reviewed and supported by
2 professional journalists, trade publications all of which were
3 uniformly accepted and recognized by child sexual abuse
4 experts and professionals, Your Honor.

5 And they go on to discuss that that is a -- it's a
6 reliable concept for her based on her training and experience,
7 her specialized knowledge, and that without her testimony
8 jurors would not understand why children act the way they do,
9 why they may not disclose at all, nonoffending caregiver
10 behaviors and any other specialized dynamics around rape
11 trauma victims, Your Honor.

12 **THE COURT:** All right. Anything, Mr. King?

13 **MR. KING:** Well, Judge, I don't want to take up more time
14 with the argument if you want to get to the evidence, but I do
15 have a rebuttal to that.

16 **THE COURT:** Yes, sir. Put it on the record.

17 **MR. KING:** I'm sorry?

18 **THE COURT:** Put it on the record.

19 **MR. KING:** Thank you, Judge. So State v. Jones, the
20 Court of Appeals opinion, that's 417 S.C. 319, that one
21 actually explains the whole issue very thoroughly. And then
22 the Supreme Court just reiterates it but changes the grounds
23 for why they affirm it.

24 Specifically the Court of Appeals said that based -- the
25 need for the expert on jurors' responses to voir dire. And

1 the Supreme Court said that's inappropriate.

2 So as to this case, Jones is distinguishable because
3 Jones is about late reporting -- delayed reporting. Here we
4 have a denial, that it didn't happen. That's just a
5 completely different situation.

6 But Jones does lay out clearly that the -- it's well
7 settled law that behavioral evidence is admissible for rape
8 trauma, okay? But that's to explain strange demeanor of the
9 child or unique and often perplexing behavior exhibited by the
10 child that does not fall within the normal knowledge of a
11 juror.

12 Here, we don't have any of that strange demeanor, or
13 unique or perplexing demeanor. It was a denial. It's been a
14 denial from day one. And there's been no evidence presented
15 so far that this happened.

16 **THE COURT:** Well, we're not -- are you calling this
17 witness first?

18 **MS. OWEN:** Yes, Your Honor. She needs to be in Columbia

19 ---

20 **THE COURT:** I mean first today?

21 **MS. OWEN:** Yes. She needs to be in Columbia this
22 afternoon.

23 **THE COURT:** All right. What ...

24 **MS. OWEN:** Your Honor, in regards ---

25 **THE COURT:** What is the -- yeah. What is the -- why do

1 you need her to testify?

2 **MS. OWEN:** The unique behavior is the denial. And we
3 will put up ---

4 **THE COURT:** What's unique about denial?

5 **MS. OWEN:** It's unique in the fact that this was seen by
6 a person who is going to testify to the jury that he saw this
7 victim performing a sexual act on Mr. Durham.

8 **THE COURT:** Well, why don't ...

9 **MS. OWEN:** He walked ---

10 **THE COURT:** See, I'm factually deficient here. What --
11 explain that. What testimony will come forward ---

12 **MS. OWEN:** Your Honor, ---

13 **THE COURT:** --- that indicates that denial is abnormal
14 behavior?

15 **MS. OWEN:** Your Honor, I think what Ms. Shauna Galloway-
16 Williams can testify to is the fact that every child is
17 different, but that initial denial or how disclosure -- the
18 disclosure process is unique. And the fact that it is very
19 rare that there is an immediate disclosure, that oftentimes
20 there are denials and that eventually children disclose or
21 sometimes they never disclose at all. And there is stats --
22 statistically evidence out there that says children have never
23 disclosed, yet ---

24 **THE COURT:** Well, we found that out in voir dire.

25 **MS. OWEN:** Yes. And then offenders have later on been

1 convicted or reported that they have sexually assaulted
2 someone and the child has still never disclosed, Your Honor.

3 So I think it would be important for a juror to know that
4 this is a commonplace theme with disclosures and that the fact
5 that she is still denying this ---

6 **THE COURT:** Denying that ...

7 **MS. OWEN:** That this happened ---

8 **THE COURT:** What the ---

9 **MS. OWEN:** --- even though we have an eyewitness.

10 **THE COURT:** What the witness says he saw?

11 **MS. OWEN:** Yes, Your Honor. And that there are
12 circumstances surrounding that in the home such as the fact
13 that this defendant was her father figure, he lived with her,
14 he provided for her, he acted as a father to her, her mother
15 is on disability, her mother loves him, they've been married
16 since she was young and that that would be a good reason for
17 her to continue to deny that this happened, Your Honor.

18 **THE COURT:** Right. I understand that. And presumably
19 what your testimony will show is that the defendant committed
20 an act, which is prohibited by the statute.

21 **MS. OWEN:** Correct, Your Honor.

22 **THE COURT:** That's your affirmative allegation as to what
23 the proof will show?

24 **MS. OWEN:** Yes.

25 **THE COURT:** Okay. All right. Anything further?

1 **MR. KING:** Judge, based on what the State has just
2 argued, it sounds like Ms. Galloway-Williams would be
3 testifying that the young Miss Land is not credible and that
4 she lied yesterday. And an expert cannot testify ---

5 **THE COURT:** I don't think she ---

6 **MR. KING:** --- to ---

7 **THE COURT:** I wouldn't allow her -- I wouldn't allow her
8 to testify to that.

9 **MR. KING:** Yeah. Well, I mean, that's that -- that's the
10 evidence she'd be presenting ---

11 **THE COURT:** I don't know, ---

12 **MR. KING:** --- that she was lying.

13 **THE COURT:** --- but that's clearly objectionable. That's
14 bolstering.

15 **MR. KING:** Yeah. I mean, that's what it sounds like the
16 purpose ---

17 **THE COURT:** Well, that's ---

18 **MR. KING:** --- the heart of this is to say that this
19 denial was a lie.

20 **THE COURT:** Well, the jury will have to make that
21 decision or interpretation, but I wouldn't allow a witness to
22 say that.

23 **MR. KING:** Right. I understand ---

24 **THE COURT:** I understand what you're -- I understand what
25 you're saying. All right. Mr. King, I'm going to deny your

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1 motion based on State v. Jones and the cases cited by the
2 State.

3 **MR. KING:** Judge, are we going to proffer her ---

4 **THE COURT:** Yes.

5 **MR. KING:** --- testimony so you can make a clear finding
6 as to knowledge beyond the normal understanding ---

7 **THE COURT:** Well, I -- yeah, I want to hear that.

8 **MR. KING:** Okay.

9 **THE COURT:** But at this point I'm going to deny your
10 objection to her even testifying.

11 **MR. KING:** Okay.

12 **THE COURT:** All right. Call your witness.

13 **MS. OWEN:** Thank you, Your Honor. The State would call
14 Ms. Shauna Galloway-Williams to the stand.

15 **MADAM CLERK:** Place your left hand on the Bible and raise
16 your right hand, please.

17 **Shauna Galloway-Williams,**
18 being duly sworn testified as follows;

19 **MADAM CLERK:** Have a seat. And state your name for the
20 record, please.

21 **MS. GALLOWAY-WILLIAMS:** Shauna Galloway-Williams.

22 **Direct Examination by Ms. Owen (Voir Dire):**

23 Q. Good morning, Ms. Williams. How are you?

24 A. Good.

25 **THE COURT:** Hold on a minute. Would you hand up Jones to

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1 my law clerk, please?

2 MS. OWEN: Yes, sir.

3 THE COURT: A copy.

4 MS. OWEN: I have written on it, so ...

5 THE COURT: Well, -- he's my lawyer.

6 MR. KING: Is that the Supreme Court opinion?

7 MS. OWEN: It is the Supreme Court opinion. It's just
8 got the Appellate cite on it that I printed out the day it
9 came out.

10 MR. KING: Okay. The Appellate Court one, and this one's
11 got my notes on it. It more clearly lays the whole issue out.

12 THE COURT: All right. Sorry to interrupt you. Go
13 ahead.

14 MS. OWEN: Thank you, Your Honor.

15 **Direct Examination by Ms. Owen Continued:**

16 Q. Good morning.

17 A. Good morning.

18 Q. How are you?

19 A. Fine. Thanks.

20 Q. Ms. Galloway, could you please tell us where you work?

21 A. I'm the executive director of the Julie Valentine Center.

22 Q. How long have you been there?

23 A. I've worked with the Julie Valentine Center for 14 years.

24 I've been executive director of the center for nine years.

25 Q. Okay.

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1 A. Ten years. Ten years this year.

2 Q. What are your duties and capacities as the executive
3 director?

4 A. As executive director I'm responsible for the fiscal
5 administration and management of the agency. I oversee all
6 the program managers. So I have the oversight over all the
7 programmatic functions of the organization. I have some
8 responsibilities to marketing, development. I do a little bit
9 of everything.

10 I still provide some clinical services in the sense that
11 I'd provide clinical supervision to some of our therapists and
12 forensic interviewers. I occasionally provide forensic
13 interviews. I also do a lot of community education and
14 training.

15 Q. Okay. Can you tell us a little bit about your
16 educational background, please?

17 A. I have a Bachelor's Degree in Psychology from Winthrop
18 University and a Master's Degree in Counseling from Clemson
19 University. I'm also licensed as a professional counselor and
20 have been licensed in South Carolina since 2004.

21 Q. And where did you get that license?

22 A. In the State of South Carolina. I'm a licensed
23 professional counselor.

24 Q. Okay. And how many years have you been counseling
25 victims -- how many individuals?

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1 A. Right. So I have been working in the field of mental
2 health since 1996. When I completed my master's degree in
3 2000, I began providing more individualized and group
4 counseling services, specifically working with children and
5 adolescence beginning in 2001, primarily specializing in the
6 area of child abuse and sexual assault. And that's been my
7 area of specialization for most of my career.

8 Q. Okay. And do you provide any professional training in
9 this area?

10 A. I do. I'm an adjunct faculty member at USC Upstate in
11 their Child Advocacy Studies Program. I teach two
12 undergraduate courses. I teach Child Maltreatment, which is a
13 three-hour undergraduate course. I also teach Gender Violence
14 in Society, which is another three-hour undergraduate course.

15 I'm also on the South Carolina Child First faculty.
16 That's the South Carolina forensic interview training program
17 that's affiliated with the Zero Abuse Project formerly known
18 as the Gundersen Child Protection Training Center. I also
19 provide national and state-wide training as well as local
20 training.

21 I have presented at national conferences including the
22 National Children's Alliance, the Gundersen Violence
23 Intervention and Prevention Conference for the past three
24 years. I provide training regularly, like I said, locally and
25 across the State.

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1 Q. Okay. And do you use peer reviewed articles and journals
2 to support your training and the classes you teach?

3 A. Yes.

4 Q. Okay. And are your opinions supported by peer reviewed
5 articles and journals?

6 A. Yes.

7 Q. Okay. And do you participate yourself in peer review?

8 A. I do.

9 Q. And since you are a licensed counselor, do you have to
10 also get a certain number of hours each year to keep up your
11 credit?

12 A. Yes.

13 Q. Okay. Can you tell us a little bit about that?

14 A. It's approximately -- well, it's 50 hours every two
15 years. But I have received over 150 hours of skills-based-
16 training, specifically related to assessing children in cases
17 of child maltreatments. I have participated in numerous
18 continuing education opportunities annually above and beyond
19 the requirement by my license.

20 Q. Okay. And have you testified in court previously?

21 A. I have.

22 Q. Do you know about how many times you've been qualified as
23 an expert?

24 A. Over 40 times.

25 Q. Do you know about how many times in general sessions?

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1 A. All of those times were in general sessions.

2 Q. Okay. And I will just make sure that we are clear on why
3 you're here today. Do you know anything about this case?

4 A. I don't, other than what I heard sitting in the room
5 today.

6 Q. Okay. And who subpoenaed you?

7 A. You did. The State.

8 Q. Have you been paid in any capacity?

9 A. No. I'm paid by the Julie Valentine Center. So this is
10 considered part of my workday.

11 Q. Okay. And do you know any parties in this case?

12 A. I do not.

13 Q. Have you had any contact with the alleged victim?

14 A. No.

15 Q. Have you had any contact with the defendant?

16 A. No.

17 Q. Okay. Do you know any of the facts of this case other
18 than what you were sitting through today?

19 A. No.

20 **MS. OWEN:** I don't have any further questions for this
21 witness, Your Honor.

22 **THE COURT:** Any voir dire or objection?

23 **MR. KING:** Thank you, Judge.

24 **Cross-examination by Mr. King (Voir Dire):**

25 Q. It's Ms. Galloway-Williams, right?

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1 A. That's correct.

2 Q. Okay. Ms. Galloway-Williams, you said you're the
3 executive director, correct, ---

4 A. That's correct.

5 Q. --- of the Julie Valentine Center?

6 A. That's correct.

7 Q. Okay. And you oversee the clinical staff?

8 A. I oversee the program managers. So there's one --
9 there's a manager over the clinicians on each -- each
10 programmatic area. But I still provide clinical oversight to
11 them as needed ---

12 Q. Okay.

13 A. --- and participate in clinical staffing.

14 Q. What does that mean?

15 A. That means that I may meet with them during their
16 clinical meeting, which might -- which happens every -- twice
17 a month. And I might provide supervision for them related to
18 their cases.

19 Q. Okay. And does that -- are those clinical people that --
20 including the forensic interviewers you employ?

21 A. Yes. So those will be the adult therapists, child
22 therapists and forensic interviewers. But that does not mean
23 that I have direct oversight over each of their individual
24 cases.

25 Q. Okay. But you do say that you occasionally interview

1 people on your own, right?

2 A. I do. I still provide forensic interviews. And I also
3 train forensic interviewers.

4 Q. Okay. And you do occasionally support the forensic
5 interviews if they've got a question, correct?

6 A. I do.

7 Q. And that includes Ms. Carlberg, correct?

8 A. Christine Carlberg? Yes.

9 Q. Yes. Okay. So you said you do -- you participate in
10 peer review. What does that mean?

11 A. So on a quarterly basis in each region of the State, so
12 we're the upstate region, we meet with the other children's
13 advocacy center forensic interviewers and participate in peer
14 review, which means there's an educational component to that.

15 We will review a peer reviewed article, have discussion
16 around that, discuss how that relates to the cases that we've
17 seen or are seeing. And then individual interviewers have an
18 opportunity to showcase or show their forensic interviews and
19 receive and give feedback as interviewers.

20 Q. Okay. So have you presented an interview in the last
21 quarter?

22 A. I have not.

23 Q. Or the quarter before that?

24 A. I have not.

25 Q. Okay. When was the last time you presented one of your

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1 own, your interviews?

2 A. I'm not exactly sure.

3 Q. Okay. Years?

4 A. No. I mean, it probably would have been over the past
5 year.

6 Q. Okay. But not the last six months, you said?

7 A. No. I've not -- I actually have only participated in one
8 peer review probably in the past six months.

9 Q. Okay. And what was the topic of that peer review?

10 A. I don't know.

11 Q. Okay. I'm looking at your CV and it says you gave a
12 presentation to expert testimony related to the effects of
13 trauma back in 2011, is that correct?

14 A. Yes. And actually I'd note that this is not my most
15 updated CV. This doesn't include, I mean, this only includes
16 presentations that I did in 2011. So this is not the most up-
17 to-date one.

18 Q. Okay. Well, you worked with the solicitor's office to
19 get prepared for these today, don't you?

20 A. I do.

21 Q. Yeah. And you haven't provided them an updated CV,
22 apparently?

23 A. I have.

24 Q. Okay. Well, they handed this as an officer of the court

25 ---

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1 A. I don't have an explanation for you as to why they handed
2 you this one, but I can assure you that I have emailed and
3 provided to the State more recent and updated CVs. And I'll
4 be glad to provide an email documentation if that's required
5 to show that I've done that.

6 Q. Okay. Now what textbook do you use in your courses at
7 USC Upstate, I think you said?

8 A. I believe the name of the title of that book is Child
9 Maltreatment or Child Abuse and Maltreatment. It's written by
10 Dr. Stefanie Keen. She's one of the co-authors. She's also
11 one of my fellow professors at the Child Advocacy Studies
12 Program at USC Upstate.

13 Q. Okay. Have you ever published anything about denials?

14 A. I've never published anything, period.

15 Q. You've never published anything, period?

16 A. I'm not a researcher or writer. So I've never published
17 articles or done research.

18 Q. Okay. But you said you do peer review, is that right?

19 A. I participate in peer review. And that doesn't require
20 that you be published or that you be authored or an author.

21 Q. Okay. I'm just trying to get -- one step at a time.

22 Okay. So your peer reviews are your groups with other
23 forensic interviews, correct?

24 A. Peers. Peer reviews, yes.

25 Q. Peers.

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1 A. So they're other forensic interviewers and professionals
2 in the field.

3 Q. Okay. And you said they're with -- you do those with
4 other child advocacy centers in the upstate, correct?

5 A. We do that quarterly. And then we do a state-wide peer
6 review. And then if I participate in one of the national
7 conferences, I might participate in a national peer review as
8 well.

9 Q. Okay.

10 A. There are opportunities for those.

11 Q. Let's pause on that. Okay. You said we participate
12 quarterly. When you say that, you mean the Julie Valentine
13 Center participates quarterly, correct?

14 A. The Julie Valentine Center, yes.

15 Q. Okay. Because earlier you said you haven't participated
16 in the last -- the last quarter you haven't participated, and
17 the quarter before that you haven't participated.

18 A. I'd have to -- if I could access my calendar I could tell
19 you exactly which dates I participated in peer review and
20 which ones I haven't.

21 Q. Okay.

22 A. The last peer review that I participated in, I -- we
23 hosted at the Julie Valentine Center. And I don't remember
24 exactly when that was, but I'll be glad to grab my calendar if
25 you need me to do that.

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1 Q. You don't even remember the holiday it was around? No?

2 MS. OWEN: Objection, Your Honor.

3 A. I'm being completely truthful with you in the sense that
4 I do not remember that.

5 Q. Okay.

6 A. But I have it. If you'd like for me to get it, I'll be
7 glad to grab my phone, which is in my purse right beside Mr.
8 Cleveland.

9 Q. I'm good. If -- you say you've done it in the last six
10 months, right? Once in the last six months.

11 A. I've done it this year at least one time.

12 Q. Okay.

13 A. And I hosted it at Julie Valentine Center.

14 Q. Okay. So how many other ---

15 A. And you can -- you can find the documentation through the
16 National Children's Advocacy -- the South Carolina Network of
17 Children's Advocacy Centers because they maintain documents of
18 our participation in the peer review.

19 Q. Okay. How many other child advocacy centers were
20 participating in this peer review that you held at the Julie
21 Valentine Center?

22 A. I don't remember exactly who was there, but it is open to
23 the -- the upstate peer review is Spartanburg Children's
24 Advocacy Center, Julie Valentine Center, Beyond Abuse, which
25 is the Greenwood Children's Advocacy Center, as well as

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1 Foothills Alliance, which covers Anderson, Oconee and Pickens.

2 Q. Okay.

3 A. So it -- we are covering the entire upstate. And it's
4 hosted by the South Carolina Network of Children's Advocacy
5 Centers, which is the South Carolina Coalition of Children's
6 Advocacy Centers that oversees the work of 17 children's
7 advocacy centers in South Carolina.

8 Q. So I counted four advocacy centers. Does that sound
9 right?

10 A. Spartanburg, Julie Valentine Center, Foothills Alliance
11 and Beyond Abuse.

12 Q. Four. Okay.

13 A. Four of the 17 in the State. And when we do state-wide
14 peer review, that's -- all 17 participate in that.

15 Q. So at these peer reviews somebody gives a presentation,
16 correct?

17 A. At the peer review there's an article that is shared with
18 us ahead of time by the network, the South Carolina network.
19 We are all responsible for reviewing or reading that article.
20 And then we all discuss that and provide feedback.

21 There may be a presentation that the network
22 administrator provides around a particular topic, but it
23 primarily is peer review. So it's looking at an article or a
24 subject, discussing that, reviewing each other's interviews,
25 providing feedback around those, constructive feedback.

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1 Q. Did you -- did you go into that peer review having done a
2 recent interview?

3 A. I'm not sure exactly when -- well, the last interview
4 that I did was approximately three weeks ago. I don't know
5 the exact date. Prior to that, again, I'd have to look at my
6 calendar. I don't feel confident telling you the exact dates
7 of when I've conducted interviews this year.

8 Q. All right. Well, I'm just asking what you brought to the
9 table at this peer review?

10 A. My years of experience, and training, and history in
11 conducting forensic interviews, but I did not bring an
12 interview to peer review that day.

13 Q. Okay. All right.

14 **MR. KING:** No further questions.

15 **MS. OWEN:** Your Honor, would you like for me to go into
16 the substance of what I would like her testimony to be?

17 **THE COURT:** You want to offer her first?

18 **MS. OWEN:** Yes. Your Honor, I would offer Ms. Shauna
19 Galloway-Williams as an expert in the field of child abuse
20 dynamics.

21 **THE COURT:** Child sex abuse dynamics?

22 **MS. OWEN:** Yes, Your Honor.

23 **MR. KING:** Judge, at the moment we'd just object to her
24 being an expert as to child sex abuse dynamics because we feel
25 that her testimony needs to be -- I handed up my sticky note

1 -- needs to be outside the normal knowledge of the jury, it
2 needs to be scientifically based, and then it needs to be
3 reliable.

4 Ms. Galloway-Williams as to the first one has not
5 provided any information -- well, she -- we'll skip the first
6 one because we've got behavioral.

7 **THE COURT:** But you recognize she's been so qualified
8 before?

9 **MR. KING:** I recognize she's been so qualified before. I
10 just -- I don't feel that it's necessary for this case, ---

11 **THE COURT:** Okay.

12 **MR. KING:** --- the right way to say it.

13 **THE COURT:** Okay. All right. Well, I do find her
14 qualified to so testify, although, Jones goes into the issue
15 of delayed disclosure as opposed to denial. I find that
16 either of those two conditions are within the range of
17 knowledge of this expert and they are beyond the knowledge of
18 a jury. And under 702 she would qualify to testify.

19 **MS. OWEN:** Thank you, Your Honor. Would you like to have
20 her testimony proffered or will that be sufficient?

21 **THE COURT:** I think that's sufficient. The jury's here.

22 **MR. KING:** Judge, ---

23 **THE COURT:** Mr. King.

24 **MR. KING:** So we'd ask for a proffer because we need to
25 know exactly what she's going to be saying and what's the

1 scientific basis for whatever she's saying. If we put it in
2 front of the jury and then, I mean, she's an expert. But if
3 we put this new testimony in about denial, if it's not based
4 on science and we don't have anything that says it's reliable,
5 then we've got a big problem, and we're going to need a
6 mistrial.

7 **MS. OWEN:** Your Honor, I don't believe Rule 702 ---

8 **THE COURT:** I'm sorry?

9 **MS. OWEN:** I don't believe Rule 702 says it has to be
10 scientific, it says a specialized knowledge. And Ms.
11 Galloway-Williams is very qualified as she has just gone
12 through her voir dire process about all the training and
13 experience she has over, it appears to be around 20 plus years
14 at this point between school and completing forensic
15 interviews and now being the executive director of the Julie
16 Valentine Center. She does have a specialized knowledge. It
17 does not have to be scientific. I don't know where Mr. King
18 sees that in the Rule, but that is one of the areas that you
19 can qualify an expert in, but that is not the only area.

20 **THE COURT:** I think he's concerned about the issue of
21 denial within -- whether that is within the scope of her
22 knowledge as a condition in child sex abuse cases.

23 **MS. OWEN:** Your Honor, I think Ms. Galloway-Williams can
24 ---

25 **THE COURT:** You didn't qualify, I mean, you didn't --

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1 establish a record with regard to the issue of denial.

2 **MS. OWEN:** I could do that, Your Honor. We'll proffer
3 your testimony, Ms. Galloway-Williams.

4 **Direct Examination by Ms. Owen (Proffered Testimony):**

5 Q. Can you please tell us what a disclosure is?

6 A. Disclosure refers to a statement, or behavior or
7 information that a child shares about an abuse scenario.

8 Q. Okay. And are there more than one type of disclosure?

9 A. Yes.

10 Q. Can you explain that to us?

11 A. Well, first of all, I think it's important to understand
12 that disclosure's a process. So it's not a one-time event.
13 There may be -- a child may delay disclosure. They may not
14 initially tell. That delay may be for days, weeks, years or
15 they may live into their adulthood and not tell.

16 Disclosures may be purposeful or accidental. A
17 purposeful disclosure would be one in which someone makes an
18 attempt to tell someone with purpose. They decide that they
19 want to tell about what's happened to them.

20 An accidental disclosure would be one in which someone
21 discovers behavior, hears a child say something, sees
22 something, asks a question of the child or reports that
23 without the child making the purposeful intent to tell someone
24 about that. That may be discovered, again, by something that
25 someone heard, or saw or witnesses. Or sometimes it's

1 discovered by a child's writings, or drawings or behaviors.

2 Q. Okay. And can you tell us about denial? Is that common
3 or uncommon, to deny sexual abuse?

4 A. So, you know, a child might deny abuse or they may change
5 or recant their abuse scenario. There are reasons why
6 children might delay disclosure as well as deny a disclosure.
7 And some of those are similar.

8 One of the main reasons that a child might do that is out
9 of fear, fear of what might happen to them and/or the person
10 that's done this to them or their family. Most children are
11 abused by someone that they know, they love and they trust.
12 And this person's also usually someone that's known, loved and
13 trusted by their family and sometimes likely by the community.
14 And so children are aware of the consequences that they and
15 others may face if they tell.

16 Children's relationship with the person that has done
17 this to them is pretty powerful as well. A child can still
18 love and have affection for the person that's done this, but
19 just not like what's happened to them. Sometimes this person
20 may be the one person that they love and trust and enjoy
21 spending the most time with. They may also realize that
22 that's the type of relationship that others in their family
23 have as well. That may lead a child to delay or deny what's
24 happened.

25 Additionally, sexual abuse often carries embarrassment,

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1 shame, guilt. And those feelings can be very powerful in
2 limiting a child from sharing information about what's
3 happened. Also the age of a child may impact that, their
4 ability to actually verbalize or describe what's happened to
5 them. They may just really literally not have the words to
6 say what's happened to them.

7 Q. Okay. Now, if someone saw what happened, would that
8 potentially lead someone not to disclose because someone else
9 is going to disclose for them?

10 A. You know, I suppose that could be -- that would be
11 considered an accidental disclosure if someone had witnessed
12 an act and shared that information rather than the child
13 sharing it themselves. And those same conditions, the shame,
14 the guilt, the fear, all of those same things may still be in
15 place in spite of the fact that the child may know that
16 someone saw what happened. And even more so, the shame, and
17 embarrassment, and fear and worry about the consequences if
18 someone has actually witnessed what happened.

19 Q. And could consequences include being taken away from the
20 home?

21 A. Yeah. Consequences could include worrying about
22 themselves getting in trouble or someone else, it could be
23 consequences -- fear of being separated from the person that's
24 done this to them, being separated from their caregivers,
25 their siblings. Particularly in families that have already

1 been involved in some type of social services system or have
2 seen this happen before, those children may be even more
3 fearful of those types of consequences.

4 Q. Okay. And could you tell us what the term nonoffending
5 caregiver means?

6 A. So a nonoffending caregiver is a caregiver who has not
7 been the caregiver who was the abusive caregiver. So they're
8 not the alleged offender or not the person that is alleged to
9 have committed abuse on the child.

10 Q. How could a nonoffending caregiver possibly affect a
11 disclosure?

12 A. Both positively and negatively. We know that
13 nonoffending caregivers -- initially nonoffending caregivers
14 are often in impossible situations because they often know,
15 love and trust the person that may have abused their child.
16 And so that relationship and all those things that I just
17 described about the child also apply to them, the trust, the
18 guilt, the shame, the fear of consequences, the fear of loss
19 in that relationship are very strong. So initially
20 nonoffending caregivers may not make the best choices.

21 We know that some nonoffending caregivers will be
22 protective. They will believe and support the child, make
23 reports, protect the child from the alleged offender.

24 We know that some caregivers -- nonoffending caregivers
25 may not make the best choices initially because there may be

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1 other things that are interfering with their ability to do
2 that. For instance, some caregivers, the person that's abused
3 their child may be the primary caregiver, may be the person
4 who owns the car, the home. And the caregiver themselves may
5 be very reliant on that person. They may have other children.

6 They may literally have to make choices about whether or
7 not they keep a roof over their head and provide, you know,
8 their living -- their needs, basic needs versus protecting
9 their child. And although we would hope that they would
10 choose their child and protecting their child, that's not
11 always the case. So there are two different scenarios there.

12 Q. Thank you. And, Ms. Galloway-Williams, have you seen all
13 these concepts in your clinical experience?

14 A. Yes. Both in my experience, but also in my education and
15 training.

16 Q. And do you teach these topics to new college students?

17 A. I do.

18 Q. Thank you.

19 **THE COURT:** Mr. King.

20 **MR. KING:** Judge, we have no questions for this witness.
21 We would have an argument at the appropriate time.

22 **THE COURT:** All right. You may come down.

23 A. Thank you.

24 **THE COURT:** You may proceed.

25 **MR. KING:** Thank you, Judge. So Ms. Galloway-Williams

1 talked about how disclosure is a process and frequently
2 there's a delay and a denial phase because the child fears
3 what could happen, could be removed from the home, put in DSS
4 custody, she fears the loss of the relationships, the shame
5 and the guilt, okay? What young Miss Land testified to
6 yesterday was she was taken, she was put in DSS custody right
7 away after she denied the first time, okay? That's the first
8 denial.

9 So that's -- Ms. Galloway-Williams is claiming that she
10 was worried about being taken away, but she was taken away
11 anyway, okay? After she was taken away, she talked to DSS --
12 or after she was taken away she went to the hospital. She
13 denied the allegations to the nurse once she was in a room by
14 herself. That's what she testified to yesterday. Her mom was
15 taken out of the room. She got to talk to the nurse by
16 herself.

17 Then she went to her pastor's family. And that's where
18 DSS placed her. She still continued to deny it. She said
19 that she wanted to go home, but it wasn't a bad situation for
20 her, all right? She denied it there.

21 She talked to the DSS case workers and she denied it with
22 them. And eventually they let her go home and -- where she's
23 living with her mother now. She's continued to deny it with
24 her mother. She says she doesn't want Mr. Durham to -- well,
25 she didn't say she didn't want him to move back in, but she

1 said she's happy where she currently is.

2 And I asked her if she was afraid of what would happen
3 based on her testimony. And she said she was afraid of what
4 would happen to her parents, but she said she was going to
5 tell the truth. She wasn't afraid of what was going to happen
6 to her.

7 And that's the key to Ms. Galloway-Williams' testimony,
8 that she's trying -- Ms. Galloway-Williams is saying that
9 child sexual abuse victims deny because they're afraid. And
10 the key here in this case, the young Miss Land said she wasn't
11 afraid.

12 So at this point if we're going to be placing this
13 evidence in front of the jury, we've got a severe problem
14 because she hasn't met any of the strange, peculiar, unique
15 circumstances for a child sexual abuse victim other than a
16 denial, which a denial is it didn't happen. Without some
17 other kind of extra oomph to it, we don't need this evidence.
18 It's just completely unnecessary.

19 And at the end of the day it comes down to a 403
20 balancing test to whether it's probative versus prejudicial.
21 And it becomes extremely prejudicial because it's saying,
22 look, jury, she took the stand and she denied everything, she
23 said she's not afraid, she's going to tell the truth, but
24 abuse victims deny, therefore, you should speculate that she
25 was denying.

1 And that speculation is the scary part, the part that
2 makes it more prejudicial than probative. And so we think
3 respectfully her testimony is not reliable or needed in this
4 case. Thank you.

5 **THE COURT:** Well, I find that she has adequately met the
6 standard for her testimony. The question of denial versus
7 delayed disclosure, they seem to both be conditions or
8 phenomenon that this witness is familiar with, and I'm going
9 to allow her to testify over the objection of the defendant.

10 **MR. KING:** Thank you, Judge.

11 **MS. OWEN:** Thank you, Your Honor.

12 **THE COURT:** All right. Let's take five minutes and then
13 we'll call the jury.

14 **MS. OWEN:** Thank you, Your Honor.

15 (Whereupon court was in recess at 9:48 am)

16 (Whereupon court reconvened at 9:56 am)

17 **THE COURT:** The State ready for the jury?

18 **MS. OWEN:** Yes, Your Honor.

19 **THE COURT:** Defense ready?

20 **MR. KING:** We are, Your Honor.

21 **THE COURT:** Just announce that juror number 131 is the
22 foreperson of the jury. All right. Bring the jury, please.

23 (Whereupon the jury entered the courtroom at 10:00 am)

24 **THE COURT:** Good morning.

25 **THE JURY:** Good morning.

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1 **THE COURT:** Sorry for the delay. I said we'd start at
2 9:30. We actually did start at 9:00, but there were some
3 procedural matters that I had to discuss with the attorneys.
4 So we're now ready to continue with the trial. Mr. 131, thank
5 you for -- as I told you -- for agreeing to serve as
6 foreperson. I told you, you don't get paid more than anybody
7 else, but it's a high honor, you know?

8 **JUROR 131:** Yes, sir.

9 **THE COURT:** All right. Thank you very much. All right.
10 Solicitor, call your next witness, please.

11 **MS. OWEN:** Thank you, Your Honor. The State would call
12 Ms. Shauna Galloway-Williams.

13 **MR. KING:** Judge, I'd just like to renew my prior
14 objection.

15 **THE COURT:** Overruled.

16 **MADAM CLERK:** Place your left hand on the Bible and raise
17 your right hand, please.

18 **Shauna Galloway-Williams,**
19 being duly sworn testified as follows;

20 **MADAM CLERK:** Have a seat and state your name for the
21 record, please.

22 **MS. GALLOWAY-WILLIAMS:** Shauna Galloway-Williams.

23 **Direct Examination by Ms. Owen:**

24 Q. Good morning, Ms. Galloway-Williams. How are you?

25 A. I'm fine. Thank you.

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1 Q. Good. Can you tell the jury a little bit about yourself,
2 where you work?

3 A. Yes. I'm the executive director of the Julie Valentine
4 Center.

5 Q. What does that mean?

6 A. The Julie Valentine Center is the child abuse and sexual
7 assault recovery center that serves Greenville and Pickens
8 County. We provide prevention and education services. We
9 provide intervention services and treatment services related
10 to child abuse and sexual assault. That includes 24 hour
11 crisis intervention, counseling, forensic interviews, medical
12 exams as well as training and education in the community.

13 Q. Okay. As the executive director what are your duties,
14 specifically?

15 A. I am responsible for the full administration of the
16 center including the fiscal management of marketing and
17 development as well as oversight of all of the programs of the
18 center. I oversee the leadership team which are our program
19 managers as well as still providing some clinical
20 responsibilities. I do conduct some forensic interviews. I
21 provide some clinical supervision to our counselors as well as
22 our interviewers in addition to doing training and education
23 in the community.

24 Q. I don't know that our jury knows, but what is a forensic
25 interview?

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1 A. That's an investigative interview conducted with a child
2 whenever there's an allegation of abuse or neglect.

3 Q. And, Ms. Galloway-Williams, can you tell the jury about
4 your education?

5 A. Yes. I have a Bachelor's Degree in Psychology from
6 Winthrop University and a Master's Degree in Counseling from
7 Clemson University. And I'm licensed as a professional
8 counselor in the State of -- in the State of South Carolina.

9 Q. And when did you get that license?

10 A. I've been licensed since 2004. I finished my master's
11 degree in 2000.

12 Q. And can you tell the jury a little bit about -- for
13 education purposes did you have to do some clinicals and that
14 kind of thing?

15 A. Yes. So during that period of time between finishing my
16 master's degree and obtaining my license, I had to take two
17 additional graduate level courses as well as participate in
18 individual and group supervision with a licensing supervisor
19 as well as providing a certain number of hours of individual
20 and group counseling to clients during that time.

21 And I also, on a recurring basis, have to renew my
22 license. And in order to do that we have to maintain
23 continuing education requirements, so at least 50 hours of
24 continuing education every two years.

25 Q. And once you got your master's did you start to do more

1 one-on-one interviewing or counseling with individuals?

2 A. Yes. So most of my work prior to my master's degree --
3 so from 1996 until 2000 or 2001 I primarily worked in group
4 settings with adults with chronic mental health conditions.
5 Beyond -- beginning in 2001 I more specifically started
6 working with children and families who've been impacted by
7 child abuse and sexual assault. And that's become my area of
8 specialization. It's the area that the vast majority of my
9 continuing education since that time has been -- I've
10 participated in as well as provided training in.

11 Q. Could you tell the jury about what kind of training you
12 provide?

13 A. Yes. I am an adjunct faculty member with USC Upstate in
14 their Child Advocacy Studies Program. I teach two
15 undergraduate courses there, one three hour course called
16 Child Maltreatment, it's an undergraduate course, and then
17 another three hour undergraduate course entitled Violence --
18 Gender Violence in Society.

19 I also am on the South Carolina Child First faculty,
20 which is the South Carolina training team that trains forensic
21 interviewers four times a year here in South Carolina. We are
22 part of a national organization called the Zero Abuse Project,
23 which was formerly called the Gundersen National Child
24 Protection Training Center.

25 In addition to those teaching responsibilities, I also

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1 provide local state-wide and national training. Most recently
2 I've provided training on a national level in the area of
3 bringing spiritual care or chaplaincy to children's advocacy
4 centers. That's one of the services that we provide at the
5 Julie Valentine Center.

6 Q. Okay. And do you use peer reviewed articles and journals
7 in these peer reviews and in your trainings?

8 A. Yes.

9 Q. During your peer reviews do you go through journals and
10 articles that are specialized in child abuse?

11 A. Yes.

12 Q. Okay. And are your opinions supported by those peer
13 reviewed articles and journals?

14 A. Yes. My opinions are supported by my years of training,
15 experience as well as the research in the field.

16 Q. Okay. Ms. Galloway-Williams, have you testified
17 previously in court?

18 A. I have.

19 Q. How many times, approximately?

20 A. I've been qualified in general sessions over 40 times as
21 an expert witness.

22 Q. Okay. And general sessions is the court we're in
23 currently?

24 A. Yes.

25 Q. Okay.

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1 **MS. OWEN:** And at this time, Your Honor, I would like to
2 qualify or offer to qualify Ms. Shauna Galloway-Williams as an
3 expert in child sexual abuse dynamics.

4 **THE COURT:** All right. Any voir dire or objection?

5 **MR. KING:** Objection and voir dire, Judge.

6 **Voir Dire by Mr. King:**

7 Q. Ms. Galloway-Williams, did you just say you do research
8 in this field?

9 A. No, no, no. I did not say I do research. I said my
10 opinions are based on research in the field.

11 Q. Oh, okay. All right. Because you're not published,
12 correct?

13 A. That's correct. I am not a researcher, and I have also
14 not been published.

15 Q. Okay. And you're the executive director out at the Julie
16 Valentine Center, correct?

17 A. That's correct.

18 Q. Where you do fiscal management?

19 A. Yes. I'm responsible for the financial health of the
20 organization, so fiscally responsible for the organization.

21 Q. You do marketing, correct?

22 A. Yes.

23 Q. That includes news interviews ---

24 A. Correct.

25 Q. --- for the Julie Valentine Center, right?

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1 A. Yes.

2 Q. You've been on the news, right?

3 A. I have.

4 Q. To talk about cases, yes?

5 A. I never speak specifically about cases.

6 Q. Okay. You haven't talked about the Julie Valentine case
7 on the news?

8 A. Oh, well, that case is a specific case, yes. It's
9 relevant to -- but I don't ever speak about specific cases
10 that are, you know, when they -- if they were to present this
11 case on the news, I would not speak to it.

12 Q. Okay. So not pending cases?

13 A. Not pending cases or not cases that have, you know, that
14 had resolution.

15 Q. Okay.

16 A. The Julie Valentine case was specific to our center. And
17 so, yes, I did comment on that.

18 Q. Okay. So as executive director you do fiscal managing,
19 marketing, and you manage the employees of the Julie Valentine
20 Center, correct?

21 A. Yes.

22 Q. Okay. And that includes super -- managing includes
23 supervising your clinical technicians, right?

24 A. Yes. So I don't directly supervise them. They have
25 program managers that supervise them. But I am supervising

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1 the program managers, so there's an indirect supervision
2 there.

3 Q. Right. And that includes forensic interviews, right?

4 A. Forensic interviewers, yes, that's correct.

5 Q. All right. And along with all of those tasks you do
6 continuing education credits every year, right?

7 A. I participate in my own continuing education, yes.

8 Q. All right. And then you're teaching as well, correct?

9 A. That is correct.

10 Q. All right. Now let's back up to the fiscal management.
11 The Julie Valentine Center receives money from the solicitor's
12 office, correct?

13 A. No.

14 Q. No, they don't?

15 A. We do not receive money ---

16 Q. Okay.

17 A. --- from them. Now, they do attend our annual
18 fundraiser, which is the two annual fundraisers. So I think
19 this past year the solicitor's office may have purchased one
20 table at our annual fundraiser, which is approximately seven
21 hundred and fifty dollars (\$750.00) out of my two million
22 dollar (\$2,000,000.00) budget.

23 They also registered a team for the Run to Overcome. And
24 that was ten runners at about thirty-five dollars (\$35.00) per
25 runner. So I'm not great with numbers, but that would be

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1 another -- so those are their participation in our annual
2 fundraising events. But we do not receive funding directly
3 from them for services. So I'm not paid to be here today.

4 Q. Okay. But you're managing a two million dollar
5 (\$2,000,000.00) budget for the Julie Valentine Center?

6 A. A little over two million, yes.

7 Q. Okay. And you focus on as little as seven hundred and
8 fifty dollars (\$750.00) as the manager of -- or executive
9 director of the Julie Valentine Center, right?

10 A. Can you clarify your question, please?

11 Q. You pay attention to every penny including the seven
12 hundred and fifty dollars (\$750.00) the solicitor's office
13 gives you, correct?

14 A. What do you mean by pay attention to seven hundred and
15 fifty dollars (\$750.00)?

16 Q. You remember it.

17 A. I do know -- yes. I know who's giving what, and I do
18 keep track of that. Not every single donation, but in this
19 particular case, I've been asked that before.

20 Q. Okay. Now, you say you participate in local peer
21 reviews, correct?

22 A. That's correct.

23 Q. And those happen quarterly, correct?

24 A. That's correct.

25 Q. Did you go to the one last quarter?

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1 A. The last one I went to -- I've gone to one peer review
2 this year. And it was the one that we hosted at the Julie
3 Valentine Center. And it was probably in first quarter.

4 Q. Okay. So we're in the third quarter now. You've only
5 gone to one peer review this year?

6 A. There's another one coming up on August 30th.

7 Q. Okay.

8 A. So that would be third quarter.

9 Q. Okay. But so far this year you've only been to one,
10 correct?

11 A. That's correct.

12 Q. Okay. And at these peer reviews some -- well, let's
13 stop. The peer reviews are the four upstate child advocacy
14 centers meaning locally together, correct?

15 A. So to explain what peer review is, the South Carolina
16 Network of Children's Advocacy Centers, which is a coalition
17 that oversees the 17 children's advocacy centers of South
18 Carolina, hosts quarterly peer reviews in each of the regions
19 of the State. The upstate includes the Julie Valentine
20 Center, which serves Greenville and Pickens County, Beyond
21 Abuse, which serves the Greenwood, Abbeville area, Foothills
22 Alliance, which serves Oconee and Anderson County as well as
23 Spartanburg Children's Advocacy Center, which serves the
24 Spartanburg area.

25 And four times per year those centers, those forensic

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1 interviewers at those centers come together to review recent
2 articles, educational materials specifically related to the
3 field of child maltreatment and forensic interviewing, and
4 also have an opportunity to present their forensic interviews
5 that they've done to share with other interviewers and get
6 feedback. At the most recent one that I attended at the Julie
7 Valentine Center, I did not present a forensic interview, but
8 did provide feedback and response to the educational materials
9 that were shared as well as the interviewers interviews.

10 Q. Okay. So back to my simple question, the peer review has
11 four centers, correct?

12 A. Those were the four that I listed, yes.

13 Q. Okay.

14 A. In the upstate. As I said, there's peer review that
15 takes place in the low country and the -- what we call it, the
16 ---

17 Q. I'm concerned about the one you went to locally, okay?

18 A. Okay.

19 Q. All right. Now, at the peer review no one's publishing
20 anything, correct? You are reviewing a published article that
21 someone somewhere else wrote, correct?

22 A. That's correct. It's review -- peers among each other
23 reviewing each other's work as well as other's materials.

24 Q. So you were having a discussion about an article that you
25 all read, correct?

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1 A. Correct.

2 MR. KING: No further questions. We do renew our

3 objection, Judge.

4 THE COURT: All right. Overruled. You may proceed.

5 MS. OWEN: Thank you, Your Honor.

6 **Direct Examination by Ms. Owen Continued:**

7 Q. Ms. Galloway-Williams, I know Mr. King asked you, but are
8 you being paid to be here today?

9 A. Not outside of my salary at the Julie Valentine Center.
10 So, no, I'm not being paid by the State to be here.

11 Q. Thank you. And can you tell me, do you know anything
12 about this case?

13 A. Nothing other than what I've heard in the courtroom today
14 while I've been here.

15 Q. Okay. Have you read any statements?

16 A. No, I have not.

17 Q. Any incident reports?

18 A. I have not.

19 Q. Do you know the names of any of the parties?

20 A. I do not.

21 Q. Thank you. Ms. Galloway-Williams, can you tell the jury
22 what a disclosure process is?

23 A. So when we refer to disclosure in the field of child
24 maltreatment and sexual abuse, it is the statement or the
25 information that comes out about an allegation of child abuse.

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1 So it may be a statement that the child has made. It may be
2 an observation that someone else has made. But generally
3 we're referring to a child making a decision to tell or
4 someone finding out about an abuse scenario.

5 And we consider that a process, meaning that because of
6 the unique dynamics of child sexual abuse we don't expect that
7 a child is going to tell every single aspect or every single
8 detail about what's happened to them the first time. We know
9 that some children delay disclosure. That may be that they
10 delay for days, weeks, years.

11 And many survivors, victims may never tell anyone about
12 what's happened for multiple reasons. And that's part of that
13 process. We know that over time someone may become more
14 comfortable and begin to share more information. We also know
15 that over time a child may take back their statement or deny
16 something happening for multiple reasons.

17 Q. When they take that statement back, is there a word for
18 that?

19 A. Recantation or denial.

20 Q. Okay. And could you give us some reasons that a child
21 may recant or deny that sexual abuse happened?

22 A. For many of the same reasons that a child might delay
23 disclosure. So one of the main reasons would be fear. They
24 might fear the consequences to themselves or someone else if
25 they were to tell. They may fear the change in their family

1 situation.

2 Many children are abused by someone that's known, loved
3 and trusted to them. They may also be someone that's known,
4 loved and trusted to their caregivers and may be somebody
5 who's known, loved and trusted in the community. That may
6 lead a child to fear telling about them because the child may
7 have a complex relationship with this person.

8 This child may love this person and care about this
9 person, but not like what this person's doing to them. They
10 may feel very responsible for the rest of the family and what
11 might happen if they do tell about what's happened. And so
12 all that is related to fear as well. But it may not be rooted
13 directly in fear.

14 They may also -- children may have been threatened and
15 told that something would happen to them if they tell or if
16 someone finds out about what's happened. Children sometimes
17 don't have the words to describe what's happened to them.
18 They may just literally not have the cognitive abilities or
19 language to describe what's happened to them. And many times
20 children may be embarrassed, ashamed or worried about someone
21 finding out what's happened to them.

22 In general, people are not comfortable sharing about
23 sexual experiences with other people, in particularly -- in
24 particular in a non-consensual situation or an abuse situation
25 even more so, particularly when this is an act that may have

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1 been committed by someone that you know, and love, and trust
2 and that's close to you and your family members.

3 Q. Okay. And does age ever factor into whether a child may
4 make a disclosure or not?

5 A. Yeah. Again, you know, with very young children they may
6 not have the cognitive skills or language skills to describe
7 what's happened to them. They may not have a sexual
8 vocabulary. They may not really understand what's happened to
9 them. They may know that something happened to them that was
10 uncomfortable or maybe wasn't supposed to happen, but they may
11 not be able to articulate that clearly to someone else.

12 You know, we know that -- in terms of disclosures we know
13 that there may -- we see many accidental disclosures. That's
14 a disclosure where a child has not made a purposeful intent to
15 say what's happened. Instead, someone has maybe observed a
16 behavior, they've heard the child say something, they may have
17 read something the child has written or they may have seen
18 something that alerted them to be concerned that something's
19 happened to the child.

20 Q. Would another potential fear be shame?

21 A. Yes. So along with the shame, and guilt, and
22 embarrassment, I mean, there may be shame along with the guilt
23 and embarrassment of the act, being embarrassed about what
24 happened. And the older that children get, the more they come
25 to understand what may have really happened to them, so in

1 terms of, you know, as children get a little bit older, if
2 they're learning about reproductive health or learning about
3 sexuality.

4 And for some children that's the first time that they're
5 realizing what's happened to them when they learn about, you
6 know, healthy sexual relationships. And that may lead them to
7 feel even more shame, and guilt and responsibility about
8 what's happened.

9 Q. Okay. And if someone lives in the home with the child,
10 how could those circumstances of them potentially being a
11 guardian or a caregiver impact their disclosure?

12 A. Yes. So as I said before, most children are abused by
13 someone they know, they love and they trust. And that may be
14 someone that lives in their household. This may be somebody
15 that the child really enjoys, and loves and spends time with.
16 This may be the person that's responsible for making sure that
17 the family has a roof over their head and the bills are being
18 paid.

19 And that's a lot of responsibility for a child to carry,
20 particularly if they fear or know that there may be
21 consequence if they share about the abuse scenario. So they
22 may be cautious about saying what happened to them. They may
23 be more fearful about the consequences. That's what that
24 means by that, the fear of the consequences that they, or
25 their family or someone else may face.

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1 And in particular, if a child or a family is what I would
2 say system savvy, or if they have been involved in the
3 Department of Social Services' system, or law enforcement, or
4 some other system like that, they may have a real
5 understanding of what may happen if they tell and if someone
6 finds out about what's happened.

7 Q. Relating to that, can you explain what the term
8 nonoffending caregiver means?

9 A. So a nonoffending caregiver would be a caregiver who is
10 not the caregiver that has committed an abuse act. So a
11 nonoffending caregiver can be protective, but nonoffending
12 caregivers can also be non-protective.

13 So we know that nonoffending caregivers often have
14 relationships with the offender just like the child did. So
15 they may be someone that they love, know and trust. And so
16 their responses initially may also be complex and difficult to
17 understand.

18 We know that some nonoffending caregivers are protective
19 initially. That means that they believe their child, they
20 believe that something's happened to them, they get them all
21 the supportive services that they need.

22 We know that some caregivers are in impossible
23 situations, meaning that they may be very reliant and
24 dependent on this person, and so they may not initially make
25 the best choices. They may be choosing having a roof over

1 their head and a car to get them to and from their home to
2 their job over getting their child to a safe location or
3 leaving this person. And so that can impact the child.
4 Obviously if you have a caregiver who is protective, and
5 supportive, and believing, that's the best case scenario for a
6 child. And they may feel comfortable to begin the healing
7 process and to share information about what's happened to
8 them.

9 The flip side of that, if they have a non-protective
10 caregiver or a caregiver who is not believing and not
11 supportive, that may influence the child to change their
12 story, recant their story, or deny, or possibly just not
13 disclose at all.

14 Q. And just to clarify, victims of sexual abuse can still
15 love the person that hurt them, is that correct?

16 A. Absolutely. Again, you know, these are complex
17 relationships. Individuals can, you know, we all have
18 individuals in our life that we love that maybe have hurt us
19 or done something to us and we still love them. Not to
20 minimize the experience of child sexual abuse to that, but
21 it's the same thing. It's a complex relationship.

22 A child can still want to spend time with this person,
23 but just want this abuse to stop. So they can still love them
24 and not like what they're doing. And offenders, you know, for
25 the most part, they can be good people and do good things and

SHAUNA GALLOWAY-WILLIAMS - CROSS-EXAMINATION BY MR. KING

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1 still abuse a child.

2 **MS. OWEN:** No further questions for this witness, Your
3 Honor.

4 **THE COURT:** Cross-examination.

5 **MR. KING:** Thank you, Judge.

6 **Cross-examination by Mr. King:**

7 Q. Take your time. You're not rushed.

8 A. Oh, I'm fine.

9 Q. All right. Ms. Williams, you said you read articles
10 about child sexual abuse dynamics, correct?

11 A. I do.

12 Q. Okay. And do any of these articles have statistics about
13 rates of delayed disclosure or recantations?

14 A. Some of them do, yes.

15 Q. Yeah. Do any talk about denial specifically?

16 A. They do.

17 Q. Yeah. Do they talk about how denials are accurate
18 sometimes?

19 A. Sure.

20 Q. Yeah. Okay.

21 (Pause)

22 **MR. KING:** No further questions.

23 **THE COURT:** Redirect.

24 **MS. OWEN:** No redirect at this time, Your Honor.

25 **THE COURT:** All right. You may come down. Thank you

BRENDA LINK - DIRECT EXAMINATION BY MS. OWEN

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1 very much.

2 A. Thank you.

3 **MS. OWEN:** May this witness be excused, Your Honor?

4 **THE COURT:** Without objection? Any objection? Excuse
5 this witness?

6 **MR. KING:** No objection, Your Honor.

7 **THE COURT:** All right. Thank you. Next witness.

8 **MS. OWEN:** Thank you, Your Honor. The State would call
9 Sergeant Brenda Link to the stand.

10 **MADAM CLERK:** Place your left hand on the Bible and raise
11 your right hand, please.

12 **Brenda Link,** being duly
13 sworn testified as follows;

14 **MADAM CLERK:** Have a seat and state your name for the
15 record, please.

16 **MS. LINK:** Brenda Lynn Link.

17 **Direct Examination by Ms. Owen:**

18 Q. How are you today, Sergeant Link?

19 A. I'm doing well. How about you?

20 Q. Doing well. Thank you. Can you tell the jury a little
21 bit about yourself, where you work, your training, your
22 experience?

23 A. I'm a police officer with the City of Clemson. I'm a
24 sergeant over road patrol as well as a K-9 handler. I've been
25 there since 2002. I became a sergeant in March of 2007, a K-9

BRENDA LINK - DIRECT EXAMINATION BY MS. OWEN

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1 handler in October of 2007.

2 Q. And as being sergeant of the road patrol, what does that
3 mean?

4 A. I handle calls as well as I supervise the people that
5 work with me.

6 Q. And you've been there since 2002?

7 A. Correct.

8 Q. Have you worked anywhere else in law enforcement?

9 A. No.

10 Q. Strictly at Clemson?

11 A. Strictly Clemson.

12 Q. All right. On May 14th of 2016 were you sergeant of road
13 patrol that day?

14 A. I was.

15 Q. Did anything unusual happen that day?

16 A. I received a phone call from the chief advising me there
17 was going to be a man come to the police department to file a
18 report based on an incident he had witnessed.

19 Q. Okay. Would that incident be why we're here today?

20 A. It is.

21 Q. An incident regarding sexual abuse?

22 A. Yes.

23 Q. Okay. And who was that witness?

24 A. Larry King.

25 Q. And where did you meet with him?

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- 1 A. At the police department.
- 2 Q. Approximately what time did you meet with him?
- 3 A. It was approximately 11:12 am.
- 4 Q. And that was on May 14th of ---
- 5 A. May 14th of 2016.
- 6 Q. Did you speak with Mr. King?
- 7 A. I did.
- 8 Q. Did you get a written statement from Mr. King?
- 9 A. I did.
- 10 Q. Were you wearing body camera video?
- 11 A. I was.
- 12 Q. Okay. And is his statement also recorded on that video?
- 13 A. It is.
- 14 Q. Okay. And when you were speaking to him that day did he
- 15 provide you an account of what he had seen?
- 16 A. He did.
- 17 Q. All right. And without saying what he saw or what he
- 18 said, can you tell me what you believe he had done that day?
- 19 A. He went to [REDACTED], apartment [REDACTED], Old Central Road to do a
- 20 maintenance repair.
- 21 Q. Okay. And where is that?
- 22 A. Within the City limits of Clemson, the County of Pickens,
- 23 State of South Carolina.
- 24 Q. Do you know what his job is?
- 25 A. He's a maintenance man.

BRENDA LINK - DIRECT EXAMINATION BY MS. OWEN

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1 Q. Was he the maintenance man for this apartment?

2 A. He was.

3 Q. At any point in time did he leave the apartment?

4 A. He did. He went to Ace Hardware to get a part.

5 Q. Okay. How do you know that?

6 A. He told me.

7 **MR. DeJONG:** Objection, Your Honor. She's asking for
8 hearsay ---

9 **THE COURT:** I understand that. Sustained.

10 Q. Did he provide you with something?

11 A. He did. He provided me a copy of the receipt for the
12 part that he bought at Ace Hardware.

13 Q. And did you make that a copy of your case file?

14 A. I did.

15 Q. Okay. After you got this statement from Mr. King and the
16 understanding of what he had seen, what did you do next?

17 A. I called the detective that was on call, Detective James
18 Peppers, and explained the situation to him.

19 Q. Okay. And what did you do from there?

20 A. He agreed that I could handle it, so I went forward with
21 the case. I got the written statement from Mr. King, provided
22 him a copy of it. And then I got the other officers together
23 and we went to the incident location.

24 Q. Okay. And who went with you?

25 A. Officer Ross Ables, who's currently Deputy Ables with the

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1 Anderson County Sheriff's Department, Officer Patrick Bikas,
2 who's currently with probation and parole, and Officer
3 Jonathan Duncan, who's still with the agency.

4 Q. Okay. And what did you do when you got there?

5 A. I had two of the officers, Officer Ables as well as
6 Officer Bikas, to go around to the back door in case somebody
7 came to that door. And Officer Duncan and myself went to the
8 front door to try to make contact with the individuals.

9 Q. At that time were you wearing a body camera video?

10 A. Yes.

11 Q. Can you tell me about the body camera video?

12 A. It malfunctioned after a few minutes, but ...

13 Q. Okay. Did you record what you could?

14 A. I did record what I could.

15 Q. Okay. But then it died?

16 A. Yes.

17 Q. Okay. I'm going to show you what's been marked as
18 State's exhibit 1.

19 A. Thank you.

20 Q. Are you able to identify that?

21 A. I am.

22 Q. What is it?

23 A. It's my body-cam video.

24 Q. How do you know that?

25 A. My initials are on it.

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1 Q. Ms. Link, who eventually came to the door?

2 A. The defendant, James Anthony Durham.

3 Q. How long did it take him to come to the door?

4 A. It was a few minutes, approximately four.

5 Q. Okay. And what happened when he answered the door?

6 A. When he answered the door I asked to speak with Miss
7 Land. And he said, my wife? And I said, no, your step-
8 daughter.

9 Q. Is his wife's name Ms. Land?

10 A. No. His wife's name is Vanessa Durham.

11 Q. And once Miss Land came to the door, what did you do
12 then?

13 A. I asked her to step outside, allowed her to get some
14 shoes, and she stepped outside to talk with me.

15 Q. Okay. At any point in time did you tell anybody why you
16 were there?

17 A. No.

18 Q. Did you tell anybody the allegations of why you were
19 there?

20 A. No.

21 Q. Okay. After speaking with Miss Land what did you do?

22 A. I had her step to the other side of the apartment complex
23 and stand with Officer Duncan while I spoke briefly with the
24 defendant.

25 Q. Okay. And what did you do after that?

BRENDA LINK - DIRECT EXAMINATION BY MS. OWEN

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1 A. I placed him under arrest.

2 Q. Were you aware that he had been Mirandized?

3 A. Oh, yes. I went to -- when I stepped in I went to
4 Mirandize him and then Officer Ables advised me he had already
5 Mirandized him.

6 Q. At any point in time did you threaten Mr. Durham?

7 A. No.

8 Q. Did you coerce Mr. Durham?

9 A. No.

10 Q. Did you offer to let him make any more statements after
11 he left the apartment?

12 A. I didn't tell him he couldn't talk.

13 Q. Okay.

14 A. I mean, he was advised of his rights, that it was his
15 right to stop speaking, but I never told him to stop.

16 Q. Okay. And after Mr. Durham was escorted off the property
17 did Ms. Durham arrive, his wife?

18 A. She actually was arriving as we were taking him from the
19 scene.

20 Q. Okay. And what happened then?

21 A. He was removed from the location. And then I spoke with
22 Ms. Durham as well as a little bit more with Miss Land.

23 Q. Okay. And yesterday you were here for Miss Land's
24 testimony, is that correct?

25 A. Correct.

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1 Q. Okay. Did you take her back into the apartment at some
2 point?

3 A. I did.

4 Q. What for?

5 A. So she could gather a few things. She was standing
6 outside with a spaghetti strap shirt on, and she seemed to be
7 kind of guarded or reserved. So she wanted to get a few
8 things as well as some deodorant. So we did step inside to
9 allow her to collect a few things before her mom took her to
10 the hospital.

11 Q. Okay. And, Sergeant Link, while you were in the
12 apartment does Miss Land do a demonstration for you of what
13 she said she was doing with Mr. Durham?

14 A. She did.

15 Q. What was that demonstration?

16 A. She advised that she was tickling her father. She
17 pointed -- indicated where she was -- he was sitting on the
18 couch is where -- as well as where she was sitting on the
19 couch. And then she reached forward and her head was very low
20 on the couch. I mean, I could show you a little better.

21 Q. Let me show you what's been marked as State's exhibit 4.

22 A. Yes.

23 Q. That's a picture of the couch?

24 A. Yes.

25 Q. Okay. Let me make sure everybody can see. This is the

BRENDA LINK - DIRECT EXAMINATION BY MS. OWEN

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- 1 L-shaped couch as previously discussed? Can you see this?
- 2 A. I can.
- 3 Q. Okay. There is a white blanket and we're looking at the
- 4 corner of the couch, is that correct?
- 5 A. Correct.
- 6 Q. What did she tell you or show you happened? I'm sorry.
- 7 A. She indicated that her father was sitting in the corner
- 8 of the couch, where the two sides of the couch connect.
- 9 Q. Where I'm pointing?
- 10 A. Yes.
- 11 Q. Okay.
- 12 A. And that he was sitting there with his feet down toward
- 13 where the blanket is.
- 14 Q. Down here?
- 15 A. Yes.
- 16 Q. Okay.
- 17 A. And that she indicated that she was toward his feet and
- 18 then reached up over him and was tickling him.
- 19 Q. Okay. So not on the side of the couch as she indicated
- 20 yesterday?
- 21 A. No.
- 22 Q. And you witnessed her do this?
- 23 A. Yes.
- 24 Q. Okay. And she leaned over from the bottom of the couch?
- 25 A. Up towards his abdomen area, yes.

BRENDA LINK - DIRECT EXAMINATION BY MS. OWEN

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1 Q. Okay. And ---

2 A. Where his abdomen would have been.

3 Q. Did it appear that she would have been laying on the
4 couch?

5 A. Yes.

6 Q. Okay. Sergeant Link, after Miss Land did that
7 demonstration for you of what she believes happened, can you
8 tell us what happened after that?

9 A. Her mother took her to the hospital.

10 Q. Okay. She went to what hospital?

11 A. Easley Hospital.

12 Q. Easley Baptist?

13 A. Yes.

14 Q. Okay. And while she was there did they perform any
15 tests?

16 A. No.

17 Q. Why not?

18 A. What I was told is because she didn't disclose.

19 Q. Okay. Were you able to speak with that nurse?

20 A. I did not speak to the nurse, but I do have a report.

21 Q. Okay. And, Sergeant Link, after she went to Easley
22 Baptist did you do anything else for Miss Land as far as
23 services?

24 A. She was placed with Mr. Holloway's family through DSS for
25 a safety plan. She was not technically EPC'd, she was just --

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1 a safety plan. And then they requested a interview at the
2 Julie Valentine Center be conducted.

3 Q. Okay. And on what date was that?

4 A. May 31st, 2016.

5 Q. Did you attend that interview?

6 A. I did.

7 Q. Okay. And did Miss Land make any disclosures on that
8 date?

9 A. No.

10 Q. Okay. Going back to the day of the incident, May 14th,
11 2016, while Miss Land and Ms. Durham was at the hospital, what
12 were you doing?

13 A. Well, I actually contacted the judge and got a search
14 warrant for the apartment. And we collected -- I did not
15 personally collect them, but I had Officer Bikas, Patrick
16 Bikas, who was our evidence tech at the time, he served the
17 search warrant, and he collected several items from the house.

18 Q. Okay. And what did you do with those items after they
19 were collected?

20 A. After they were collected he submitted them into
21 evidence. And then they were later sent out to be tested.

22 Q. Okay. Did you receive any tests in this case?

23 A. I was advised that nothing came back on the evidence.

24 Q. Okay. When you say nothing came back, is that an
25 analysis of the items that were sent out?

BRENDA LINK - DIRECT EXAMINATION BY MS. OWEN

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1 A. Correct.

2 Q. There was no DNA in this case, is that correct?

3 A. None that matched the suspect or the victim.

4 Q. Okay. Sergeant Link, just to make sure I'm clear, you
5 said the witness, Mr. King, came to the police department
6 around 11:12 that morning, is that correct?

7 A. Correct.

8 Q. After you spoke with him and you got some statements,
9 about what time approximately did you arrive at [REDACTED] Old
10 Central Road?

11 A. It was approximately 11:45 am, also when the other
12 officers went to the incident location.

13 Q. Okay. So approximately 30 minutes?

14 A. Yes.

15 MS. OWEN: Your Honor, at this point I would offer in
16 State's exhibit 1 as evidence. It's a body-worn camera by Ms.
17 Brenda Link. It's about four or five minutes in length.

18 THE COURT: Any objection?

19 MR. DeJONG: Your Honor, it's my understanding in
20 speaking briefly to the Madam Solicitor, it's for date and
21 time only.

22 MS. OWEN: Well, it's going to be for that duration, Your
23 Honor, ---

24 MR. DeJONG: I can't hear you.

25 MS. OWEN: Sorry. It's for the duration of that four to

BRENDA LINK - DIRECT EXAMINATION BY MS. OWEN

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1 five minutes where Ms. Link is arriving in the home.

2 MR. DeJONG: As long as she's not talking to anybody.

3 MS. OWEN: There is a brief discussion, but nothing with
4 the victim.

5 MR. DeJONG: Well, I object to the brief discussion.
6 That's not a part of this. I don't know what that discussion
7 is ---

8 THE COURT: Has that been shared?

9 MS. OWEN: Yes, Your Honor. And Mr. Durham answers the
10 door, and it's a very brief interaction. And Mr. King
11 reviewed that video with us in our office.

12 THE COURT: What's the difference between this video and
13 the one we saw yesterday?

14 MS. OWEN: This video, Your Honor, is ---

15 THE COURT: Other than it's hers?

16 MS. OWEN: Yes. And Miss Land comes out for everyone to
17 see what she's wearing. Mr. Durham opens the door. Officer
18 Ables is not present for that portion of the video, Your
19 Honor.

20 THE COURT: Okay.

21 MR. DeJONG: I'm sorry, Your Honor.

22 THE COURT: Go ahead.

23 MR. DeJONG: I'm just curious what this discussion is
24 between the cops. I don't know.

25 MS. OWEN: There's no discussion ---

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1 **MR. DeJONG:** I mean, I've watched it, but I don't
2 remember it.

3 **MS. OWEN:** There's no discussion between law enforcement
4 and ---

5 **MR. DeJONG:** Well, I thought you said there was a
6 discussion, but not with the victim.

7 **MS. OWEN:** And it's with Mr. Durham.

8 **MR. DeJONG:** Well, nothing else. That part, Your Honor,
9 I do not object to.

10 **THE COURT:** Okay.

11 **MR. DeJONG:** Anything beyond that, I would object to.

12 **THE COURT:** Thank you.

13 **MR. DeJONG:** Thank you.

14 **THE COURT:** We'll watch it carefully.

15 **MS. OWEN:** Thank you.

16 (Whereupon State's exhibit 1, DVD, was admitted into
17 evidence)

18 (Whereupon State's exhibit 1, DVD, was played for the
19 jury)

20 Q. Sergeant Link, is this where your body camera dies?

21 A. Yes.

22 Q. It appears that there's more time after this, but it's
23 ---

24 A. It's turned off.

25 (Whereupon State's exhibit 1, DVD, was ended)

BRENDA LINK - CROSS-EXAMINATION BY MR. DeJONG

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1 Q. Sergeant Link, is that an accurate depiction of what
2 happened that day?

3 A. It is.

4 Q. Is that your voice we can hear?

5 A. Yes.

6 Q. Okay. Sergeant Link, in regards to this case did you do
7 anything else?

8 A. I don't know exactly, so many specifics, other than we
9 did the forensic interview and that's about it.

10 Q. Thank you. I don't have any further questions. Please
11 answer any questions defense counsel has.

12 A. Thank you.

13 **THE COURT:** Cross-examination.

14 **MR. DeJONG:** Thank you.

15 **Cross-examination by Mr. DeJong:**

16 Q. Sergeant, I'm going to apologize. I have been having
17 some real trouble with my voice. So if you cannot hear me,
18 please let me know, all right?

19 A. All right.

20 Q. So you were a sergeant on May the 14th of 2016?

21 A. Correct.

22 Q. Okay. And I believe you said you supervise people, was
23 that correct?

24 A. That is correct.

25 Q. Did you supervise Ables?

BRENDA LINK - CROSS-EXAMINATION BY MR. DeJONG

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- 1 A. Yes.
- 2 Q. Bikas?
- 3 A. Yes.
- 4 Q. Duncan?
- 5 A. Yes.
- 6 Q. How about Brown?
- 7 A. Detective or Officer Brown? John Brown? No.
- 8 Q. Okay.
- 9 A. No. He's under the -- another unit.
- 10 Q. Okay. Would it be fair to say that you are the -- were
- 11 or are, I guess, the lead investigator on this case?
- 12 A. Yes.
- 13 Q. Okay. And you remained so throughout?
- 14 A. Correct.
- 15 Q. Okay. So you get a call from the chief. What time was
- 16 that, do you remember?
- 17 A. It was shortly before the incident was -- the CAD sheet
- 18 was called or cut, so right before 11:12 am.
- 19 Q. Okay. And at that time you say you spoke to Mr. King?
- 20 A. Yes. He came to the police department, and I spoke with
- 21 him.
- 22 Q. Now, did you or dispatch send Duncan, Ables and Bikas out
- 23 to this apartment at that point in time?
- 24 A. No. We all went together after I got the statement.
- 25 Q. Okay. Now, I'm a little bit confused. And is this a

BRENDA LINK - CROSS-EXAMINATION BY MR. DeJONG

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1 townhouse or a one level apartment?

2 A. It's apartment buildings that has four apartments.

3 There's two at the bottom and two at the top.

4 Q. Okay. So I guess to answer my question it's one level?

5 A. No.

6 Q. The apartment itself?

7 A. Theirs is a one floor apartment.

8 Q. So when y'all get out there, the four, I'm a little

9 curious, at one point in time it appeared that there was one

10 or more officers standing some way -- some distance away from

11 the building. Are you aware of that?

12 A. There was two officers behind the building. I don't know

13 exactly where they took their stance. And then there was

14 Officer Duncan and myself at the front door.

15 Q. Okay. So Ables and Bikas would have been around back?

16 A. Correct.

17 Q. Okay. So when Mr. Durham answered the door you

18 immediately asked for **Minor** ---

19 A. Miss Land.

20 Q. Pardon me?

21 A. Miss Land.

22 Q. Okay. But you asked for the alleged victim in this case?

23 A. I asked to speak with Miss Land, yes.

24 Q. All right. But you didn't speak with her at that point

25 in time, did you?

BRENDA LINK - CROSS-EXAMINATION BY MR. DeJONG

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1 A. She stepped outside, and I took her off to the side of
2 the ---

3 Q. At your request?

4 A. --- apartment. Yes.

5 Q. Okay. It wasn't that she said, yippee, let me go talk to
6 Sergeant Link. You actually verbally pulled her out of the
7 apartment.

8 A. I requested that she step outside so I could speak with
9 her.

10 Q. And where did she go from there?

11 A. We stood on the side of the apartment for a little bit.
12 And then voices were being raised, so I actually asked her to
13 go stand at the -- in the parking lot away from the apartment.

14 Q. So, obviously, I would say obviously, at that point in
15 time Mr. Durham knew that you had taken his child, right?

16 A. He had -- he knew that she had stepped outside with me,
17 yes, but I didn't take her.

18 Q. Indeed, he asked to see his child, right?

19 A. He did.

20 Q. And it wasn't going to happen as far as Sergeant Link was
21 concerned?

22 A. No, sir. He was the alleged suspect and she was the
23 alleged victim in the case. I'm definitely going to separate
24 them at that time.

25 Q. Well, maybe let's just do an overall here. I understand

BRENDA LINK - CROSS-EXAMINATION BY MR. DeJONG

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1 what you're saying. He was a suspect in your case, but other
2 than an alleged or statement from somebody that made
3 allegations, there's nothing else in this case, is there?

4 A. I don't know exactly what you mean.

5 Q. Okay. We'll break it down. So you get out there with
6 Minor and she doesn't disclose anything, does she?

7 A. No.

8 Q. All right. And then she goes to the hospital?

9 A. Yes.

10 Q. Okay. And for what we commonly call a rape kit, but it
11 is not, it's for a SANE -- sexual assault -- a nurse's
12 examination, right?

13 A. Correct.

14 Q. Was that examination ever done?

15 A. No.

16 Q. There was no disclosure, was there?

17 A. No.

18 Q. And there was no need to do an exam, was there?

19 A. That was up to the nurse at the hospital. I don't
20 determine that.

21 Q. Well, you got a report, did you not?

22 A. I did.

23 Q. Okay. And there was no exam done when you reviewed the
24 report?

25 A. Correct.

BRENDA LINK - CROSS-EXAMINATION BY MR. DeJONG

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1 Q. And then from there she went to the Julie Valentine

2 Center, correct?

3 A. Correct.

4 Q. And at the Julie Valentine Center there was no

5 disclosure?

6 A. Correct.

7 Q. Now, you say you executed a search warrant.

8 A. We did. Two, actually.

9 Q. Two?

10 A. Two. One on the phone and one on the apartment.

11 Q. Okay. Okay. But on the female, that came later, did it

12 not?

13 A. The female?

14 Q. You said you had two search warrants.

15 A. Oh, I'm talking about the apartment and the telephone.

16 Q. Okay. You had two search warrants for the apartment.

17 A. One for the apartment and one for the telephone.

18 Q. And one for the what?

19 A. The suspect's telephone.

20 Q. Oh, yeah, yeah. Well, while we're on that, the telephone

21 certainly didn't reveal anything, did it?

22 A. Pardon me?

23 Q. The telephone certainly didn't reveal anything, did it?

24 A. No.

25 Q. Okay. So the items you gathered at the apartment was --

BRENDA LINK - CROSS-EXAMINATION BY MR. DeJONG

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1 you tell me. What did you -- what was gathered ---

2 A. I didn't personally gather them. But Officer Bikas, who
3 was the ID tech at the time, he collected several items.

4 Q. Well, you got the search warrant.

5 A. Yes. I signed for the search warrant.

6 Q. What was returned on the search warrant?

7 A. Listed in his supplemental report, it was a blue fiber
8 cloth that was on the top of the couch, a white blanket on the
9 right side of the couch, a gray and white blanket on the back
10 side of the couch, a gray sweater on the left cushion, a black
11 cell phone located on the nightstand on top of the -- some
12 books to the left side of the bed in the right bedroom, maroon
13 pillow on the center of the couch cushion and a multicolored
14 pillow on the center of the couch.

15 Q. Okay. I think you indicated earlier that some of these
16 items were sent to a lab, right?

17 A. Correct.

18 Q. Now in this case you did not send them to the State Law
19 Enforcement Division?

20 A. I requested that Master Patrol Officer John Brown send
21 them. He's in charge of that. I'm not sure where he sends
22 items. That's his ---

23 Q. All right. At some point in time, I gather, not as part
24 of a search warrant, but Mr. Durham's clothing was collected,
25 correct?

BRENDA LINK - CROSS-EXAMINATION BY MR. DeJONG

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1 A. Correct, at the jail.

2 Q. And do you know what clothing was collected from him?

3 A. I'd have to look again at the supplemental report. We
4 attempted to take them at our facility, however, we did not
5 have any overalls or coveralls that would fit Mr. Durham. So
6 when he was transported to the Pickens County facility, he was
7 given a pair of coveralls big enough, and then we took his
8 clothing. But I'd have to find exactly what he was wearing.

9 Q. Well, when this allegedly occurred ---

10 A. I can't hear you, sir.

11 Q. I'm sorry. I'm trying to ---

12 A. I understand.

13 Q. --- so the jury can hear me and you can hear me. And I'm
14 having a difficult time. I'm sorry. When you arrived at the
15 apartment with Duncan, Bikas and Ables -- let me back up. Was
16 there ever a description of what Mr. Durham was wearing when
17 this allegedly occurred?

18 A. I don't see specifically.

19 Q. I'm sorry?

20 A. I don't see in the written statement specifically what he
21 was wearing, no.

22 Q. Well, you had no reason to believe when you arrived at
23 that apartment that Mr. Durham had changed clothes, did you?

24 A. I'm not sure. He had about an hour. I don't know if he
25 did or didn't change.

BRENDA LINK - CROSS-EXAMINATION BY MR. DeJONG

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1 Q. Well, so you took shorts, right, from Mr. Durham,
2 ultimately?

3 A. I personally did not take anything, Officer Bikas did.

4 Q. I understand. They were taken into evidence, were they
5 not?

6 A. Yes.

7 Q. Okay. Along with underwear?

8 A. Yes.

9 Q. Along with a shirt?

10 A. Apparently so, yes.

11 Q. And all of those were sent to the lab in -- someplace?

12 A. Yes.

13 Q. For DNA testing?

14 A. Yes.

15 Q. The gold star of the criminal profession, right?

16 A. If you want to sum it up like that, I guess.

17 Q. All we hear anymore is DNA ---

18 A. I'm sorry?

19 Q. All we hear anymore is DNA.

20 A. Not in everything, no, sir.

21 Q. Let me ask you this, let's move forward a little bit,
22 somewhere, somewhat later, someone took a buccal swab of the
23 young lady, right?

24 A. Oh, yes.

25 Q. Can you explain to the jury what a buccal swab is?

BRENDA LINK - CROSS-EXAMINATION BY MR. DeJONG

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1 A. I've witnessed them. I've never been trained to do one
2 or I've never done one myself. But it's when they take a swab
3 of the inside of the cheek of a person.

4 Q. And that's for DNA match purposes, is it not?

5 A. Correct.

6 Q. Okay. So now that was also -- well, that was -- again,
7 that was **Minor**, correct?

8 A. Correct.

9 Q. The buccal swab?

10 A. Yes.

11 Q. Okay. So were the blankets sent to the DNA lab?

12 A. I'm not sure what all Officer Brown sent out.

13 Q. Okay.

14 A. But like you pointed out, we don't know -- he may have
15 changed by the time the complainant left the apartment until
16 the time that we got back there. There was approximately an
17 hour. So like you pointed out, he may have changed.

18 Q. While he was at the police department did he have access
19 to a shower?

20 A. Oh, I'm talking about from the time that Mr. King left
21 the apartment, ---

22 Q. Right.

23 A. --- came to the police department and the time we went
24 back to the apartment, there was approximately an hour. For
25 all I know Mr. Durham changed his clothes, showered. I don't

BRENDA LINK - CROSS-EXAMINATION BY MR. DeJONG

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1 know what he did in that approximate hour. So ---

2 Q. That would be purely speculation on your part and mine,
3 wouldn't it?

4 A. Yes, sir. You brought it up.

5 Q. And I think everything we have seen, Mr. King had no idea
6 about the allegations?

7 A. Excuse me?

8 Q. Everything we have seen and heard over the last two days,
9 Mr. King -- Mr. Durham had no idea what the allegations were
10 when you got there?

11 A. Mr. King had a clear allegation, I mean, he made a
12 specific allegation. So he knew what he was ...

13 Q. Mr. Durham knew what the allegations ---

14 A. Oh, no. You said Mr. King, I'm pretty sure.

15 Q. Let's cut to the chase. Now, we've been through all of
16 that. There is absolutely no physical evidence in this case,
17 correct?

18 A. Correct.

19 Q. Thank you, ma'am.

20 A. Nothing came back matching the victim or the suspect.

21 Q. I'm sorry?

22 A. Nothing came back from the DNA lab matching the victim or
23 the suspect, but like you had pointed out, he may have
24 changed.

25 Q. And **Minor** continued to say nothing happened?

BRENDA LINK - CROSS-EXAMINATION BY MR. DeJONG

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1 A. Yes.

2 Q. And even from May the 14th of 2016 to ...

3 A. August 19th.

4 Q. I forget the date. August ---

5 A. August 19th, yesterday.

6 Q. --- 19th of 2019 nothing changed from what she ever said,
7 did it?

8 A. She has not changed her statement, no.

9 Q. Now, to your knowledge, if you don't know that's fine, to
10 your knowledge between May the 14th of 2016 through August the
11 19th of 2019 did **Minor** have any contact with her father, Mr.
12 Durham? If you know?

13 A. It would be through a second party, but I heard that she
14 actually had ---

15 Q. Pardon me? I'm sorry.

16 A. It's through second party, but I had actually heard that
17 she did speak with him.

18 Q. And how often? Do you know?

19 A. I don't know the frequency. I do know that he was
20 discussing the case yesterday in the hall with her.

21 Q. Okay. What was the conversation, if you know that?

22 A. He was saying that she -- the witness had actually seen
23 through the window, which wasn't the case.

24 Q. That was not what came out in the courtroom, was it?

25 A. No, but you asked if he talked to her. And that's

BRENDA LINK - CROSS-EXAMINATION BY MR. DeJONG

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1 exactly what was said yesterday.

2 Q. But before then, how often or if at all, you don't know?

3 A. I have no idea how frequent they had spoke from ---

4 Q. Yes, ma'am.

5 A. --- the incident date til yesterday's date, no.

6 Q. Well, indeed, and, in fact, at some point in time during
7 all of this you instructed the mother and ---

8 A. I cannot hear you, sir.

9 Q. At some point in time during all this you instructed the
10 mother and/or Zariah not to talk to him, didn't you?

11 A. I didn't. The judge said that there was a no contact
12 order.

13 Q. Okay. So you did not -- I don't know who really did, you
14 did not start asking Mr. -- I'm sorry, let me turn around.

15 A. Thank you, sir.

16 Q. You did not start asking Mr. Durham any questions until
17 **Minor** was already out of the apartment?

18 A. I didn't really ask him anything then either. He ---

19 Q. Pardon me?

20 A. I said I didn't really ask him anything there either.

21 Q. Okay.

22 A. Officer Ables, as you saw yesterday, was trying to talk
23 to him, and he was yelling back at him.

24 Q. Other than the body-cam we saw yesterday -- and I'm not
25 calling that a statement, but was Mr. Durham ever interviewed

BRENDA LINK - CROSS-EXAMINATION BY MR. DeJONG

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1 again?

2 A. No.

3 Q. Did anybody attempt to interview him?

4 A. I didn't, no.

5 Q. You're the lead investigator, ---

6 A. Yes, I am.

7 Q. --- right?

8 **MR. DeJONG:** One moment, please, Your Honor.

9 (Pause)

10 Q. As the lead investigator how long did you have contact
11 with **Minor**

12 A. Probably less than an hour.

13 Q. Pardon me?

14 A. Probably less than an hour ---

15 Q. Okay.

16 A. --- before her mom took her to the hospital, Easley
17 Baptist Hospital.

18 Q. Okay. And in any of this, as the lead investigator, did
19 Zariah ever change her story?

20 A. She has not.

21 Q. Thank you, ma'am.

22 A. Thank you.

23 **MR. DeJONG:** No further questions.

24 **THE COURT:** Redirect.

25 **MS. OWEN:** Just briefly, Your Honor.

BRENDA LINK - REDIRECT EXAMINATION BY MS. OWEN

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1 **Redirect Examination by Ms. Owen:**

2 Q. Sergeant Link, you've seen the body camera video and you
3 were there. What was the defendant's demeanor like when he
4 got to the door?

5 A. Very hostile from -- not immediately, but, I mean, he
6 said -- when I asked to speak with Miss Land, he said, my
7 wife? And I said, no, your step-daughter. And then I took
8 her outside. And then I took her off to the side. And then
9 Officer Ables, as you saw on the video, read him his Miranda
10 and then he just became very hostile and belligerent.

11 Q. At any point in time did anybody tell Mr. Durham what the
12 allegations were?

13 A. No, not specifically.

14 Q. Okay. And it was your understanding that Ms. Vanessa
15 Durham, **Minor** and Mr. James Durham all lived in this
16 apartment?

17 A. Correct.

18 Q. And I believe she stated yesterday she thought they'd
19 lived there about two years?

20 A. Something like that, yes.

21 Q. So their DNA would be all over the apartment?

22 A. You would expect it to be everywhere, yes.

23 Q. So some items off the couch probably didn't get sent
24 because their DNA would be on those items?

25 A. Correct.

BRENDA LINK - REDIRECT EXAMINATION BY MS. OWEN

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1 Q. Okay. And there is no DNA evidence in this case, is
2 there?

3 A. No.

4 Q. Because by the time Mr. King came and got -- gave you his
5 statement, that was approximately 11:12 am, correct?

6 A. Correct.

7 Q. And you arrived at the apartment at what we believe to be
8 somewhere between 11:45 and 11:49 am, correct?

9 A. Correct.

10 Q. Approximately 30 minutes from the time that he got to the
11 police station and until you arrived?

12 A. Correct.

13 Q. So anything could have happened?

14 A. Yes.

15 Q. Between the time that Mr. King left the apartment and
16 came directly to the police station?

17 A. Correct.

18 Q. I have no further questions. Thank you.

19 **MR. DeJONG:** Nothing on recross, Your Honor.

20 **THE COURT:** All right. Thank you. You may come down.

21 A. Thank you, Your Honor.

22 **THE COURT:** The witness going to stay with us?

23 **MS. OWEN:** I'm sorry, Your Honor?

24 **THE COURT:** The witness will stay with us?

25 **MS. OWEN:** Yes.

LARRY KING - DIRECT EXAMINATION BY MS. OWEN

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1 **THE COURT:** All right. All right. Ladies and gentlemen,
2 let's take a short break. It's about 11:10. We'll call you
3 in about ten minutes. Just -- this is a comfort break. So
4 just go to the jury room. Don't talk about the case, please.
5 We'll call you in about ten minutes.

6 (Whereupon the jury exited the courtroom at 11:08 am)

7 **THE COURT:** Stand at ease for about ten minutes.

8 **MS. OWEN:** Thank you, Your Honor.

9 **MR. HILL:** Thank you, Judge.

10 (Whereupon court was in recess at 11:09 am)

11 (Whereupon court reconvened at 11:31 am)

12 **THE COURT:** Be seated. Thank you. The State ready to
13 proceed?

14 **MS. OWEN:** We are, Your Honor.

15 **THE COURT:** Defense ready to proceed?

16 **MR. KING:** Defense is ready, Your Honor.

17 **THE COURT:** Bring the jury, please.

18 (Whereupon the jury entered the courtroom at 11:32 am)

19 **THE COURT:** I meant to tell everybody when we started
20 that the seats don't have any names on them. Just feel -- sit
21 where you're comfortable. All right. Solicitor, call your
22 next witness.

23 **MS. OWEN:** Thank you, Your Honor. The State would call
24 Mr. Larry King.

25 **MADAM CLERK:** Place your left hand on the Bible, and

LARRY KING - DIRECT EXAMINATION BY MS. OWEN

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1 raise your right hand.

2 **Larry King**, being duly
3 sworn testified as follows;

4 **MADAM CLERK:** Have a seat and state your name for the
5 record, please.

6 **MR. KING:** Larry King.

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

8 Q. Good morning, Mr. King. How are you?

9 A. I'm doing fine this morning.

10 Q. Good. Mr. King, can you tell the jury a little bit about
11 yourself, where you live, where you work?

12 A. Yes, ma'am. I currently live in Liberty, South Carolina.
13 Moved here about 25 years ago. And I am husband, father of
14 five kids. I presently work for Advantage Property
15 Management. I'm a maintenance manager for a maintenance
16 property management firm. And I coordinate all the
17 maintenance and service calls for them. I'm 60 years old and
18 happily married.

19 Q. Can you tell me a little bit about your kids?

20 A. Yes, ---

21 Q. Are they local?

22 A. Yes, ma'am. I have five daughters and a son that --
23 well, I have four surviving daughters now. And my oldest
24 daughter is 42 years old. And my youngest is 25. And I have
25 a son 23 years old. He's the baby of our six children.

LARRY KING - DIRECT EXAMINATION BY MS. OWEN

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1 Q. Okay. And you said you worked for Advance -- Advanced
2 [sic] Property ---

3 A. Property ---

4 Q. --- Management?

5 A. --- Management, yes, ma'am.

6 Q. How long have you been employed there?

7 A. This October will be four years I've been working with
8 Advantage Property Management. I just recently started there
9 after working a ten year tenure at Advantage -- at Andover
10 Park Apartments in Greenville, South Carolina. So I got a
11 better job opportunity. And that's what brought us up here in
12 the Clemson area.

13 Q. Okay. And, Mr. King, what are your duties specifically
14 at Advanced property Management?

15 A. Well, I -- we manage approximately 300, 350 apartments.
16 And I manage all of the maintenance calls and service calls
17 for our different clients that -- the properties that we
18 manage. And so it is my responsibility to make sure that if
19 we have any emergency calls, all those emergency calls are
20 addressed.

21 And there are a lot of -- I'm what you call a hands-on
22 maintenance manager because a lot of things we contract out
23 and other things I go do with my staff. We go out personally
24 to the units and perform maintenance. And that includes the
25 plumbing, electrical, and painting, and the returning the

LARRY KING - DIRECT EXAMINATION BY MS. OWEN

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1 units, you know, during student time we get a mass turnover.

2 And so my job is to get all the units repainted and get all of
3 our students moved back in and ready for school again.

4 Q. And you said four years will be in October of this year,
5 correct?

6 A. That's correct.

7 Q. Okay. In May of 2016 you would have been working for
8 Advanced Property Management?

9 A. Yes, ma'am.

10 Q. Specifically on May 14th, 2016 were you working for
11 Advanced Property Management?

12 A. Yes, ma'am, I was. That's correct.

13 Q. Okay. Can you tell me what happened that day?

14 A. Well, we have what is a 24 hour service call. And that
15 particular weekend I got a service call from our answering
16 service. And I responded to a plumbing problem that we had at
17 one of our -- one of our properties that we manage.

18 And so I got that service call approximately 10:30 that
19 morning. And I proceeded to go to -- because it's a plumbing
20 thing, we consider that stuff to be like emergency,
21 electrical, something like that. So I proceeded to go to the
22 property and to see what the plumbing issue was.

23 And so I knocked on the door, and I was told to come in.
24 So I came in. And I asked the gentleman there what was his
25 plumbing problem. And they said it was the shower was

LARRY KING - DIRECT EXAMINATION BY MS. OWEN

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1 leaking. And so I went in the bathroom and proceeded to see
2 what I needed to get the shower issue addressed.

3 And at that time I seen that I needed parts. I didn't
4 have the parts on my truck. I do have a service truck, but
5 some things we have on the service truck and then some things
6 I have to go to the local hardware or Lowe's, you know, to get
7 the parts that I need.

8 So I left there after about 15 minutes of diagnosing what
9 needed to be done. And I left there to go to Ace Hardware so
10 that I could pick up a shower assembly for them. And I went
11 to Ace, got the part, came back.

12 And when I came back I just -- being that I was on the
13 service call, I didn't knock, I just entered the thing. The
14 door was open. And when I walked in I observed a lewd act
15 being -- well, I observed them having oral sex. I pictured
16 it. And I just immediately like turned my head and proceeded
17 to go to the bathroom.

18 I say I was in shock because it just -- it just hit me.
19 And so I went in the bathroom and contemplated, processed what
20 I just seen and then contemplated what we're going to do here.

21 So I immediately continued, fixed the problem, came out,
22 walked out of the unit and went and got in my truck and called
23 my boss and told him what I just witnessed and that I was
24 intending to go to report this. And at that time my boss
25 agreed. And so I immediately proceeded to the Clemson Police

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Letitia H. Verdin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES ANTHONY DURHAM,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), which is wblitch@scag.gov, this 9th day of September, 2020.

s/Susan B. Hackett

Susan B. Hackett
Appellate Defender