

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

JAN 14 2019

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2018-001498
Lower Court Case No. 2015-CP-42-0996

JAMES BENJAMIN IRBY, #352507,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

J. ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JORDAN COX
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT.

JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 1834
Irmo, SC 29063
803-779-2555
803-753-9732 Fax
jeremyatlaw@yahoo.com

ATTORNEY FOR PETITIONER.

INDEX

Index	i
Pretrial Hearing Transcript dated January 29, 2011	1
 Brenda Sparks Izzara	
Direct.....	13
Cross	20
 Tanya Aldridge	
Direct.....	23
Cross	33
Redirect.....	45
 Danny Morgan	
Direct.....	46
Cross	61
Redirect.....	72
 James Benjamin Irby	
Direct.....	74
Cross	80
Redirect.....	88
Recross.....	89
 Trial Transcript dated November 18-19, 2012	100
 Jury Selection.....	106
 State's Opening Statement.....	143
 Defense's Opening Statement.....	146
 Victim	
Direct.....	150
Cross	157
Redirect.....	163
 Jennifer Turner	
Direct.....	164
Cross	167
 Brenda Sparks Izzara	
Direct.....	168
Cross	178

Tanya Aldridge	
Direct.....	180
Cross	191
Lynn McMillian	
Direct.....	196
Cross	203
Dr. Nancy Henderson	
Direct.....	204
Cross	213
Redirect.....	217
Danny Morgan	
Direct.....	217
Cross	242
Redirect.....	256
Recross.....	258
Lillian Dannette Collins	
Direct.....	264
Cross	266
Redirect.....	270
Recross.....	272
James Benjamin Irby	
Direct.....	273
Cross	276
Redirect.....	281
Gina Odom	
Direct.....	282
Cross	285
Defense's Closing Argument.....	292
State's Closing Argument.....	301
Charge to the Jury	324
Verdict.....	347
Sentencing.....	349
Final Brief of Appellant.....	354
Final Brief of Respondent.....	372

Court of Appeals Opinion.....	397
Remittitur filed March 3, 2015	399
Application for Post-Conviction Relief filed March 9, 2015	401
Application for Post-Conviction Relief filed March 25, 2015	412
Order of Merger and Motion for Merger filed January 5, 2016	423
State's Return dated December 18, 2015.....	428
Clerk of Court Records	437
SCDC Records	441
Amendment to Application for Post-Conviction Relief filed October 30, 2017	445
PCR Hearing Transcript dated November 16-17, 2017.....	449
 Gaye Allen Cook	
Direct.....	468
Voir Dire Cross	473
Resumed Direct.....	474
Cross	486
Redirect.....	501
Recross.....	505
 Bernadette Melissa Smith	
Direct.....	507
Cross	515
 Christopher Brough	
Direct.....	519
Cross	563
Redirect.....	573
Recross.....	576
 Dr. Richard Leo	
Direct.....	578
Voir Dire Cross	582
Voir Dire Direct	603
Voir Dire Cross	607
Resumed Direct.....	627

James Benjamin Irby

Direct.....	648
Cross	684
Redirect.....	704
Recross.....	706

Jennifer A.J. Jordan

Direct.....	708

Dr. Richard Leo (Continued)

Resumed Direct.....	711
Cross	729
Redirect.....	754

Michael J. Prodan

Direct.....	761
Voir Dire Cross	768
Resumed Direct.....	779
Cross	804

Applicant's Exhibit #1	816
Applicant's Exhibit #2	817
Applicant's Exhibit #3	818
Applicant's Exhibit #4	819
Applicant's Exhibit #5	820
Applicant's Exhibit #6	821
Applicant's Exhibit #7	822
Applicant's Exhibit #8	827
Applicant's Exhibit #9	830
Applicant's Exhibit #10	833
Applicant's Exhibit #12	834
Applicant's Exhibit #14	836
Applicant's Exhibit #15	977
Applicant's Exhibit #16	1033

Order of Dismissal filed June 4, 2018	1053
Motion Pursuant to Rule 59, SCRCP, filed June 12, 2018	1081
Order Denying Applicant's Motion to Alter or Amend the Judgment filed June 25, 2018	1110

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 James Benjamin Irby,) 2008-GS-42-1536
6 Defendant.) January 29, 2011
7 Spartanburg, South Carolina
8
9

10 B E F O R E :
11 HONORABLE J. DERHAM COLE, JUDGE
12
13

14 A P P E A R A N C E S :
15 SUSAN SHAVER REESE, ESQUIRE
16 JENNIFER JORDAN, ESQUIRE
Attorneys for the State
17 CHRISTOPHER BROUGH, ESQUIRE
18 Attorney for the Defendant
19
20

21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	BRENDA SPARKS AZZARA (SW)	
4	Direct examination by Ms. Reese	13
5	Cross-examination by Mr. Brough	20
6	TONYA ALDREDGE (SW)	
7	Direct examination by Ms. Reese	23
8	Cross-examination by Mr. Brough	33
9	Redirect examination by Ms. Reese	45
10	DANNY MORGAN	
11	Direct examination by Ms. Reese	46
12	Cross-examination by Mr. Brough	61
13	Redirect examination by Ms. Reese	72
14	JAMES BENJAMIN IRBY (DW)	
15	Direct examination by Mr. Brough	74
16	Cross-examination by Ms. Reese	80
17	Redirect examination by Mr. Brough	88
18	Recross-examination by Ms. Reese	89
19		
20		
21	Certificate	99
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>
S-1	Documents
S-2	DVD
S-3	DVD

<u>ID.</u>	<u>EV.</u>
	13
	13
	13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

NO. DESCRIPTION

ID. EV.

D-1 Transcript

34

Motions

1 (Proceedings June 29, 2011)

2 THE COURT: All right. This is in the matter of the
3 State vs. James Benjamin Irby.

4 What do we have here?

5 MS. REESE: Your Honor, the state would have two
6 pretrial motions in this case, the first being a simple
7 rape shield motion prohibiting the defendant from
8 mentioning sexual activity by a 13-year-old with any other
9 person other than himself; and the second would be a Boiter
10 motion regarding prior allegations, that she not be
11 cross-examination -- cross-examined on any information
12 given about any prior allegations that she may have made.

13 THE COURT: All right. Mr. Brough, which one do you
14 want to start with?

15 MR. BROUGH: I'm taking them in the order she laid
16 them out, Your Honor.

17 THE COURT: Okay.

18 MR. BROUGH: In terms of the rape shield statute, at
19 this point in time we're not planning on going through any
20 sort of previous sexual activities that the child has.

21 However, we do reserve the right should the state make
22 some sort of argument that the only way she would have
23 sexual knowledge of this type is that if she had sex with
24 my client -- at that point in time I believe it would be
25 relevant to show an alternative source of knowledge. But

Motions

1 if they're not going to do that, I don't see the need to go
2 into that.

3 THE COURT: All right. Ms. Reese.

4 MS. REESE: Your Honor, this is a 13-year-old child.
5 She's not of an age that we would argue that she had no
6 other way to know this. So that wouldn't -- I don't think
7 that's going to come up.

8 THE COURT: All right. Well --

9 MR. BROUGH: I'm sorry, Your Honor.

10 In terms of that issue, there was some statements made
11 by Detective Danny Morgan, as well as by the mother, that
12 there were previous incidents of sexual abuse to victim .

13 So if they are going to argue that we do intend to go
14 into that line of questioning, if they're going to argue
15 the only reason she would have any kind of sexual knowledge
16 is if my client, you know, acted inappropriately with her.

17 THE COURT: Well, I think I understood Ms. Reese to
18 say she does not intend to go into that.

19 Is that a fair statement?

20 MS. REESE: Yes, Your Honor.

21 THE COURT: All right. That motion is agreed to.

22 MS. REESE: Your Honor, our second motion would be a
23 Boiter motion.

24 The state -- this child does have a prior allegation.
25 She did report at the age of seven being forced to perform

Motions

1 oral sex on older boys on a school van while attending a
2 field trip at Mt. Sinai Christian School in Greenville.

3 She reported the event to the school. It was
4 investigated by law enforcement. Two boys were convicted
5 in that matter. A third gave testimony regarding what they
6 saw.

7 Your Honor, obviously these are not false allegations.
8 We do not believe that they have any relevance here, and we
9 would just ask under Boiter that the defense not be allowed
10 to cross-examine the child or talk to the child about these
11 allegations.

12 THE COURT: Mr. Brough.

13 MR. BROUGH: Your Honor, we don't plan to go into the
14 substance of any kind of allegations regarding past sexual
15 instances.

16 Again, but in terms of the seriousness in which, you
17 know, the Court has taken those allegations in the past,
18 you know, it would be our position that given the victim's
19 dislike of my client that she potentially knowing how the
20 system could have worked could have used her previous
21 experiences to her benefit in this situation.

22 THE COURT: Well, I'm not sure I understand.

23 You want -- you plan -- you -- you're intending to
24 offer evidence that this child has been sexually abused by
25 other people in order to prove some bias on her part in

Motions

1 this case?

2 MR. BROUGH: Just that she would have a means of
3 knowing how the system would work in terms of what would
4 take place as to the seriousness in which the allegation is
5 treated in that she did not care for my client who was the
6 stepfather. She wanted him gone. She would have some bias
7 towards him, and this would be a means of getting rid of
8 him.

9 THE COURT: Well, let me ask it one more time.

10 Are you telling me that you intend to offer evidence
11 of prior sexual abuse of the victim in this case in your
12 case?

13 MR. BROUGH: Your Honor, we don't --

14 THE COURT: In other words, you want to introduce
15 evidence that this child has been victimized in other
16 instances besides the one the state is alleging now?

17 MR. BROUGH: Your Honor, the only thing that we would
18 ask is if she indicates that she -- through her
19 cross-examination that she has some sort of bias against my
20 client, that we be allowed to do in-camera hearing at that
21 time. She --

22 THE COURT: Well, I don't think you're going to
23 find -- if she testifies she's going to have some bias
24 towards your client. She's accusing him of sexual
25 misconduct, I'm guessing. So I think that's going to

Motions

1 establish a bias.

2 MR. BROUGH: Well, I understand that, but in terms of
3 wanting him gone as the stepfather, wanting him out of the
4 house because he is the stepfather, and wanting him out of
5 the house preceded the allegations is my understanding.

6 THE COURT: All right. Well, I'll be happy to
7 consider any evidence you want to offer in that regard.

8 We'll do that -- well, we can do it now, or we can do
9 it any time you want to if you intend to proffer such
10 testimony.

11 I, quite frankly, don't see that it's going to be
12 admitted, but perhaps I'm not understanding the context of
13 it and perhaps something could come up during the course of
14 the trial that would make that evidence relevant to some
15 point. But I'm not -- I'm not seeing the relevance right
16 at this minute.

17 MR. BROUGH: All we're asking is that if something
18 comes up at the trial that might make it relevant we be
19 allowed to deal with it at that time.

20 THE COURT: Oh, well, all of these are pretrial
21 motions and all -- any in-camera ruling is subject to
22 alteration if trial testimony or evidence makes it
23 otherwise relevant and therefore admissible.

24 So, anyway, do I understand at the present time you --
25 you do not intend to offer such evidence, but if during the

Motions

1 course of the trial it becomes relevant on some point, then
2 you would wish to introduce it and at that time we would
3 take it up outside the jury's presence?

4 MR. BROUGH: Yes, sir.

5 THE COURT: Okay.

6 MS. REESE: That's all the state would have as far as
7 our motions, Your Honor.

8 THE COURT: Okay.

9 MR. BROUGH: Your Honor, the defense would have two
10 motions.

11 The first is for a Jackson vs. Denno hearing to
12 determine which statements, if any, the state intends to
13 introduce into evidence and to determine the admissibility
14 of those statements.

15 The second motion would be a motion in limine to
16 prevent the state from introducing any evidence dealing
17 with an uncharged incident regarding a minor 1
18 And any sort of sexual misconduct on that instance, we
19 would seek to have a motion in limine on that.

20 THE COURT: Are these -- do you have these written
21 motions, or are you just making them as oral motions?

22 MR. BROUGH: These are oral motions, Your Honor.

23 THE COURT: All right. Motion to exclude any evidence
24 relating to any allegations against your client made by
25 who?

Motions

1 MR. BROUGH: By a minor 1

2 THE COURT: All right. And is that the only two
3 motions you have?

4 MR. BROUGH: Yes, sir.

5 THE COURT: All right. Well, of course Jackson vs.
6 Denno -- I guess we'll take that up.

7 MS. REESE, what about the motion to exclude any
8 evidence relating to allegations made against this
9 defendant by minor 1 ?

10 MS. REESE: Your Honor, we have no intention of
11 offering any information from minor 1 at this
12 trial.

13 As the defense stated, we too would reserve the right
14 if something were to be said or were the defendant to
15 testify, we would at that time ask for an in-camera hearing
16 if the impression became relevant.

17 THE COURT: All right. It appears the motion is
18 agreed to depending upon evidence developed at trial.

19 All right. So the remaining motion is the Court's
20 determination as to the voluntariness of any statement?

21 MS. REESE: Yes, sir.

22 MR. BROUGH: Yes, sir.

23 THE COURT: Okay.

24 MS. REESE: Your Honor, for the record, I'm offering
25 state's Exhibits 1, 2 and 3 for purposes of this hearing.

Motions

1 State's Exhibit 1 is a packet of different statements
2 and forms. It contains what I have indicated as Form No.
3 1, which is a Miranda form from November 14th done by Tonya
4 Aldredge with the defendant; statement No. 1, which is the
5 dictation of the DSS worker who took a verbal statement
6 from the defendant. I have indicated through highlighting
7 which parts of this dictation we are offering.

8 State's Statement 2, which, again, is dictation from
9 that same caseworker. And I have highlighted the statement
10 which we are intending to offer.

11 Statement 3, which is a statement taken from the
12 defendant on December 5th at 11:00 a.m. that he signed and
13 wrote, a rights form from Detective Danny Morgan. That was
14 done on -- at 11:00 a.m. on the 5th of December of 2007.

15 A polygraph form that was done at that same time, Your
16 Honor, on the 5th of December at 11:00 a.m.

17 A 5-page statement written by Detective Morgan for the
18 defendant with the defendant's signature and initials
19 labeled Statement 4; and a 1-page statement again written
20 by Detective Morgan. In that he also -- the defendant also
21 signed that. I've labeled that Statement 5. .

22 I've also included in this packet a proposed Statement
23 5. Your Honor, in Statement 5 the defendant talks about
24 and Detective Morgan talks about the allegations of
25 minor 1 . So I have made that a part of the

Brenda Sparks Azzara
Direct examination by Ms. Reese

1 packet. But I've also put in a proposed Statement 5, which
2 would be a redacted version of that statement which would
3 take out any mention of minor 1 .

4 That is the packet I'm offering as State's Exhibit 1
5 for the purposes of this hearing. Mr. Brough has a copy of
6 that.

7 THE COURT: Okay. That's State's Exhibit No. 1.

8 (Documents marked State's Exhibit No. 1; DVD marked
9 State's Exhibit No. 2; DVD marked State's Exhibit No. 3.)

10 MS. REESE: Yes, Your Honor. Statement -- I mean,
11 State's Exhibit No. 2 and 3 would be the two polygraph
12 tapes, Your Honor, for Your Honor's review, and it would be
13 the polygraph in its entirety.

14 THE COURT: Has that State's Exhibit No. 1 got nine
15 separate items in it?

16 MS. REESE: Yes, Your Honor.

17 THE COURT: Okay. All right. Do you want to call
18 your first witness?

19 MS. REESE: Your Honor, the state would call Brenda
20 Sparks Aczara.

21 BRENDA SPARKS AZZARA, having
22 been first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MS. REESE

24 Q Will you state your name, please?

25 A Brenda Azzara.

Brenda Sparks Azzara
Direct examination by Ms. Reese

1 Q Will you spell your last name?

2 A A-Z-Z-A-R-A.

3 Q And in December of -- November and December of 2007
4 where were you employed?

5 A The Department of Social Services based in Spartanburg
6 County.

7 Q And are you still working there?

8 A No. I retired in November of 2010.

9 Q And during the time that you were working at the
10 Department of Social Services what -- at this time what was
11 your name?

12 A Brenda Sparks.

13 Q And you have since been married, is that right?

14 A Yes. That's correct.

15 Q Did you have occasion on the 14th of November to meet
16 with the defendant, James Irby?

17 A Yes, I did.

18 Q And where did you meet with him?

19 A At the Spartanburg County Department of Social
20 Services in my office.

21 Q How did he come to you?

22 A He came just by his personal vehicle with his wife,
23 Ms. Collins.

24 Q Was he under any type of arrest at that time?

25 A No, he was not.

Brenda Sparks Azzara
Direct examination by Ms. Reese

1 Q Now, did you have a detective present with you while
2 you were questioning him?

3 A Yes. Detective Tonya Aldredge was present.

4 Q And how did that come about?

5 A I had called her and invited her to the interview.

6 Q But this, in effect, was your interview, is that
7 correct?

8 A Yes.

9 Q And when you interviewed him did you interview him by
10 himself, or was someone else present?

11 A His wife, Lillian Dannette Collins, was present as
12 well.

13 Q And she's also the mother of the alleged victim in
14 this case?

15 A That's correct.

16 Q At the time that he came to you did detective Aldredge
17 read him a rights form in your presence?

18 A She read him his Miranda rights and also had him sign
19 a preinterrogation waiver form.

20 Q And I'm going to show you what's in exhibit -- State's
21 Exhibit 1, what I've labeled as Form 1. Is that the rights
22 form that Tonya Aldredge --

23 A It is.

24 Q -- did in your presence?

25 A It is.

Brenda Sparks Azzara
Direct examination by Ms. Reese

1 Q Okay. And after she took that information from him
2 did she -- did she ask him any questions or did you ask him
3 any questions?

4 A I basically conducted the interview that day.

5 Q And did you -- at the time that you talked to him did
6 he appear to be under the influence of any alcohol or
7 drugs?

8 A No. He was not.

9 Q Did he appear to be suffering from any mental
10 infirmity or illness that would affect his judgment?

11 A No.

12 Q Did he ever say I don't want to do this, I don't want
13 to talk to you?

14 A No. He talked freely and willingly the whole --
15 during the whole interview.

16 Q In your presence did Detective Aldredge ever threaten
17 him or coerce him?

18 A No, she didn't.

19 Q And did he, in fact, give you a verbal statement?

20 A Yes.

21 Q I'm going to show you what in State's Exhibit 1 is
22 what we've listed as Statement 1 or indicated as Statement
23 1 in the packet. Can you tell us what that is?

24 A This is a copy of the written dictation. It's called
25 CAPS, a system that DSS uses for us to record interviews.

Brenda Sparks Azzara
Direct examination by Ms. Reese

1 Q And did you in effect record the information he was
2 giving you at the time of the interview?

3 A Yes.

4 Q And would you please read the portion of that
5 statement that the defendant -- or the information the
6 defendant gave you on that day?

7 A "Ms. Irby states that these allegations are not true
8 and nothing ever happened. He states that this all started
9 one day when he came home when victim " -- which is the
10 victim child, also known as victim -- "was cleaning her
11 room. He told her to clean her room and that if he did not
12 see progress soon she would not be going to Biltmore
13 Estates with her class at school. He states that he and
14 Ms. Collins discussed discipline issues and the fact that
15 victim has a hard time coping and has problems at school.
16 Things have been going fine, but when they try to
17 discipline Lillian's family tries to interfere and this has
18 caused a lot of problems. Lillian's dad grabbed her by the
19 neck and tried to get her to allow the baby to stay with
20 them. He states that the evening they told victim she
21 could not go on the field trip she got mad and went into
22 her room. He states that they heard her in her room and he
23 thinks that the T.V. was on. And the next thing he knew
24 Jennifer" -- who is mom's sister -- "and the police were
25 there. He states that when he came into the family

Brenda Sparks Azzara
Direct examination by Ms. Reese

1 Dannette or Lillian did not have control of the kids.
2 They've been together almost one year. They were married
3 in July. His father -- her father is Dusty Collins, Jr.
4 Mr. Irby states that they have tried all kinds of
5 discipline and nothing has worked. He states he went to
6 the school because of problems she was having there. She
7 was misbehaving in school and being rude to the teacher and
8 to the principal, and this was at Berry Shoals. This was
9 year before last. He states that after this victim went to
10 her grandmother's house and she was supposed to be on
11 punishment but the grandparents gave her pizza. He states
12 that he had never been in an atmosphere where kids and a
13 child were acting" --

14 THE COURT: Ms. Aczara, let me stop you just a minute.

15 Ms. Reese, since this hearing is for the purpose of
16 determining whether or not any statement was voluntary,
17 does it matter what was stated?

18 MS. REESE: No, Your Honor. I just wanted -- because
19 we're taking out portions of it that he did not say, I just
20 wanted to be clear for the record what we were offering.
21 And when I talked to Mr. Brough he asked that she testify
22 to it.

23 THE COURT: Well, I thought you had highlighted what
24 you were offering.

25 MS. REESE: I did, Your Honor.

Brenda Sparks Azzara
Direct examination by Ms. Reese

1 THE COURT: So is she just reading the highlighted
2 portions?

3 MS. REESE: Yes, sir.

4 THE COURT: Mr. Brough, is it necessary for her to
5 read it if we know what it is?

6 MR. BROUGH: No, Your Honor. I think most of our
7 concerns were dealt with with the suppression issue with
8 minor 1

9 MS. REESE: Okay.

10 THE COURT: Oh, okay. You don't need to read any
11 more. Thank you.

12 Q Was that -- and what is highlighted in there is the
13 sum total of the information he gave you on that day, is
14 that correct?

15 A Well, that's the first part of the interview.

16 Q Okay.

17 A It didn't deal directly with the allegations, but that
18 is later in this same statement.

19 Q Okay. But the stuff -- all of this highlighted
20 information --

21 A Yes.

22 Q -- is what he told you that day, is that correct?

23 A That's correct.

24 Q Okay. And I ask you to look at the next thing, which
25 is statement 2 in that packet. Did you have occasion to

Brenda Sparks Azzara
Cross-examination by Mr. Brough

1 speak with Mr. Irby again?

2 A Yes. I went to his home on November the 9th of 2007
3 at 10:50 -- well, 8:45 a.m.

4 Q Okay. And at that time did he make a spontaneous
5 statement to you regarding this incident?

6 A He did.

7 Q And that information is highlighted in Statement 2.
8 It's just one line, is that correct?

9 A That's correct.

10 Q And at that time did you have a detective with you?

11 A No. I was by myself.

12 Q Okay. And was that the -- are those the sum total of
13 information Mr. Irby gave you about these allegations
14 during your investigation?

15 A It is.

16 Q And to your knowledge were any -- were all of these
17 statements voluntarily given to you?

18 A They were.

19 MS. REESE: We have nothing further of this witness.

20 MR. BROUGH: If I may, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. BROUGH

23 Q Ms. Azzara --

24 A Azzara.

25 Q Azzara. I'm sorry. In your interview you said that

Brenda Sparks Azzara
Cross-examination by Mr. Brough

1 Detective Aldredge was also present.

2 A She was.

3 Q Was there any conversation between you and Mr. Irby
4 regarding further interviews or polygraph examinations?

5 A Yes. I believe he told me later that he didn't
6 believe in polygraphs and he would not submit to one.

7 Q Do you remember exactly what he said when he said he
8 would not submit to one? Did he say he didn't believe in
9 them?

10 A I think that's the gist of what he said. It's in this
11 statement somewhere, but I don't see it right now.

12 Q Look on the second page of that statement.

13 A Statement 1?

14 Q Statement 1, second page, the last paragraph. Did he
15 say he didn't believe in polygraph tests?

16 A "Mr. Irby states that he does not believe in the
17 polygraph test and will not consent to one."

18 Q Was there a conversation about future interviews at
19 the sheriff's office that took place?

20 A Well, the day that I went to his home I told him the
21 investigation would continue and that there would be more
22 interviews.

23 Q On that first initial meeting was there a conversation
24 about additional interviews including polygraph tests?

25 A I don't think so.

Brenda Sparks Azzara
Cross-examination by Mr. Brough

1 Q Did you ask him about taking a polygraph?

2 A I asked him if he was willing to submit to a polygraph
3 with the sheriff's office, and that was when he said that
4 he didn't believe in them and would not submit to one.

5 However, I think the sheriff's detectives interviewed
6 him later with their own investigation and he did submit.

7 Q Did he say that he didn't want to be questioned any
8 more?

9 A No, he didn't. He never asked for an attorney. He
10 didn't -- he gave every statement willingly and freely.

11 Q But at that time he didn't make any admissions of
12 guilt, correct?

13 A No. He denied the allegations.

14 Q Okay.

15 MR. BROUGH: No further questions.

16 MS. REESE: Nothing further.

17 THE COURT: You may step down.

18 MS. REESE: Your Honor, may this witness be excused?

19 THE COURT: She may be.

20 (Whereupon, the witness was excused.)

21 MS. REESE: Our next witness, Your Honor, is Tonya
22 Aldredge.

23

24

25

Tonya Aldredge
Direct examination by Ms. Reese

1 TONYA ALDREDGE, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. REESE

4 Q Can you state your full name?

5 A Tonya Keith Aldredge.

6 Q And at the time in November of '07 and December of
7 '07 where were you employed?

8 A Spartanburg County Sheriff's Office.

9 Q And what were your duties at that time?

10 A I was a criminal investigator.

11 Q And did you have occasion to investigate a case
12 regarding the defendant, James Irby?

13 A I did.

14 Q And did you meet with him on November the 14th of
15 2007?

16 A I did.

17 Q I'm going to show you what's State's Exhibit 1 marked
18 as Form 1. Do you recognize that form?

19 A Yes. It's a preinterrogation waiver form.

20 Q Did Mr. Irby sign this on the 14th?

21 A He did.

22 Q And at that time where was he?

23 A DSS.

24 Q And was he in any kind of custody?

25 A No, he was not.

Tonya Aldredge
Direct examination by Ms. Reese

- 1 Q Was he under the influence of drugs or alcohol?
- 2 A No, he was not.
- 3 Q Did he have any problems understanding you or appear
- 4 to be suffering from any mental problems?
- 5 A No, ma'am.
- 6 Q Did he answer your questions freely and voluntarily?
- 7 A He did.
- 8 Q Did he ask for an attorney?
- 9 A No, ma'am.
- 10 Q Did he ever ask that you not question him any further?
- 11 A No, ma'am.
- 12 Q During the time that you were at DSS between you and
- 13 Brenda Azzara or Brenda Sparks, who did the questioning of
- 14 him that day?
- 15 A Brenda.
- 16 Q And you simply were present, is that correct?
- 17 A I was.
- 18 Q At some point did you have an occasion after that day
- 19 to talk with him again?
- 20 A I did.
- 21 Q Did you see him at the detention center on November
- 22 the 30th of 2007?
- 23 A I did.
- 24 Q And did you have a purpose in going -- first of all,
- 25 do you know why he was in the detention center?

Tonya Aldredge
Direct examination by Ms. Reese

1 A He was there on a family court issue.

2 Q Okay. And did you go there for any particular purpose
3 on the 30th?

4 A I did.

5 Q And what was that?

6 A To ask him again if he would take the polygraph test.

7 Q And did you read him his rights that day?

8 A I did.

9 Q Did -- did you record that in a form of any kind?

10 A I did, but I cannot locate the form.

11 Q Okay. And that was just the 30th when you went down
12 to ask him if he wanted to take a polygraph.

13 A Yes.

14 Q Did -- what did he tell you at that time about a
15 polygraph?

16 A He said he would take it.

17 Q Okay. And was there any questioning or anything that
18 went on that day?

19 A No.

20 Q Did you, in fact, set up that polygraph?

21 A Yes.

22 Q And that was set up for December the 5th?

23 A Yes.

24 Q Did you go back to the detention center to retrieve
25 him on that day?

Tonya Aldredge
Direct examination by Ms. Reese

1 A I did.

2 Q And what did you do? Did you pick him up from the
3 detention center?

4 A I picked him up and brought him to the sheriff's
5 office.

6 Q Did you talk to him on that day --

7 A Yes.

8 Q -- regarding the allegations?

9 A Yes, ma'am.

10 Q And how long would you say that you spoke with him
11 that day initially?

12 A It wasn't long, ten or 15 minutes.

13 Q Okay. And in that ten or 15 minutes did you ask him
14 to do anything regarding his -- his statements about this
15 incident?

16 A I asked him to write a statement.

17 Q And did he agree to do that?

18 A He did.

19 Q Now, he was in custody.

20 A He was.

21 Q Did -- and you had read him his rights on the 14th and
22 again on the 30th, is that right?

23 A Yes.

24 Q At the time that he wrote this statement did you
25 question him about this statement? What was the procedure

Tonya Aldredge
Direct examination by Ms. Reese

1 for him writing this statement?

2 A I just asked him to tell me in his own words what had
3 happened.

4 Q And did he write the statement himself?

5 A He did.

6 Q In the time that you spoke with him did he appear to
7 be under the influence of any drugs or alcohol?

8 A No.

9 Q Did he appear to be having any problems understanding
10 you?

11 A No.

12 Q Did you threaten him or coerce him in any way?

13 A No, ma'am.

14 Q And you just had him write the statement, is that
15 correct?

16 A That's it.

17 Q And that took how long?

18 A Thirty minutes.

19 Q Okay. In total. And I'm going to show you -- or you
20 can look there in that packet, what's marked as Statement
21 3. Do you recognize that?

22 A Yes, ma'am. That's a statement he gave me on the
23 5th of December.

24 Q Okay. And this is a statement he wrote on his own.

25 A Yes, ma'am.

Tonya Aldredge
Direct examination by Ms. Reese

1 Q And did you question him regarding that statement in
2 any way?

3 A No, ma'am.

4 Q After he finished that statement, what did you do?

5 A I took him to the polygraph operator.

6 Q Okay. And that was Detective Danny Morgan.

7 A Yes, ma'am.

8 Q At the time or as he was writing this statement did
9 he -- did he give you any admissions in that statement or
10 on that day?

11 A No, ma'am.

12 Q To you?

13 A No, ma'am.

14 Q So this statement that you took from him in Statement
15 No. 3 was a statement again of denial, is that correct?

16 A Yes, ma'am. He denied the allegations.

17 Q And you took him to Detective Morgan at that time for
18 a polygraph.

19 A Yes.

20 Q Did you have occasion to see him again during the day
21 after Detective Morgan had spoken with him?

22 A I did.

23 Q And did you, in fact, have to transport him at any
24 time during the day?

25 A I did. I had to transport him back to the courthouse.

Tonya Aldredge
Direct examination by Ms. Reese

1 Q Okay. What time -- about what time -- do you have any
2 idea what time Detective Morgan started talking to him?

3 A I really don't know what time the polygraph started.

4 Q Okay.

5 A He -- Detective Morgan started talking to him before
6 lunch.

7 Q Okay. And after some time why did you have to
8 transport him? What happened that you had to come in
9 contact with him again?

10 A I was notified that he needed to be in family court.

11 Q And what did you do?

12 A I brought him to the courthouse.

13 Q How long were you with him?

14 A At the courthouse, it was about an hour.

15 Q Okay. And after you took him to the courthouse what,
16 if anything, did you do before going back to Detective
17 Morgan?

18 A Stopped at McDonald's and got him something to eat.

19 Q And did he eat?

20 A Yes, he did.

21 Q And did you take him back to Detective Morgan at that
22 time?

23 A I did.

24 Q Were you present for portions of this interview or
25 viewing portions of this interview with Detective Morgan?

Tonya Aldredge
Direct examination by Ms. Reese

1 A Parts of it.

2 Q During the time that you witnessed those portions did
3 you ever witness any threats or coercion by Detective
4 Morgan?

5 A No, ma'am.

6 Q Did you -- and at the time that you were transporting
7 him did the defendant make any statement to you that he
8 didn't want to be questioned, that he wanted an attorney,
9 that he didn't want to go back to see Detective Morgan?

10 A No, ma'am.

11 Q At some point were you asked to notarize a statement
12 for the defendant?

13 A Yes, ma'am.

14 Q And how did that come about?

15 A After the interview was finished, Detective Morgan's
16 interview was finished, I was asked to witness his
17 statements.

18 Q Okay. And so on Statement No. 4 that's in this packet
19 are you -- did you, in fact, sign as the notary on those
20 statements?

21 A I did.

22 Q Did you go into the polygraph room to interact with
23 the defendant while you were notarizing this statement?

24 A I just went to -- to notarize it.

25 Q Do you remember if at the times that you were

Tonya Aldredge
Direct examination by Ms. Reese

1 notarizing these statements the defendant made any comment
2 to you about whether or not he had been completely honest
3 with you before?

4 A He apologized for not being completely truthful.

5 Q And you notarized that 5-page statement, is that
6 correct?

7 A It is.

8 Q Did the defendant appear any different to you in his
9 demeanor or attitude from when you had dropped him off?

10 A No, ma'am.

11 Q Did he seem to be suffering from any kind of mental
12 issue? Was he upset, was he asking for an attorney,
13 anything like that?

14 A No, ma'am.

15 Q After the 5-page statement was given did you and/or
16 did -- was there a break taken between questioning of the
17 defendant?

18 A After he took the polygraph?

19 Q Yes.

20 A After he took the polygraph I had took him back to the
21 jail.

22 Q Okay. Was -- there was a 5-page statement given, and
23 then there was another 1-page statement given, is that
24 correct?

25 A Yes.

Tonya Aldredge
Direct examination by Ms. Reese

1 Q What happened between that 5-page statement and that
2 1-page statement, do you know?

3 A I do not recall.

4 Q At some point were you called back into Detective
5 Morgan's office to notarize another statement?

6 A I was.

7 Q And, again, this is Statement No. 5. Did you, in
8 fact, notarize the statement of James Irby as Statement No.
9 5?

10 A I did.

11 Q And did you interact with him again in a limited way?

12 A Limited.

13 Q Okay. At that time did he still appear to be thinking
14 clearly?

15 A Yes, ma'am.

16 Q Was he communicative? Did you have any problems
17 understanding him, or did he ask for an attorney at any
18 time?

19 A No, ma'am.

20 Q Did he tell you that he had been threatened or coerced
21 at any time when you talked to him?

22 A No, ma'am.

23 After he gave these statements did you transport him
24 back to the detention center?

25 A I did.

Tonya Aldredge
Cross-examination by Mr. Brough

1 Q And was that the end of your interaction with him?

2 A It was.

3 MS. REESE: Nothing further of this witness.

4 MR. BROUGH: May it please the Court.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. BROUGH

8 Q Detective Aldredge, when you went to go see Mr. Irby
9 at the detention center was it your intent that he take a
10 polygraph at some point on that day?

11 A Yes.

12 Q And that was on the December the 5th.

13 A Whatever day it was he took it. I'm sorry.

14 Q Okay. Now, your initial contact with Mr. Irby
15 occurred November 14th when Ms. Brenda Sparks Azzara had
16 invited you, correct?

17 A Yes.

18 Q And you were present for that conversation?

19 A I was.

20 Q And at that time Mr. Irby did indicate he did not wish
21 to take a polygraph test.

22 A He did.

23 Q Okay. Now, I believe you testified you went to see
24 Mr. Irby on November the 30th at the detention center, is
25 that correct?

Tonya Aldredge
Cross-examination by Mr. Brough

1 A I don't have the papers up here with the dates on it.

2 Q Okay. Well, you just testified to them, did you not,
3 that you went to see him on November 30th?

4 A To the -- to the jail?

5 Q Yes.

6 A Yes.

7 Q Do you remember testifying in the Department of Social
8 Services vs. Lillian Collins and James Irby, etc., on July
9 30th of 2008?

10 A I remember some of it. I don't remember the whole
11 testimony.

12 Q Okay. I show you -- this is -- marked for I.D.
13 purposes -- Defendant's 1 for the purposes of this hearing.
14 It's a transcript consisting of 75 pages.

15 (Transcript marked Defendant's Exhibit No. 1.)

16 Q Ms. Arledge, I'm going to hand you a copy of this and
17 represent to you that this is a copy of your sworn
18 testimony in front of Judge Fraley on July 30th of 2008
19 beginning on page 13.

20 If you could review that testimony for me, ma'am, and
21 answer whether or not you ever mentioned meeting with
22 Mr. Irby in any of that questioning on November the 30th.

23 A On November the 30th?

24 Q Yes.

25 A I'm sorry. I'm studying right now.

Tonya Aldredge
Cross-examination by Mr. Brough

1 Q Take your time.

2 THE COURT: Well, let me ask you this.

3 Ms. Reese, do you and Mr. Brough know the answer to
4 the question?

5 MR. BROUGH: I believe it's not in there, Your Honor.

6 MS. REESE: It's not in there, Your Honor.

7 THE COURT: Okay. It's not in there.

8 THE WITNESS: Okay.

9 MS. REESE: I believe the -- the person asked her if
10 she met with him on the 14th and then asked him about the
11 statement on the 5th. I'm not sure anybody mentions the
12 30th in that.

13 THE COURT: The question was whether or not she had
14 testified to having met with the defendant on the 30th.

15 MS. REESE: Right.

16 THE COURT: As I understand it, y'all agree that she
17 did not testify to that in that hearing.

18 MS. REESE: No, Your Honor.

19 MR. BROUGH: No, Your Honor.

20 THE COURT: No, you don't agree or no --

21 MR. BROUGH: I'm sorry. We agree she did not testify
22 to that, Your Honor.

23 Q Detective Arledge, is it the policy of the Spartanburg
24 County Sheriff's Office that when you interview a suspect
25 that you're supposed to advise them of their rights in a

Tonya Aldredge
Cross-examination by Mr. Brough

1 preinterrogation form?

2 A Most definitely.

3 Q Is that to ensure that you actually advise them of
4 their rights?

5 A It is.

6 Q Okay. Now, in Mr. Irby's case you never gave him or
7 had him sign any preinterrogation waiver form on
8 December the 5th, is that correct?

9 A I read him his rights. I believe he signed a
10 preinterrogation form, but I cannot locate that form. As a
11 matter of fact, in that hearing he told the judge I did
12 read him his rights.

13 Q Do you recall being asked the following question if
14 you would refer to -- let me refer to page 27 of the
15 transcript, ma'am.

16 A Okay.

17 Q Beginning on line 11 were you asked the following
18 question:

19 "Q But you never again advised him of
20 his rights on December 5th.

21 And your answer:

22 "A I'm not finding the form here, but I
23 always do, so I know I did, but I can't show
24 you the form right now.

25 A That's correct.

1 Q And do you recall the following question and answer:

2 "Q So you don't have it.

3 "A I'm not saying I don't have it. I'm
4 saying I can't locate it right now, but I'll
5 keep looking for it.

6 A That's correct.

7 Q That hearing was on July 30th of 2008, correct?

8 A The family court hearing?

9 Q Yes, ma'am.

10 A I'm assuming it is, yes, July -- no that's January.

11 Q Have you found the form yet?

12 A I have not.

13 Q Okay. Now, do you recall being asked the following
14 question:

15 "Q So you never gave someone a written
16 form which actually tells them what their
17 rights are, that they have the right to stop
18 answering questions, that they don't have to be
19 subject to several hours of interrogation.

20 "A You asked me if I read him his
21 rights, and I said he signed the waiver.
22 Do you recall that exchange?

23 A Yes.

24 Q And do you recall the exchange:

25 "A You asked me."

Tonya Aldredge
Cross-examination by Mr. Brough

1 "Q Yes. Did he do that on
2 December 5th in terms of the rights?
3 And your answer was?

4 "A I can't swear to that right now."
5 Do you recall that?

6 A Yes.

7 Q So at that time in 2008 you could not swear to the
8 fact that you ever gave him his rights on December the 5th,
9 correct?

10 A Yes.

11 Q And you were under oath at that time. Is that also
12 correct?

13 A Yes.

14 Q But now you're telling me you can swear to the fact
15 that you gave him his rights today.

16 A I didn't say I always read people their forms before
17 they gave -- give a written statement. And he told the
18 judge that day that he did -- I did read him his rights.

19 MR. BROUGH: I want to object. That's hearsay, and
20 ask that it be struck. I believe that --

21 THE COURT: Well, it's in the transcript, is it not?

22 THE WITNESS: It is not.

23 THE COURT: It is not?

24 THE WITNESS: It is not.

25 THE COURT: Oh, I'm sorry.

Tonya Aldredge
Cross-examination by Mr. Brough

1 THE WITNESS: I believe it was after the hearing was
2 over.

3 THE COURT: It's a statement made by the defendant,
4 so.

5 MR. BROUGH: I understand.

6 THE COURT: Overruled.

7 BY MR. BROUGH

8 Q Now, Mr. Irby was scheduled to be in family court on
9 December the 5th, correct?

10 A Yes, sir.

11 Q So you picked him up at the detention center on
12 December the 5th at what time, do you recall?

13 A Not exactly what time, no, I don't.

14 Q And he gave you a written statement consisting of two
15 pages in his own handwriting at 11:00 a.m. on December 5th,
16 is that correct?

17 A I've got to find the statement. This is the wrong
18 packet. Do you have that? 11:00 a.m. on December 5th,
19 yes.

20 Q Now, in that statement there was a reference to the
21 child making a sexual advance to Mr. Irby asking him if he
22 wanted her to -- him to smell her cookies, correct? Is
23 that in --

24 A I'd have to read the statement.

25 Q I'll get it. Is that in there -- page two?

1 A Thank you. Yes. It does say that the child asked
2 her -- asked him that.

3 Q So there's some sort of inappropriate sexual conduct
4 referenced in that statement, correct?

5 A On the child's part.

6 Q But there's an inappropriate interaction between the
7 two of them, correct?

8 A He states there was, yes.

9 Q Okay. Now, after Mr. Irby gave you that statement at
10 11:00 o'clock, how long before he went to see Detective
11 Morgan? Was it immediately after? Just what was the delay
12 between you taking him from you to Detective Morgan?

13 A It was immediately after he -- he gave this statement.

14 Q And you transported Mr. Irby to a family court
15 hearing, correct?

16 A I did.

17 Q Were you on time or were you late to that hearing?

18 A I don't recall that.

19 Q Do you recall that the hearing was at 2:00 o'clock?

20 A I believe it was, but I don't recall if we were right
21 on time.

22 Q Okay. The timeframe between you transporting him to
23 family court and you ending the statement, would it be fair
24 to say that you observed that Mr. Irby was being
25 interrogated and ready to take a polygraph for that entire

Tonya Aldredge
Cross-examination by Mr. Brough

1 period of time?

2 A Could you restate that? I'm sorry.

3 Q In other words, the entire period of time from when
4 you ended that statement until you transported him to
5 family court, he was being interrogated by Detective
6 Morgan, correct, and given a polygraph?

7 A He was being talked to -- but when I took that
8 statement until I brought him to family court, yes.

9 Q So from 11:00 o'clock until sometime around
10 2:00 o'clock.

11 A Yes.

12 Q He was in the room with Detective Morgan the whole
13 time.

14 A Yes.

15 Q And then I believe you transported him back from the
16 family court hearing, correct?

17 A I did.

18 Q And that was approximately a 30-minute hearing?

19 A It was an hour total, I would guesstimate.

20 Q Including your travel time.

21 A Yes.

22 Q Did you have additional conversations with Mr. Irby in
23 the vehicle?

24 A I did.

25 Q Were you asking him about this incident?

Tonya Aldredge
Cross-examination by Mr. Brough

- 1 A No.
- 2 Q Okay.
- 3 A He said he was hungry.
- 4 Q Okay. And you notarized, or I believe you testified
- 5 that you notarized, the other two statements he gave to
- 6 Detective Morgan, correct?
- 7 A Affirmative, yes, sir.
- 8 Q Okay. Do you recall what time he got back to the
- 9 sheriff's office?
- 10 A Around 3:00 o'clock, I would imagine.
- 11 Q And then he went in to talk to Detective Morgan pretty
- 12 much immediately after that?
- 13 A Yes, sir.
- 14 Q On those statements that you notarized, on Statement
- 15 No. 4, what's the time given as to when that statement was
- 16 issued?
- 17 A 5:59.
- 18 Q P.M.?
- 19 A Yes, sir.
- 20 Q So a period of at least three-plus hours had elapsed.
- 21 A Somewhat.
- 22 Q And to your knowledge was Mr. Irby being questioned
- 23 that entire time?
- 24 A To my knowledge he was, yes, and giving statements.
- 25 Q You said that Mr. Irby signed a preinterrogation

Tonya Aldredge
Cross-examination by Mr. Brough

1 waiver form when you saw him at the detention center on
2 November the 30th asking if he would consent to a
3 polygraph, correct?

4 A I misspoke.

5 Q That did not happen.

6 A No.

7 Q Okay. So you never went and saw him on the 30th of
8 November.

9 A He didn't sign a preinterrogation waiver form on the
10 30th.

11 Q Okay. So the only form he signed for you was on the
12 14th of November when you were interviewing him with DSS
13 when you were a party to that interview, correct? He
14 signed a preinterrogation waiver form --

15 A He did.

16 Q -- November the 14th with you at DSS.

17 A He did.

18 Q And at the end of that conversation he told that he
19 did not wish to take a polygraph test, correct?

20 A He did.

21 Q That he did not believe in it, correct?

22 A Yes.

23 Q Detective Aldredge, are you the type of person that
24 routinely loses important case documents?

25 A I try not to, but it happens.

Tonya Aldredge
Cross-examination by Mr. Brough

- 1 Q Does it happen all the time?
- 2 A No, sir.
- 3 Q I imagine you'd get in trouble if it happened all the
- 4 time.
- 5 A Yes, sir.
- 6 Q Okay. You would agree with me that this would be an
- 7 important case document that you're saying exists.
- 8 A Yes, I would say it's important.
- 9 Q And you haven't been able to find it since 2007.
- 10 A No, sir.
- 11 Q Is that entirely possible because it doesn't exist?
- 12 A I don't think so, no.
- 13 Q Isn't it true that Mr. Irby was never advised of his
- 14 Miranda rights until he was in the polygraph room by
- 15 Detective Morgan --
- 16 A No.
- 17 Q -- on December the 5th? Isn't that what really
- 18 happened?
- 19 A No.
- 20 Q But you can't show me the document he signed.
- 21 A I cannot, but he did say in court I did read him his
- 22 rights.
- 23 Q And you did look for it, did you not?
- 24 A I did.
- 25 Q You still can't find it.

Tonya Aldredge
Redirect examination by Ms. Reese

1 A No.

2 Q He never said when you read him his rights, did he?

3 A He was talking about that particular time.

4 Q Did he use that date?

5 A That was what was -- they were -- the document they
6 were talking about in family court. And he was -- never
7 mind.

8 MR. BROUGH: No further questions.

9 REDIRECT EXAMINATION

10 BY MS. REESE

11 Q You read him his rights on the 14th, is that right?

12 A I did.

13 Q You went back and talked to him on the 30th just to
14 ask him if he would take a polygraph.

15 A I did.

16 Q You set up the polygraph for the 5th.

17 A Yes.

18 Q And then talked to him briefly.

19 A Yes.

20 Q He did a statement for you.

21 A Yes.

22 Q And then you delivered him to Detective Morgan on the
23 5th.

24 A I did.

25 Q Thank you.

Danny Morgan
Direct examination by Ms. Reese

1 THE COURT: You may step down.

2 THE WITNESS: Thank you.

3 MS. REESE: The state calls Detective Danny Morgan.

4 DANNY MORGAN, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MS. REESE

7 Q State your name, please.

8 A Danny Morgan.

9 Q And where were you employed in 2007 in December?

10 A Spartanburg County Sheriff's Office.

11 Q And at that time what were your duties?

12 A I was a detective in the investigation division and a
13 polygraph examiner.

14 Q Did you have a request from Detective Arledge that day
15 to perform a polygraph examination on the defendant, James
16 Irby?

17 A Yes, ma'am.

18 Q And did he actually come to your office in the
19 polygraph room in your section at the sheriff's department?

20 A Yes, ma'am.

21 Q How did he arrive there?

22 A He was brought there by Detective Aldredge.

23 Q And at the time that she brought him in to you what
24 was the first thing that you did in regards to interacting
25 with him before you questioned him?

Danny Morgan
Direct examination by Ms. Reese

1 A I went over the polygraph paperwork in his -- in
2 his -- in -- a preinterrogation waiver form or rights form
3 that I have.

4 Q I'm going to show you what's in the packet as Form No.
5 2. Do you recognize that?

6 A Yes, I do.

7 Q And what is it?

8 A That's the rights form that I would use.

9 Q Okay. And is it the rights form you used in this
10 case?

11 A Yes, it is.

12 Q And how did you read him his rights when he came for
13 the polygraph test?

14 A As a matter of routine I would always take the form
15 and turn it so that the examinee would be able to read the
16 form as I went along with him.

17 So basically I kind of read sideways or upside down.
18 I would read through each line with him. There's two parts
19 to this form. The first part advises the rights. Then
20 there's a space for his signature.

21 The second part of it is the waiver of rights, and he
22 signed that one as well. And then I witnessed it.

23 Q At the time that you were speaking with him did he
24 appear to be under the influence of any drugs or alcohol?

25 A No, ma'am, he was not.

Danny Morgan
Direct examination by Ms. Reese

- 1 Q Was his speech coherent?
- 2 A Yes, ma'am, it was.
- 3 Q Did he seem to understand your questions?
- 4 A Very much.
- 5 Q Did he answer them?
- 6 A Yes, he did.
- 7 Q Did the answers make sense?
- 8 A Yes.
- 9 Q At that time did he appear to be having any kind of
- 10 struggle, mental health issue or anything that would impair
- 11 his judgment?
- 12 A No, ma'am.
- 13 Q Did you threaten him or coerce him or promise him
- 14 anything in order to take this polygraph or give a
- 15 statement to you?
- 16 A No, ma'am.
- 17 Q And to the best of your knowledge was this done freely
- 18 and voluntarily?
- 19 A Yes, ma'am.
- 20 Q Did you, in fact -- after he signed that rights form
- 21 did you, in fact, do another form with him? I'm going to
- 22 show you what's in the packet as Form No. 3.
- 23 A Yes, ma'am.
- 24 Q And can you tell us what that is?
- 25 A That is a consent to interview with polygraph form.

Danny Morgan
Direct examination by Ms. Reese

1 Q And what is the purpose of that form?

2 A This one is to make sure that the examinee understands
3 that they are there for the purposes of a polygraph
4 examination, what the allegations are that the polygraph
5 would be about, and then to let the person know also that
6 they -- three specific things -- that you have the right to
7 refuse to take a polygraph; if you agree to take the
8 polygraph test you have the right to stop the test at any
9 time; and if you agree to take the polygraph test you have
10 the right to refuse to answer any individual questions.

11 Q Now, is that a standard form that you use?

12 A Yes, ma'am.

13 Q And it's a form you use in addition to the first or
14 initial rights form.

15 A Yes, ma'am.

16 Q Did the defendant sign that form?

17 A Yes, ma'am, he did.

18 Q Did he make any changes or alterations to your form
19 before he was willing to sign it?

20 A Yes, ma'am. The last line of the standard form just
21 mentions that in addition to the fact that the interview
22 would be recorded that there was -- and any recording may
23 be used in training sheriff's office personnel. There's a
24 line drawn through that with my initials and his initials
25 where he indicated that he did not want his tape to be used

1 for training.

2 Q And did you comply with his wishes and take that out?

3 A Yes. I drew the line out through it.

4 Q Okay. In the time that you interacted with the
5 defendant did he ever ask for an attorney?

6 A No, ma'am.

7 Q Did he ever ask that questioning stop?

8 A No, ma'am.

9 Q Did he ever give you any indication that what he was
10 doing was not voluntary on his part?

11 A No, ma'am.

12 Q Did you, in fact, ask him some health questions
13 regarding whether or not he would -- he was a candidate for
14 polygraph?

15 A Yes, ma'am.

16 Q And did those answers involving his health and other
17 information he gave you -- did that -- was that also
18 consistent with your idea that these statements were being
19 given voluntarily?

20 A Do you have that specific form, the polygraph form?

21 Q I don't have it here.

22 A I would not have continued with the polygraph if there
23 was anything inconsistent indicating that he could not do a
24 polygraph.

25 So the fact that we continued with the polygraph is

Danny Morgan
Direct examination by Ms. Reese

1 an -- indicates that there was nothing indicating that he
2 could not do a polygraph.

3 Q So to your knowledge he did not report any mental
4 health or physical condition given in response.

5 A No, ma'am.

6 Q And after the initial rights forms were done and
7 completed did you then begin to actually conduct the
8 polygraph examination?

9 A Yes, ma'am.

10 Q And was he cooperative during that?

11 A Yes, ma'am.

12 Q Did he answer any questions for you that you needed
13 answered?

14 A Yes, he did.

15 Q And did he participate in the polygraph?

16 A Yes, ma'am.

17 Q At some point after the polygraph was completed did
18 you receive a call regarding whether or not the defendant
19 needed to go to family court?

20 A Yes, ma'am.

21 Q And what was -- what was the nature of that situation?

22 A He had to be in family court sometime around 2:00 or
23 something like that. And routinely the polygraph process
24 to get to completion usually runs between two and a half,
25 around two and a half hours, maybe three.

Danny Morgan
Direct examination by Ms. Reese

1 And so we would have come up close to the time period
2 where he needed to get to court. So I was notified that he
3 needed to leave to go to court. So I was not able to go
4 over his results with him at that time.

5 Q So you completed the polygraph, and then he left to go
6 to court.

7 A Yes, ma'am.

8 Q But you did not talk to him about the results of that
9 polygraph or actually talk to him about whether or not he
10 needed to change his statement or had anything different to
11 say at that time.

12 A No, not at that time.

13 Q Once he left Detective Aldredge I assume transported
14 him to your knowledge.

15 A As far as I know, yes, ma'am.

16 Q Okay. And then at some point he arrived back.

17 A Yes, ma'am.

18 Q Did you explain to him before he left what the process
19 was going to be, that he would be brought back?

20 A I don't remember exactly what the wording was, but I
21 did let him know that he needed to go to court and that he
22 could come back and we'd talk about the results when he got
23 back.

24 Q Did he ever tell you I don't want to come back, I
25 don't want to talk to you?

Danny Morgan
Direct examination by Ms. Reese

1 A No, ma'am.

2 Q Once he arrived back at the station and in your
3 polygraph room did you then talk to him about the results
4 of that polygraph?

5 A Yes, I did.

6 Q And do you have any idea how long that process was
7 from the time that you spoke to him until he began to
8 change his story?

9 A Not very long, probably 30 minutes maybe.

10 Q And do you know how long it took for you to actually
11 write the statement, the new statement that he gave, after
12 you discussed his results with him?

13 A The actual writing period was probably about --
14 because there's five pages there, and I'm pretty detailed
15 as I go through it. So there's probably about an hour's
16 worth of writing for the statement.

17 From the time that he started to change his story to
18 the time that we actually started writing the statement,
19 I'm not sure exactly how long that was. That could have
20 been anywhere from maybe another 30 minutes to maybe 45 or
21 an hour. I'm not really sure.

22 Q At any time during your interaction with the defendant
23 did you threaten him?

24 A No, ma'am.

25 Q Did you coerce him?

1 A No, ma'am.

2 Q Did you promise him anything in return for making a
3 statement?

4 A No, ma'am.

5 Q And, in fact, did he agree to give you a written
6 statement regarding a change that -- or changes that he
7 wanted to make in the statement?

8 A Yes, ma'am.

9 Q And describe for us how you took that written
10 statement. Who wrote the statement?

11 A I actually wrote the statement after asking him did he
12 want to write the statement or did he want me to write the
13 statement.

14 Q And what was the process and what did he tell you at
15 that point? Did he want to write it or did he want you to
16 write it?

17 A No. He wanted me to write it for him.

18 Q And what was the process of the actual writing? How
19 did that come about?

20 A Again, I tried to be very detailed and make sure that
21 the statement speaks for itself -- speaks for itself.

22 I covered with him that if I did write the statement
23 for him that it would be done exactly as he and I
24 discussed. I wouldn't put anything in there that he didn't
25 agree with, which he already saw I'd be able to take out

Danny Morgan
Direct examination by Ms. Reese

1 anything that he didn't agree with like on the waiver form.

2 I told him that I would also go over every paragraph
3 with him and that we would cover it for accuracy before we
4 moved on to the next paragraph. And that's what we did
5 step by step.

6 Q And once he -- once you would write a paragraph, read
7 it to him, did you in any way have him indicate that he
8 agreed with that paragraph?

9 A Yes, ma'am. The first paragraph I had him sign his
10 name and also indicated in that paragraph that he would
11 sign his name on that paragraph, and all subsequent
12 paragraphs would be acknowledged by his initials.

13 Q And is this how every paragraph of the statement was
14 completed with the defendant?

15 A Yes, ma'am.

16 Q And he initialed every single paragraph, is that
17 correct?

18 A Yes, ma'am.

19 Q I'm going to show you what's in the packet as
20 statement 4. Is that the 5-page statement that you wrote
21 at his direction?

22 A Yes, ma'am.

23 Q And did he, in fact, sign and initial the paragraphs
24 and sign the statement?

25 A Yes, ma'am. I see the initials and I see his

1 signatures.

2 Q And you were present when he did that?

3 A Yes, ma'am.

4 Q Did -- during the time that you were speaking with him
5 and during this process did you offer him breaks?

6 A Yes, ma'am.

7 Q And what kind of breaks?

8 A Well, there's a standard break that I go through
9 during the polygraph portion where we go through what's
10 called the pre -- pretest interview. That's a fairly --
11 fairly long interview in and of itself, usually an hour to
12 an hour and a half.

13 There's a standard break that I take at that point for
14 the individual but also for myself. We'll take a restroom
15 break, water break, come back and do the polygraph.

16 In this particular instance since we did the polygraph
17 but didn't go over the results, he left, so he was on
18 another break at that point in time.

19 I believe he also went to get something to eat or
20 had -- or had lunch provided for him, and he came back in.

21 During the rest of the time I'm not sure how many
22 other breaks we would have taken, so I don't know exactly,
23 you know.

24 The only one that I always know for sure that I take
25 is that break between the pretest and the actual test.

Danny Morgan
Direct examination by Ms. Reese

1 Q But do you -- can you safely say there were other
2 breaks offered to him during that period?

3 A Yes, ma'am. When I reviewed the video I noticed in
4 the video -- and I'll have to say I didn't listen to every
5 verbatim word for word of the tape, but I did go through
6 various parts of it.

7 I noticed there was one part in there where he's
8 drinking water, and the only way he would have gotten that
9 would have been by me providing him with the water, so.

10 Q And once this statement was completed, what did you do
11 in regard to having it notarized?

12 A Well, I had Detective Aldredge come in. And after I,
13 you know, I went over the form with him, signed it, he
14 signed it, and then I had Detective Aldredge notarize each
15 page.

16 Q And was there -- at that point was there some reason
17 that you decided after this statement was completed to go
18 back and talk to him again?

19 A Yes. There was -- and I am not real -- you know, that
20 was several years ago. But I do know that there was some
21 other -- there was indication that there was another girl
22 had made some allegations against him as well.

23 I'm not sure if those allegations -- as far as I know
24 those allegations were not actually something written down
25 on paper. It was just something that had come up in the

1 investigation.

2 Since he had told a story at one point and was now
3 telling a very different story of actual sexual activity
4 between him and victim -- since he was talking about that I
5 decided to go back and ask him about these other incidents
6 or these allegations of a different person.

7 Q And so the final part of the interview, the final
8 portion of that interview, was not an interview regarding
9 victim 's allegations. It was an interview regarding
10 minor 1 's allegations, is that correct?

11 A That's correct.

12 Q And did you speak to him at length about the
13 allegations minor 1 was making?

14 A I'm not sure how at length I went into it because I'm
15 not exactly sure how much information I had about the
16 allegations, but I know that he was very -- he was very
17 clear that he was not going to be admitting to anything
18 about anyone else other than what we had already discussed
19 about victim .

20 Q So once you had obtained this 5-page statement and
21 after speaking to him about minor 1 , he did not
22 change his story regarding minor 1 , is that true?

23 A No, not about minor 1 .

24 Q So he made no admissions to you regarding minor 1

25 --

Danny Morgan
Direct examination by Ms. Reese

1 A No.

2 Q -- despite your interviewing him this length of time.

3 A Yes.

4 Q After -- in the course of talking to him about

5 minor 1 did he make another admission regarding

6 victim 1?

7 A Well, he -- he did. And a part of that was also that
8 in everything that he had admitted to to this point he was
9 framing it as if he woke up and this was happening. "I was
10 asleep and this was happening."

11 So there was -- I knew that there was, you know, the
12 ability for him to claim that he didn't have any kind of
13 control over that.

14 So while I was talking with him it was interesting
15 because he wanted to bring up another incident that had
16 occurred, because I asked him was there anything else that
17 he needed to add to it, and he brought up another incident
18 between he and victim 1 that did have not anything to do with
19 being asleep. He was fully awake when that occurred.

20 Q Once he made that admission with regard to victim 1 did
21 you decide or did -- was it decided that he would make an
22 addition to his 5-page statement?

23 A Yes, ma'am.

24 Q And I'm going to show you what's in the packet as
25 Statement No. 5. Is that the statement that he gave in

Danny Morgan
Direct examination by Ms. Reese

1 regard to the new admission he made about victim ?

2 A Yes, ma'am.

3 Q And did -- and was this same process that you used in
4 the first statement used in this statement?

5 A Yes, ma'am.

6 Q And did he initial and sign this statement?

7 A Yes, ma'am, he did.

8 Q And did Detective Aldredge also come in and notarize
9 that statement?

10 A Yes, ma'am.

11 Q At any time during this entire time did he ask for an
12 attorney?

13 A No, ma'am.

14 Q Ask to stop the interview?

15 A No, ma'am.

16 Q Did you threaten him or coerce him to do this new
17 statement?

18 A No, ma'am.

19 Q And as a part of this statement he -- there was some
20 information put in this statement regarding minor 1

21 's allegations, is that right?

22 A Yes, ma'am.

23 Q Okay. Now, the entire time that you were having -- or
24 this interview with him, from the beginning, the time that
25 he came in to do the rights form to the end when he was

Danny Morgan
Cross-examination by Mr. Brough

1 taken by Detective Aldredge back to the detention center,
2 is that polygraph and subsequent interview on video tape?

3 A Yes, ma'am.

4 Q And does that video tape that the sheriff's department
5 has -- is that the sum total of every interaction you had
6 with him?

7 A Yes, ma'am.

8 Q And you're aware that in the family court matter the
9 defendant testified that you had offered him four years if
10 he would just say he did something.

11 A Yes, ma'am.

12 Q And did that ever happen?

13 A No, ma'am.

14 Q And the entire interviews are on polygraph tapes,
15 video tape, is that correct?

16 A D.V.D. tapes, yes.

17 Q And those have been marked as State's Exhibits 2 and 3
18 for the purpose of this hearing.

19 A Yes, ma'am.

20 MS. REESE: Nothing else at this time.

21 THE COURT: Mr. Brough.

22 MR. BROUGH: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. BROUGH

25 Q Mr. Morgan, were you terminated from the sheriff's

1 office, sir?

2 A Yes, ma'am -- yes, sir.

3 Q Is that for misconduct while conducting a polygraph
4 examination?

5 A No, sir.

6 Q What was it for?

7 A It was for making some inappropriate comments while I
8 was working a part-time -- a part-time job.

9 Q Now, you stated that you didn't use any threats,
10 force, coercion, promises, correct?

11 A Yes, sir.

12 Q And when you made that statement that you didn't do
13 that, is that a statement that you didn't do that expressly
14 or that you didn't do that by implying threats or promises?

15 A Either expressly or implying.

16 Q So it's your testimony that you never expressly
17 promised or threatened Mr. Irby.

18 A Yes, sir.

19 Q Nor did you imply any sort of threat or promise.

20 A No, sir.

21 Q And you agree with me that both of these are on tape,
22 polygraph as well as the polygraph results, correct?

23 A Both of those assertions that I didn't --

24 Q Yes, sir.

25 A Yes, sir, I do.

Danny Morgan
Cross-examination by Mr. Brough

1 Q Sir, when you went through the physical requirements
2 for taking a polygraph did you ask the defendant
3 approximately how much sleep he had?

4 A Yes, sir.

5 Q Do you recall this answer being typically he has three
6 hours of sleep but that he got four prior to this? Do you
7 recall that?

8 A I don't have any real memory of that.

9 Q Would watching a portion of State's 2 refresh your
10 memory?

11 A If we watched that portion where we went over that.
12 (Whereupon, the tape was played.)

13 Q Would that be a correct statement about the amount of
14 sleep, sir?

15 A Yes, sir.

16 Q Okay. You went over his criminal record with him,
17 correct?

18 A I'm not sure how much criminal record I went over with
19 him, but I do typically ask about arrests and things.

20 I didn't have -- I don't recall that I had his
21 N.C.I.C. printout in going over that. I don't do that.

22 Q But you asked him about his criminal record.

23 A Yes, sir.

24 Q Did you have a conversation? This is before the
25 polygraph test about foundations and good people versus bad

Danny Morgan
Cross-examination by Mr. Brough

1 people and acceptance of responsibility.

2 A Yes, sir.

3 Q And did you tell him that a person that comes from a
4 good background accepts responsibility for their actions
5 and moves on?

6 A I said it's been my -- my opinion or my impression
7 that generally -- you know, I don't remember exactly what,
8 word for word, but I say this same stuff every polygraph
9 that I do, and that I still do today.

10 Q Do you recall him denying having sex with victim prior
11 to the administration of the polygraph?

12 A Yes.

13 Q And do you recall that, or would you have any reason
14 to disagree with me if I told you that approximately two
15 hours and 35 minutes into the video is when you had notice
16 that Mr. Irby had to go to family court?

17 A I wouldn't have any reason to deny it. I don't know
18 exactly when.

19 Q But you don't dispute that he could have been there
20 that long.

21 A Sure.

22 Q Okay.

23 A I think I testified earlier that usually two and a
24 half to three hours is about the normal amount of time.

25 Q Do you recall talking to Mr. Irby about the results of

Danny Morgan
Cross-examination by Mr. Brough

1 the polygraph?

2 A Once he came back from family court, yes.

3 Q And actually y'all talked for about three hours and 46
4 minutes or so, is that correct?

5 A From the time that he got back from family court?

6 Q Yes. In addition to the two and a half previous
7 hours.

8 A I did not write down the actual amount of time, but
9 that sounds probably pretty -- pretty accurate.

10 Q Okay. Do you recall telling Mr. Irby that he failed
11 the test?

12 A Yes.

13 Q Do you recall telling him that you didn't believe that
14 your job was finished at that point?

15 A A statement that I usually would make in those
16 situations was that my job as a polygraph examiner is to
17 get to the point of getting the answer as to whether or not
18 a person is telling the truth or not but that as a routine
19 I like to try to talk to people to go beyond just saying
20 that, okay, you failed and that's it.

21 So as a routine, no, I would not have considered that
22 my job was finished at that point, but that as a part of my
23 job I would have continued to talk with him.

24 Q But you wanted to find out what happened. That's what
25 you told him, isn't it?

Danny Morgan
Cross-examination by Mr. Brough

1 A Yes.

2 Q Sir, do you recall talking to him about bad choices?

3 A I'm sure I did.

4 Q Be fair to say that this is an accurate version of
5 what you said on tape?

6 (Whereupon, the tape was played.)

7 Q Now, you talk to him about going this way or going
8 that way.

9 Would you agree with me that you were talking about
10 choosing to remain silent or choosing to confess?

11 A No, not choosing to remain silent, about choosing to
12 continue to lie about the allegation or what he had done or
13 choosing to tell the truth about what he had done. That's
14 what I was talking about.

15 Q You indicated that you said you're not saying you can
16 make it all better. Do you recall saying that?

17 A Yes.

18 Q Would you agree with me that that also implies you can
19 make at least some of it a little better?

20 A No, sir. The very next statement says, was that I can
21 help you to understand what will happen or what is likely
22 to happen. That was based on my experience. So the
23 portion of that was to help him to understand where he was
24 at based on the choices that he might make.

25 Q Well, as part of your interrogation technique -- I

Danny Morgan
Cross-examination by Mr. Brough

1 mean, it makes your case better if Mr. Irby confesses,
2 right?

3 A Absolutely.

4 Q You tried to empathize with him, correct?

5 A Yes.

6 Q And you indicated that you're sure that victim : came on
7 to him, correct?

8 A Yes.

9 Q You also made a statement about what might happen if
10 he didn't come forward, did you not?

11 A He did not come forward?

12 Q If he didn't come forward and tell the truth that he
13 had been sexually inappropriate with victim . Did you not
14 make such a statement to him?

15 A A statement that I probably would have made would have
16 been around from the standpoint of in my past experience
17 this is what could happen. I don't remember exactly what I
18 stated, but I'm sure that you have the part cued up.

19 Q Did you talk about throwing him to the wolves?

20 A I did -- I do say that I don't want to -- that's a
21 part of helping him to understand what the results of the
22 polygraph are and that I could stop at that point and
23 just -- it's not unusual for me to say something along the
24 lines of to just say, okay, you failed and just throw you
25 to the wolves and let them -- you know, whatever happens

1 from there.

2 Q Would you agree with me this is your statement?

3 (Whereupon, the tape was played.)

4 Q Prior to you making that statement to Mr. Irby isn't
5 it accurate to say that at no point in time prior to that
6 statement had Mr. Irby confessed to you?

7 A Yes.

8 Q So at no point prior to that had he said, yes, I was
9 sexually inappropriate with victim .

10 A Can I point out something on the video? These are
11 things that I look at. Since we just played it, can we do
12 it again? I'm not sure if the judge can see it.

13 Q I'll be happy to play it again, sir.

14 (Whereupon, the tape was played.)

15 A See his head nod as he's following along with me that
16 he understands? And you can hear him, uh-huh, uh-huh.

17 Not state as a fact. He nods his head yes. These are
18 the things that I take into account when I'm talking to a
19 person. So not everything that is -- is all verbal. I'm
20 looking at a whole wide range of things that's going on.

21 So as he told me verbally, yes, I had sex with victim
22 and I want to confess to that, no, but he has given me the
23 indication that he has.

24 I also made it clear in a statement that I'm saying
25 that it did happen, not that I think it might have

1 happened. I'm stating that it did.

2 Q Well, you would agree with me that this statement
3 about you didn't want to see him thrown to the wolves after
4 you stated to him that he did have sex with victim -- was made
5 after you talked to him about choices and going this way or
6 going that way, correct?

7 A I didn't keep up with the time slot on it. If you say
8 it was, then I agree that it was.

9 The part of saying that I don't want to see you thrown
10 to the wolves, that's a part of getting him to identify
11 that -- that I am trying to talk to him to help him to
12 understand what his choices could be. As you said earlier,
13 to empathize.

14 Q Well, you would agree with me though that there's a
15 very large implication that you didn't want to see him
16 thrown to the wolves, so you want him telling you what
17 happened.

18 A Yes.

19 Q And you told him before you wanted him to tell you
20 what happened that you knew he had sex with victim -- ,
21 correct?

22 A Yes.

23 Q So the implication is clear, either confess or we're
24 going to throw you to the wolves, correct?

25 A Do I have a pack of wolves outside to throw to him --

1 throw him to, no, sir. It's a statement of choices.

2 Q It's a statement of you're going to confess or you're
3 going to end up getting a lot of time.

4 A I can't tell you what he read into that, sir.

5 Q Okay. Well, let's go a little bit further into the
6 entry, because we all agree that at no point up until now
7 has he confessed to you, correct? Up until what we've
8 reviewed so far, up until this last statement, at no point
9 has he confessed to you, correct?

10 A He has not verbalized a confession.

11 (Whereupon, the tape was played.)

12 A I couldn't hear that.

13 Q Do you need to step down to hear it?

14 A If that's okay.

15 (Whereupon, the witness left the stand.)

16 Q I would be happy to replay it for you.

17 (Whereupon, the tape was played.)

18 (Whereupon, the witness returned to the stand.)

19 Q You'd agree with me that he said it's not about making
20 her life look bad, it's about your life, correct?

21 A Can you play the part before that? Because he
22 indicated that he had not made statements and he had not
23 said everything because he didn't want to make her look
24 bad. He brought that part up.

25 Q But you told him it was about his lie, correct?

Danny Morgan
Cross-examination by Mr. Brough

- 1 A Yes.
- 2 Q And this was also after you made the previous
3 statement about being thrown to the wolves, correct?
- 4 A Yes.
- 5 Q Okay.
- 6 (Whereupon, the tape was played.)
- 7 Q Would you agree with me that at that point he gave
8 much more detailed information to you starting when he said
9 he was going to tell you what happened? Correct? From
10 that point on in the polygraph.
- 11 A He gave more detailed information after that, yes.
- 12 Q Okay. Now, would you also agree with me that you
13 talked about, once again, you can make a choice, you can go
14 this way or you can go that way, correct?
- 15 A Yes, sir.
- 16 Q And you also indicated that based on your experience
17 people that aren't truthful, the gentleman that dealt with
18 you wasn't truthful, didn't tell everybody everything,
19 nobody wanted to come and break -- because and he didn't
20 confess and he got the maximum sentence. That's what you
21 told Mr. Irby.
- 22 A And I made a distinction that that was a different
23 person and the ages of those children were like six and
24 seven.
- 25 Q Okay. So, in other words, you didn't tell him

Danny Morgan
Redirect examination by Ms. Reese

1 specifically he would get the maximum sentence, but you
2 talked about other people in the context of giving him
3 choices, correct?

4 A I told him about things that I had seen happen before.

5 Q And this is after the conversation where you basically
6 told him that if he wasn't truthful you didn't want to see
7 him thrown to the wolves, correct?

8 A Yes.

9 Q Okay. You'd agree with me that those are coercive
10 efforts, correct?

11 A No, sir.

12 Q You used a good bit of psychology in this interview to
13 get him to confess, didn't you?

14 A I'm not a psychologist. I just talk to people.

15 Q Talked to Mr. Irby for a long time, didn't you?

16 A Yes, I did.

17 MR. BROUGH: No further questions.

18 REDIRECT EXAMINATION

19 BY MS. REESE

20 Q What Mr. Brough just played to you, just to make it
21 clear, you told him about this man who had gotten 60 years,
22 right?

23 A Yes.

24 Q And you told him that man had confessed to you --

25 A Yes.

Danny Morgan
Redirect examination by Ms. Reese

1 Q -- and gotten 60 years.

2 A Yes.

3 Q Did you tell him repeatedly during this interview I'm
4 not making any deals, I have no power to make deals?

5 A Yes, I did.

6 Q I can't tell you which direction to go, that's your
7 choice.

8 A Yes, I did.

9 Q Did you repeatedly tell him I'm not making you any
10 promises and I'm not threatening you in any way?

11 A Yes, I did.

12 Q And is all of that recorded on the tape in its
13 entirety?

14 A Yes, it is.

15 MS. REESE: Nothing further.

16 THE COURT: You may step down.

17 MS. REESE: Your Honor, those are the only witnesses.
18 We have the taped videos, are in evidence in their
19 entirety.

20 THE COURT: Okay.

21 MR. BROUGH: Your Honor, we would like to call
22 Mr. Irby to the stand.

23 THE COURT: All right. Let's take a short break
24 before you do that. Let's take ten minutes.

25 (Whereupon, a recess was taken.)

James Benjamin Irby
Direct examination by Mr. Brough

1 THE COURT: Okay. Mr. Irby is going to testify?

2 MR. BROUGH: Yes, sir.

3 JAMES BENJAMIN IRBY, having
4 been first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BROUGH

6 Q Please state your name for the record, sir.

7 A James Benjamin Irby, III.

8 Q Mr. Irby, did you go for an interview at the
9 Department of Social Services on November the 14th of 2007,
10 sir?

11 A Yes, I did.

12 Q Who was present there?

13 A Detective Arledge and Ms. Sparks.

14 Q Now Ms. Azzara?

15 A Sir?

16 Q Her name is now Ms. Azzara?

17 A Yes, Ms. Azzara.

18 Q Sir, at that time were you advised of your rights?

19 A Yes, sir.

20 Q At the conclusion of the interview did you tell them
21 anything regarding the polygraph?

22 A That I wasn't -- I didn't want to take it.

23 Q Did you tell them anything other than that you wished
24 not to take it?

25 A I told them that I didn't believe in it.

James Benjamin Irby
Direct examination by Mr. Brough

1 Q Sir, were you present in the courtroom when Detective
2 Aldredge testified?

3 A Yes, sir, in family court.

4 Q Well, were you present here today when she testified,
5 sir?

6 A Yes.

7 Q Do you recall her testifying about seeing you on
8 November the 30th in the detention center?

9 A Yes.

10 Q Did that happen?

11 A Yes, that happened.

12 Q She saw you on November 30th in the detention center
13 prior to the family court hearing?

14 A Prior to the family court hearing?

15 Q In other words, she testified, sir, I believe if you
16 recall her testimony, she saw you on two different
17 occasions, November the 30th and December the 5th. Did she
18 see you on November the 30th?

19 A Yes. I seen here at DSS, and also I seen her when she
20 came to pick me up at the detention center.

21 Q The day of the polygraph?

22 A The day of the polygraph, yes.

23 Q Which was on December 5th.

24 A Yes, I believe that was on December 5th.

25 Q At no time in between did she see you?

James Benjamin Irby
Direct examination by Mr. Brough

- 1 A No.
- 2 Q So she did not see you on November 30th.
- 3 A I can't recall the dates. It's just -- I seen her at
- 4 DSS and I seen her when she picked me up from the jail.
- 5 Q And if I represent to you that was December the 5th,
- 6 you'd have no reason to disagree with me.
- 7 A Yes.
- 8 Q Were you informed of your Miranda rights on
- 9 December 5th when Detective Aldredge picked you up from the
- 10 jail?
- 11 A No.
- 12 Q Are you sure?
- 13 A Yes.
- 14 Q Tell me about the conversation you had with Detective
- 15 Aldredge. How long was it?
- 16 A At DSS?
- 17 Q At the Spartanburg County Sheriff's Office.
- 18 A Maybe about 45 minutes, I think.
- 19 Q Did you give a written statement, sir?
- 20 A Yes, I gave her a written statement.
- 21 Q And were you ever advised of your Miranda rights prior
- 22 to doing so?
- 23 A No, I wasn't.
- 24 Q At some point did you see Detective Morgan?
- 25 A Yes, I did.

1 Q What was your feelings as to the interrogation by
2 Detective Morgan?

3 A Well, I felt threatened.

4 Q Why?

5 A There was just a lot of things he was saying. He was
6 saying that, you know, if I didn't tell him something they
7 would give me so many years, and if I did tell him
8 something, then they would only give me like five or four
9 years.

10 So I felt regardless of whatever I said they was going
11 to give me time anyway. I rather do five years than 20.

12 Q What about the statement he made to you about he
13 didn't want to see you thrown to the wolves?

14 A Like I said, I felt threatened.

15 Q When you say you felt threatened, tell me what you
16 thought might happen since you felt threatened.

17 A Well, I mean, in the video, I mean, he told me about,
18 you know, if I told him something he would give me five
19 years, but if I didn't tell him something he would give me
20 20 years.

21 And we was in that little small room, and he would
22 bring his chair in -- in close proximity of me, and that
23 was kind of intimidating of me.

24 And I was in leg irons. I felt if anything happened,
25 you know, I couldn't defend myself, because Mr. Morgan,

1 he's a bigger man than I am.

2 Q Would it be fair to characterize what you just said as
3 if you didn't confess you'd feel as though you would get
4 more prison time?

5 A Yes.

6 Q Do you recall how long you were at the sheriff's
7 office that day, sir?

8 A I just know I was up there so long I lost all track of
9 time. And when they finally did take me back to the jail,
10 it was nighttime.

11 And then in the process of that I didn't get any
12 breaks. The only -- the only break I got was when they
13 took me to family court, and then she bought me -- the
14 Ms. -- the police officer bought me a sandwich, and that
15 was the only break.

16 Now, he did give me some water. I asked for water.
17 He just went out and got the water and came back in. I
18 don't consider that a break.

19 Q So it would be fair to say that you're being
20 questioned somewhat relentlessly the whole time.

21 A Yes. And then the whole time -- the whole time I was
22 up there it just wasn't about the questioning. He was
23 telling me all kind of stories.

24 You know, at one point in time if I can recall I asked
25 him was he some kind of doctor or something, because he --

1 when -- when I first met him he said he was a police
2 officer.

3 Then later on, you know, after I left that -- after
4 they took me back to the jail, you know, I said he's a --
5 he's a smart man, smarter than me.

6 And, like I said, I thought he was some kind of
7 psychologist or something. It was just a lot of things he
8 was saying. I say he couldn't have been no doctor, I mean,
9 a police officer. He was some kind of psychologist. At
10 one point in time he had me confused.

11 Q Sir, do you feel that -- let me show you State's
12 Exhibit 1, Statement No. 4. Sir, do you feel that you gave
13 that statement voluntarily?

14 A No, sir, I don't think I gave it voluntarily.

15 Q You would agree with me that you signed something
16 saying that you did though, right?

17 A Yes, sir.

18 Q Are you telling me today that's not accurate?

19 A I didn't give that voluntarily. I gave those
20 statements because I felt threatened.

21 Q And would that be the same as to Statement No. 5, sir?
22 Did you give that statement voluntarily?

23 A No, sir, I didn't give that voluntarily.

24 Q And you'd agree with me that you signed something
25 saying you did, correct?

James Benjamin Irby
Cross-examination by Ms. Reese

1 A Yes, sir.

2 Q Would you agree with me that what's in these papers is
3 not representative of what actually happened on video?

4 A What's on these papers is not actually what's
5 represented, no.

6 Q And, sir, just for my clarification, you had denied
7 these allegations on several occasions prior to those
8 statements, correct?

9 A Yes, I denied them on several, several times.

10 MR. BROUGH: No further questions.

11 CROSS-EXAMINATION

12 BY MS. REESE

13 Q Mr. Irby, when did Detective Aldredge ask you about --
14 I know that there was a first time with DSS when Brenda
15 Sparks asked you about the polygraph. When did Detective
16 Aldredge ask you about a polygraph?

17 A They asked me about the polygraph at DSS and then also
18 when she picked me up at the jail.

19 Q And did you agree at that time to take one?

20 A I didn't agree. I don't think I agreed with
21 Ms. Aldredge, but I agreed with Detective Morgan.

22 Q So is it your testimony that Detective Morgan just
23 happened to be at the station that day, or was this a
24 planned polygraph? Was this something you were supposed to
25 do that day?

James Benjamin Irby
Cross-examination by Ms. Reese

1 A No. I didn't even know they was coming down to the
2 jail.

3 Q But at some point during the December 5th, that day,
4 you agreed to take a polygraph.

5 A Yes.

6 Q Did anybody threaten you?

7 A I felt threatened by Detective Morgan.

8 Q But you agreed to take the polygraph before you met
9 Detective Morgan, right?

10 A No. I didn't agree to anything. They took me -- they
11 took me down to the jail. And if I can recall, I took the
12 polygraph. And then after I took the polygraph, then
13 that's when I started feeling threatened, after the
14 polygraph.

15 Q Okay. So at the time of the polygraph when you
16 decided to take the polygraph you didn't feel threatened
17 then.

18 A No, I didn't feel threatened then. I felt threatened
19 after I took the polygraph.

20 Q And that would have been when he told you you didn't
21 pass it.

22 A Yes.

23 Q Was that threatening when he said you failed it?

24 A No, that wasn't threatening, because I asked him. I
25 say if I passed let me see it, and he went on to not even

1 make any comments about what I asked. He just went on into
2 what he wanted to go into.

3 Q Tell me specifically what Detective Morgan told you
4 that made you feel threatened.

5 A Like I say, I believe he told me if I tell him
6 something they would give me only five years or four years,
7 but if I didn't tell him something, then they was going to
8 give me the maximum.

9 Q Now, and you testified. Do you remember testifying in
10 family court that Detective Morgan told you if you told him
11 something you would get four years?

12 A Yeah, I said four to five years.

13 Q But if you didn't tell him anything you would get more
14 time.

15 A Yes.

16 Q And is it your testimony -- have you reviewed this
17 video?

18 A No.

19 Q Okay. So you understand that this entire polygraph
20 was videotaped.

21 A I didn't know at the time.

22 Q Well, wasn't that one of the rights forms that you
23 signed?

24 A I signed it, but I don't even think I can't -- I can't
25 recall it's been so long ago.

1 Q Well, did you have a conversation with Detective
2 Morgan when you -- look at Form 3 in this packet. It talks
3 about that the room is monitored and recorded. And you
4 actually marked out any recording may be used in training
5 at the sheriff's personnel -- to train sheriff's office
6 personnel. So you knew according to this that the
7 interview was being recorded.

8 A Actually, I don't think I read it. Morgan read it to
9 me, and I told him to strike out what I wanted struck out.
10 So I don't think I actually read that.

11 Q But you understood it was being recorded because you
12 struck out the part where it says the recording can be sent
13 for training purposes.

14 A I mean, to me -- I didn't take it that way.

15 Q All right. Did you sign this form?

16 A Yes, I did.

17 Q Did you initial a line that said -- there was a mark
18 through any recording may be used in training sheriff's
19 office personnel? Did you strike through that and initial
20 it?

21 A Any recording don't mean it's necessarily being
22 recorded. That's how I took it.

23 Q "I understand the examination room contains an
24 observation device that the exam may be monitored or
25 recorded."

James Benjamin Irby
Cross-examination by Ms. Reese

1 A I understand that, but that doesn't mean necessarily
2 that the interview was being recorded.

3 Q Okay. Do you understand that it's recorded now?

4 A I understand it's recorded now.

5 Q So if Detective Morgan -- would you agree if Detective
6 Morgan ever said what you're saying that he said, four or
7 five years, it will be on that recording?

8 A Yeah. It should be on that recording.

9 Q During the time that you talked with Dr. Morgan -- I
10 mean Detective Morgan -- did you ever try to stop the
11 interview?

12 A No, I never tried to stop the interview.

13 Q Did you ever ask for an attorney?

14 A No, I didn't ask for an attorney, because I felt the
15 time of day while I was going to get -- No. 1, my family, I
16 felt they couldn't afford an attorney.

17 As far as a public defender, I figured it was after
18 5:00 o'clock, so where was they going to get a public
19 defender from?

20 Q But you had been read your rights. Detective Morgan
21 did read your rights to you, and you did sign a form saying
22 you understand you had the right to an attorney and you had
23 the right to stop the interview.

24 A Yes, but, I mean, I thought -- where they going to get
25 one? The interview was happening now, so if I needed a

James Benjamin Irby
Cross-examination by Ms. Reese

1 lawyer, I mean, where it's going to come from?

2 Q But you were read that information and you understood
3 it at the time. You signed the form saying that you
4 understood.

5 A I signed the form.

6 Q So you never asked for a lawyer. You never asked the
7 interview to stop. Did you tell Detective Morgan at any
8 point that you were feeling threatened?

9 A No, I didn't tell him that.

10 Q Did you go over the statement that is written with
11 him --

12 A Yes, I did.

13 Q -- paragraph by paragraph?

14 A Yes.

15 Q Did you initial each paragraph?

16 A Yes.

17 Q Did you -- when he would start to write did you
18 actually tell him you wanted something added to a
19 paragraph, I want to add that to my statement? Do you ever
20 remember telling him that?

21 A No.

22 Q But you do acknowledge that you initialed and signed
23 the statement and the paragraphs in the statements.

24 A Yes. I initialed and signed them.

25 Q When Detective Aldredge came in to notarize the

1 statements did you actually tell her you were sorry for not
2 being truthful with her before?

3 A I don't recall that, and I don't recall her notarizing
4 anything.

5 Q Again, if that happened, it would be on the tape, is
6 that right?

7 A It should be on the tape.

8 Q Do you remember at one hour and 41 minutes into this
9 interview Detective Morgan asked you if you would like a
10 restroom break? He says he's going to the restroom and
11 asked you if you would like a restroom break, and you say,
12 "No. Thank you. I'm going to stay here." Do you remember
13 that?

14 A I believe I had already used the restroom prior to
15 probably going into the interview, so.

16 Q But do you remember him offering you to use the
17 restroom?

18 A Yes. But I didn't need to.

19 Q So you did -- you were offered a break, at least one.

20 A A restroom break, yeah.

21 Q Okay. And then again after you came back there were
22 two separate other times -- one at 1:27 and one later
23 after -- just before writing the statement when Detective
24 Morgan again asked you if you needed a break, and he left
25 the room to get something to drink and brought you back

1 water because you didn't need a break. Do you remember
2 that?

3 A I remember him going out and bringing me the water. I
4 remember that.

5 Q So if you were offered breaks that would be on the
6 tape.

7 A Should be if I was offered breaks.

8 Q After you gave the initial 5-page statement Detective
9 Morgan came back in and questioned you regarding the
10 allegations of minor 1 , is that correct?

11 A Yes. He mentioned something about that.

12 Q Okay. And do you remember that he not only mentioned
13 it to you but he actually read you part of an interview
14 that the Children's Advocacy Center had done with minor 1
15 where the allegations were specifically told to
16 you? Do you remember him doing that, reading something to
17 you where minor 1 had given a statement?

18 A I can't remember that.

19 Q Okay. Do you remember him questioning you regarding
20 what happened between you and minor 1 ?

21 A No, I don't remember that.

22 Q If it happened would it be on the tape?

23 A I mean, if he asked me some questions it would be on
24 the tape.

25 Q And despite his questioning you refused to make any

James Benjamin Irby
Redirect examination by Mr. Brough

1 admissions regarding minor 1 , is that correct?

2 A If he asked me anything about minor 1 ,
3 nothing happened with minor 1 , so I had no reason
4 to, you know, go into that.

5 Q So why would you feel threatened with victim : but not
6 feel threatened with regard to allegations with minor 1
7 ?

8 A No. I felt threatened based on what he was telling me
9 as far as if I told him something what would happen versus
10 if I didn't tell him something what would happen.

11 Q But despite that feeling threatened you never made any
12 admissions regarding minor 1 .

13 A No.

14 MS. REESE: Nothing further, Your Honor.

15 MR. BROUGH: Just briefly on redirect, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. BROUGH

18 Q Mr. Irby, in terms of minor 1 , would it be
19 fair to say that you were questioned for nowheres near the
20 length of time that you were about victim :? In other words,
21 he questioned you about minor 1 only for a little while.
22 Is that fair to say?

23 A I guess that would be fair to say.

24 Q Whereas, you were questioned for victim : for a period
25 of probably a little over six hours.

1 A Yes, sir.

2 Q All right. Thank you, sir.

3 MS. REESE: Just one question, Your Honor.

4 RECROSS-EXAMINATION

5 BY MS. REESE

6 Q Is it your testimony you were questioned about victim
7 for over six hours?

8 A Like I said, I lost all track of time, but it was over
9 a long period of time.

10 Like I said, when they first brought me up to the
11 police station that was that morning. When I left the
12 police station that was that night.

13 Q All right. So whatever happened, we'd probably need
14 to review the tape. Would you agree with that?

15 A Yes. Review the tape.

16 THE COURT: Okay. Step down.

17 Anything else on behalf of the defendant?

18 MR. BROUGH: No further questions.

19 THE COURT: Any reply?

20 MS. REESE: No, Your Honor.

21 THE COURT: Anything else y'all need to present?

22 MS. REESE: Nothing Your Honor.

23 MR. BROUGH: Your Honor, we would present argument if
24 I may.

25 THE COURT: Okay. Well, let me ask you this before

1 you do that.

2 Do you want me to review the rest of the video, or
3 have you shown me what you want me to see?

4 MR. BROUGH: I'll be happy for Your Honor to review
5 the rest of it. I've showed what I think I need to show
6 you.

7 THE COURT: Say that again.

8 MR. BROUGH: If Your Honor wishes to review it I'll
9 have --

10 THE COURT: No. I am asking you. Are you expecting
11 me to look at all of the video tape, or have you shown me
12 what you think I need to see so far as the motion is
13 concerned?

14 MR. BROUGH: As far as the motion is concerned, I
15 think I've highlighted enough of the points that I can go
16 forward on it, so I'm prepared to argue it now.

17 THE COURT: Well, I'm going to let you do that, but my
18 question is are you -- have you shown me what you think is
19 relevant to this motion, or are you expecting me to look at
20 all of the video?

21 MR. BROUGH: I have shown you what I believe I think
22 is relevant, Your Honor.

23 THE COURT: Okay. Ms. Reese.

24 MS. REESE: Yes, Your Honor.

25 THE COURT: Yes, what? Do you want me to look at all

1 of it, or have I seen what I need to see?

2 MS. REESE: If what he has -- if what he has shown you
3 is the parts that he indicates that there's threats or
4 coercion, then I don't -- I don't think you need to see the
5 rest of it. I was concerned about this four years being
6 brought up.

7 THE COURT: Okay. All right. Mr. Brough.

8 MR. BROUGH: Thank you, Your Honor. May it please the
9 Court.

10 May I approach a moment? I have some cases I'll be
11 relying on.

12 Your Honor, it would be our position that the state
13 has not met its preponderance-of-the-evidence burden in
14 this hearing as laid out in the State vs. Washington for
15 the admission of the statements of Mr. Irby.

16 Your Honor, I believe that there's actually two
17 different reasons that the statement should be suppressed,
18 the first being that the Court, the Supreme Court of South
19 Carolina, in State vs. Navy addressed the situation in
20 which a defendant was not initially advised of his Miranda
21 rights and then after giving a first statement was then
22 subsequently advised of his Miranda rights before giving a
23 second and third statement. And I think that case is very
24 similar to the case we have here today.

25 In that case there was some sort of admission or

1 arguable admission in that first statement, and then
2 Miranda was given.

3 And the Court held that even the statements that were
4 given post-Miranda warnings were not admissible. And the
5 Court in doing so cited the United States Supreme Court
6 case of Missouri vs. Seibert, 542 U.S. 600 for that
7 proposition.

8 The reason for it is essentially that the failure to
9 advise of Miranda initially, and what's basically subject
10 to a 2-part questioning by law enforcement where they're
11 questioning the first time without being advised of their
12 Miranda rights, and then subsequently advised only after
13 they've been interrogated for some time and given a
14 statement so that they can then go further into those
15 statements, basically seeks to get around and defeat the
16 purpose of the Miranda cases.

17 And I believe that's the case here. What we have here
18 is we have a situation where Mr. Irby was clearly in
19 custody at the time because he was a prisoner at the
20 detention center on a family court matter -- was picked up
21 by Detective Aldredge and transported to the Spartanburg
22 County Detention Center.

23 It would be our position that Mr. Irby per his
24 testimony was not read his rights. And I believe that in
25 light of the fact that Detective Aldredge is unable to

1 produce a preinterrogation waiver form of which she says
2 she executed and has been looking for for the past two and
3 a half years, I think lends credence to the fact that that
4 form was never executed, nor was Mr. Irby advised of his
5 rights.

6 Only after he gives the initial statement in which in
7 State's Exhibit 1, in that first statement that he gives in
8 his own handwriting -- Mr. Irby made some sort of reference
9 to the child asking him to smell her cookies, which is then
10 further explored by Detective Morgan in the polygraph
11 examination room, and yet Detective Morgan did read him
12 Miranda initially.

13 But it would our position that the course of
14 environment afterwards was such as to defeat the purpose of
15 Miranda and that this falls akin into the case that we have
16 cited, State vs. Navy.

17 As to -- I don't know if the Court wishes me to go on
18 to the second matter or to allow Ms. Reese to respond.

19 THE COURT: Well, you just keep going. She's going to
20 respond to all of that.

21 MR. BROUGH: All right. As to the second matter, it
22 would our position that there was threats made, threats of
23 dealing with more harsh punishment, some sort of leniency
24 potentially depending on how you would interpret threats
25 versus leniency. They are kind of the same thing. You're

1 going to get more harsh punishment if you don't come
2 forward and confess.

3 And I don't think the state can really legitimately
4 deny that there were threats that were made. And in State
5 vs. Peake at 291 S.C. 138 the Court went through and
6 stated that the trial court had erred in admitting into
7 evidence a statement that was made in police custody. And
8 on direct examination there was statements that were
9 elicited that he would -- in Peake that he would not get
10 the death penalty and would have that put in writing prior
11 to his confession.

12 Now, here I think that -- and it goes through the
13 test, and it says, "The test for determining the
14 admissibility of the statement is whether it was knowingly,
15 intelligently and voluntarily given."

16 Then it also goes further and says, "A statement
17 induced by promise of leniency is involuntary if so
18 connected that it'd be a consequence of a promise."

19 Now, in going through this, the Peake case also
20 relates back to Hutto vs. Ross, United States Supreme Court
21 case, 429 U.S. 28 where they go through and they discussed
22 the standard as to whether or not the statement should be
23 admitted.

24 What it says is it says the test is whether the
25 confession was extracted by any sort of pressure or

1 violence or obtained by any direct or implied promises,
2 however slight, or by the exertion of any improper
3 influence.

4 I think clearly in this case we have implied promises
5 that are made that Mr. Irby needs to come forward or he was
6 going to be thrown to the wolves, that if he makes the
7 choice this way versus that way, if he goes this way, you
8 know, and he tells everything all at once he might be dealt
9 with impliedly better and less harshly, because given
10 Detective Morgan's experience people that he had dealt with
11 in the past that didn't come forward and had to have it
12 dragged out of them received the maximum sentence.

13 And I think that when you look at that case you can
14 see that there was a threat that was made here.

15 Now, that language in that case ultimately cites back
16 to a case from the United States Supreme Court that was
17 decided in 1897, Brown vs. United States.

18 And they went through that language, which tracks all
19 the way through the cases that I've handed up. And in the
20 language on there on that page 70 in that first column on
21 the fifth paragraph the Supreme Court states in 3 Russell
22 on Crimes it is stated as follows: "A confession in order
23 to be admissible must be free and voluntary; that is, must
24 not be extracted by any sort of threats or violence, nor
25 obtained by any direct or implied promises, however slight,

1 nor by the exertion of any improper influence."

2 It also talks about some language that was not carried
3 over, but I think it very relevant in determining how it
4 should be interpreted. It says, "A confession should never
5 be received in evidence where a prisoner has been
6 influenced by any threat or promise; for the law cannot
7 measure the force of the influence used or decide upon its
8 effect upon the mind of the prisoner and therefore excludes
9 the declaration if any degree of influence has been
10 exerted."

11 I don't think the state can prove by a preponderance
12 of the evidence in light of the testimony here today, the
13 exhibits entered, the videos entered that there was not
14 some sort of threat of influence. Clearly there was. And
15 as such we believe that Mr. Irby's statement should be
16 suppressed.

17 THE COURT: Ms. Reese.

18 MS. REESE: Thank you, Your Honor.

19 Your Honor, as to his first argument -- and I believe
20 that was under the Seibert line of cases -- I think those
21 cases deal with situations where law enforcement is
22 intentionally trying to get around Miranda by getting a
23 person in a custodial situation and getting an admission
24 from them and then once the admission is gotten then going
25 back and reading them Miranda.

1 In this situation clearly that is not what happened.
2 The statement obtained from this defendant was
3 self-serving. It is in no way an admission.

4 What he says in his statement is I've never touched
5 her, nothing's ever happened, the child's out of control,
6 she has made advances to me, she's a problem child, I've
7 never touched her.

8 So I don't think that those, that line of cases,
9 control. I think the question is whether or not these
10 statements were both given voluntarily, and they clearly
11 were voluntary.

12 There is no threat or promise, and I would submit that
13 this is more akin to the Rochester case where a polygraph
14 examiner I think in that case says this is in the best
15 interest, it might be -- it's probably in your best
16 interest to tell the truth.

17 In that case I think specifically distinguished what
18 happened in Peake where the person was told if you do this,
19 then I'm not going to give you the death penalty.

20 There was no such promise in this case. He was honest
21 with him. He did tell him, look you've got two roads to go
22 down, you can take one of two, in my experience it's better
23 to tell the truth. But I do believe that that's more in
24 line with the cases. I don't believe his will was
25 overborne.

1 I think that is obvious from the fact that he did not
2 admit after repeated interrogation about minor 1 ,
3 that he actually changed the statement forms to reflect
4 that he didn't want this video given out to anybody.

5 I believe that in the totality of the circumstances
6 these statements were both made freely and voluntarily.

7 THE COURT: All right. I'll take it under advisement
8 and issue an order.

9 END OF REQUESTED TRANSCRIPT OF RECORD
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

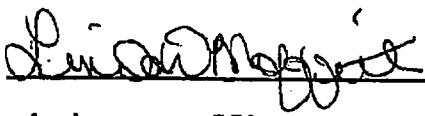
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 29th day of June 2011.

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

April 8, 2013



Linda D. Moffitt
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA

2 -----x

3 State,

4 Plaintiff,

5 Case No.

6 -against- 2008-DR-42-1536

7 James Benjamin Irby,

8 Defendant.

9 -----x

10 November 18-19, 2012

11 Spartanburg, S.C.

12

13 B E F O R E:

14 HONORABLE J. Derham Cole

15

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

17 Susan Reese, Esquire

18 Assistant Solicitor

19

20 Chris Brough, Esquire

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

25

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Victim				
4	Ms. Reese	51		64	
5	Mr. Brough		58		
6	Jennifer Turner				
7	Ms. Reese	65			
8	Mr. Brough		68		
9	Brenda Sparks Izarra				
10	Ms. Reese	69			
11	Mr. Brough		79		
12	Detective Tanya Alridge				
13	Ms. Reese	81			
14	Mr. Brough		92		
15	Lynn McMillian				
16	Ms. Reese	97			
17	Mr. Brough		104		
18	Nancy Henderson				
19	Ms. Reese	105		118	
20	Mr. Brough		115		
21	Danny Morgan				
22	Ms. Reese	118		157	
23	Mr. Brough		143		159
24					
25					

1	<u>I N D E X</u>				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Lillian Dannette Collins				
4	Mr. Brough	165		171	
5	Ms. Reese		167		173
6	James Benjamin Irby				
7	Mr. Brough	174		182	
8	Ms. Reese		177		
9	Gina Odem				
10	Ms. Reese	183			
11	Mr. Brough		186		
12	Closing Arguments				
13	Mr. Brough	193			
14	Ms. Reese	202			
15	Charge of the Court	225			
16	Verdict of the Jury	248			
17	Sentence of the Court	252			
18					
19					
20					
21					
22					
23					
24					
25					

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

NO.	DESCRIPTION	<u>I.D.</u>	<u>EVD.</u>
State's 1	Waiver form		84
State's 2	Statement		87
State's 3	Waiver form		122
State's 4	5-pg statement		131
State's 5	statement		142

1 THE COURT: This is the matter of State
2 versus James Irby, case number 2008-GS-42-1536.

3 This Court previously heard the
4 defendants's motion to suppress certain
5 statements made by the defendant. Having
6 considered the motion and the grounds presented,
7 and the evidence presented during the course of
8 that hearing I find that the defendant's motion
9 should be denied.

10 Any other matters we need to address before
11 the jury is brought in?

12 MS. REESE: No, Your Honor, I believe we
13 already had motions regarding rape shield and
14 prior sexual abuse of the child and you granted
15 those motions to exclude those as well.

16 THE COURT: As I understand, Mr. Brough
17 didn't intend to enter any evidence as to either
18 of those. Is that true?

19 MR. BROUGH: No, I don't think it would go
20 to identity or anything of that nature.

21 It is also my understanding that the State
22 was going to be redact some statements. There is
23 an uncharged incident with a Britney Jackson and
24 I believe Miss Reese has redacted that statement to
25 exclude that, Your Honor.

1 MS. REESE: I have Your Honor, if Your Honor
2 would like to see it. I have shown it to Mr.
3 Brough.

4 THE COURT: Was that presented to me before?

5 MS. REESE: It was, Your Honor. We
6 presented both the statement with her name in it.
7 In the bottom part of the statement he put in I
8 didn't do anything to Brittany Jackson. Those
9 allegations aren't true. We redacted that so
10 that information is not in the statement.

11 THE COURT: Okay. Let me see. I got them
12 here.

13 MS. REESE: That is the redacted copy. That
14 is what we are offering.

15 THE COURT: All right. We ready for the
16 jury panel now?

17 MS. REESE: The State is ready, Your Honor.

18 MR. BROUGH: Yes, sir.

19 THE COURT: All right. Bring them around
20 please.

21 Where is this alleged to have occurred?

22 MS. REESE: On [redacted] in Spartanburg
23 County.

24 THE COURT: [redacted] ?

25 MS. REESE: [redacted] It is [redacted]

1 in Spartanburg.

2 THE COURT: What community is that in?

3 MS. REESE: Near Fairmont.

4 (Jury entering)

5 THE COURT: Good morning, ladies and
6 gentlemen of the jury. My name is Derham Cole.
7 I am resident judge here in the 7th Circuit like
8 Judge Couch whom you met this morning. I will be
9 presiding over a term of general sessions court
10 this week just as he will be.

11 The first case that we have that is going to
12 require some of your participation is the case of
13 the State versus James Benjamin Irby.

14 Mr. Irby has been accused by the prosecutor
15 by way of Indictment with having committed the
16 crime of criminal sexual conduct with a minor in
17 the second degree.

18 The State alleges by way of this Indictment
19 that the defendant, James Benjamin Irby, did here
20 in Spartanburg County between the dates of
21 October of 2005 and November of 2007, did
22 commit the crime of criminal sexual conduct with
23 a minor in the second degree in that he did
24 engage in a sexual battery with victim
25 who was 14 years of age or less at the time but

1 was at least 11 years of age at the time the
2 sexual battery was committed.

3 As to those allegations the defendant has
4 entered a plea of not guilty. A plea of not
5 guilty places upon the State the burden of
6 proving the allegations that they have set forth
7 in the Indictment. The burden of proving each of
8 the essential elements that constitute the crime
9 that is alleged against the defendant. And
10 therefore the burden is upon the State to
11 establish the defendant's guilt to the
12 satisfaction of 12 jurors beyond a reasonable
13 doubt before any verdict of guilt could be
14 returned. And so we are going to be selecting 13
15 of you. Twelve primary jurors and one additional
16 juror to serve as an alternate.

17 By way of your participating you are simply
18 going to be called upon to listen to the
19 testimony. To consider the evidence in the case.
20 From that evidence you will decide the facts.
21 Upon deciding the facts you will apply the law
22 and you will determine whether or not the
23 defendant has been proven guilty of the crime or
24 not.

25 Before we begin with that jury selection I

1 got some questions to ask you. And the purpose
2 of the questions is to determine whether or not
3 there is some reason why any one of you jurors
4 should not be selected to participate in the
5 trial of this particular case. And so as these
6 questions are asked of you, should you need to
7 respond to them, I will ask that you please stand
8 and I will address those matters with you
9 individually in the event that should become
10 necessary.

11 Now, first of all as I told you the
12 defendant, the person who is accused of having
13 committed this crime, is James Benjamin Irby.

14 Mr. Irby, if you will stand and face the
15 jury panel please, sir. Thank you, be seated.
16 Seated with Mr. Irby at the defense counsel table
17 is Chris Brough. He is his lawyer. He will be
18 assisting him during the course of the trial in
19 this case.

20 The person who is alleged to have been the
21 victim of this event is victim

22 MS. REESE: She is not in the courtroom,
23 Your Honor.

24 THE COURT: victim . . . is not in the
25 courtroom. Is someone related to victim . . .

1 present?

2 MS. REESE: Her aunt and mother.

3 THE COURT: Let me identify who they are.

4 MS. REESE: This is Lillian Collins.

5 RTHE COURT: Lillian Collins and what
6 relation is she to victim ?

7 MS. REESE: She is the mother of the victim.

8 THE COURT: She is the mother of victim
9 Collins. Miss Collins if you will stand and face
10 the jury panel please and perhaps they can
11 identify victim by knowing who you are.
12 And who else?

13 MS. REESE: This Jennifer Turner, this is
14 victim 's aunt.

15 THE COURT: All right. Thank you. You may
16 be seated. Does anybody believe they know victim
17 , the person who is alleged to have been
18 the victim, if so please stand.

19 Presenting the case on behalf of the State
20 are Susan Reese and Jennifer Jordan. Each are
21 assistant circuit solicitors for the 7th judicial
22 circuit.

23 Other persons who maybe called to testify
24 during the course of the trial -- and the reason
25 I am identifying all these people for you is I

1 need to know if you are related by blood or
2 connected by marriage to any of these people or
3 if you have any other type of a connection
4 whether it be arising out of your employment, out
5 of the going to church with them, out of
6 socializing with them, or any other connection
7 that you might have.

8 Do you know these people in any way. Other
9 potential witnesses include; Tanya Aldride, with
10 the Spartanburg County Sheriff's Department,
11 Brenda Izarra, with the Department of Social
12 Services, Lynn McMillian and Gina Odom with the
13 Children's Advocacy Center, Lillian Dannette
14 Collins, who has been introduced and Jennifer
15 Turner who has already been introduced, Danny
16 Morgan with Spartanburg County Sheriff's
17 Department or formerly was, Nancy Henderson, a
18 medical doctor with the Greenville hospital
19 system, Brittany Jackson, Avery Collins, Natalie
20 Nicole Spells, Mike Jones with the Spartanburg
21 County Detention Facility, Todd Wilson with the
22 Spartanburg County Solicitor's Office and
23 Bernadette Smith.

24 All right. Does any juror know any of the
25 people who have just been introduced? If so

1 please stand.

2 All right. I will start to my right and go
3 to my left if you give me your name and number,
4 please.

5 JUROR: One seventy four, James Williamson.
6 I know one of the attorneys by work.

7 THE COURT: Well, who do you know?

8 JUROR: This young man right here.

9 THE COURT: Mr. Brough?

10 JUROR: Yes.

11 THE COURT: And you know him how?

12 JUROR: My company does service work for his
13 company.

14 THE COURT: Okay. All right. Is there
15 anything about that connection would have any
16 bearing upon your decision in this case?

17 JUROR: No. I stood up because you asked if
18 I knew anybody.

19 THE COURT: Well, I know. That is what I
20 asked you all to do. But my question is now that
21 you stood, my question is would that connection
22 in any way have any bearing upon your decision in
23 the case?

24 JUROR: No.

25 THE COURT: It would not?

1 JUROR: No.

2 THE COURT: All right. Thank you. You may
3 be seated.

4 Yes, Ma'am.

5 JUROR: I know Nancy Henderson. Our
6 children are the same age and are friends. I am
7 Elizabeth Hamilton, number 63.

8 THE COURT: And would that have any bearing
9 upon your decision in the case?

10 JUROR: No.

11 THE COURT: Thank you, you may be seated.

12 Yes, sir.

13 JUROR: Billy Davis, number 48. I worked
14 with Miss Aldridge about 20 years ago.

15 THE COURT: In what capacity?

16 JUROR: We were both with the city police at
17 that time.

18 THE COURT: Would that have any bearing upon
19 your decision in this case?

20 JUROR: No, sir.

21 THE COURT: Thank you. You may be seated.

22 Yes, ma'am.

23 JUROR: I am number 128, Harley Porter. I
24 interned at the Children's Advocacy Center and I
25 know Miss McMillian and Doctor Henderson and I

1 met Miss Reese on two occasions, I believe.

2 THE COURT: Would any of those connections
3 have any bearing upon your decision in this case?

4 No, I don't think so.

5 THE COURT: Thank you. You you may be
6 seated. Yes, ma'am.

7 JUROR: I know Miss Lynn McMillian.

8 THE COURT: And your name and number?

9 JUROR: Debra Pennington, 124.

10 THE COURT: And how do you know Miss
11 McMillian?

12 JUROR: I had a case with my grandson
13 involved.

14 THE COURT: And would that have any bearing
15 upon your decision in this case?

16 JUROR: No, sir, it wouldn't.

17 THE COURT: Thank you. You may be seated.
18 Yes, ma'am.

19 JUROR: Bridget Gillespie, juror number 60.
20 I know Miss Aldridge. She is one of my customers.

21 THE COURT: And would that have any bearing
22 upon your decision in this case?

23 JUROR: No.

24 THE COURT: Thank you. You may be seated.

25 Is there anyone else need to respond to the

1 question of having some knowledge or connection
2 with with any potential witness in the case or
3 the lawyers? If so please stand.

4 Is any member of the jury panel related by
5 blood or marriage or have any close connection
6 with any person employed by the 7th Judicial
7 Circuit Solicitor's Office, the Spartanburg
8 Department of Public Safety, the Spartanburg
9 County Sheriff's Department or any other law
10 enforcement agency?

11 I need to know if you are connected by blood
12 or marriage or if you have a close personnel
13 friend or connection with someone who is employed
14 by any of those agencies that I identified as
15 well as any law enforcement agency. If so please
16 stand.

17 All right. I will begin with you, ma'am.
18 If you give me your name.

19 JUROR: Mary Bethea, number 11. I go to
20 church with Chuck Wright.

21 THE COURT: All right. Would that have any
22 bearing upon your decision in this case?

23 JUROR: No.

24 THE COURT: Thank you. You may be seated.
25 Yes, sir.

1 JUROR: Daniel Huckaby, number 75. The
2 manager where I work her husband is a state
3 trooper in Cherokee County.

4 THE COURT: Would that have any bearing upon
5 your decision in this case?

6 JUROR: No, sir.

7 THE COURT: Thank you, be seated. Yes,
8 ma'am.

9 JUROR: Dawn Moody, number 110. I work
10 closely with the sheriff's department in the
11 false alarm division for the county.

12 THE COURT: Would that have any bearing upon
13 your decision in this case?

14 JUROR: No.

15 THE COURT: Thank you. Be seated.
16 Yes, sir.

17 JUROR: Billy Davis, 48. My son is a
18 detective with the Spartanburg County sheriff's
19 Department and I do volunteer Chaplain work.

20 THE COURT: And would either of those facts
21 have any bearing upon your decision in this case?

22 JUROR: No, sir.

23 THE COURT: Thank you. Be seated. Yes,
24 ma'am.

25 JUROR: Lisa Mahaffey, juror number 97.

1 Andy Munoz, he is a public safety officer, his
2 mother and my mother-in-law are sisters. Doug
3 Bishop who was in the courtroom just a few
4 minutes ago, his mother and my mother-in-law are
5 also sisters.

6 THE COURT: All right. And would either of
7 those facts have any bearing upon your decision
8 in this case if you were called upon to serve?

9 JUROR: No.

10 THE COURT: Thank you, you maybe seated.

11 I need to ask if any member of the jury
12 panel or any members of your immediate family and
13 I am going to define an immediate family member
14 as a parent or a spouse, or a child, or a
15 sibling. Parent, spouse, child or sibling. And
16 I need for you to respond if you or any members
17 of your immediate family as I just defined that
18 term for you, have ever been the victim of any
19 type of criminal offense which might be described
20 as a violate criminal offense, as well as whether
21 you or one of those family members has ever been
22 accused of having committed any type of crime
23 that might be characterized as violate offense.
24 And I am going to include in that definition of
25 criminal offenses which might be characterized as

1 violent to include, murder, manslaughter, armed
2 robbery, criminal sexual conduct, criminal
3 domestic violence of a high and aggravated
4 nature, burglary, robbery, assault and battery of
5 a high and aggravated nature, assault and battery
6 with intent to kill or any other similar type of
7 offense and specifically to include criminal
8 sexual conduct in any degree.

9 Have you or any family member ever been the
10 victim of such or have you or that family member
11 ever been accused of having committed any similar
12 offenses? If so please stand.

13 All right. Six standing. I need for you to
14 give me your names and your juror number and then
15 respond to the question for me. If you prefer
16 not to answer the question in front of the
17 audience, feel free to step down here and I will
18 discuss it with you privately. The lawyers will
19 have to step down here too, but feel free to step
20 down here if you prefer not to respond to the
21 question if front of the audience.

22 I will begin you, ma'am, if you will give me
23 your name and number again please.

24 JUROR: Number 110, Dawn Moody. My mother
25 was killed by a drunk driver and my father was

1 severely injured.

2 THE COURT: And would those facts in any way
3 effect your judgement in this case?

4 JUROR: Not in this case, no.

5 THE COURT: Thank you. Be seated.

6 I will get the front row and then I will
7 work my way back.

8 Yes, ma'am.

9 JUROR: Georgi Lathbury, and I am 57 -- no,
10 I am number 87 and I would rather talk to you.

11 THE COURT: Okay. Step down here please
12 ma'am.

13 JUROR: I was a victim of an assault
14 when I was eight years old by a family member.

15 THE COURT: It was a family member?

16 THE JUROR: Yes.

17 THE COURT: Was it a sexual assault?

18 JUROR: Yes.

19 THE COURT: All right. Was someone arrested
20 for that?

21 JUROR: No.

22 THE COURT: And the experience you had in
23 any way would that impair your judgement in this
24 case?

25 JUROR: I don't think so.

1 THE COURT: You could put that experience
2 aside?

3 JUROR: I do think so, yes.

4 THE COURT: Okay. Thank you. You maybe
5 seated.

6 Does anyone else want to step down here?
7 Okay. The others will respond from where they
8 are.

9 All right. Yes, ma'am, your name and
10 number please.

11 JUROR: Gwendolyn Lazurick, number 90.

12 THE COURT: Nine zero. Okay.

13 JUROR: My daughter was raped and battered.

14 THE COURT: And was anyone charged or
15 convicted of that offense?

16 JUROR: No, sir.

17 THE COURT: Would it have any bearing upon
18 your decision in this case?

19 JUROR: I don't think so.

20 THE COURT: Ma'am?

21 JUROR: Probably not.

22 THE COURT: Well, do you feel, relatively
23 certain that it would not influence your
24 judgement?

25 JUROR: Not for certain.

1 THE COURT: Well, I can appreciate you
2 probably could not 100 percent certain, but do
3 you feel confident that you would be able to put
4 that experience aside and not allow it to enter
5 into your decision? Ma'am.

6 JUROR: Yes, sir.

7 THE COURT: Okay. All right. Yes, sir.

8 JUROR: Number nine, Carl Barnard. My
9 mother was battered by her second husband.

10 THE COURT: And would that have any bearing
11 upon your decision in this case?

12 JUROR: No, it would not.

13 THE COURT: Thank you. Next.

14 JUROR: Eighty-four, Sarah Kelly. We had
15 our property and cars burglarized twice.

16 THE COURT: And would that have any bearing
17 upon your decision in this case?

18 JUROR: No.

19 THE COURT: Thank you. Yes, ma'am.

20 JUROR: Debra Pennington, number 124. My
21 grandson was abused.

22 THE COURT: And would that have any bearing
23 upon your decision in this case?

24 JUROR: No, sir.

25 THE COURT: Thank you. You may be seated.

1 Does any member of the jury panel contribute
2 time or money to any type of organization that
3 might be characterized as a law enforcement
4 support organization or victim's advocacy type of
5 organization and those would include associations
6 such as mother's against drunk drivers, citizens
7 against violate crime, the trooper's association,
8 the honorary sheriff's association, the fraternal
9 order order of police, safe homes, rape crisis
10 center, children's advocacy center or any other
11 similar type organization or associations, do you
12 contribute time or do you contribute money to
13 those types of organizations? If so please
14 stand.

15 All right, ma'am. I will begin with you. If
16 you would give me your name and number please and
17 tell me how the question relates to you.

18 JUROR: Juror 164, Mary Truluck, and I give
19 to the trooper's association.

20 THE COURT: All right. Thank you, you may
21 be seated.

22 JUROR: Elizabeth Hamilton, number 63, and
23 we contribute to CAC, children's advocacy center.

24 THE COURT: Thank you. Be seated. Yes,
25 ma'am.

1 JUROR: Sarah Kelly, 84. We contributed to
2 trooper's association and the FOP.

3 THE COURT: All right. Thank you. Be
4 seated.

5 Yes, ma'am.

6 JUROR: Debra Pennington, 124. The
7 trooper's association and then the children's
8 advocacy center and the children's shelter.

9 THE COURT: Thank you, ma'am. Be seated.
10 Yes, sir.

11 JUROR: Jeff Turner, 165. Trooper's
12 association.

13 THE COURT: Okay. Thank you. Be seated.

14 Any member of the jury panel ever been
15 called to testify as a witness in a criminal case
16 or a criminal trial? Have you ever been called
17 to testify as a witness either called by the
18 prosecutor or by a defendant's lawyer? Have you
19 been called to testify in a trial in a criminal
20 case? If so please stand.

21 This is an event which I told you the State
22 alleges occurred back in October of 2005 to
23 November 2007. It is alleged to have occurred at
24 residence on in the Fairmont
25 Community of Spartanburg County and it involves

1 the defendant and the person who I have told you
2 is alleged to have been the victim being victim

3
4 Does any member of the jury panel believe
5 that you may have heard, seen or read something
6 that relates to this particular case? In other
7 words, have you been exposed to any type of
8 information that would relate to this case from
9 any source whatsoever, whether it be television,
10 radio, newspaper, conversations between people at
11 work or church or anywhere else?

12 Have you been exposed to any type of
13 information relating to the case? If so please
14 stand.

15 Is there any anything about the nature of
16 the case itself, that is what the allegations
17 are, is there anything about the nature of the
18 case itself that would prevent any juror from
19 being fair and impartial if called upon to serve
20 as juror in the case.

21 Yes, ma'am.

22 JUROR: I am in the process -- in the middle
23 of two nieces that has also has brought
24 allegations towards --

25 THE COURT: I don't want you to go any

1 further. You are involved in some way with
2 somebody who has a similar experience?

3 JUROR: Yes.

4 THE COURT: And do you think that that fact
5 that you are involved with those family members
6 would in any way interfere with your ability to
7 be fair and impartial in this case?

8 JUROR: Yes.

9 THE COURT: All right. And your juror name
10 and number is what?

11 JUROR: Jennifer Scruggs, 138.

12 THE COURT: All right. We will excuse you
13 from service in the trial in this case, but don't
14 leave yet.

15 Has any member of the jury panel already
16 formed an opinion as to how you think the case
17 ought to be decided based upon what you have
18 heard up to this point or based upon any other
19 consideration?

20 Have you already made up your minds and
21 formed an opinion as to the outcome? If so
22 please stand.

23 Does any juror know of any reason whatsoever
24 why you think you could not be fair and impartial
25 if called upon to serve as a juror in in case?

1 If so please stand.

2 Any other questions requested by the State.

3 MS. REESE: Not from the State.

4 THE COURT: By the defendant?

5 MR. BROUGH: Yes, Your Honor. We would
6 request the Court ask our submission under number
7 four, Your Honor.

8 THE COURT: Okay. I thought they answered
9 that, but we will be more direct and perhaps we
10 will get a different answer.

11 Is there any member the jury panel related
12 to by blood or marriage or do you have a close
13 friend who is employed by the children's advocacy
14 center or the Department of Social Services? If
15 so please stand.

16 If you or some family member or close friend
17 is now or has ever been employed at the
18 children's advocacy center or the Department
19 of Social Services, if so please stand.

20 JUROR: Juror number 128. I am employed by
21 the Department of Social Services in Greenville
22 County.

23 THE COURT: All right. And would that have
24 any bearing upon your decision?

25 JUROR: I don't believe so, no, sir.

1 THE COURT: Thank you. Be seated.

2 Yes, ma'am.

3 JUROR: I am Lynne Aragon, juror number
4 three and I was employed with the Department of
5 Social Services for 17 years and I last worked
6 in '94 and it doesn't have any bearing.

7 THE COURT: And it wouldn't have any impact
8 upon your decision?

9 JUROR: No.

10 THE COURT: Thank you, ma'am. Be seated.
11 Anybody else? Any other request?

12 MR. BROUGHT: No, Your Honor.

13 THE COURT: All right, draw us a jury,
14 please ma'am.

15 The computer selects your name randomly so
16 as your name is called you will be asked to come
17 forward. You see the desks where the lawyers are
18 seated if you will simply come past those desks
19 towards me about two paces or so, turn and face
20 your fellow jurors.

21 Each side has an opportunity to have you
22 seated for service in the case or have you
23 excused from serving in the case. If either side
24 asks that you be excused from serving just go
25 back and have a seat on the back row as you are

1 excused and if both agree to have you seated for
2 serving in the case you will be having a seat in
3 that jury box to your right and to my left. So
4 if you will please come forward as your name is
5 called you will be instructed if you are to be
6 seated or excused from serving in the case.

7 We are having technical difficulties but
8 they should have it resolved in just a few
9 minutes, so bear with us please.

10 THE CLERK: Number 118, James Owens.

11 What says the State?

12 MS. REESE: Please excuse the juror from
13 this case.

14 THE CLERK: Number 75, Daniel Huckaby.

15 What says the State?

16 MS. REESE: Please present the juror.

17 THE CLERK: What say the defense?

18 MR. BROUGH: Please excuse Mr. Huckaby.

19 THE CLERK: Number 165, Jeff Turner.

20 What says the State?

21 MS. REESE: Please present the juror.

22 THE CLERK: What say the defense?

23 MR. BROUGH: Please excuse the juror.

24 THE CLERK: Number nine, Carl Barnard?

25 What say the State?

1 MS. REESE: Please present the juror.
2 THE CLERK: What say the defense?
3 MR. BROUGH: Please excuse Mr. Bernard.
4 THE CLERK: Number 93, Toy Loftis.
5 What says the State?
6 MS. REESE: Please present the juror.
7 THE CLERK: What says the defense?
8 MR. BROUGH: Please seat Mr. Loftis.
9 THE CLERK: Number 150, Warren Smith.
10 What say the State?
11 MS. REESE: Please present the jury.
12 THE CLERK: What the say the defense?
13 MR. BROUGH: Please seat Mr. Smith.
14 THE CLERK: Number 39, Russell Cook.
15 What say the State?
16 MS. REESE: Please present the juror.
17 THE CLERK: What say the defense?
18 MR. BROUGH: Please seat Mr. Cook.
19 THE CLERK: Number 154, Lonnie Starnes.
20 What say the State?
21 MS. REESE: Please present the juror.
22 THE CLERK: What say the defense?
23 MR. BROUGH: Please seat Mr. Starnes.
24 THE CLERK: Number 131, Casey Randall.
25 What says the State?

1 MS. REESE: Please present the juror.
2 THE CLERK: What says the defense?
3 MR. BROUGH: Please seat Mr. Randall.
4 THE CLERK: Number 35, Brandon Claytor.
5 What says the State?
6 MS. REESE: Please present the juror.
7 THE CLERK: What says the defense?
8 MR. BROUGH: Please seat Mr. Claytor.
9 THE CLERK: Number 158, Demetria Tanner..
10 What say the State?
11 MS. REESE: Please present the juror.
12 THE CLERK: What says the defense?
13 MR. BROUGH: Please seat Mr. Tanner.
14 THE CLERK: Number 149, Paul Smith.
15 What say the State?
16 MS. REESE: Please present the juror.
17 THE CLERK: What says the defense?
18 MR. BROUGH: Please seat Mr. Smith.
19 THE CLERK: Number 149, Brandon Smith.
20 What say the State?
21 MS. REESE: Please present the juror.
22 THE CLERK: What say the defense?
23 MR. BROUGH: Please seat Mr. Smith.
24 THE CLERK: Number 119, John Pack.
25 What say the State?

1 MS. REESE: Please present the juror.
2 THE CLERK: What says the defense?
3 MR. BROUGH: Please seat Mr. Pack.
4 THE CLERK: Number 32, Tieng Chanthalangsy?
5 What say the State?
6 MS. REESE: Please excuse the juror from
7 this case.
8 THE CLERK: Number 44, Erin Crum.
9 What say the State?
10 MS. REESE: Please present the juror.
11 THE CLERK: What says the defense?
12 MR. BROUGH: Please seat Mr. Crum.
13 THE CLERK: Number 110, Dawn Moody.
14 What say the State?
15 MS. REESE: Please present the juror.
16 THE CLERK: What says the defense?
17 MR. BROUGH: Please excuse Miss Moody.
18 THE CLERK: Number 30, Robert Cecil.
19 What say the State?
20 MS. REESE: Please present the juror.
21 THE CLERK: What say the defense?
22 MR. BROUGH: Please seat Mr. Cecil.
23 THE COURT: This is for the alternate.
24 THE CLERK: Number 179, Evans Wright.
25 What say the State?

1 MS. REESE: Please present the juror.

2 What says is the defense?

3 MR. BROUGH: Please seat Mr. Wright.

4 THE COURT: All right. Those of you who
5 have been selected, I will ask you to please go
6 with the bailiff to the jury room and I will
7 bring you out in just a few minutes at which
8 time you will be excused for lunch.

9 (Jury exits the courtroom.)

10 Are there any matters that need to be
11 addressed regarding the jury selection by
12 the State?

13 MS. REESE: None from the State.

14 THE COURT: From the defense?

15 MR. BROUGH: No, Your Honor.

16 THE COURT: Those of you not selected you
17 will be excused for the balance of the
18 afternoon. Please call back
19 the number you have. The one 800
20 number that is in your jury
21 information pamphlet. Call that number after
22 six o'clock this evening to receive
23 further reporting information.
24 Call back after six in the evening to
25 receive that reporting information. Have a

1 good afternoon. Thank you for your
2 participation.

3 Are there any matters to be addressed prior
4 to the jury being sworn.

5 MS. REESE: None from the State.

6 MR. BROUGH: None from the defense.

7 THE COURT: All right. Bring the jury in
8 please.

9 (Jury enters).

10 THE COURT: Swear the panel, please.

11 THE CLERK: Do you solemnly swear in the
12 case about to be tried you truly try the issues
13 in this case and a true verdict rendered
14 according to the evidence so help you God.

15 (Jurors respond I do.)

16 Thank you.

17 THE COURT: You may be seated.

18 Ladies and gentlemen, as you know you have
19 been selected to decide the verdict in the case
20 of the State versus James Benjamin Irby.

21 We are not going to begin with opening
22 statements and the receiving of evidence until
23 after lunch. But I want to caution you now that
24 you have been selected and sworn that you are
25 not to discuss this case in any fashion

1 whatsoever with any person whatsoever unless and
2 until you are instructed to begin with your
3 deliberations in the case. And that of course
4 won't be until the end of the trial after all
5 the evidence has been received and I have
6 instructed you on the law that is applicable in
7 the case and when that time does come that is
8 when you will discuss the case in order to
9 arrive at your ultimate decision. But until
10 that time comes you are not to discuss this
11 case in any fashion whatsoever with any person
12 whatsoever and that includes with your fella
13 jurors. You are only permitted to discuss it
14 during those deliberations at the trial's
15 conclusion.

16 Also, you are never during the course of the
17 trial permitted to conduct your own research or
18 do your own investigation into any issue that
19 might arise during the course of the trial. You
20 have to base your decision upon what you see and
21 hear during the course of the trial. You are
22 not permitted to supplemental your knowledge by
23 conducting outside research or doing your own
24 investigation. And also you are never permitted
25 to allow yourselves to be exposed to any type of

1 media courage that might be related to the case.
2 Whether it be television, radio or newspaper.
3 All of that exposure must be avoided. Again,
4 your decision has to be based upon the
5 evidence presented during the trial. You are
6 not permitted to allow yourselves to be
7 influenced by any outside or extraneous
8 information that you might receive from any
9 source whatsoever including media courage. So
10 no discussions. No research. No media
11 exposure. Do have a good lunch. Please report
12 to your jury room at 2:30. At 2:30 this
13 afternoon at which time we will begin with the
14 actual trial. If you are not sure how to get
15 back into the jury room that you have just
16 been introduced to talk to the bailiff before
17 you leave. He will provide you with those
18 directions.

19 Have a good lunch. Please report to your
20 jury room at 2:30 this afternoon.

21 (Jury leaves the courtroom.)

22 THE COURT: All right. The court is in
23 recess until 2:30

24 (Luncheon recess)

25 THE COURT: Any matters we need to address

1 before we bring in the jury?

2 MS. REESE: No, Your Honor.

3 MR. BROUGH: No, Your Honor.

4 (Jury entering.)

5 THE COURT: Good afternoon ladies and
6 gentlemen. We are ready to begin with the trial
7 of case for which each of have you been
8 selected.

9 Mr. Pack, I am going to ask you to serve as
10 foreperson of the jury and as a foreperson
11 you will have three specific duties that none of
12 the other jurors will have.
13 Number one, you will be asked to serve as a
14 spokesperson for the jury and so if something
15 arises during the course of the trial that needs
16 to be brought to my attention it will be you who
17 will be responsible for contacting me, either
18 directly in court or through the bailiff if you
19 are in the jury room. Also you are going to be
20 called upon to preside over the jury
21 deliberations when that time comes. That of
22 course will not be until the end of the trial
23 after the evidence has been received and I have
24 instructed you on the law that is applicable in
25 the case. But when that time does come for

1 jury deliberations you are tasked with the
2 responsibility of presiding over that process in
3 the jury room simply to insure that those
4 deliberations are carried out in some orderly
5 fashion.

6 Thirdly, you will be asked to actually write
7 the verdict or the decision of the jury. You
8 will do that on a verdict form that I will
9 provide you at the trial's conclusion on which
10 you will indicate the jury's unanimous decision.

11 Now, the foreperson has those specific
12 duties that I just indicated. That does not
13 mean that he is any more important than any of
14 you other jurors and that is because as I said
15 the verdict of the jury has to be unanimous.
16 All 12 of you must be in agreement. Someone
17 simply has to be delegated those
18 responsibilities that I have just indicated and
19 I have dedicated those to Mr. Pack in appointing
20 him as foreperson. But all of you jurors are
21 equally important as far as the ultimate
22 decision in the case is concerned because
23 as I said the verdict has to be unanimous. All
24 of you must be in agreement.

25 Mr. Wright, you have been selected as

1 alternate juror and the function of an alternate
2 is to take the place of one of the original 12
3 jurors. If during the course of the trial one
4 of the 12 can not continue to serve for some
5 reason. And so if one is called away because of
6 emergency or illness or some other reason that
7 precludes them from being able to continue you
8 would be called upon to take that person's
9 place. In that event you become the 12th juror.
10 In that event you would participate throughout
11 the trial including the jury deliberations at
12 the trial's conclusion. If however, when the
13 time does come for jury deliberations the
14 original 12 are able to perform their function
15 your service would end and you not
16 participate any further and that's because the
17 decision of the jury is that of 12 and no more
18 than 12 are permitted to engage in that
19 deliberation process. But it is important that
20 you pay just as careful attention as we ask of
21 all of the jurors in the case because it does
22 occur from time to time for one reason or
23 another one of these 12 maybe called away. In
24 that event you would become number 12th. So we
25 do appreciate your participation as a alternate

1 juror just as we appreciate the participation of
2 each of you jurors who have been selected for
3 the purpose of deciding the verdict in this
4 particular case.

5 Now, you have previously been sworn before
6 we broke for lunch. The way the trial will
7 proceed is in a moment the lawyers will address
8 you in what we call opening statements. There
9 are two occasions in the trial of the case where
10 lawyers are permitted to address the jury and
11 that is at the beginning of the trial before any
12 evidence has been introduced and then again at
13 the conclusion of the trial after all of the
14 evidence has been received.

15 Please keep in mind however that the lawyers
16 statements are not evidence. The lawyers don't
17 know anything about this case of their own
18 personnel knowledge or experience like witnesses
19 will be testifying too. They are not going to
20 take the witness stand and testify under oath
21 and be examined and cross-examined by lawyers
22 like each of the witnesses will be. And so what
23 the lawyers tell you in their statements is not
24 to be considered by you as any evidence upon
25 which you will base your decision. But you

1 should listen to what the lawyers have to say
2 because those statements do serve a purpose.
3 The opening statements will serve to provide
4 you with a basic understanding as to what this
5 case is about from both the perceptive of the
6 State and of the defense so that you will have
7 some context in which to place the evidence that
8 we will be receiving shortly thereafter.

9 The closing statements occur after all of the
10 evidence has been received. And again while
11 those statements are not evidence it does afford
12 the lawyers an opportunity to discuss with you
13 the evidence that you have seen and heard
14 throughout the course of the trial and through
15 that discussion each will have an opportunity to
16 try to persuade you or try to convince you that
17 the evidence in the case does or does not
18 support a particular decision. And it is in
19 between those opening and closing statements
20 that we actually received the evidence upon
21 which will you base your decision.

22 The State has the burden of proof so they
23 will go forward first in their presentation of
24 the evidence. Once they conclude the defense
25 has the same opportunity to testify and present

1 evidence if he wishes to. But understand that a
2 defendant is never under any obligation to
3 testify or to call any witness or produce any
4 evidence.

5 The burden is on the State to prove a
6 defendant guilty beyond a reasonable doubt. A
7 defendant in a criminal case is always presumed
8 to be innocent. And that presumption of
9 innocence remains with any defendant as it does
10 with this defendant from the time he is placed
11 under arrest and throughout the course of the
12 criminal process and even throughout course of
13 the actual trial. That presumption of
14 innocence will be with him even at the time that
15 you go back to begin with your deliberations in
16 the case at the trial's conclusion. And that
17 presumption of innocence will be with him in
18 that jury room and it will be with him forever
19 unless you 12 jurors unanimously determine that
20 his guilt has been proven beyond a reasonable
21 doubt. So, if you determine that it has then he
22 is no longer entitled to the presumption of
23 innocence. But it is only if and unless and
24 until you are satisfied of his guilt beyond a
25 reasonable doubt that the presumption of

1 innocence will no longer be applicable. So the
2 State has the burden of proof. A defendant has
3 no burden because in some cases the defendant
4 might not be able to prove that he is not guilty
5 or prove that he is innocent and that is the
6 reason for the constitution's presumption of
7 innocence.

8 Nevertheless, everybody is afforded an
9 opportunity to testify or call witnesses if they
10 wish to do so. So after all of the evidence has
11 been received and after you hear the final
12 summations of the lawyers, I will then instruct
13 you fully on the law as it relates to the
14 criminal law generally and as it relates to this
15 particular crime specifically. And after that
16 you will be asked to go back and begin with
17 your deliberations and through that process, you
18 are simply going to be called upon to exercise
19 good judgement and common sense, conscientiously
20 apply to the testimony and evidence in the case
21 to decide what you believe to be the true facts
22 as they relate to these allegations. Once you
23 decide those facts you will apply the law that I
24 will have provided you and you will determine
25 whether or not the defendant has been proven

1 guilty beyond a reasonable doubt. If he has
2 then your verdict is guilty. If he has not then
3 your verdict will be not guilty.

4 All that you are going to be asked to do is
5 pay careful attention throughout the course of
6 the trial because there maybe conflicts in
7 testimony and where there is a conflict in
8 testimony it is your prerogative to determine
9 what is the most credible and believable
10 testimony. That is the testimony you will
11 accept. You will reject any testimony or other
12 evidence that you find not to be credible or
13 believable. But in order for you to be in a
14 proper position to be able to fairly evaluate a
15 witness's testimony, it is important that you
16 give every witness the same degree of attention
17 as they testify so that at the trial's
18 conclusion you will be in a proper position to
19 evaluate that testimony based upon not just that
20 witness's testimony individually but based upon
21 your consideration of all of the testimony and
22 all of the evidence received during the trial.
23 And of course it is important that you keep an
24 open mind throughout the course of the trial and
25 that simply means that you are not to begin

1 making up your minds or formulating your
2 opinions as to what you think the ultimate
3 decision in this case ought to be until all of
4 the evidence has been received, until I have
5 instructed you on the law and until you have
6 been asked to begin with your deliberations in
7 the case.

8 That is the process that is designed for you 12
9 jurors to arrive at a fair and just decision in
10 the case. So I do want to thank you in advance
11 for your participation as well as for your
12 careful attention.

13 I would ask that you please give the lawyers
14 your attention now as they give you their open
15 statements.

16 THE COURT: Miss Reese.

17 MS. REESE: Thank you, Your Honor. May it
18 please the Court.

19 In the later part of 2007, victim
20 had some decisions to make. She had just turned
21 13 and something was wrong at her house. It had
22 been wrong for a while.

23 victim lived in a house with her mother, the
24 defendant and her sister and brother. She had
25 told her mom about a year before something was

1 wrong but nothing happened. So victim lived the
2 next year not knowing exactly what to do. In
3 November of 2007 her worse fears became a
4 reality. And she had to decide what am I going
5 to do now. What she decided to do was reach out
6 to family. And finally to her aunt Jennifer and
7 her aunt Jennifer called the police.

8 victim reached out and told. And you will
9 hear that when the officer who was sent to that
10 house on that Friday wasn't a detective. Didn't
11 work sexual assaults. He took a statement and
12 left her in the home until DSS invested the next
13 week. So she stayed that weekend with the
14 defendant.

15 My name is Susan Reese and I prosecute cases
16 involving child sexual abuse in Spartanburg
17 County. I am going to tell you up front that
18 you are going to hear things you do not want to
19 hear. You are going to hear things said and you
20 are going to have to think about things that
21 nobody really wants to think about. I think
22 that it is easier for us if we believe these
23 things don't happen because we feel safer. I am
24 asking you to accept that these things do
25 happen. That grown men really do these things

1 to children and then look at this case on its
2 merits.

3 The defendant has been charged with criminal
4 sexual conduct in the second degree. What that
5 means is that he committed a sexual battery upon
6 a child who is between the ages of 11 and 14 at
7 the time. Now sexual battery is any penetration
8 of anal or vaginal openings of the child however
9 slight. Or it can be oral sex. Either one of
10 those things.

11 You are also going to hear -- everybody likes
12 to watch CSI. Everybody likes that show. But
13 what you are going to find out that is not
14 reality. Child sexual abuse does not leave
15 marks. There is rarely medical evidence of
16 child sexual abuse and children don't tell so
17 you are going to have to base your decision on
18 what you hear from the stand. You will hear
19 from victim . It has taken her a long time. A
20 long time to be able and ready to do this.

21 victim is a special education student. She is
22 in self contained classes throughout her high
23 school career. So victim is going to be a
24 little bit slower to answer questions some
25 times. She may have to process. I ask you to

1 be patient with her.

2 I tell people I have five children at my
3 house and I could not get one of them to come up
4 here and tell you what they had for breakfast
5 this morning, much less talk about the worse
6 thing that ever happened to them. Be patient
7 with her. Listen to her.

8 Also, you will hear from officers and people
9 who investigated the case. And in the end I
10 will ask you to do two things. I am just going
11 to ask you to be fair. Be fair to the State.
12 Be fair to the defense. That is all we can ask
13 and keep your eye on the ball. My dad was a
14 basketball coach so all my life I had all this
15 basketball analogies. One of them was, keep
16 your eye on the ball. Keep your on the ball.
17 In the end the word verdict means to speak the
18 truth. And we believe if you do those things
19 that you will return a verdict that speaks the
20 truth.

21 This defendant is guilty of criminal sexual
22 conduct in the second degree.

23 THE COURT: Mr. Brough.

24 MR. BROUGH: Thank you, Your Honor. May it
25 please the Court.

1 Good afternoon, ladies and gentlemen of the
2 jury. My name is Chris Brough. I represent
3 James Irby in this matter.

4 I ask you first of all like Miss Reese did,
5 to be fair and listen to the testimony. Now, I
6 listened very closely to her opening and there
7 is one thing that she is right about. I think
8 people believe that they are safer if they think
9 these things don't happen. And the really bad
10 thing is when these things are made up. And
11 that's where we are today.

12 The evidence will show that Mr. Irby became
13 involved with victim's mother, Lillian Collins.
14 He got married to her. They were living as
15 husband and wife. These were his stepchildren.
16 He went into an environment where there was no
17 disciplinary controls. He attempted to assert
18 some discipline. The child got upset with him.
19 He knew that this was an avenue in which there
20 would be action taken against him and it was.
21 You will hear testimony about statements that
22 were taken. You will hear testimony about a
23 number of statements that were taken from Mr.
24 Irby. And I will tell you right now there is
25 great pressure brought to bear on him. But he

1 denied it initially to officer Tanya Aldridge in
2 November 2007. He denied it again in December
3 of 2007. And after being pressured and
4 questioned for hours he told them basically
5 anything then they wanted to hear. You will
6 hear from him. We will ask you to pay
7 attention. I ask you to listen to his
8 testimony.

9 You will also hear testimony that victim
10 recanted her story in a session of counseling.
11 You will hear testimony that in a counseling
12 session with her mother present when asked what
13 had happened with James, she said nothing
14 happened. Nothing at all.

15 So unfortunately like Miss Reese, I am going
16 to have to ask you to do a very difficult job
17 here this week, and I know it is probably not a
18 job that any of you wanted before you came in
19 here and I know it is not something that anybody
20 would wish to have to decide a case of this
21 serious nature.

22 I will ask you to pay close attention to the
23 witnesses. You are going to hear testimony that
24 victim stated nothing happened. And there is
25 going to be conflicts in testimony. I will tell

1 you that right now. And you are going to have
2 have a difficult job going through the
3 credibility of each of these witnesses. But I
4 will tell you one thing that we appreciate your
5 efforts in advance and appreciate you being
6 fair.

7 Now, I know Judge Cole has instructed you on
8 the law and I know we hear these terms quite a
9 bit in terms of what the law means. Presumption
10 of innocence means a number of other things. I
11 want to remind you that right now you haven't
12 heard anything about the case. Miss Reese's
13 comments aren't evidence. My comments aren't
14 evidence. They are just opinions of what the
15 evidence will show. But you haven't heard any
16 evidence yet. To be presumed innocent means at
17 this point having heard no evidence that you
18 would be required by law to return a verdict of
19 not guilty at this point. That is what that
20 means. That you haven't heard the first bit of
21 evidence and only after you heard that evidence
22 are you in a position to determine whether or
23 not that presumption has ever been overcome by
24 proof beyond a reasonable doubt. Which is more
25 likely then not. It means you do not have a

1 reason to hesitate to act. That is what that
2 means. Right now you haven't heard anything.
3 And I think it is very difficult and people want
4 to believe that people got arrested for a
5 reason and everything else, but the reality is
6 the reason we have our court system is in order
7 to find out what the truth is. And I want to
8 you to ask to pay close attention to the
9 witnesses and at the end of the case I will ask
10 you to return a verdict of not guilty.

11 Thank you.

12 THE COURT: Miss Reese.

13 MS. REESE: Your Honor the stated calls

14 victim

15 victim , after being duly sworn,

16 testified as follows:

17 DIRECT EXAMINATION

18 BY MS. REESE:

19 Q. State your name for the record.

20 A. victim

21 Q. And what do you go by?

22 A. victim

23 Q. victim , how old are you now?

24 A. Seventeen.

25 Q. And where do you go to school?

1 A. Texas Job Core Center.

2 Q. Texas Job Core center. And how long have you
3 been there?

4 A. Since February the 27th.

5 Q. Who is the defendant to you ? How do you know
6 him?

7 A. He is my momma's husband.

8 Q. Do you remember about how old you were when you
9 met him?

10 A. No, probably 11 or before. I don't know.

11 Q. Do you know how old you were when he moved in
12 with your family?

13 A. No, I don't remember.

14 Q. When he first moved in what kind of things did
15 you do together as a family?

16 A. We went out to eat and that's about it. We just
17 went out to eat and did things.

18 Q. Was there a time when James was living with you,
19 a first time that he made you uncomfortable sexually?

20 A. Yes.

21 Q. What were you doing that day?

22 A. Cleaning my room.

23 Q. And where was James?

24 A. In my momma's room. In and out of momma's room
25 and the living room.

1 Q. What were you doing just before this happened?

2 A. I was going to get a trash bag.

3 Q. And can you tell us what happened next?

4 A. I was put on the floored, with my hands like over
5 my head where I couldn't move.

6 Q. And then what happened?

7 A. He snatched my underwear down and he started
8 fingering me.

9 Q. What did you do when that happened?

10 A. I told him to stop.

11 Q. After that happened now -- I mean, when you say
12 fingering you, where did his finger go?

13 A. In my private part.

14 Q. After that happened did he say anything to you?

15 A. Not that I remember. I went to my room.

16 Q. Did you tell anybody that day what had happened?

17 A. I told my momma.

18 Q. And how long before? How long was that before
19 the last time that something happened?

20 A. Like over a year, I think.

21 Q. After you told your mom what if anything happened
22 about what James had done?

23 A. Nothing really happened. She just -- she said
24 that he said he didn't do anything.

25 Q. So after you told the first time did James still

1 live in the house?

2 A. Yes. Yes.

3 Q. Now, when you lived at your home, who lived there
4 with you?

5 A. Me, my mom ma, James, my sister and my brother.

6 Q. And what were the sleeping arrangements? Where
7 did people sleep?

8 A. My brother had his own room. My sister slept in
9 the room with me either on the top bunk or some times in
10 the bed with me. My momma and James were together in
11 their room.

12 Q. Now, when you would go to bed at night after this
13 first time that something happened, when you would go to
14 bed at night, would anybody come in to your room?

15 A. Yes.

16 Q. And who would come into your room?

17 A. James.

18 Q. And do you know why he said he was coming into
19 your room?

20 A. He said he was coming in to turn the TV off
21 because I always left the TV on.

22 Q. And was that why he was coming into your room?

23 A. No.

24 Q. When he would come into the room during the
25 period between the first time and the last time, what

1 would he do when he come in there?

2 A. He would pull my covers off of me and he would
3 pull my clothes down.

4 Q. Would he touch you anywhere?

5 A. Yes. On my legs.

6 Q. When he would do those things what would you do?

7 A. Tell him to stop.

8 Q. Would he leave the room?

9 A. Yeah.

10 Q. Did you complain to your mom about him coming
11 into your room?

12 A. Yes.

13 Q. Did he still keep coming into your room?

14 A. Yes.

15 Q. Did you do anything yourself to make it harder
16 for him to do those things in your room?

17 A. Can you tell it again?

18 Q. What did you do, if anything, to make it harder
19 for him to do those things in your room?

20 A. Like to keep him from messing on me?

21 Q. Yes.

22 A. I would push the dresser in front of the door.

23 Q. Did you change what you would wear to bed?

24 A. Yes.

25 Q. What did you wear to bed?

1 A. I started wearing jeans. I would leave my
2 clothes on. My jeans.

3 Q. Did you change anything about where your sister
4 slept?

5 A. Some times I would make her sleep with me.

6 Q. In November of 2007, do you remember the last
7 time that something happened that he came in your room?

8 A. Yes.

9 Q. What were you doing when he first came in the
10 room?

11 A. I think I was asleep.

12 Q. Did you tell him to leave?

13 A. Yes.

14 Q. Did he leave at first?

15 A. Yes, he left and then he came back.

16 Q. What happened when he came back?

17 A. Can you repeat the question.

18 Q. When he came back in your room what happened?

19 A. He pulled my clothes down, and the clothes that I
20 had on and I told him to stop. And he -- he -- he
21 pulled my clothes down that I had on and he put his
22 private part in me.

23 Q. And what did he do once he put his private part
24 in you?

25 A. He started having sex with me.

- 1 Q. Did it hurt?
- 2 A. Yes.
- 3 Q. Do you know if you bleed at all?
- 4 A. Yes.
- 5 Q. When he was finished what did he do?
- 6 A. He left out of my room.
- 7 Q. And what did you do?
- 8 A. I cried. I tried to cry myself back to sleep.
- 9 Q. Did you tell your mom?
- 10 A. No.
- 11 Q. Why not?
- 12 A. Because I had told her twice and she didn't
- 13 believe me, so I didn't want to say anything else.
- 14 Q. Did you decide to tell somebody else?
- 15 A. I was writing letters to my daddy.
- 16 Q. And did you eventually tell somebody in your
- 17 mother's family?
- 18 A. Yes.
- 19 Q. Who did you tell?
- 20 A. A called my aunt. I told my aunt.
- 21 Q. And what did your aunt do?
- 22 A. Immediately she came with the police to my
- 23 momma's house.
- 24 Q. Did your momma agree for you to leave the house?
- 25 A. No.

1 Q. So you stayed?

2 A. Yeah.

3 Q. That was on Friday. The next week did DSS come
4 to see you?

5 A. At school, yes.

6 Q. And after they saw you did you get taken from the
7 house?

8 A. Yes.

9 Q. Did your mom continue to live with James?

10 A. Yeah. Yes.

11 Q. The house that you lived in was it in Spartanburg
12 County?

13 A. Yes.

14 Q. When were you born? What is your birthday?

15 A.

16 MS. REESE: Nothing further.

17 CROSS EXAMINATION

18 BY MR. BROUGH:

19 Q. Victim , you said you are were writing
20 letters back and fourth to your father?

21 A. Yes.

22 Q. And what is his name?

23 A. Frankie Smith.

24 Q. And how long have you been doing that for?

25 A. I don't remember.

1 Q. Was it before or after James came to live with
2 you?

3 A. After James came to live with me.

4 Q. Right before the incident that you are referring
5 to in November, do you recall James telling you that if
6 you didn't clean your room you couldn't go on a field
7 trip to Biltmore?

8 A. I don't remember.

9 Q. You don't remember that?

10 A. No.

11 Q. Any of these times that you testified to these
12 things happening did you ever cry out? Did you ever ask
13 for help while it was happening?

14 A. Yes.

15 Q. Did anyone ever hear you?

16 A. No.

17 Q. But your room -- you were rooming with your
18 sister who was in there?

19 A. Yes.

20 Q. And she didn't hear you?

21 A. I don't -- to be honest, I don't even remember if
22 she was even in there that night.

23 Q. Well, my understanding of your testimony is that
24 you alleged that this has happened on multiple
25 occasions?

1 A. Yes, it has.

2 Q. Okay. So, but in your testimony was that your
3 sister was also in the room with you?

4 A. She sleeps with me. Not with me, on the top
5 bunk.

6 Q. So is it your testimony that she was asleep the
7 whole time this happened every single time?

8 A. Just about every single time I think so.

9 Q. She never woke up?

10 A. No.

11 Q. Now your brother ~~mon~~ 4, where is his room in
12 relation to yours?

13 A. Right close to mine. Like next to mine. Past
14 the bathroom.

15 Q. So it is right next door?

16 A. Yes.

17 Q. And ~~mon~~ 4 is older or younger than you?

18 A. Older.

19 Q. By how many years?

20 A. Like four.

21 Q. So he is four years older. So when you were 13
22 he would be 17?

23 A. I think so.

24 Q. Okay.

25 Q. And his room is right next to yours?

1 A. Uh-huh.

2 Q. And he never heard you call out for help any of
3 these times?

4 A. No.

5 Q. So you did call out for help audibly, is what
6 your testimony is?

7 A. Yes.

8 Q. So you screamed out for help?

9 A. I screamed for my momma.

10 Q. And your brother who was right next door never
11 ran in and checked on you?

12 A. No.

13 Q. And your mom never heard you?

14 A. No. Her room is all the way down the hall.

15 Q. And your sister who is in the same room with you
16 never heard you?

17 A. Yeah.

18 Q. Okay. So you screamed out for help on multiple
19 occasions but nobody ever came.

20 When James moved in to your house would it be fair
21 to say that your family life was significantly
22 different? That he started trying to have certain rules
23 for the family that didn't exist before him getting
24 there?

25 A. Can you say that again.

1 Q. When James moved in with your family, did he try
2 to enforce certain rules of conduct that did not exist
3 prior to him being there?

4 A. Yeah.

5 Q. He did. How many times do you alleged that this
6 happened?

7 A. I don't know. It was -- it wasn't like -- like
8 several times, but not a lot.

9 Q. Several times but not a lot?

10 A. Yeah.

11 Q. I understood your previous testimony to be that
12 this would be a regular thing. Was that not accurate?

13 A. Like him messing with me a regular thing -- yeah.
14 But it was like he wasn't messing with me in the same
15 way every time.

16 Q. After DSS took you into custody did you ever have
17 a chance to talk with your mom? Go to some counseling
18 with her?

19 A. We had one session together.

20 Q. Just one?

21 A. I think one, yeah.

22 Q. And during that session did you ask your mom why
23 she didn't believe you? Why she was choosing James over
24 you. Did you ask her that?

25 A. Yes.

1 Q. And did she in turn ask you a question that since
2 you hasn't talked to her about this that she needed to
3 know what happened from you?

4 A. Yes.

5 Q. And did you not state that nothing happened?

6 A. I didn't state that.

7 Q. Are you sure?

8 A. I am 100 percent sure.

9 Q. Let me make sure I am clear on one thing. This
10 incident in November, you said you reached out to your
11 aunt and they came with the police. Was that the same
12 night this happened?

13 A. No.

14 Q. When was it?

15 A. Like a few days earlier is when it happened, but
16 I didn't tell my aunt until after it happened.

17 Q. So you waited a couple of days to tell her?

18 A. Yes.

19 Q. And this time that you alleged in November that
20 was right around the time when you were instructed that
21 you weren't going on a field trip with your class unless
22 you did certain things around the house; isn't that
23 true?

24 A. I don't remember.

25 Q. Those letters that you wrote back and forth to

1 your father, Frankie Smith, did you ever indicate in
2 those letters that you wished you were living with him?

3 A. I don't remember writing a letter that said. I
4 don't remember.

5 MR. BROUGH: No further questions.

6 REDIRECT EXAMINATION

7 BY MS. REESE:

8 Q. victim , just a few things to clarify. How much
9 younger is your sister than you.

10 A. Like seven years younger than me I think.

11 Q. So during the time this was all going on your
12 sister was little, right?

13 A. Uh-huh.

14 Q. Tell me about the time that you called out.

15 A. It was that night like a few days before I told.
16 I was -- when he was in my room I had told him to stop.
17 Leave me alone and I called for my momma and he hit me
18 and he covered my mouth and told me to shut up.

19 Q. And is that the same night he put his private
20 part in your --

21 A. Yes.

22 Q. And did you tell that to the people when they
23 asked you?

24 A. Yeah, I think yes.

25 MS. REESE: Nothing further.

1 THE COURT: Okay. You may step down.

2 MS. REESE: I would ask this witness be
3 excused.

4 THE COURT: She may be.

5 MS. REESE: The State call Jennifer Turner.

6 JENNIFER TURNER, after having been sworn,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MS. REESE:

10 Q. Will you state your name for the jury, please?

11 A. Jennifer Turner.

12 Q. And where do you live?

13 A. I live in Lyman.

14 Q. And how do you know victim ?

15 A. She is my niece.

16 Q. And how is she your niece? Who are you related
17 to?

18 A. My sister is Dannette Collins.

19 Q. Do you know the defendant?

20 A. I do.

21 Q. And before victim talked to you in November of
22 2007, did you see the defendant and victim and Dannette
23 on a regular basis?

24 A. I did. Like at my parent's house or cookout or
25 different family functions.

1 Q. And did you have occasion to see victim and
2 Dannette on the evening of November 9th, 2007?

3 A. After I was called by victim .

4 Q. What were you doing that day when you got the
5 call?

6 A. I was asleep and my daughter came into my room
7 and woke me up and told me she was on the phone.

8 Q. What was victim 's demeanor when you got on the
9 phone?

10 A. She was very upset. She was crying.

11 Q. Now, you can not tell me exactly what she said.
12 The law doesn't let you tell me exactly what she said.
13 When she called you that night did she report a sexual
14 assault?

15 A. She did.

16 Q. And at the time did she tell you where and when
17 it had happened?

18 A. She just said that it had happened in the
19 household.

20 Q. At that point what did you do?

21 A. I got up and I got dressed and I told her I was
22 on my way.

23 Q. And did you go to the house?

24 A. I did. I went to the house and then I went to
25 the store that was near the store and I called police.

1 Q. So, the first time you went to the house you
2 didn't go in the house, do I understand that correctly?

3 A. That is correct.

4 Q. So, once you called 911 and went back to the
5 house, when you got to the house what was going on? Did
6 you knock on the door?

7 A. The door was unlocked and I walk in and victim
8 and her younger sister came out.

9 Q. And what did victim look like when you saw her?
10 What was she doing?

11 A. She was crying.

12 Q. When the officer arrived were you allowed to take
13 victim with you?

14 A. No. He said that they had to get out of the car
15 and until DSS investigate they weren't allow to leave.

16 Q. So victim stayed in the house that night?

17 A. Yes.

18 Q. Since this time, 2007 have you seen victim on a
19 regular basis?

20 A. I have.

21 Q. And where does she live now?

22 A. Now she lives with McKinney Texas a job core.

23 Q. And do you speak with her?

24 A. I do.

25 Q. Now, again you can not tell me what she said, but

1 since the time in 2007 has she disclosed to you a sexual
2 assault?

3 A. Yes.

4 Q. And where has she told you it happened?

5 A. In her mother's house.

6 Q. And at the time that this happened, victim was
7 living in Spartanburg County; is that right?

8 A. That's correct.

9 MS. REESE: Nothing further of this witness,
10 Your Honor.

11 MR. BROUGH: Just briefly.

12 CROSS EXAMINATION

13 BY MR. BROUGH:

14 Q. Miss Turner, you said that you showed up and the
15 police showed up too; is that right?

16 A. Yes.

17 Q. Was that a Deputy Washington?

18 A. I don't remember his name. He did show up.

19 Q. At the time did you make him aware of when you
20 believe the incident occurred was two days prior to the
21 date you showed up with him?

22 A. I don't remember what I told him. Whatever my
23 niece had told me.

24 Q. Did he insist on calling a detective?

25 A. He did not. He said everything was closed and I

1 don't know why, but, he was very adamant about her
2 remaining in the household. He took a report, a written
3 statement from victim at that time. That same night.

4 Q. But he did not arrest Mr. Irby that night?

5 A. He did not.

6 MR. BROUGHT: No further questions.

7 MS. REESE: May this witness be excused.

8 THE COURT: You may step down.

9 MS. REESE: Your Honor, the State calls
10 Brenda Sparks Izarra.

11 BRENDA SPARKS IZARRA, after being duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MS. REESE:

15 Q. Will you state your name for the jury, please?

16 A. Brenda Izarra.

17 Q. And where are you currently employed?

18 A. I am retired.

19 Q. And where were you employed in November of 2007?

20 A. I was employed by the Spartanburg Department of
21 Social Services.

22 Q. And how long had you worked with the Department
23 of Social Service?

24 A. Twenty-five years.

25 Q. And what were your duties at the department?

1 A. I was a child abuse investigator.

2 Q. And did you have occasion to investigate the case
3 of the defendant James Irby?

4 A. I did.

5 Q. Now, how did you get the information, or when did
6 you get the information that the child had disclose
7 sexual abuse?

8 A. Our agency received a call November the 13th
9 around 9:30 a.m. and it goes into a central calling
10 agent in our office and the case was assigned to me at
11 that time.

12 Q. So this would have been the Monday after the
13 Friday that she reported?

14 A. Correct.

15 Q. So you first heard about this on that Monday?

16 A. That Monday at 9:30.

17 Q. And at the time that you got the report what did
18 you do?

19 A. I went to the school and made contact with victim
20 the victim in this case at 10:30 a.m..

21 Q. And at that time, and again you can not tell us
22 specifically what she told you, did she disclose to you
23 a sexual assault?

24 A. She did.

25 Q. And did she say where it happened?

1 A. At her home where she was living with her mother
2 and the defendant and her siblings.

3 Q. And did she tell you when it had happened?

4 A. She said it had been ongoing for a couple of
5 years and the last time being the Wednesday of the
6 previous week.

7 Q. After she made the disclosure to you and talked
8 to you about it, what did you do in regard to victim ?

9 A. Well, the mother came to the school. I spoke
10 with her and then there was a school resource officer at
11 the school and we asked the mother for names of
12 relatives where the child could go because she couldn't
13 go home with the defendant being still in the home.

14 Q. Were you able to confirm from the mother that
15 there had been at least some sort of report to the
16 mother a year previously?

17 A. Yes.

18 Q. At that time where did you decide to place
19 victim ?

20 A. We placed her with the relative and her name was
21 Barbara Pearson. She was the relative of the mother's
22 family.

23 Q. And at the time did you get permission from the
24 mother to do that?

25 A. Yes.

1 Q. Did you make a referral for victim ?

2 A. I did. I referred the case to the Children's
3 Advocacy Center of Spartanburg.

4 Q. And can you briefly describe for the jury what
5 the Children's Advocacy Center is?

6 A. It is an agency that assists DSS and law
7 enforcement in investigating cases of child abuse.
8 Basically it is a child friendly environment where the
9 children go and they feel comfortable. They are
10 interviewed by what is called a forensic interview. It
11 is called forensic interview and they are licensed and
12 certified personnel. They get information about what
13 happened, the alleged allegations and what happened, as
14 well as family dynamics and other things involved with
15 the child.

16 They have a doctor on staff that examines the
17 children. They have a multi-disciplinary staffing every
18 Wednesday or every week. Once a week. And this
19 involves anybody that is involved with the case; law
20 enforcement, DSS, school staff, medical staff, and it
21 allows us to make a better treatment plan for the child
22 as well as prevent reduplication of services and keeps
23 the interviews there. Keeps the child from having to go
24 through so many different interviews by so many
25 different people. They are usually recorded and so that

1 we all can -- all the investigators, law enforcement and
2 DSS can watch and see what the child says so they can
3 report it one time and not a zillion times.

4 Q. So, you in fact made the referral for victim ?

5 A. I did.

6 Q. And after you made a referral what then was the
7 next step that you took in the investigation?

8 A. Well, I continued to interview the siblings in
9 the home. There was a brother, ~~MR. DA 4~~, and a little
10 sister. She was only five at the time, and so I didn't
11 get a lot out of her, but -- and another sister in the
12 home, as well as Mr. And Miss Irby.

13 Q. Now, there was -- help me. There was a brother
14 and sister in the home. Was there another sister in the
15 home or was that sister out of the home?

16 A. I am thinking she was still in the home.

17 Q. Do you remember how old she was?

18 A. She went to I think it was Berry Shoul's
19 (phonetics) School. It was Eliza, River Ridge
20 Elementary. I am sorry.

21 Q. And that is the same child as , is it not,
22 the five-year old?

23 A. Maybe so. The other sister, the older sister was
24 out of the home. This was a five-year old and she had a
25 different name, but her records in the school was a

1 Eliza.

2 Q. Thank you. After you talked to the other
3 children, what did you do in regard to your
4 investigation?

5 A. Well, the other children didn't disclose any
6 sexual abuse during the interviews, but I talked to
7 Victim again at the Advocacy Center and she maintained
8 everything that had happened. Investigator Aldridge and
9 I worked together closely on the case. We interviewed
10 Mr. Irby and Victim .

11 Q. All right. I am going to show you what has been
12 marked as States Exhibit 1. Did you interview Mr. Irby
13 on November 14th, 2007?

14 A. I did.

15 Q. And were you present when Detective Aldridge read
16 him his Miranda warnings?

17 A. I was.

18 Q. And states Exhibit 1 is that the form that he
19 signed?

20 A. It is a pre-interrogation waiver form that he
21 signed when his rights were read by Investigator
22 Aldridge.

23 Q. And you were present for that?

24 A. Yes, I was.

25 Q. Did he in fact agree to talk with you that day

1 regarding victim's allegations?

2 A. He did.

3 Q. And did you in fact take dictation about what he
4 said that day on November 14th, 2007?

5 A. I did.

6 Q. And would you just read for the jury from your
7 dictation for that day as to what he said or his
8 statements in regards to what victim's alleging?

9 A. This interview was on November the 14th in my
10 office at DSS. Mr. Irby states that the allegation are
11 not true. Nothing ever happened. He stated that this
12 all started one day when he came home and victim, or the
13 victim child who goes by the name victim was cleaning
14 her room. He told her to clean her room and if he
15 didn't see progress soon that she would not be going to
16 Biltmore Estates with her class at school. He stated
17 that he and Miss Collins had discussed discipline issues
18 and the fact that victim has had a hard time coping.
19 Has problems at school. Things had been going fine
20 until they tried to discipline and that is when
21 Lillian's family tries to infer and this has caused lots
22 of problem. Lillian's father grabbed her by the neck
23 and tried to get her to allow the baby to stay with
24 them.

25 He states that evening they told victim that she

1 couldn't go on the field trip. She got mad and went
2 into her room. They heard her in the room and thinks
3 the TV was on. The next thing he knew Jennifer, the
4 mother's sister, and the police were there.

5 He states that when he came to live with the family
6 that Lillian did not have control of the children. They
7 have been together for almost a year. They were married
8 in July. Her father is Jesse Collins Jr. Mr. Irby
9 states they have tried all kinds of discipline. Nothing
10 has worked. He says that when he went to the school
11 because of the problems she was having there. That she
12 was misbehaving in school and being rude to the teacher
13 and the Principal at Barry Shouls. This was the year
14 before last. He states that after this victim went to
15 her grandparent's house and she was suppose to be on
16 punishment but the grandparents gave her pizza. And he
17 had never been in an environment where the kids were
18 acting like victim was.

19 Q. Did he continue to make statements regarding
20 victim ?

21 A. He said he was not upset that the allegation had
22 been made, but it could have been avoided and that it
23 could have been avoided because he feels that Lillian's
24 family had let her get away with to much for this long
25 and that she is out of control now. He said they have

1 not had any problems with other children. They
2 discussed sending victim somewhere but she states -- he
3 states that Dannette brought up she didn't want to go
4 and he didn't want to do this.

5 He said that any time something happens it is
6 always the teacher's fault or another child's fault.
7 Mr. Irby states that he thinks this all started because
8 he told her she could not go on the field trip. The
9 mother told her she could not go to the grandmother's
10 for the holidays. Mr. Irby states that when he first
11 came to live there he would try to plan things with
12 Dannette and he would say that the kids -- she would say
13 that the kids had already made plans. He says he was
14 trying to make plans for the whole family and the
15 children had already made plans for all of them. The
16 other kids have handled things fine as far as he and the
17 mother, but victim did not handle things well. He says
18 that he would not do anything to hurt victim. That they
19 wrestled all the time and that it is always victim ,
20 ~~maybe~~ and himself wrestling and nothing ever happened.
21 He said his finger did not go into her private parts or
22 anywhere around it. He states that nothing happened
23 where either of them had a hand touching the wrong
24 place.

25 Mr. Irby says that victim is always going to the

1 mother and saying James ate the chips. James did this
2 or James did that. They have had a problem with
3 victim 's attitude.

4 Mr. Irby stated further that they went to the flea
5 market and victim saw a puppy they wanted. They told
6 her she could not have one because of the vet bills.
7 She pitched a fit. States that they decided to get her
8 a pet anyway because everyone else had one. So he
9 bought her a bird for \$150. He states that they did not
10 want another dog, so he decided to get the bird and she
11 through a fit and was being very rude.

12 Mr. Irby says that he has always gone to the kids
13 room ever night to turn off the TV and other things.
14 Before that nobody ever did this. He stated that he
15 told his wife every time he went down the hall because
16 with a child like victim you have to cover yourself. He
17 went on to say that he was not self-employed.

18 Q. And at the time that you did this interview with
19 him and he gave you all this information about the
20 child, were you also on that day able to interview the
21 mother of the child?

22 A. I did.

23 Q. And in regard to a prior incident or report that
24 victim had made to her mother regarding digital
25 penetration, did you talk to her mother about that?

1 A. I did.

2 Q. And were you able to confirm that report had been
3 made to her?

4 A. Yes.

5 Q. After you talked with him in the office did you
6 have occasion to actually go to his home?

7 A. I did.

8 Q. And was that on the same day or a different day?

9 A. It was a different day. I believe on the 19th.
10 Yes, November the 19th.

11 Q. And at that time did he make any spontaneous
12 statement to you regarding this case?

13 A. He did. We were in his kitchen. He showed me
14 the home and we were in the kitchen and I was going over
15 things like water and food in the house and
16 spontaneously he grabbed himself on the crotch and said
17 that if he had touched -- he was not an average sized
18 man and if he had touched her that she would have been
19 torn up.

20 MS. REESE: Nothing further from the State.

21 CROSS EXAMINATION

22 BY MR. BROUGH:

23 Q. Miss Izarra, the interview that you are referring
24 to on November the 14th, was Detective Tanya Aldridge
25 with the sheriff's office present for that interview as

1 well?

2 A. Yes, she was.

3 Q. And Mr. Irby did in fact deny the allegations on
4 that date; is that correct?

5 A. He did.

6 Q. In terms of the interview that did you with
7 Lillian Collins and I believe at one point you refer to
8 Dannette. Is Dannette the same person as Lillian
9 Collins.?

10 A. Dannette is the child's mother and she also goes
11 by Lillian.

12 Q. Upon speaking to her was it your understanding
13 that she didn't believe anything had occurred?

14 A. Yes.

15 Q. And when you initially talked to James -- I
16 believe it was your dictation that you had taken down
17 that it was immediately after victim was told she
18 couldn't go on the field trip that her aunt was call; is
19 that correct?

20 A. I think that was on Wednesday. The previously
21 week and I spoke with him on Monday the following week.

22 Q. But in terms of the statement he gave you that it
23 was that same day?

24 A. Right. That is correct.

25 Q. Okay. Thank you.

1 MR. BROUGH: No further questions.

2 MS. REESE: Nothing further.

3 THE COURT: You may step down.

4 MS. REESE: State calls Dectetive Tonya
5 Aldridge.

6 DETECTIVE TANYA ALDRIDGE, after being duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. REESE:

10 Q. Please state your name for the jury, please.

11 A. Tanya Aldridge.

12 Q. And where are you employed?

13 A. Spartanburg County Sheriff's office.

14 Q. And how long have you been employed with the
15 Sheriff's department?

16 A. Since 1988

17 Q. And in 2007 in November of 2007 what were your
18 duties at the department?

19 A. I would investigate juvenile sexual assault
20 cases.

21 Q. And were you assigned to invest the case of the
22 defendant James Irby?

23 A. I was.

24 Q. And upon being assigned the case, were you
25 contacted by the Department of Social Services?

1 A. I notarized it.

2 Q. But you were present when he signed it?

3 A. Yes.

4 Q. At this time I move to introduce as States
5 Exhibit 1.

6 (State's Exhibit 1, Waiver From, received in
7 evidence as of this date.)

8 Q. Now, this interview was conducted I think you
9 said at the Department of Social Services?

10 A. Yes.

11 Q. And Miss Izarra Sparks was there?

12 A. Yes.

13 Q. And you were present when she testified as to the
14 substance of that; is that correct?

15 A. Yes.

16 Q. At the time that you talked to him did Mr. Irby
17 appear to be articulate?

18 A. Yes.

19 Q. How long would you say that you met with him that
20 first day?

21 A. I would think about an hour.

22 Q. And after the initial interview that you did that
23 day, what if anything did you do? Did you have at that
24 point -- did you have the information from the
25 Children's Advocacy Center yet?

1 A. At first I was on vacation the first few days and
2 then I did have opportunity to find out that it had been
3 referred to DSS and that Miss Sparks had the case.

4 Q. At the time that you realized the case had been
5 assigned to the Children's Advocacy Center a referral
6 had already been made?

7 A. That's correct.

8 Q. And on the date of November 14th, which was
9 essentially when you realized the case belonged to you,
10 did you in fact interview the defendant at the
11 Department of Social Service?

12 A. Yes.

13 Q. I am going to show what has been marked as States
14 Exhibit 1?

15 Q. Can you identify that?

16 A. This is a pre-interrogation waiver form that I
17 filled out and Mr. Irby signed.

18 Q. And at the time who was present for this
19 interview?

20 A. It was Mr. Irby his wife, Miss Sparks and myself.

21 Q. And did you in fact read that form to him?

22 A. I did.

23 Q. And can you just demonstrated to the jury how you
24 read that form to him on?

25 A. Sure. I read it completely as it is typed on the

1 form. I filed in the top; his name, his address, his
2 age, the date, what time I am reading the form to him,
3 and the location I am while I am reading the form to
4 him.

5 It says, "I have the right to remain silent.
6 Anything I say can and will be used against you in a
7 court of law. I have the right to talk to a lawyer or
8 have him present with me while I am being questioned.
9 If I can not afford to hire a lawyer one will be
10 appointed to represent me before questioning if I so
11 wish and I have the right to stop questions, at any
12 point of the questioning. It says above rights have
13 been read to me by T.K. Aldridge. I have read same and
14 understand my rights fully.

15 He signed it. It was witnessed, and then it says I
16 waive or give up my rights explained to me and agree to
17 talk to Officer T.K. Aldridge in reference to criminal
18 sexual conduct.

19 In my statement that I make is of my own free will
20 without fear, threat or promise or favor or reward of
21 any kind. I am able to read and write the English
22 language and finished 12 years of school and then it is
23 signed by Mr. Irby.

24 Q. And did you actually witness him signing that?

25 A. I did.

1 A. I did not have the report back from the Advocacy
2 Center.

3 Q. Did you have occasion after this first interview
4 at the Département of Social Services to speak to the
5 defendant a second time?

6 A. I did.

7 Q. And was that on December 15th, 2007?

8 A. Yes, ma'am.

9 Q. And at that time where did you met with him?

10 A. I went and picked him up.

11 Q. And where did you met with him?

12 A. I met with him at the sheriff's office.

13 Q. And at that time did you ask him, did you in fact
14 read him his rights to him again?

15 A. I did.

16 Q. And do you have a similar form like you did that
17 day?

18 A. I do not.

19 Q. But you are confident you read him his rights?

20 A. I am absolutely confident.

21 Q. And did he in fact agree to give you a written
22 statement on that day?

23 A. He did.

24 MR. BROUGH: Your Honor, we are going on
25 object and renew our previous motions under

1 Jackson/Denno.

2 THE COURT: Overrule the objection.

3 Q. I am going to show you what has been marked as
4 State's Exhibit 2.

5 Q. Do you recognize that?

6 A. This is a statement that Mr. Irby wrote on the
7 5th of December 2007.

8 Q. And did he -- how long did you meet with him
9 before he gave you that statement?

10 A. It wasn't long at all.

11 Q. And at that time did you ask him if he would
12 agree to speak to another investigator?

13 A. Yes, ma'am.

14 Q. And so, who wrote that statement?

15 A. Mr. Irby.

16 Q. And were you there while he wrote it?

17 A. Yes.

18 Q. And did that statement provide more information
19 then had been provided previously?

20 A. He just denied -- continued to deny the
21 allegations.

22 Q. Did you witness him sign that form as well?

23 A. I did.

24 Q. And is there -- did he appear to give you that
25 statement voluntarily?

1 A. Absolutely.

2 Q. Did he appear to be under the influence of any
3 drugs or alcohol?

4 A. No, ma'am.

5 Q. Did he appear to understand what was going on?

6 A. Yes, ma'am.

7 Q. Did you promise anything?

8 A. No, ma'am.

9 Q. Did you threaten him in any way?

10 A. No, ma'am.

11 Q. Did he appear to be coherent and able to speak
12 with you?

13 A. Yes, ma'am.

14 Q. Is there any reason you could think or was there
15 anyone indication that he was giving that statement not
16 of his own free will?

17 A. Absolutely not.

18 MS. REESE: Your Honor at this time I would
19 like to admit State Exhibit's 2 and have it
20 published to the jury.

21 MR. BROUGH: Your Honor, subject to our
22 previous motion.

23 THE COURT: It is admitted over objection.

24 Q. Would you please read to the jury the statement
25 the defendant gave on the 5th of December?

1 A. Certainly. It has case number. Statement of
2 James Irby. On the top part I filled in statement of
3 James Irby, age 38, . His address of
4 . Phone number. His date of birth. His social
5 security number. And then from there on it is in his
6 handwriting. "Child has threatened me before, saying
7 all dogs will have their day. Child told me this after
8 I spanked her.

9 Now, about me having putting my finger and my
10 penis in after I think child got upset because I told
11 her to clean up her room where she never had not in
12 three-year, unless someone help her. But this time know
13 one was, I told he if the room did not get cleaned up
14 she was not going on the field trip. Child was not does
15 not like to mind the mother or me. Anything that
16 happens is never - - he has got me and mother have had
17 problems out of her since I ever been there. It is her
18 way or no way. Also child has come up to me in the past
19 and asked me if I wanted to smell her cookies. I told
20 her to go away from me. I knew what that meant. The
21 child had not cooked any cookies. I told mother about
22 this when it happened and also the child told me that
23 she smelled my underwear. I told mother about this when
24 it happened. That was the end of statement page two
25 pages completed on the 5th of December 2007.

1 Q. So is the information before when you had talked
2 to him at the Department of Social Services had he told
3 you that victim had asked him to smell her Cookies?

4 A. No.

5 Q. On the first interview November 14th, had he told
6 you that victim had been smelling his underwear?

7 A. No.

8 Q. This was the first time that you had that
9 information?

10 A. Yes, ma'am.

11 Q. Did you ask him, at that point if he would speak
12 to another investigator?

13 A. I did.

14 Q. And did he agree to do that?

15 A. He did.

16 Q. And did you immediately take him to meet with
17 that investigator?

18 A. I did.

19 Q. Did you remain in that interview or did you
20 witness that interview?

21 A. No.

22 Q. Do you know if he was allowed to take breaks
23 during that interview?

24 A. He was.

25 Q. And did it become necessary for him to take a

1 long break?

2 A. Yes, it did. And was that related to a family
3 court hearing he had.

4 A. It was.

5 Q. And did you in fact, you personally, take him to
6 that family court hearing?

7 A. I did.

8 Q. And did you bring him back to the meeting with
9 the investigator?

10 A. I did.

11 Q. And on the way did you do anything to make sure
12 he was comfortable?

13 A. On the way back I stopped and got him a double
14 cheese burger and tea. I don't know if I sprang for
15 fries or not because it was for his lunch.

16 Q. So you actually bought him lunch that day?

17 A. Yes.

18 Q. And brought him back to finish his interview with
19 Detective Morgan?

20 A. Yes, ma'am.

21 Q. So he was actually gone from that interview
22 during that time period?

23 A. Yes.

24 Q. After he got back and was interviewed with
25 Detective Morgan, did you have occasion to see the

1 defendant again for purposes of acknowledging a
2 statement?

3 A. Yes.

4 Q. I am going to show you what has been marked as
5 State's Exhibit 4? Did you take this statement from
6 him?

7 A. No, this statement was written by Sergeant
8 Morgan.

9 A. And did you in fact go into the room when the
10 statement was completed and acknowledge, have him
11 acknowledge that was the his statement?

12 A. Yes, ma'am.

13 Q. And he signed on each page: Is that correct?

14 A. Yes, ma'am.

15 Q. And you signed as well?

16 A. I notarized it.

17 Q. Now, I am going to show you what has been marked
18 as States Exhibit 5, is that another statement he gave?

19 A. It is to Detective Morgan a little later.

20 A. Yes, ma'am.

21 Q. And did you have him acknowledge that was his
22 statement?

23 A. Yes.

24 Q. And did you sign it?

25 A. I notarized it.

1 Q. And he signed it?

2 A. Yes.

3 Q. After, you completed, after Detective Morgan
4 completed his interview and you had the defendant
5 acknowledge that was his statement, did you in fact
6 arrest the defendant?

7 A. Yes.

8 Q. And that was for criminal sexual conduct in the
9 second degree?

10 A. Yes.

11 MS. REESE: Nothing further Your Honor.

12 MR. BROUGH: May it please the Court.

13 THE COURT: Mr. Brough.

14 CROSS EXAMINATION

15 BY MR. BROUGH:

16 Q. Detective Aldridge, now your first interaction
17 with Mr. Irby was in November on the 14th?

18 A. At DSS.

19 Q. At DSS?

20 A. Yes.

21 Q. And I believe you said Ms. Sparks, that is Ms.
22 Izarra now, correct

23 A. Yes.

24 Q. And during that initial interview at the DSS
25 would it be fair to say Mr. Irby denied all the

1 allegations?

2 A. I am sorry.

3 Q. At the initial interview at DSS, would it be fair
4 to say Mr. Irby denied the allegations against him?

5 A. Yes. Yes.

6 Q. And at that point in time while he was at DSS you
7 did not have an arrest warrant for him at that point in
8 time?

9 A. No.

10 Q. And when Mr. Irby met with you again on December
11 the 5th, I believe you testified to States Exhibit 2?

12 A. Yes.

13 Q. And did you witness Mr. Irby write that in his
14 own handwriting?

15 A. Yes.

16 Q. And on the other documents Miss Reese showed you
17 on States 4 and 5, the statements that you indicated
18 were taken by Detective Morgan, would it be fair on to
19 say that those statements were in Detective Morgan's
20 handwriting?

21 A. Yes.

22 Q. So Mr. Irby did not write those statements?

23 A. No.

24 Q. Do you recall what time it was when you went in
25 with Mr. Irby to notarize those other two documents that

1 were written by Detective Morgan?

2 A. It would be on the bottom of the documents. I
3 don't think I have a copy of it.

4 Q. Would it be fair to say that one was at --

5 A. Wait a minute. I do have a copy of it. One was
6 5:59 it looks like.

7 Q. Okay..

8 A. And then there was another one at --

9 Q. 6:50?

10 A. 6:50. Exactly..

11 Q. Now, the statement Mr. Irby wrote out for you was
12 taken at 11 a.m., correct?

13 A. Yes, sir.

14 Q. Okay. And then the subsequent statements there
15 was one at 5:55 p.m. and then almost an hour later one
16 at 6:50 p.m. So on December the 5th, I guess in total
17 Mr. Irby gave three separate statements?

18 A. Yes.

19 Q. Do you recall what time your conversation with
20 Mr. Irby began initially on the December 5th before he
21 issued the statement in his own handwriting?

22 A. No. I know I picked him up around 11 in the
23 morning. Took him over to the sheriff's office. We
24 didn't have a long conversation. I just asked him if he
25 wanted to give me a statement.

1 Q. And he did give you that statement?

2 A. Yes, he did.

3 Q. And would it be fair to say that since I am
4 assuming that you were present while not necessarily in
5 the room with him and Detective Morgan, but that you
6 were at the sheriff's office at that same time?

7 A. Yes.

8 Q. Okay. Would it be fair to say that question went
9 on for a significantly longer period of time than your
10 questioning of Mr. Irby?

11 A. Oh yes, definitely.

12 Q. And after he acknowledged the first statement did
13 that questioning then reassume for approximately another
14 hour?

15 A. That's the time line on the statements.

16 Q. Okay. Did you interview any of the other
17 children in the house?

18 A. No. We leave all the interviewing of the
19 children to the Children's Advocacy Center.

20 Q. Did you ever go back in and do any forensic
21 testing on the bed where victim alleged the assault
22 occurred?

23 A. No.

24 Q. Never did any testing if you could detect any
25 sort of semen or anything of that nature?

1 A. No.

2 Q. To your knowledge was there ever a rape kit done
3 on victim ?

4 A. To my knowledge, no.

5 Q. And these two interactions that you had with Mr.
6 Irby were those the only interactions you had with him
7 throughout the case?

8 A. Talking to him at DSS and the sheriff's office.

9 MR. BROUGH: No further questions.

10 MS. REESE: Your Honor, may I approach.

11 THE COURT: You may step down.

12 (Witness excused.)

13 THE COURT: Ladies and gentlemen and we will
14 need to break for the afternoon. So let me
15 caution you as you leave as I cautioned you
16 before lunch. Don't talk about the case with
17 any relative, friends, not even among
18 yourselves. Don't conduct any research. Don't
19 do your own investigation. Don't permit
20 yourself to be exposed to any type of media
21 coverage that might relate to the trial.
22 Do have a good evening. Please report to your
23 jury room at 9:30 in the morning. 9:30 in the
24 morning. Have a good evening.

25 (Jury leaves courtroom.)

1 THE COURT: Court is in recess until 9:30 in
2 the morning.

3 (State v James Irby, Sept 17, 2012)

4 THE COURT: Thank you be seated. Any
5 matters to address before the jury is brought
6 in?

7 MS. REESE: None from the state.

8 MR. BROUGH: None from the defense.

9 THE COURT: Who is your next witness going
10 to be?

11 MS. REESE: Lynn McMillian.

12 (Jury entering).

13 THE COURT: Good morning, ladies and
14 gentlemen.

15 As you know when we recessed yesterday the
16 State was in the mist of their presentation of
17 the evidence. So we will continue that
18 presentation this morning.

19 Miss Reese.

20 MS. REESE: Thank you, Your Honor. The
21 State calls Lynn McMillian.

22 LYNN MCMILLIAN, after being duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MS. REESE:

1 Q. Would you state your name for the jury, please.

2 A. My name is Lynn McMillian, M-c-M-i-l-l-i-a-n.

3 Q. And where do you work?

4 A. Well, I work three places. I work at the
5 Children's Advocacy Center in Spartanburg. I work for
6 the University of South Carolina College of Social Work
7 and I also work for the University of South Carolina
8 Upstate.

9 Q. And what specific types of services do you
10 provide?

11 A. Where?

12 Q. Any place?

13 A. Any place. At the Children's Advocacy Center in
14 Spartanburg, specifically I work as a forensic
15 evaluator. I interview children that are referred to
16 the Advocacy Center from other places and I also have
17 some administrative responsibilities there.

18 At the University of South Carolina, the College of
19 Social Work, I am part of the adjunct faculty. I teach
20 graduate students at their Greenville location and I am
21 also the psych coordinator for the Greenville program.
22 And at the University of South Carolina Upstate I am
23 part of their adjunct faculty teaching undergraduates in
24 their child advocacy studies program.

25 Q. Please tell the jury about your education and

1 treatment that allows you to do your job at the
2 Children's Advocacy Center?

3 A. I am currently a PHD candidate through the
4 University of South Carolina College of Social Work and
5 I also have a master's degree in social work from USC
6 and I have undergraduate degree in social work from East
7 Carolina University in Greenville, North Carolina.

8 I am also am licensed social worker. I am an
9 independent social worker for clinical practice in South
10 Carolina and licensed clinical social worker in North
11 Carolina.

12 I also attend annually national conferences and
13 training specific to forensic evaluating and other
14 matters related to children.

15 Q. How long have you been in the field?

16 A. I have been a social worker for over 30 years. I
17 have been specifically at the Children's Advocacy Center
18 doing forensic evaluations since 2001.

19 Q. And have you had training in the area
20 specifically of assessment and evaluation of children,
21 child sexual abuse?

22 A. Yes, I have. I have attended advanced training
23 institutes specific to forensic evaluations and I have
24 also attended conferences that were specific to child
25 forensic interviewing.

1 Q. What is a forensic evaluation?

2 A. A forensic evaluation is an opportunity in a
3 child friendly setting for a child to have the
4 opportunity to tell about something that may have
5 happened to them. Where we attempt to ask them
6 questions about what happened to them in a
7 non-suggestive and non-leading manner. Again to
8 understand what may have happened to them.

9 Q. What are the rules of a forensic evaluation?

10 A. Well, partly the rules are that one, we want our
11 child friendly setting to do that in, and we video tape
12 our interviews -- all of our interviews the children are
13 video taped and then preserved and there is nobody in
14 the room but me and the child. So any parents or
15 caretakers who may have come with them is not present
16 during the interviews and they do not observe the
17 interviews.

18 Specific to the child there are rules about telling
19 the truth. Being able to correct me if I misspeak or
20 misunderstand something they are saying and also
21 permission to answer I don't know, or I don't remember
22 instead of guessing at an answer.

23 Q. How many forensic evaluations would you say you
24 done in your career?

25 A. Specific to forensic evaluations of children I

1 would estimate over 900.

2 Q. Is your work subject to pier review?

3 A. Yes, it is.

4 Q. And after going through all your training in
5 regard to forensic evaluation and child abuse assessment
6 have you found that in the real world the things that
7 you learned in your education actually do play out in
8 the real world?

9 A. Yes, absolutely.

10 Q. Have you been qualified as an expert in general
11 sessions court?

12 A. Yes, I have.

13 Q. How many times?

14 A. Well, I not sure specific to general sessions.
15 General sessions and family court combined I would
16 estimate 45, 50 times.

17 MS. REESE: Your Honor at this time I would
18 move to qualify her as an expert in the field of
19 child abuse assessments.

20 MR. BROUGH: No objection.

21 THE COURT: She is so qualified without
22 objection.

23 Q. Can you tell the jury briefly what the term delay
24 disclosure means?

25 A. Yes, I can. Well, first of all disclosure just

1 means telling about -- disclosure means telling about
2 something. So when we say delayed disclosure we mean
3 that somebody didn't tell about something right away.
4 There was some time delay on when they reported or told
5 about something.

6 Q. Now, in your practice is delayed disclosure
7 common or uncommon in incidents of child abuse?

8 A. Delayed disclosure is very common in incidents of
9 child sexual abuse.

10 Q. And what factors play into a delayed disclosure?

11 A. The greatest factor that plays into delayed
12 disclosure is if the person, the alleged offender of the
13 sexual abuse is somebody close to that child. Other
14 factors may be other family dynamics. It might be their
15 age. Some times young children for instance are afraid
16 they will get in trouble if they say something that is
17 happened. Older children may have a better
18 understanding of family dynamics and they may disrupt
19 the family or upset somebody in the family so they will
20 not tell about something.

21 Q. What is a partial disclosure?

22 A. Partial disclosure, again referring to something
23 being told about, means that they only tell something.
24 A portion of it. A partial. Where they have not made a
25 full disclosure and told every detail about what has

1 happened. They tell a part of it.

2 Q. And is a partial disclosure in your experience
3 and training common or uncommon in cases of abuse?

4 A. Certainly at the first time that I see a child a
5 partial disclosure is quite common because in our
6 forensic evaluations we see children more than one time.
7 We often obtain additional information about the
8 disclosure over the course of more than one session.

9 Q. Did you have occasion to actually conduct an
10 interview on victim ??

11 A. Yes, I did.

12 Q. And how did she come to you?

13 A. victim was referred to the Children's Advocacy
14 Center by Brenda Sparks of the Spartanburg County of
15 Social Services.

16 Q. And when did you see her?

17 A. I saw victim on two occasions. I saw her on
18 November 27th of 2007 and second time on December 4th of
19 2007.

20 Q. And during these sessions was anyone else present
21 other than you and she in the room?

22 A. No. It was just me and victim in the interview
23 room.

24 Q. And during these interviews the -- law does not
25 allow you to tell specifically what she told you, but

1 did she disclose to you sexual assault?

2 A. Yes, she did.

3 Q. Did she say where it happened?

4 A. Yes.

5 Q. Where did she say it happened?

6 A. She said it happened at her residence where she
7 was living at the time.

8 Q. And did she say when it happened?

9 A. Yes, she did.

10 Q. And when did she say it happened?

11 A. She gave a range between 2006 and late 2007 over
12 about a period of a year, year and a half.

13 Q. What was her demeanor in these interviews?

14 A. Victim was really, I think she has some trouble
15 engaging and really being able to engage with me. She
16 was often quite quiet. Still she seem to be very sad.
17 And her affect was pretty flat. Meaning she didn't
18 display much emotion, although some times she was
19 tearful during that time.

20 MS. REESE: That is all the questions I
21 have.

22 CROSS EXAMINATION

23 BY MR. BROUGH:

24 Q. Just briefly. Miss McMillian, you have no
25 personnel knowledge or first hand experience of what

1 actually occurred in this case is that correct.

2 A. That is correct.

3 MR. BROUGH: Thank you. No further
4 questions.

5 THE COURT: You may step down.

6 MS. REESE: The state calls Dr. Nancy
7 Henderson.

8 DR. NANCY HENDERSON, after being duly sworn
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MS. REESE:

12 Q. State your name?

13 A. Nancy Henderson.

14 Q. And what is your occupation?

15 A. I am a child abuse pediatrician.

16 Q. And where are you employed?

17 A. I am employed at Greenville hospital system.

18 Q. And are you licensed in the state of South
19 Carolina?

20 A. Yes, I am.

21 Q. And where did you receive your undergraduate?

22 A. I received my under graduate at Rutger's College
23 of pharmacy in New Brunswick, New Jersey.

24 Q. And after your undergraduate work can you briefly
25 just describe for the jury what your training and

1 experience is that enables you to be a child abuse
2 pediatrician?

3 A. Okay. After I went to pharmacy school which was
4 a five-year undergraduate program, I then attended
5 Bowman Gray School of Medicine in Winston Salem, North
6 Carolina. I graduated in 1984. I then did my pediatric
7 residency which is a three-year program at TC Thompson
8 Children's Hospital in Chattanooga, Tennessee. I then
9 took my boards after that, my pediatric boards, which is
10 an a sit down test that you have to do to be certified
11 and that has to be retaken every ten years to keep your
12 certification.

13 From there I became sub-boarded in adolescent
14 medicine which again, you had to do a certain amount of
15 your practice as part of that and then take another set
16 of exams and recertify for that. And in 2009 the
17 Academy of Pediatrics began to offer the sub-board in
18 child abuse in pediatrics and so I took that at that
19 point and am certified. Again you had to have
20 50 percent of your practice a part of all areas of child
21 abuse and neglect and that also has to be recertified
22 every ten years.

23 Q. And so you are actually board certified as --
24 what is the term?

25 A. Child abuse pediatrics.

1 Q. Are you engaged in the private practice of
2 medicine?

3 A. No, my work is all through the hospital system.

4 Q. And have you had occasion to treat children who
5 have been victims of sexual abuse?

6 A. Yes. A big portion of my outpatient practice
7 which I do at the Children's Advocacy Center in
8 Spartanburg as well as the Julie Ballantyne Center in
9 Greenville which are both advocacy centers in evaluating
10 children there for concerns about abuse and neglect.
11 Probably about 80 percent of those patients referred
12 there are related for concerns of sexual abuse.

13 MS. REESE: Your Honor, at this time -- let
14 me ask you this.

15 Q. Have you been qualified as an expert for the
16 courts in South Carolina in general sessions and in
17 family court as an expert?

18 A. Yes, I have.

19 Q. Do you have any idea how many times?

20 A. I am probably in court approximately 20 times a
21 year.

22 MS. REESE: Your Honor, at this time I would
23 move to to qualify Doctor Henderson as an expert
24 in the field of child sexual abuse.

25 MR. BROUGH: No objection.

1 THE COURT: She is so qualified.

2 Q. Doctor Henderson, what is it that you do?
3 Briefly describe to the jury what is it you do when you
4 are referred a child for assessment?

5 A. At the advocacy center?

6 Q. Yes.

7 A. As part of my evaluation there I am responsible
8 for the medical aspect of that, so I work with the child
9 life specialist who accompanies me during the entire
10 part of the exam. And initially what we do is we bring
11 the child into the exam room along with the person that
12 has brought them there to get background medical
13 history. Any behavioral concerns. Find out what
14 medications the child is on and things like that.

15 After that point I talk with the child by
16 themselves to help get an understanding of what has
17 happened and then I do a complete head to toe physical
18 exam which includes looking at the genital area with
19 something it is call a cobalscope. (Phonetics) it just
20 allows for a lot of magnification and a really good
21 light source to look at the genital area but it not at
22 all at evasive. It doesn't go inside or touch the
23 child. And then depending on what the concerns are
24 decide if we need to do any testing for any sexually
25 transmitted infections, blood work and things like that.

1 The child then gets dressed and then we discuss kind
2 of the findings of the exam and make sure they have the
3 appropriate follow up.

4 Q. Doctor Henderson, can you briefly describe and I
5 will actually have you come down if you will and
6 describe and draw for the jury the area that you are
7 looking at when you are looking -- when you are doing an
8 evaluation of this kind on a child.

9 A. So the positioning of the child is just similar
10 to the way it would be for an adult. They are on the
11 exam table and they have their feet in the stirrups or
12 feet holders.

13 I think I will go ahead and draw it and then give
14 an explanation. This is a very rough schematic, but if
15 you can imagine the head is up at this part of the body.
16 This is a abdomen and these are the legs, this is the
17 genital area. And again this is a rough schematic, but
18 this part is the labia, which is the kind of the outer
19 covering of the genital area. There are actually two
20 parts, the labia majora, and the minora, and when I do
21 the exam what I do is just very gently kind of pull on
22 that area. It is not at all uncomfortable for the
23 child, but it allows for an excellent look at the inner
24 part of genital area again without anything evasive.
25 The children tolerate this type of exam very, very

1 easily. So this part is, again, it becomes a little bit
2 dilated during the exam, but this is the urethra. The
3 part where we void from, and this is the anus right
4 here. And this part here on the inner part is the
5 called the vulva area. And then this area here is the
6 vaginal opening, but this part here that I am coloring
7 in is the hymen, which you can see is just a partial
8 covering around the vaginal area, so there is an opening
9 to the vagina and the type of -- and so this one is
10 considered just because of the way it is. There is just
11 lots of different varieties of normal, but this is
12 considered an angular hymen because it goes
13 circumferentially around the entire vaginal area.

14 Q. Now Doctor Henderson, specifically in regard to
15 the hymen, you said that there is a partial covering
16 here. What is that covering -- from the standpoint of a
17 lot of people, we think that when a child has sexual
18 intercourse or something happens to the child that hymen
19 is necessarily destroyed and you can tell that from a
20 medical exam. Is that based on your training and
21 experience to a reasonable degree of medical certainty
22 is that true or not true?

23 A. That is not true.

24 Q. And why is that?

25 A. Well, it is not true for lots of different

1 reasons. And a lot of that depends on one, the age of
2 the child that I am examining. So that in younger
3 children when they report concerns about abuse to the
4 genital area a lot of times there are things that are
5 actually not even going directly near that hymen tissue
6 or vaginal area causing a direct trauma. Although they
7 say something happened to that area they are using one
8 name for the whole, like a private, for the whole
9 genital area. So that maybe one reason why there may
10 not be specific findings to the hymenal tissue and they
11 still have a normal exam and things have happened to
12 them. Secondly, a lot of times children don't disclose
13 right away, so that trauma can happen and that
14 particular area, including the anus and the entire
15 genital area has excellent blood supply so small tears
16 and trauma heal very, very quickly within days and so
17 that if I see a child later on after that weeks to
18 months after their exam could look normal.

19 Lastly, a lot of times especially once they have
20 gone through puberty when all those hormones are around
21 in fact that is the first sign that we see of puberty
22 even before we see breast and pubic hair are developed,
23 is that change in the hymenal tissue. It goes like from
24 very thin like saran wrap to very, very thick and very
25 stretchable. And so once a child has that estrogen

1 around that is introduced into that hymenal tissue it
2 can easily stretch instead of tear and another common
3 reason children, adolescent and adults have normal exams
4 even though they either have been abused or sexually
5 active.

6 Q. So is it your opinion to a reasonable degree of
7 medical certainty that this area can appear to be normal
8 and unaffected even though a child has reported
9 penetration even by an adult male if that child is
10 older?

11 A. Yes.

12 Q. And what do you base your opinion on?

13 A. Well, the opinion is based on the medical
14 literature in my field of child abuse and my own
15 experience. I see a lot of kids as part of my other job
16 I am just in a general pediatric clinic one half
17 afternoon a week and did a lot adolescent medicine, so I
18 see a lot of sexually active teenagers. A lot of times
19 if they didn't share that I could not tell based on
20 their exam itself because a lot of times as I mentioned
21 they have normal exams. Either they are sharing they
22 are sexual active or I am finding they have discharge or
23 a very positive S.T.I. and so obviously that confirms
24 that. So the literature and my practice definitely
25 confirm that children can have normal exams and still

1 have some type of penetrating incident to that area.

2 Q. Is there any specific literature in regard to
3 percentages in cases of confirmed sexual abuse and
4 normal exams?

5 A. Well, probably the most landmark paper that came
6 out was back in 1994. It is normal to be normal and
7 that was by Joyce Adams who is now one of the leading
8 child abuse pediatricians, looking at kind of pulpa
9 scopic pictures of people -- children and adolescents
10 and then there have been known cases where it has gone
11 legally where there has been some finding about
12 penetrating injury and these children did have normal
13 exams and the majority of them are more when they are
14 seen not acutely so three days out or thereafter about
15 90 percent or more have normal exams.

16 Q. So, that literature, to my understanding, three
17 days out or more about 90 percent of these confirm cases
18 there is was no physical finding?

19 A. That is correct.

20 Q. Did you in fact do an evaluation of victim
21 victim ?

22 A. Yes, I did.

23 Q. And was her evaluation normal?

24 A. Yes, it was.

25 Q. And based on your experience in the field, is it

1 your opinion with a reasonable degree of medical
2 certainty that that normal evaluation is still
3 consistent with what she is reporting happened?

4 A. That normal exam could be consistent with the
5 information that she shared with me.

6 MS. REESE: Nothing further.

7 CROSS EXAMINATION

8 BY MR. BROUGH:

9 Q. Doctor Henderson, isn't it true that virginity a
10 long time ago use to be defined in females with a person
11 having an intact hymen?

12 A. I think there is lots of different kind of talks
13 about how you define virginity kind of in the lay,
14 public medically. So I think people do assume that when
15 you lose your virginity you have had sex and have been
16 sexually active.

17 Q. I understand that, but isn't that what it use to
18 be defined as having in tact hymen medically and then
19 there was some studies done that found that not all
20 woman are born with hymens?

21 A. There are some genetic problems that some people
22 can have that they don't have a hymen, but they also
23 have other genetic problems, so it is not just that
24 people are born without hymen. That just don't exist.

25 Q. You did this study November 20, 2007 is that

1 accurate?

2 A. That is correct.

3 Q. And in your study did you find specifically that
4 there was no tears or scarring to the hymen?

5 A. That is correct.

6 Q. Essentially the hymen was in tact?

7 A. That's correct.

8 Q. And according to that little diagram that you
9 drew, the hymen is the tissue around the opening of the
10 vaginal opening, correct?

11 A. Yes, sir.

12 Q. So, that tissue would come into contact if
13 someone were to penetrate that vaginal opening, correct?

14 A. Correct.

15 Q. And your testimony is that that area was in tact
16 on November the 20th?

17 A. That is correct.

18 Q. Okay. So on November the 20th when you exam
19 victim the tissue around her vaginal opening was
20 in tact, correct?

21 A. Yes.

22 Q. Is it also true that having an in tact hymen is
23 completely consistent with absolutely nothing happening?

24 A. That is correct.

25 Q. I believe you testified 20 times in court

1 previously?

2 A. In over a year.

3 Q. In the past year, is that correct?

4 A. Yes.

5 Q. Is that correct. How many of those times did you
6 testify for the defense?

7 A. Probably about two.

8 Q. So, it would fair to say that the vast majority
9 of the times you testify for the State?

10 A. Yes.

11 Q. Could you give me the names of those two cases?

12 A. The most recent one was a case in Union County
13 which was about -- probably about two months ago. I
14 can't give you the name off hand, but I certainly can
15 reference that to you at any point.

16 Q. Now, when you say consistent with, it is kind of
17 a little bit of a loose term since it can be consistent
18 with more than one thing?

19 In other words, your exam could be consistent
20 according to your testimony with absolutely nothing
21 happening, but it can be consistent you are claiming if
22 the hymen regrew if something having actually occurred

23 A. Regrew. I didn't say that.

24 Q. Okay. I believe you had some testimony about if
25 there were penetration there it could regrow in a

1 certain timeframe?

2 A. Heal.

3 Q. Heal. Yes. Okay. But my point is, it could be
4 consistent with absolutely nothing happening, or you are
5 saying it doesn't rule out something might have
6 happened; is that accurate?

7 A. A normal exam can be normal that nothing has
8 happened or it can be depending on the history it can
9 also occur when there has been injury to that area and
10 heal or even at the time there was no injury.

11 Q. And would it be fair to say that not all exams
12 come back as normal?

13 A. It is unusual, but yeah there are times I see
14 children that do have abnormal exams.

15 Q. And have you see children with abnormal exams
16 after allegations of some sort of sexual abuse I am
17 assuming?

18 A. Yes.

19 Q. But that is not the case that we have here. Here
20 the exam was in fact normal?

21 A. That is correct.

22 Q. And there was no tearing or scaring on any part
23 of the vaginal area, correct?

24 A. That is correct.

25 Q. And there was no tearing or scaring on any part

1 of anal area, is that also correct?

2 A. That is correct.

3 Q. So everything was in tack when you did your
4 examination?

5 A. That's correct.

6 Q. On November the 20th?

7 A. That's correct.

8 MR. BROUGH: Nothing further.

9 REDIRECT EXAMINATION

10 BY MS. REESE:

11 Q. Just to clarify, a normal exam had, there actually
12 been penetration and been a sexual assault you would
13 still not find it unusual to have a normal exam?

14 A. That's correct.

15 MS. REESE: Thank you.

16 THE COURT: You may step down.

17 MS. REESE: State calls Danny Morgan.

18 DANNY MORGAN, after being duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MS. REESE:

22 Q. State your name for the jury, please?

23 A. My name is Danny Morgan.

24 Q. Where are you currently employed?

25 A. I am a training lieutenant with the Department of

1 Corrections at the academy in Columbia.

2 Q. And where were you employed in December of 2007?

3 A. I was working with Spartanburg County Sheriff's
4 office.

5 Q. And what were your duties as an employee of that
6 department?

7 A. I was a Detective Sergeant of the investigation
8 division and my primary function was to perform
9 interviews and to assist other investigators with
10 interviewing in different situations.

11 Q. How long have you worked in law enforcement?

12 A. Total now of about 24 years.

13 Q. And did you have occasion to investigate the
14 allegations of victim ?

15 A. Yes. I did not do so much of the investigation
16 as much as I participated in the investigation with
17 doing interviewing.

18 Q. On December the 5th, 2007 were you asked to speak
19 with the defendant?

20 A. Yes, ma'am.

21 Q. And did you in fact interview him?

22 A. Yes, I did.

23 Q. Did you read him his rights?

24 A. Yes, I did.

25 Q. I am going to show you what has been marked as

1 States Exhibit 3 and ask you if you recognize this?

2 A. Yes, ma'am.

3 Q. And what is that?

4 Q. This is the rights form that is read to anyone
5 who is being interviewed where there is a potential for
6 them to make any incriminating statements?

7 Q. And did you read that to him?

8 A. Yes, I did.

9 Q. And can you just show the jury how you actually
10 read that to the defendant?

11 A. Sure. Generally from the direction that I am
12 sitting with the person I will always take the form and
13 turn it around so the individual can read it along with
14 me. Having read it a number of times I can usually read
15 it upside down to pretty well.

16 I will turn it to the person and read it line by
17 line with them. Would you like me to read the entire
18 form?

19 Q. Yes.

20 A. I will turn the form to them. It says, "Before
21 we ask you any questions you must understand your
22 rights. You have the right to remain silent. Anything
23 you say can and will be used against you in a court of
24 law. You have the right to talk to a lawyer for advice
25 before we ask you any questions and to have him or her

1 present with you during questioning. If you have no
2 money for lawyer's fees the court will appoint one to
3 represent you without cost to you if you wish. If you
4 decide to answer questions now without a lawyer present
5 you still have the right to stop answering questions at
6 any time.

7 I have read the statement of my rights and
8 understand what my rights are and there is a section
9 there for the individual to sign that they understand
10 their rights.

11 Q. And in the time that you were meeting with the
12 defendant that day, and I know that you had briefly met
13 him at the time that he agreed to this, in the time that
14 you saw him, did he appear to be coherent and
15 understanding what you were saying to him?

16 A. Yes, ma'am, very much.

17 Q. Did he appear to be intoxicated or under the
18 influence of alcohol or drugs?

19 A. No, ma'am, he was not.

20 Q. Did he appear to understand his rights and what
21 you were saying to him?

22 A. Yes, ma'am.

23 Q. Was there any indication at that time that he
24 didn't understand or didn't agree or did he do this
25 freely voluntarily and far as you?

1 A. No, it was very freely and voluntarily.

2 MS. REESE: Your Honor, at this time I
3 would move States Exhibit 3 into evidence.

4 MR. BROUGH: No objection as to the
5 statement, Exhibit 3.

6 THE COURT: It is admitted.

7 (WHEREUPON, State Exhibit 3 received in
8 Evidence.)

9 Q. When you started the process of the interview,
10 did you have any information or prior statement from the
11 defendant?

12 A. The only information I had from him at that time
13 was a statement that had been taken just before when he
14 got there right before I saw him. So I was able to read
15 over a statement that he had written for Detective
16 Aldridge just before coming in to see me.

17 Q. When you spoke with the defendant what was your
18 impression of him as you spoke to him?

19 A. I found him to be very articulate. Calm in
20 demeanor. He presented himself very well. I was kind
21 of surprised because the statement that he had written I
22 kind of had a different picture in mind because it
23 didn't come across very well in writing, but in speaking
24 with him he was very clear and very articulate.

25 Q. And did you speak to him in your office there at

1 the sheriff's department?

2 A. Yes, I did.

3 Q. And what initially -- how did you begin this
4 interview because this interview was actually a two-part
5 interview?

6 A. It was. My function there was to provide more of
7 in depth interview. I did not carry a case load like
8 other detectives did. I didn't carry a case load so I
9 was able to be freed up to have longer interviews with
10 people.

11 I wasn't pressed for time. So what I do generally
12 when I start my interview after going over the paper
13 work and making sure they understand their rights and
14 everything, I spend the next usually at much as two
15 hours or more just getting to know the person. Talking
16 with them about their background. Talking to them more
17 in depth about themselves rather than rushing right in
18 to what the allegations are about. What has been said
19 about you and things such as that.

20 Q. During that time period that you spoke to him,
21 what kinds of things did you talk about initially?

22 A. Well, initially I do go in to you asked about
23 drugs and alcohol and things such as that, I do
24 initially go into that talking to them about how they
25 are feeling that day. Are they presently -- have they

1 taken any drugs or alcohol that would impair them. Are
2 they able to understand me. So I kind of get a little
3 bit of background information there. Then I talk to
4 them about how they are raised. Where they are from.
5 Family members. What types of jobs they worked at. So
6 it is a process of just acclimating with the person and
7 developing a level of rapport with the person.

8 Q. And do you feel like you did that with the
9 defendant?

10 A. Yes, I did.

11 Q. At some point while you were doing the interview
12 he had to leave, is that correct?

13 A. That is correct. I knew going into to it that
14 there was going to be a breaking point where that he
15 already had a scheduled appointment that he needed to
16 attend.

17 Q. And so at some point the two of you cut off the
18 interview and he went to family court, is that right?

19 A. That is correct. I don't remember the exact time
20 but I think it was roughly an hour and a half to two
21 hours after sitting down with him to talk with him he
22 left.

23 Q. After he went to his family court hearing, do you
24 know whether or he had any anything to eat? Any break?

25 A. I do know that he was Detective Aldridge had

1 bought him some lunch and I am pretty sure that he
2 brought it back with him and ate it there in my office.
3 But I do know he did have lunch on the way back.

4 Q. And during the time that you interviewed him,
5 after his family court hearing did you, was he allowed
6 to take breaks?

7 A. Yes. During the time that I was with him I know
8 that we took at least two breaks, not counting the long
9 break for his appointment.

10 Q. After you came back from the break, did you speak
11 to the defendant or -- his family court break -- did you
12 speak to the defendant directly about these allegations?

13 A. Yes. At that point -- up until that point we
14 really had not talked to much from a standpoint of
15 directly questioning his level of truthfulness about
16 that. So after he came back from the break I began to
17 talk with him about being honest about what had
18 happened.

19 Q. And did he in fact give you a verbal statement
20 that was different from the statement he had given
21 Detective Alridge?

22 A. He did. He began to state that there had been
23 some sexual contact.

24 MR. BROUGH: I am going to object under
25 Jackson versus Denno, involuntary statement.

1 THE COURT: Overruled.

2 Q. Please continue. You were saying that he began
3 to tell you there had been sexual contact between --

4 A. Yes, he did. He was basically telling me sexual
5 contact -- that at that point I had not been aware of
6 based on what had already been said by the statements or
7 the investigation, that sexual contact had occurred in
8 victim 's bedroom. That was the only sexual contact I
9 believe they knew about at the time, or maybe something
10 in the kitchen, but those were the areas I was aware of.

11 So in talking with him all I told him was that I
12 felt like he needed to tell the truth about this. That
13 I knew that he wasn't telling the truth about it and
14 that's when he started to go in to the first thing. The
15 first situation he described was being in the living
16 room asleep and that he was wearing boxers. Some boxer
17 shorts and that his penis was hanging outside of the
18 boxer shorts and he woke up to find that victim was
19 performing oral sex on him.

20 Q. And victim at the time was the child we are
21 talking about?

22 A. Yes.

23 Q. And that was the first statement that he made
24 that she was performing oral sex on him while he was
25 asleep?

1 A. That is correct.

2 Q. Did he indicate to you another incident that he
3 said occurred between he and victim ?

4 MR. BROUGH: I will review my continuing
5 objection.

6 THE COURT: Overruled.

7 Q. Yes, he gave another statement of another time
8 that more sexual activity occurred and this time it was
9 vaginal penetration. And what he said was at this time
10 that he was again sleeping in the living rooming, but at
11 this time he was sleeping naked and he woke up to find
12 that victim was -- had come in to the living room and
13 she was straddling him and she was -- began having
14 sexual intercourse with him while he was asleep.

15 Q. So at that time when he made these changes in his
16 story, what did you decide to do?

17 A. Well, as Miss McMillian had mentioned earlier
18 about partial disclosures and some times not having all
19 the information up front, I knew that -- I believe at
20 that time I knew that victim still had other
21 appointments ahead of her for more interviewing, so I
22 knew that this information could reveal more instances
23 that had occurred that had not been disclosed yet that
24 we were not aware of. So I felt it was important to go
25 ahead and get this information that he was giving

1 written down even though he was framing it in the light
2 that this was all victim . That she was the one
3 initiating all of this contact.

4 I felt it was still important to get it written
5 down. So I gave him the opportunity to correct his
6 statement since the first statement that he had given to
7 Detective Alridge indicated that there had been no
8 sexual contact.

9 Q. And did he agree to do another written statement?

10 A. Yes, he did. He said he wanted to make sure that
11 it was corrected.

12 Q. Now, at that time did -- did he write the
13 statement or did you write the statement?

14 A. I gave him the option of him writing the
15 statement himself. I told him that would be perfectly
16 fine for him to write the statement himself. I did tell
17 him although often times when I talking to someone they
18 may not feel up to writing a statement themselves and I
19 would be happy to write it for him.

20 However, I did give him very specific guidelines of
21 how I would do that if I were going to write the
22 statement for him.

23 Q. Go ahead.

24 A. What I would do and I explained to him is this,
25 any time I write a statement for someone -- first of

1 all, before I write anything down I am going to make
2 sure that I clarify with them everything that is going
3 to be written down. So, I will tell them ahead of time
4 what I am going to write on the statement.

5 Then I tell them that we are going to do it in
6 paragraph form. Step by step. So each paragraph --
7 after we do that paragraph I tell them that I will read
8 over the paragraph with you. If there are any
9 corrections that need to be made we will make those
10 corrections. But if you agree that the paragraph is
11 accurate then I will have you -- the first part is I
12 have them sign it that we are going to do this, and then
13 from there each paragraph I would have the person
14 initial that he each paragraph is accurate. So I tell
15 him that ahead of time before I even agree to write the
16 statement for him.

17 Once I did that I explained to him how I would go
18 about taking the statement. He said that he would
19 prefer that I write the statement because he didn't feel
20 he was up to it at that time.

21 Q. And did you go through the process of discussing
22 the paragraph, writing the paragraph, reading it to
23 him, and then having him sign it if he agreed?

24 A. Yes, ma'am. I was always very methodical to do
25 that step by step.

1 Q. Now, the actual writing of this statement, how
2 long did it take? Do you have any idea?

3 A. It is a five-page statement, so I probably
4 including all of the discussion with each paragraph --
5 the statement itself is probably at least an hour.

6 Q. I am going to show you what has been marked as
7 State's Exhibit 4.

8 MR. BROUGH: Your Honor we note our
9 continuing objection, renew our Jackson versus
10 Denno motion.

11 THE COURT: What is number four?

12 MS. REESE: Number four is the five-page
13 written statement.

14 THE COURT: All right. Overrule the
15 objection.

16 Q. Do you recognize that?

17 A. Yes, ma'am, I do.

18 Q. And is this the statement that you wrote at his
19 direction?

20 A. Yes, ma'am.

21 Q. Was everything single thing in the statement told
22 you or discussed between you and him.

23 A. Yes, ma'am, everything.

24 Q. And did he initial each paragraph?

25 A. He did initial each paragraph, yes.

1 Q. Did he do so after you reread the paragraph to
2 make sure it was right?

3 A. Yes, ma'am.

4 Q. Did he sign each of the pages?

5 A. The bottom of each page signed an affidavit that
6 it was true and correct.

7 Q. And did he verify the statement to Detective
8 Alridge when she came in to notarize it?

9 A. Yes, she came and notarized it and he verified it
10 then.

11 MS. RESSE: At this time Your Honor we
12 will move to admit State's Exhibit 4.

13 THE COURT: It is admitted over the
14 objection of defense.

15 (WHEREUPON, State's Exhibit 4 received in
16 Evidence as of this date.)

17 Q. Detective Morgan, can you read the statement that
18 you wrote at the direction of the defendant?

19 A. Yes, ma'am. The top part of the statement is his
20 information. Same as the other statement that was told
21 to you yesterday: His basic information, social
22 security number, date of birth.

23 The part that is written in after that states, it
24 starts off with, "I, James Irby, asked Sergeant Danny
25 Morgan to write the statement for me because at the

1 present time I do not feel up to writing it myself.
2 Sergeant Morgan has assured me that he will the not
3 write down anything I have not told him and he has told
4 me I will be given the opportunity to review each
5 paragraph for accuracy before moving onto the next
6 paragraph. I will acknowledge this first paragraph with
7 my signature each paragraph after that will be verified
8 by my initials."

9 At that point there is a "X" and a line where Mr.
10 Irby signed that that was correct.

11 The next paragraph says, "I want to start by
12 acknowledging that I gave a statement earlier today that
13 was not completely truthful. Additionally, when I was
14 speaking Sergeant Morgan earlier I lied to him about the
15 extent of the sexual contact between victim and myself.
16 I withheld this information for two primary reasons.
17 One reason was that I did not want to make victim look
18 bad by telling what she had done. The other reason was
19 that I was for scared for myself and I was afraid of
20 what my wife and the police would think of me and how
21 they would view me if I told everything. In hind site I
22 wish I had been completely honest with everyone up
23 front.

24 I am sorry that I was not completely truthful from
25 the start. I was even untruthful with DSS in regards to

1 them asking if I owned my own business. I lied to them
2 and told them that I didn't because I knew that they
3 would try to take what little bit of money I had for my
4 back child support. I lied about this because I was
5 looking out for my family and I wanted to provide for
6 them."

7 Can I stop? In each one of these statements I can
8 read that in about one minute, but it took about
9 15 minutes because I go over each part of that before I
10 write it down to make sure that everything that is
11 written in there is what he wants written in. And the
12 part about DSS was not something we had talked about.
13 While I was in the process of writing he mentions
14 himself that he had lied to DSS to me. It was not
15 something that was relevant, but I asked him do you want
16 that in here as well. He said yes, he did. So that was
17 an example of how everything that is in there is taken
18 as he is giving me the information and it is written in.
19 Although it comes in paragraph form it takes a while to
20 write all that.

21 Q. Continue please?

22 A. And he did initial by that, that it was accurate
23 also.

24 The next paragraph, "I have been with my wife,
25 Dannette, victim's mother for about three years. For

1 the past two years. victim has been making sexually
2 suggestive comments and sexual overtures towards me in
3 ways that made it clear to me that she was available
4 sexually if I wanted it.

5 The first thing was comments such as telling me that
6 she has been sniffing my underwear and asking me if I
7 wanted to smell her cookies. I knew that this is common
8 slang for a woman's vagina and that she was asking if I
9 wanted to put my head between her legs. Her comments
10 progressed to more overt actions like walking around the
11 house in her panties and making sure that I had an
12 opportunity to see her naked. She would do stuff like
13 that. She would do stuff like come in the bathroom when
14 I was there and she would have her shirt off. One time
15 she was in her bedroom masturbating when I walked in. I
16 am sure that she was doing this with intention of me
17 seeing her because she would have been able to hear me
18 coming. I also found a note in her pocketbook one time
19 where she had wanted to buy a sex toy.

20 victim is only 13 years old but she has been acting
21 sexually inappropriate for about two years now." And
22 that was the end of that paragraph and he initialed that
23 one.

24 The next paragraph. "There are two instances of
25 sexual contact with victim that I did not tell about

1 before. Both of these incidents were initiated by
2 victim . Both of them were in October of this year. The
3 first one was one night while I was asleep on the floor
4 of the living room. I was wearing a pair of loss
5 fitting shorts and my penis was out of the shorts
6 through the leg opening. I woke up to the feeling of
7 someone performing oral sex on me. Since I usually
8 sleep with a blanket or something over my head and since
9 my wife will often perform oral sex on me while I am
10 asleep I initially thought it was my wife. I let the
11 oral sex go on for two or three minutes before I
12 uncovered my head and saw that it was victim performing
13 oral sex on me. I made her stop and go to her room.

14 The next incident occurred in October as well. On
15 this night I had been drinking earlier in the evening
16 and Dannette and I got into a disagreement. I decided
17 to sleep on the floor of the living room. I was not
18 wearing any clothes this night. I often sleep naked and
19 I usually have an erection while I sleep. I woke this
20 night to find victim naked and straddling me. She had
21 my penis at the entrance of her vagina. Because the
22 head of my penis was wet and it had white stuff on it I
23 assume she had been having sex with me. When I woke up
24 I gave her a whooping and sent her to her room. There
25 are no other incidents of sexual contacts with victim .

1 I know that victim said I put my figure in her
2 while wrestling and Sergeant Morgan has told me that
3 Dannette told DSS that I said I did, but it was
4 accidental. I do not know why Dannette would say that,
5 but it is not true. I never told Dannette that." And
6 that is the end of that paragraph. And he initialed
7 that one.

8 The next paragraph. "I was picked up at the jail
9 today by Detective Alridge and brought to the sheriff's
10 office for an interview with Sergeant Morgan. I got
11 here around 10:30 a.m. and it is about 5:45 p.m. now. I
12 did have to stop for about an hour and half to two hours
13 to go to a family court hearing. I know that in total I
14 have been here for several hours, but I recognize that
15 it is mainly because I was not completely honest in the
16 beginning. If I had been honest to begin with then I
17 would not have been here this long.

18 I would also like to say I have been treated
19 respectfully and with professionalism by both Detective
20 Alridge and Sergeant Morgan. I have been given
21 opportunities for several restroom and water breaks.
22 Detective Alridge also bought me some food from
23 McDonald's on the way back to court. Everything that I
24 am saying now is the truth.

25 I have not been forced or coerced into saying

1 anything. I am telling the truth now because it is the
2 right thing to do. I want to end this statement by
3 saying that I do not have any hard feelings towards
4 Victim . She is just a child and I still love her." And
5 that was the end of it and he initialed that one.

6 Q. Now, the last paragraph about he had been treated
7 with professionalism. Is that something you and he
8 discussed?

9 A. Yes.

10 Q. And was there a reason in your mind that you
11 should have that discussion with him?

12 A. I always do that, in asking a person that I am
13 talk with, I always ask them have they been treated
14 well. Not just by me, but by anyone else they have been
15 in contact with at the Sheriff's office. How do they
16 feel they have been treated. Have they been given
17 restroom breaks and things such as that.

18 The reason I discussed that with him and have that
19 in the statement is that are times, some times months or
20 years later, it is point of contention in court that I
21 threatened. That I was abusive. That I did this. I
22 didn't let him have breaks or whatever. So, I try to
23 make sure I look a head to any potential things that
24 could be called into question and have that included in
25 the statement as well.

1 Q. Now Detective Morgan after you finished this
2 statement with him, and that statement was finished at
3 what time?

4 A. It was signed at 5:55 p.m.

5 Q. After you finished this statement with him, did
6 you continue to talk with him?

7 Q. Well, immediately after finishing, after I
8 written in the time that it was signed, that I put my
9 signature on it and he signed it, I gave the paper work
10 over to Detective Alridge where she filled out each one
11 of those five pages. Gave him his copies and then she
12 took him out for a break for another restroom and water
13 break.

14 After the restroom and water break I did have
15 Detective Alridge bring him back to the interview room
16 so I could talk with him again.

17 Q. At the time that you began to talk with him again
18 did he give you some more information that he had not
19 given you before?

20 MR. BROUGH: Once again, I am going to a
21 object and the renew my objection under Jackson
22 versus Denno.

23 THE COURT: Overrule the objection.

24 A. He did come back in and give more information and
25 the purpose of that was because the incident that he

1 described contact with victim did not match up with what
2 victim had disclosed. Again, knowing that there was
3 potentially more that she would disclose later I still
4 felt it was important to go back and show why there was
5 a discrepancy, or if there was a discrepancy. She was
6 saying there had been sexual contact occurring in her
7 bedroom, but he was not saying anything about that.
8 That's why I asked Detective Alridge to bring him back
9 after a break so I can talk with him again.

10 Q. And did you at that time ask him if there is
11 anything else?

12 A. Yes. I explained to him that at this point in
13 time the best thing that he could do at that point in
14 time was to make sure there wasn't anything else being
15 left out because later on to come back and have more
16 stuff being revealed that he had not told about would
17 not -- definitely would not look good for him at this
18 point in time. So I ask him to make sure is there
19 anything else you want to tell me about. Any other
20 sexual contact.

21 Q. And did he at that time talk to you about another
22 incident that he claimed happened?

23 A. He did.

24 Q. What did he tell you at that time verbally?

25 MR. BROUGH: Again we renew our objection.

1 THE COURT: Overruled.

2 Q. At that time verbally he began to tell me that
3 there was a situation that had occurred in victim's
4 bedroom. This one he described as having happened
5 during the summer. And I am talking to him in December,
6 so he described something happened back during the
7 summer of 2007.

8 He said that because -- at that point in time
9 because of victim's continued overtures and sexual
10 advances that he had went to her bedroom I think to turn
11 off a TV or something. That is he what he is verbally
12 telling me, that he went to the bedroom to turn off the
13 TV and that she again began to offer to him that she
14 would perform oral sex on him and he said that he just
15 gave in to the temptation at that point in time.

16 Q. At that time did he agree to do another
17 statement?

18 A. Yes, he did.

19 Q. And did he decide whether or not you would write
20 it or he would write it?

21 A. Again, I asked him if he wanted to write a
22 statement. First of all I asked him did he want to do
23 another statement to include that information and he
24 said he did. He wanted to make sure everything was out
25 there. I then again asked him do you want to write it

1 yourself or do you want me to write it and he again said
2 that he still did not feel like he could write it
3 himself. So, he let me write it. I told him I would do
4 the exact same thing with him. That I would cover
5 everything with him before it was written down and he
6 would have the opportunity to verify everything before
7 it was actually signed.

8 Q. And is that the same process you had used in the
9 first one?

10 A. It is the exact same process.

11 Q. And I am going to show you what has been marked
12 as State's Exhibit 5 which is the one page statement.
13 Is that the one page statement you took?

14 A. Yes, ma'am it is.

15 Q. And what time was that statement signed?

16 A. This was actually signed as 6:50 p.m., so it is
17 approximately 55 minutes after the first one was signed.

18 Q. After your discussion, after he made this
19 disclosure to you and after you all discussed it and you
20 wrote it down, did you read it back to him?

21 A. I did.

22 Q. And did he initial it?

23 A. Yes, he did.

24 Q. Did he sign it?

25 A. Yes, he did.

1 Q. And did he confirm that statement to Detective
2 Alridge when she came in the room?

3 A. He did.

4 MS. REESE: At this time Your Honor we
5 would move to introduce Exhibit 5.

6 MR. BROUGH: Renew my objection under
7 Jackson versus Denno.

8 THE COURT: It is admitted.

9 (WHEREUPON State's Exhibit number 5 received
10 in Evidence as of this date.)

11 Q. Can you read it to the jury please.

12 A. Yes. "I, James Irby, am having Sergeant Morgan
13 write out this addition to the previous statement for
14 the same reason I had him write my other statement. I
15 will also review everything the same as before."
16 Again, this is where he signs it with his signature.

17 The paragraph, the next paragraph states, "I want
18 to add another incident of sexual contact with victim
19 that I did not disclose earlier. Back during the summer
20 victim performed oral sex on me in her bedroom. She had
21 been making sexual advances towards me for so long that
22 I just gave in to the temptation. I went into her
23 bedroom and she offered to perform oral sex on me and I
24 let her. It only lasted for two or three minutes before
25 I came to my senses and stopped her.

1 Like before I regret I did not disclose this
2 earlier when I claimed that I had disclosed everything
3 to Sergeant Morgan. I am also sorry that I agreed to
4 allow victim to perform oral sex on me. I made a lot of
5 stupid choices and my disclosing this was just another
6 stupid choice. Again everything I am saying here is the
7 truth and I am not being threatened or forced to say
8 anything of this." And he again initialed that
9 paragraph. That was the end of the statement.

10 Q. Is that the end of the contact you had with him?

11 A. Yes, that was the end of our contact together.

12 Q. And at that time you turned him back over to
13 Detective Alridge?

14 A. Yes, I did.

15 MS. REESE: Nothing further.

16 CROSS EXAMINATION

17 BY MR. BROUGH:

18 Q. Detective Morgan, I am going to should show you
19 States Exhibit 1. It has been admitted. It is the
20 advisement of rights form; is that accurate?

21 A. Yes, sir.

22 Q. What is the time on that?

23 A. 11 a.m..

24 Q. 11 a.m. States Exhibit 4. What is the time on
25 that?

1 A. 5:55

2 Q. 5:55 p.m. So approximately seven hours after the
3 advisement of rights form, sir?

4 A. Yes.

5 Q. And this is States Exhibit 5. What is the time
6 on that?

7 A. 6:50 p.m.

8 Q. So another hour after the initial?

9 A. Yes, sir.

10 Q. So absent the one break to go family court, you
11 had been speaking to Mr. Irby about eight hours that
12 day?

13 A. I think that is about a total of eight hours
14 there. So absent the two hours for family court,
15 transportation and lunch and including breaks, probably
16 more like about six.

17 Q. So about six hours you talked to Mr. Irby that
18 day?

19 A. In total.

20 Q. You are aware court started at about 9:30 this
21 morning?

22 A. Yes, sir.

23 Q. And it is about 11 o'clock?

24 A. Yes, sir.

25 Q. So about four times longer than being in court

1 here today is how long you spoke to Mr. Irby on that
2 day?

3 A. Yes, sir.

4 Q. Now, you are a detective sir, or you were
5 formerly a detective?

6 A. Yes, sir.

7 Q. Did you ever go to training classes at the
8 academy and take classes in interviewing.

9 A. Not at the academy, but I have had training
10 classes, yes.

11 Q. In interviewing?

12 A. Yes.

13 Q. And specifically the purpose of those classes is
14 to work on techniques to obtain confessions from
15 defendants; is that correct?

16 A. It is to better facilitate getting to the truth
17 if that includes a confession then yes.

18 Q. And when you spoke to Mr. Irby, you already had
19 knowledge of what victim was saying had occurred,
20 correct?

21 A. I had information from her. I believe her first
22 visit as well as whatever statements she had made at
23 that time.

24 Q. So your purpose in interviewing Mr. Irby was to
25 get him to give you a statement which essentially

1 matched what the victim had said?

2 A. If it turned out that in my opinion after talking
3 with him, like I said I spent about two hours with him
4 first to get to know him better and during that time if
5 I felt like I was seeing from him indications that he
6 wasn't being truthful about things then yes, it was my
7 attention to get a statement from him that included the
8 truth.

9 Q. Well, in your direct testimony did you not
10 indicate that you knew he wasn't being honest with you?
11 You just testified to the fact that initially you knew
12 he wasn't being honest in his statements to Detective
13 Aldridge?

14 Do you recall stating that?

15 A. After talking with him and he starts telling me
16 about the statements of times with her then he was
17 verifying at that point that he had not been honest.

18 Q. My point is you believed he wasn't honest when he
19 initially talked to you. You believed he hadn't been
20 honest at that point at all, correct?

21 A. Yeah, I believe that he was not being truthful
22 that is correct. I believe he was not being honest.

23 Q. But you didn't have any personnel knowledge of
24 any of these events. You were going based on the
25 information you had?

1 A. Based on investigation, yes.

2 Q. Okay. And as part of your interview with Mr.
3 Irby you specifically when you were telling him, did you
4 not tell him that he could be portrayed in one light or
5 another light? In this light or another light? And
6 when you said that you were referring and made a
7 specific reference to a case you had previously handled
8 where the person hadn't told you everything and they
9 received the maximum sentence. Do you remember that?

10 A. Again, as you had pointed out it was a long
11 interview and I have reviewed probably about four hours
12 of that.

13 Near the end of the interview after, and I am
14 pretty sure it it is between the two sessions there
15 where he had given this statement about her coming in
16 and performing oral sex on him while he is asleep --
17 straddling while he is asleep -- after he had given that
18 information and I started talking to him about making
19 sure there was everything out there, that there wasn't
20 anything else he hasn't told, yes, I did tell him that
21 at this point, you know, how are you going to be
22 portrayed. How are people going to look at are you.
23 Are they going to look at you as a person who has been
24 remorseful and who has admitted to the things he has
25 done wrong or they going to look at you as a person who

1 had to have every little thing pulled out of you with me
2 having to back you up against the wall basically to get
3 you to tell everything.

4 So I gave him the option there. I told him that
5 people are going to look at you one way or the other
6 because you already admitted here that you had sexual
7 contact with victim . You had lied about it earlier. So
8 I said, yeah, people are going to look at you one way or
9 the other here.

10 Q. Did you make a specific reference to another case
11 where the gentlemen had not told you initially and had
12 received the maximum sentence?

13 A. I told him I seen lots of different ways that
14 people had gone about things. I told him there was one
15 time that I had a case where a person did take a very
16 long time to come out with the truth and at the point
17 that the person had no basically again it was kind of
18 like back against the wall and had no choice but to give
19 the truth he finally did give the truth and that in that
20 particular case -- and I think I referenced also to him
21 in that case the children involved in that case were I
22 think around six and four. So I did make sure there was
23 some clear distinctions between those two cases. And I
24 told him that in that case the person did receive the
25 maximum penalty on that.

1 Q. Do you recall telling him that point black that
2 before he had given you any statements that you knew
3 sexual contact had occurred and you hate to see him
4 thrown to the wolves. Do you remember stating that to
5 him?

6 A. Yes, I did tell him that I knew at this point
7 that I was confident that sexual contact had occurred.
8 That he was not being honest with me. And when you do
9 something over and over again as far as your job you
10 develop certain habits or idiosyncrasies of ways of
11 doing my job and one of the comments I would often use
12 with a person was that I hated to see you be thrown to
13 the wolves and that is kind of sort of like the
14 statement of saying to someone I hate to see you being
15 thrown under the bus. It doesn't mean you actually have
16 to throw somebody under a bus or actually throw
17 someone to the wolves. It is just a way of saying I
18 don't want you to see you left hanging out there without
19 any sort of protection covering or whatever you would
20 say. It is just a comment that I would often make with
21 people.

22 Q. It's a threat, isn't it?

23 A. Oh, no, sir.

24 Q. Well, isn't that the whole point of doing this
25 Miranda thing is. The waiver of rights, doesn't that

1 say that no threats or promisees had been made to me and
2 no pressure, coercion of any kind has been used against
3 me?

4 A. Yes, sir.

5 Q. Well, if you tell somebody if they don't tell you
6 what you want to hear you are going to throw them to the
7 wolves.

8 A. I never said I would throw them to the wolves.

9 Q. You said you just didn't want to see it happen?

10 A. Right.

11 Q. I will show you State's two. It has been
12 admitted into evidence. This is Mr. Irby's original
13 statement to Detective Alridge, correct?

14 A. Yes, sir.

15 Q. And would it be fair to say that it is in Mr.
16 Irby's handwriting?

17 A. Yes, sir, it is.

18 Q. And these other two statements; State's four and
19 five, they are in your handwriting, correct?

20 A. Yes, sir.

21 Q. And the beginning of States Exhibit four, in that
22 first paragraph do you not indicate that it says, "I,
23 James Irby, have asked Sergeant Danny Morgan to write
24 this statement because I don't feel at the present time,
25 I don't feel up to writing it myself."

1 That is the first line in that statement, correct?

2 A. Yes, sir.

3 Q. So, he didn't feel up to writing it . Well, he
4 felt up to writing statement before to Detective
5 Aldridge on State' two, did he not?

6 A. That's correct.

7 Q. So what magically happened now that he can't
8 write his own statement?

9 A. Nothing happened that he could not. In fact he
10 was given the opportunity to write it himself. It was
11 his option to ask me to write it. As you can see
12 apparently from the first statement there his ability to
13 speak and communicate is no different then yours or
14 mine. His ability to put his thoughts down in writing
15 may not be quite as clear.

16 Q. Well, in his statement I mean, he has been
17 misspelling pronouns like her and putting he, isn't he?

18 A. That's correct.

19 Q. In your statement you are using words like
20 primary reason that he did something, et cetera. Those
21 aren't Mr. Irby's words are they?

22 A. Well, as I said earlier what I do with a person,
23 we are going to talk about everything that goes in a
24 statement before it is written down. So to make sure
25 that everything that we talk about is in the statement

1 that you want in there. And at that point so before
2 anything is written down I know ahead of time what the
3 person wants me to put in the statement. Now, a part of
4 the reason that I help a person write the statement is
5 so that their thoughts can come across clearly and not
6 mispronounce words or misspell words or use wrong
7 pronouns.

8 Q. Isn't part of the reason so that you can phrase
9 it in a way that it sounds like what it needs to say in
10 court?

11 A. I think this statement speaks for itself. It is
12 very clear that it says what he and I had discussed and
13 everything in it is what he said he wanted in.

14 Q. But that statement on State's four given at 5:59
15 that still wasn't good enough for you, was it?

16 A. This statement still did not address the incident
17 of sexual contact in victim's room.

18 Q. Right. So then we had to go back and we had to
19 get a new statement. Spend an additional hour with Mr.
20 Irby, is that correct?

21 A. We did not spend an additional hour with him.
22 There was the time for paperwork ending the first
23 statement. There was a break in there of approximately
24 between 5 and 10 minutes for restroom and water break
25 time. And then I come back in and sit with him.

1 We talked for probably 15 minutes for him to give
2 me this new information and then it took me another
3 15 minutes to write it up. So, it was not another hour
4 of interviewing. It was about 15 minutes of talking
5 prior to him telling me what is written down there?

6 Q. Now, in any of these statements, any of the
7 statements, statement that he initially gave to
8 Detective Alrdige, that was a denial, correct?

9 A. This one?

10 Q. Yes, State's two.

11 A. Actually no. My initial impression when I first
12 read it the first thing I noticed in there he did not
13 deny sexual contact with her.

14 Q. Did he admit to it?

15 A. Well, may I?

16 Q. Yes.

17 A. He starts out by saying that first of all she has
18 threatened. That the child has threatened him.

19 Q. Right.

20 A. And then he says, "Now, about me having putting
21 my finger and penis in her I think child got upset
22 because I told her to clean up the room" and he talks
23 about being denied about going to field trip. He
24 doesn't say I didn't do it. He says I think she was mad
25 at me.

1 Q. But you were present in court when Detective
2 Aldridge says this was a denial, correct? You were
3 present in court yesterday?

4 A. I was present in court. I don't remember her
5 saying it was a denial.

6 Q. Okay. Now, on these two, these two statements
7 right here, would it be fair to say that the only
8 conduct that occurred in the room is on State's number
9 five? That occurred in victim's room, that is the only
10 conduct referred to by Mr. Irby in any of the statements
11 is State's number five that occurred in victim's room;
12 is that correct?

13 A. That's correct.

14 Q. And the conduct that occurred in victim's room on
15 State's five was an oral sex issue, correct?

16 A. That's correct.

17 Q. Okay. Now, that doesn't match up with the
18 information that you had that victim disclosed that Mr.
19 Irby did to her?

20 A. That's correct.

21 Q. So none of these statements taken over the course
22 of six hours even match up the information that victim
23 said occurred, correct?

24 A. Not match up exactly and rarely do you get
25 something that does match up exactly. So what you are

1 looking for is to see is the context of it correct. And
2 this one is where he admitted that there had been sexual
3 activity that occurred in bedroom.

4 Q. But none of these match up with the specific
5 allegation that was made in November, correct?

6 A. Well, no, sir. None of these match up
7 specifically. All of these have victim being portrayed
8 as a wanton Lolita who's sexually seducing 38-year old
9 man while she is 12 years old.

10 Q. But in both of these statements -- the incident
11 of November, were you aware that a deputy had been
12 dispatched to that incident in November prior to doing
13 this interview?

14 A. Well, obviously there would have been an incident
15 report written at some point in time. Up until it was
16 mentioned in court yesterday, I really didn't have any
17 particular recall about the deputy being dispatched out
18 there. What the deputy did or didn't do. More than
19 likely in 2007 I did know about it then.

20 Q. And in spite of knowing about that and that there
21 was an officer that came out at no point in time did
22 James admit to doing anything wrong in November of 2007.
23 He didn't specifically admit to the allegations victim
24 had made that an officer had been dispatched to in close
25 proximity, even after six hours, is that correct?

1 A. I am sorry. I don't understand.

2 Are you saying up until the time the statements
3 were written he had not --

4 Q. He still had not made any sort of admission
5 regarding the specific incident that was alleged in
6 November? And it is not like there was a significant
7 reporting delay. It is a couple of days, right?

8 A. I believe the initial report started in November,
9 around the middle of November, so it is about at least
10 two weeks going on three weeks later that I am talking
11 with him. And the procedure at the time was to make
12 sure that we had given the Children's Advocacy Center an
13 opportunity to talk with the child. To get at least the
14 initial report. Whether or not there was a disclosure
15 and what the disclosures were and what the forensic
16 interviewer had. The impression of whether or not there
17 was a true disclosure. So at least for me to have
18 something to go on when I talked to the person later.
19 Does this look like a legitimate report or not. So it
20 was about two and a half weeks after the -- I believe it
21 was November 14th or something like that when the
22 initial incident report was taken.

23 Q. The point is none of this information matches the
24 disclosure that was made by victim , correct? It
25 doesn't exactly match it?

1 A. Not exactly no, sir.

2 Q. Six hours of interviewing is the whole time that
3 you spent with Mr. Irby, correct?

4 A. Yes, sir.

5 Q. And that's the amount of time you spent with him
6 after Detective Alridge had him that day, correct?

7 A. I believe she had him for about 30 minutes prior
8 to me talking with him.

9 Q. Just so that I am clear, in your direct testimony
10 you indicated that you had never threatened or coerced
11 Mr. Irby in making any of these statements, correct?

12 A. That is correct.

13 Q. Okay.

14 Q. And on cross examination you admitted that you
15 did make a statement to him that you wouldn't want to
16 see him thrown to the wolves, correct?

17 A. That's correct.

18 Q. You have only been on the stand for about 40
19 minutes.

20 MR. BROUGH: No further questions.

21 REDIRECT EXAMINATION

22 BY MS. REESE:

23 Q. When the defendant talked to you about writing a
24 statement did he not tell you I rather you write it
25 because I have problems writing things and spelling

1 things?

2 A. I don't remember exactly what his words were, but
3 I do remember -- I do remember him, especially on the
4 second statement, I remember him saying that I can't
5 write. I just don't feel like writing right now. And
6 that was not an usual thing to hear from someone, but I
7 mean it was definitely clear that he was telling me that
8 he wanted me to write the statement for him?

9 Q. And when you asked them, this particular
10 defendant in particular to tell you, what do you ask
11 them to tell you?

12 Do you ask them to tell you what you want to hear
13 or do you ask them to tell you the truth?

14 A. No. In fact I am very careful not to tell the
15 person what I already know because that is part of -- as
16 was mentioned by Mr. Brough, a part of our training is
17 that we definitely want to avoid any type of a false
18 confession. So one of the ways of avoiding a false
19 confession is not to tell the person ahead of time what
20 it is that you already know. So that way when they
21 start to tell you things you can start to look at it and
22 see what does this jive with the whole incident here.

23 So, all I ever told him was I just want to know the
24 truth. I want to know that you are telling the truth.
25 So I just kept putting it back to him to tell the truth.

1 Q. And ultimately the statements he gave you
2 admitted to sexual contact with victim , they just made
3 it her fault?

4 A. Yes, all of the statements do admit to sexual
5 contact and allowing it to be framed in the light of
6 victim . That it was all her doing.

7 It was just his way of being able to rationalize
8 way that he had had sex with her?

9 MS. RESSE: Nothing further.

10 MR. BROUGH: Just briefly on recross, Your
11 Honor.

12 RECROSS EXAMINATION

13 BY MR. BROUGHT:

14 Q. You indicated on redirect that you are not
15 suppose to tell somebody what you know because that is
16 how you avoid false confessions, correct.

17 A. Yes, sir.

18 Q. So there are false confessions? They exist,
19 correct?

20 A. Sure.

21 Q. Do you recall specifically telling Mr. Irby that
22 before he confessed that he knew he had sexual contact
23 with victim ?

24 A. Uh-huh.

25 Q. So you did tell him something?

1 A. I knew that he had sexual contact.

2 MR. BROUGH: No further questions.

3 MS. REESE: Nothing further.

4 THE COURT: You may step down.

5 MS. REESE: At this time the State rests.

6 THE COURT: Ladies and gentlemen that is all
7 the testimony or evidence to be offered by the
8 State. That is their case in chief.

9 Before I go any further I have got some
10 matters I will need to address with the lawyers,
11 so it will be convenient for us to take a short
12 break. So we will do that.

13 Please go to your jury room. Do not discuss
14 the case in any fashion. We will bring you back
15 after that break.

16 (Jury exits courtroom)

17 THE COURT: Any motions or other matters to
18 address before we continue.

19 MR. BROUGH: Yes, Your Honor. Defense would
20 make a directed verdict motion and in doing so
21 would renew all of our pretrial motions and
22 objections during the trial, Your Honor.

23 THE COURT: All right. That motion is
24 denied.

25 MR. BROUGH: We would also like the Court to

1 inquire as to whether or not my client wishes to
2 take the stand and any evidence that the State
3 in terms of prior convictions wishes to use for
4 impeachment.

5 THE COURT: Do you have any impeachment
6 matters?

7 MS. REESE: Your Honor, I don't believe
8 anything that he has can be used. He has a
9 series of CDV's, I believe, but nothing I think
10 -- he does have a failure to stop, Your Honor,
11 from 2011. I am just being made aware of that.

12 THE COURT: Do you want to ask him about
13 that?

14 MS. REESE: No, sir.

15 THE COURT: All right. They have nothing to
16 ask him.

17 All right, Mr. Irby, have you and Mr. Brough
18 discussed your right to testify as well as not
19 testify?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that when you
22 are charged with a crime you have the absolutely
23 right to remain silent. That just means nobody
24 can make you to take the witness stand or
25 testify or answer any questions. It is simply

1 your choice. You have to make the decision as
2 to whether or not you will take the witness
3 stand and testify in the trial of this case.

4 Now, do you understand that it is your
5 decision?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you also understand that if
8 you take the witness stand and testify you have
9 to answer all questions to the extent that they
10 are relevant that are asked of you by not only
11 your lawyer but also by the prosecutor, even if
12 the answers to those questions might tend to
13 prove you guilty of some kind of state crime you
14 committed.

15 THE DEFENDANT: Yes, sir, I understand.

16 THE COURT: And do you understand that if
17 you elect not to testify I will instruct the
18 jury they can't hold that against you. Can't
19 consider it in any way and can't go out to enter
20 into their deliberations or in their decision as
21 to whether or not you are guilt as been proven
22 by the evidence in the case?

23 THE DEFENDANT: Yes, sir, I understand.

24 THE COURT: Have you and Mr. Brough
25 discussed the advantages and disadvantages of

1 testifying as well as not testifying?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And do you appreciate what those
4 advantages and disadvantages are?

5 THE DEFENDANT: Yes.

6 THE COURT: Have you had time to reflect
7 upon your decision as to whether or not you will
8 testify?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And have you reached a decision?

11 THE DEFENDANT: Yes.

12 THE COURT: And what is that decision?

13 THE DEFENDANT: I will testify.

14 THE COURT: You will testify?

15 THE DEFENDANT: Yes.

16 THE COURT: And that is a decision that you
17 reached of your own free will and accord?

18 THE DEFENDANT: Yes.

19 THE COURT: Has anybody pressured into that
20 decision or forced you in that decision?

21 THE DEFENDANT: No, sir.

22 THE COURT: Has anyone even suggested that
23 is the decision that you ought to make in this
24 case?

25 THE DEFENDANT: No, sir.

1 THE COURT: You made take decision on your
2 own?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And you are satisfied with it?

5 THE DEFENDANT: Yes.

6 THE COURT: All right.

7 Any other matters we need to address before
8 we take a break?

9 MR. BROUGH: No, sir.

10 MS. REESE: No, sir.

11 THE COURT: All right. We will be at ease
12 for 15 minutes.

13 (Brief recess.)

14 THE COURT: Ready for the jury?

15 MS. REESE: Yes, Your Honor.

16 MR. BROUGH: Yes, Your Honor.

17 (Jury entering.)

18 THE COURT: Ladies and gentlemen as you know
19 the State has rested in their presentation. So
20 we are now going to proceed with any evidence to
21 be offered by the defendant.

22 Mr. Brough.

23 MR. BROUGH: Thank you, Your Honor. The
24 defense calls Lillian Dannette Collins to the
25 stand.

1. LILLIAN DANNETTE COLLINS, after being duly
2 sworn testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BROUGH:

5 Q. Please state your name for the record?

6 A. My name is Lillian Dannette Collins Irby.

7 Q. And do you know the defendant James Irby?

8 A. Yes, he is my husband.

9 Q. And do you know victim ?

10 A. Yes, she is my daughter.

11 Q. Could you describe for me after James started
12 living with you at that time were there issues with
13 discipline with victim ?

14 A. There was total chaos as far as any kind of
15 discipline for us. How I discipline the kids and then
16 the fact that someone else came in to assist with
17 discipline.

18 Q. Ma'am, do you recall a counseling session at the
19 Children's Advocacy Center between you and your daughter
20 victim ?

21 A. I do.

22 Q. Could you please tell me what happened?

23 A. The session in question, I was brought in and we
24 were suppose to have our counseling session. It was the
25 first one. At the time I was really unaware of what was

1 going on. The first thing my daughter asked me was she
2 wanted to know why I was on his side and not her side
3 and I explained to my daughter that I was in the middle
4 and I needed to find out information from both sides as
5 to what was going on. I was unaware and I didn't know.

6 Q. And did you ask her any questions to that effect?

7 A. I did. I told we were here because she made
8 allegations that something happened and I needed to know
9 what happened.

10 Q. And what was her response?

11 A. Her first response was that nothing happened and
12 I looked at her and I looked at the counselor also and I
13 asked her a second time, I said victim , we are not here
14 because nothing didn't happen. I need to understand so
15 I asked her a second time please tell me what happened.

16 Q. And what was her response to that?

17 A. It was the same thing again and I asked her a
18 third time. I just I looked at her and I looked at the
19 counselor and I said victim , I want to understand and
20 you have to help me to understand. All I can understand
21 is if you tell me. So I asked her if anything happened
22 and she said no, nothing happened but he tried and at
23 that point the counselor stopped the session. She
24 wouldn't allow her to say anything. She wouldn't allow
25 me to ask any other questions so I was just like at a

1 dead standstill so I never found out if anything and
2 nothing was disclosed to me at the time.

3 Q. Who was counselor that was present?

4 A. Gina.

5 Q. Was that Gina Odom?

6 A. Gina Odom.

7 Q. At any point in time did you ever hear your
8 daughter call out for help to you?

9 A. No, I really couldn't hear. Her room -- my house
10 is a mobile home and it is 16 by 80 so I am at one one
11 end of the house and the children are the other end.
12 They would have really have to yell and shout for me to
13 actually hear them.

14 MR. BROUGHT: No further questions.

15 CROSS EXAMINATION

16 BY MS. REESE:

17 Q. Miss Collins, do you remember about a year before
18 the time the police came to your house your daughter
19 coming to you and telling you that the defendant put his
20 finger in her private part?

21 A. I do.

22 Q. And did you confront the defendant about it?

23 A. I asked her first before I confronted him because
24 I wanted to find out what happened. It had to be a
25 reason for something like that to happen.

1 Q. Did you confront him?

2 A. I just asked him if it happened because she told
3 me it did.

4 Q. And did he tell you that he was wrestling with
5 her and his finger accidentally went in her private part?

6 A. Yes, he did.

7 Q. After he told you that he continued to live in
8 your house, is that right?

9 A. He did.

10 Q. Did your daughter tell you that she didn't want
11 James coming into her room at night any more?

12 A. She did. I asked why. Why she said that because
13 normally what we do is go down the hall and check. All
14 the kids have TV's in their rooms and they are suppose
15 to have timers on. Some times they leave them on and
16 some times they wouldn't.

17 Q. So at some point before she disclosed this abuse
18 she told you I don't want him coming in my room any
19 more?

20 A. She did.

21 Q. Did you at any time come out of your room about
22 two, three or four in the morning and find the defendant
23 standing in the hallway naked?

24 A. I did.

25 Q. Your daughter ~~NAME~~ 5 was how old?

1 A. Between four and five.

2 Q. And she slept in the bunkbed above victim ; is
3 that right?

4 A. She did.

5 Q. Now, were there times that ~~more~~s stayed other
6 places then your house at night?

7 A. She did. She stayed with her grandmother or her
8 dad.

9 Q. So she has a dad different from victim ; is that
10 right?

11 A. She does.

12 Q. And she would go to visit him, is that correct?

13 A. Yes.

14 Q. After victim disclosed sexual abuse did the
15 defendant leave your house or did he remain in the
16 house?

17 A. Well, when it all came to light he was actually
18 not at the house.

19 Q. At some point did he come back to the house?

20 A. He did.

21 Q. Did you continue to talk with him?

22 A. Off and on when I could.

23 Q. Did you go to the jail to see him?

24 A. I did.

25 Q. Did you visit him at the jail?

1 A. I did.

2 Q. Was [victim] aware that you continued this
3 relationship?

4 A. I think she was.

5 Q. Did you actually accept jewelry from him and wear
6 it, some earrings?

7 A. I did.

8 Q. Did you have a tattoo with his name on it made on
9 your body?

10 A. It was before that time but, yeah, I did.

11 Q. Did [victim] ever come back to your house?

12 A. She did. She come to visit on weekends.

13 Q. And are you with the defendant now?

14 A. No, I am not.

15 Q. Did she ever come back to live with you?

16 A. No. She stayed a few weeks. It was sporadic.
17 She stayed basically whenever she wanted too.

18 Q. And now she lives with?

19 A. She is in school in Dallas.

20 Q. And she lives in a dorm there?

21 A. Yes.

22 Q. Did your daughter have a lot of anger about you
23 continuing your relationship with James after she
24 disclosed the sexual abuse?

25 A. She did.

1 Q. Since all this has happened have you spoken to
2 victim ?

3 A. Yes, I do on a constant basis.

4 Q. As she disclosed to you and you can't say exactly
5 what she has disclosed. Has she disclosed sexual
6 assault?

7 A. She has.

8 Q. And has she told you when and where it happened?

9 A. She did.

10 MS. REESE: Nothing further.

11 MR. BROUGH: Briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. BROUGH:

14 Q. Miss Reese asked you if you and James were
15 together; is that correct?

16 A. She asked if we were still together?

17 Q. Yes.

18 A. We are not.

19 Q. You are aware that he has a new girl?

20 A. I have no contact with him. I am pretty sure
21 that he does.

22 Q. Okay.

23 MR. BROUGH: May I have this marked as
24 Defendant's 1.

25 (Whereupon Defendant's Exhibit 1 was marked

1 for identification only.)

2 Q. I will show you what has been marked as
3 Defendant's 1. Do you recognize that?

4 A. I do. It is a statement I wrote.

5 Q. Is it in your own handwriting?

6 A. Yes, it is.

7 Q. And did you sign it,

8 A. Yes, I did.

9 Q. And is it in fact notarized?

10 A. Yes, it is.

11 Q. In that statement on the third time did you not
12 indicate that in the joint counseling session on the
13 third time you asked ~~VICTIM~~ her response was again that
14 nothing happened?

15 A. Yes.

16 Q. You never indicated that he tried to do anything
17 in that statement did you?

18 A. It is in here.

19 Q. Is it in there on her response to that third
20 question?

21 A. (No response.)

22 Q. Did you believe that any abuse was occurring?

23 MS. REESE: Your Honor, I object.

24 THE COURT: Sustained.

25 Q. When Deputy Washington came to your house with

1 your sister Jennifer Turner, did you try and insist to
2 him that your husband be arrested?

3 A. No, I didn't.

4 MR. BROUGH: No further questions.

5 MS. REESE: Just a few questions.

6 RECROSS EXAMINATION

7 BY MR. REESE:

8 Q. In this statement that --

9 MS. REESE: Has it been admitted?

10 MR. BROUGH: No.

11 Q. The information about James telling you that he
12 accidentally put his finger into victim vagina you gave
13 that information to DSS workers when you two were still
14 together?

15 A. I did.

16 Q. And the information about him being naked in the
17 hallway one night when you woke, you had spoken to him
18 about that why you were both together?

19 A. Well, we had a confrontation in the hallway.

20 MS. REESE: Nothing further.

21 THE COURT: You may step down.

22 MR. BROUGH: Defense calls James Irby to the
23 stand.

24 THE COURT: Mr. Brough, you need to get the
25 statement back from the witness.

1 JAMES BENJAMIN IRBY, after being duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BROUGH:

5 Q. Mr. Irby, tell me about tell me about the
6 disciplinary issues that existed in the house when you
7 started living with Lillian, your wife, and victim ?

8 A. Well, when I started living in the house there
9 was really like none existing. The children was just on
10 auto pilot.

11 I can remember the first time when I met the
12 children. We was in the living room and we watched TV
13 and it was my first time ever meeting victim and me and
14 my wife we was trying to watch a TV program and the
15 whole time we were trying to watch the TV program
16 Dannette -- I mean victim , was making this sound and it
17 lasted through the whole TV program. She was saying
18 yang, yang, yang, yang, yang and I was looking at my
19 wife like you are not going to stop this and she never
20 did. And you know right then I knew I wanted to be with
21 her because I loved her. I had to make a decision and I
22 said well, I am just going to be with her and not even
23 worry about the kids trying to discipline them or
24 anything. But it got to a point where victim was still
25 reacting, you know, cutting up in school and one

1 incident a police officer had to bring victim to the
2 house and when that happened Dannette was called down to
3 the school. So she asked me to go. Right then I had to
4 make a decision am I just going to be with her and not
5 worry about the kids or am I going to be a father to the
6 kids. So I agreed to be a father to the kids right then
7 and there.

8 I went down there. What victim told us what
9 happened --

10 MS. REESE: Your Honor, I object.

11 THE COURT: Sustained.

12 Q. Don't go to far. I think the jury has got
13 enough.

14 Let me ask you this. Did you ever do anything
15 sexually inappropriate with victim ?

16 A. I never did anything sexual inappropriate with
17 victim . Never.

18 Q. Did you ever try to do anything sexual
19 inappropriate with her?

20 A. I never tried.

21 Q. Now sir, you understand there has been a number
22 of serious allegations made against you?

23 A. Yes, sir, I understand that.

24 Q. And is it your sworn testimony that you in fact
25 did not do any of these things that you are alleged to

1 have done?

2 A. Yes, that is my sworn testimony.

3 Q. When the police came out to the residence in
4 November of 2007, tell me what had just occurred between
5 you and victim before the police were called out there?

6 A. Well, my wife told her that if she didn't clean
7 up her room -- well, my wife told her to clean up her
8 room and that was it. But victim never cleaned up her
9 room. Through the whole time I was there I cleaned up
10 the room twice for her and I told when victim came home
11 from school I told her if she didn't clean up her room
12 this time that she wasn't going on that field trip.

13 Q. And do you recall what happened after you told
14 her that?

15 A. She got upset.

16 Q. And how long after you told her that did she show
17 up with Miss Turner and the police?

18 A. I think that was the next night.

19 Q. Please answer any of Miss Reese's questions.

20 A. Can I say one more thing?

21 Q. Yes, sir.

22 A. Like I say actually that was next night when the
23 police showed up even then me and my wife was discussing
24 how do to discipline the children and we was in the
25 bedroom with the door shut and the next thing we know we

1 hear a radio inside our house and we out there and there
2 was a cops standing out there and Jennifer.

3 MR. BROUGH: Thank you, sir.

4 CROSS EXAMINATION

5 BY MS. REESE:

6 Q. Mr. Irby, in a statement you gave to law
7 enforcement to DSS did you tell them that it was the
8 same day that you told victim that she couldn't go on
9 the field trip and the next thing you know is the police
10 were at your house?

11 A. I think it was the next day.

12 Q. But did you tell them it was the same day?

13 A. I can't remember.

14 Q. Did you tell Detective Aldridge or did you write
15 in a written statement that victim had asked you to
16 smell her cookies?

17 A. Yes. As to what happened on that particular day,
18 me and victim we was in the kitchen fixing sandwiches
19 and all of sudden she said, James, do you want to smell
20 my cookies so I said what cookies. We ain't cooking no
21 cookies. I knew what she meant and I told her to get
22 out of the kitchen and then I told my wife what she had
23 said. And then later, I little bit later on, maybe
24 about a week later she came to me and told me that she
25 smelled my underwear. I told my wife about that.

1 Q. So it is your testimony that this 12-year old
2 child was smelling your underwear?

3 A. I don't know if she was or not, but I know they
4 watch porno. The son has a collection and even I tried
5 to tell my wife about that. We went to the flea market
6 and me an and my wife were buying DVD's. After we
7 bought DVD's he snuck back and bought a porno and I told
8 her she needed to do something about it and she did
9 nothing.

10 Q. So it is really Dannette's fault that these
11 children are so out of control, isn't it?

12 A. No. When she didn't do anything I tried to. It
13 is not -- maybe she didn't know. Maybe she was burned
14 out. I don't know.

15 Q. But you needed to get control?

16 A. There needed to be some form of discipline in
17 that house.

18 Q. And you decided you would control?

19 A. I decided I would try.

20 Q. Did you tell your wife on jail phone calls, God
21 made me the head of this household you are not the head?

22 A. I probably did.

23 Q. Did you tell her to shut up? I shouldn't have to
24 tell my wife to be quiet when I am talking?

25 A. During that time me and my wife me were having

1 plenty of different arguments.

2 Q. Did you say it, yes or no?

3 A. I can't remember.

4 Q. Did you tell Detective Morgan that some times
5 when you are asleep your penis hangs out your boxer
6 shorts and you have an erection?

7 A. That's in the statements. I felt threatened.

8 Q. Did you tell him that?

9 A. I told him that.

10 Q. Is it true? Is it true?

11 A. No, it is not true.

12 Q. But he didn't make that up? You told him that?

13 A. I told him that. After telling him that nothing
14 ever happened, but I knew he was wanting to hear
15 something and I had been up there over a course of six
16 to eight hours and I knew they weren't going to let me
17 go until I told them something so I made that stuff up.

18 Q. So you made that stuff up thinking they were
19 going to let you go? You told him that you had had sex
20 with your 12-year old step daughter?

21 A. I am saying --

22 Q. Thinking they were going to let you go?

23 A. I am not talking about letting me go to be free.
24 Let me go out of the questioning. I already knew what
25 they wanted. They wanted my to confess to something so

1 that's what I did.

2 Q. So you confessed that none of this is true?

3 A. No, of this true. I was threatened.

4 Q. What were you threatened with? What did they
5 threaten you with?

6 A. You heard the statement just like I heard it.
7 That I would have been thrown to the wolves. They had
8 me in leg irons and he was invading my space at times.
9 I felt threatened.

10 Q. You signed the form you understood you could stop
11 the questioning at any time; yes or no?

12 A. Yes.

13 Q. And you understood that?

14 A. I understood that and me and wife discussed that.
15 I was just going to do the five years and be done with
16 it even though I didn't do nothing. That is what I was
17 going to do. But I did not do this.

18 Q. Well, what did you tell the Detective Morgan, did
19 you tell him that some times you sleep naked?

20 A. Yes.

21 Q. Is that true?

22 A. Yes, with my wife.

23 Q. Did you tell him that some times when you and
24 your wife get upset with each other you sleep in the
25 living room?

1 A. Yes, I sleep in the living room.

2 Q. And that is true?

3 A. That's true.

4 Q. So all these things aren't true just the ones
5 that make you look bad, right?

6 A. I don't understand what you mean.

7 Q. Well, you said everything is not true, but there
8 is a lot of truth in here. I mean, you will even admit
9 that most of this is true even by what you are saying
10 today?

11 A. I sleep in the living room. Yes, I do.

12 Q. So Detective Morgan didn't make anything up. You
13 told him this?

14 A. I made it up.

15 Q. Did you tell Detective Morgan that victim would
16 masturbate in her room because she knew you were coming?

17 A. I told him that.

18 Q. You initialed each paragraph of this statement?

19 A. Uh-huh.

20 Q. You signed the bottom?

21 A. I signed it.

22 Q. And this is what you told Detective Morgan?

23 A. That is what I told him.

24 Q. Did you have any marks or bruises when you left
25 Detective Morgan's office?

1 A. No, I didn't think he was going to jump on me. I
2 didn't think that.

3 Q. The final statement, is this the statement you
4 gave Detective Morgan?

5 A. Yes.

6 MS. REESE: Nothing further.

7 MR. BROUGH: Briefly on redirect .

8 REDIRECT EXAMINATION

9 BY MR. BROUGH:

10 Q. Mr. Irby, those statements you gave Detective
11 Morgan that Miss Reese was asking you about, did you not
12 feel up to writing your own statements?

13 A. I could have wrote my own statements.

14 Q. I will ask you one time, one time again, did you
15 do this sir?

16 A. No, I did not do that. I did not touch victim .
17 I did not have a sexual relationships with victim .

18 Q. Are you sure?

19 A. Yes, sir.

20 MR. BROUGHT: No further questions.

21 MS. REESE: Nothing.

22 THE COURT: You may step down.

23 MR. BROUGH: The defense rests, Your Honor.

24 THE COURT: Any reply.

25 MS. REESE: Yes, one reply Your Honor.

1 MR. BROUGH: Your Honor, we would renew our
2 previous motions.

3 THE COURT: Okay. Motion denied.

4 MS. REESE: The State calls Gina Odom.

5 GINA ODOM, having been first duly sworn,
6 testify as follows:

7 DIRECT EXAMINATION

8 BY MS. REESE:

9 Q. Will you state your name for the jury please?

10 A. Gina Odom.

11 Q. And where are you employed?

12 A. At the Children's Advocacy Center in Spartanburg.

13 Q. And what are your duties at the Children's
14 Advocacy Center?

15 A. I am contract therapist.

16 Q. And who do you provide therapy for?

17 A. Children adolescents who have experienced trauma.

18 Q. And does that include children adolescents who
19 have been victims of sexual abuse?

20 A. That is about 90 percent of what I do.

21 Q. And were you referred victim for therapy?

22 A. I was.

23 Q. And did she participate in therapy?

24 A. She did.

25 Q. About how long?

1 A. For just a little bit less than three years.

2 Q. And were you present I guess during all of the
3 session when she was in therapy?

4 A. I was.

5 Q. And did you have occasion to have a therapy
6 session with her mother Lillian Collins and Victim ?

7 A. I did.

8 Q. And when was that?

9 A. That was on January the 25th of 2008.

10 Q. January 25th?

11 A. Sorry, July the 25th. I apologize.

12 Q. How did -- was it your normal practice to have
13 the mother and the child in therapy with you at one
14 time?

15 A. I frequently do family therapy with the clients
16 that I see, yes.

17 Q. In this particular instance how many times did
18 you have therapy session with the mother and the child?

19 A. In this particular case only one.

20 Q. Were you present for the entire session?

21 A. Yes, ma'am.

22 Q. Did you at any time leave these two individuals
23 alone?

24 A. No, ma'am.

25 Q. And did you hear everything that was said during

1 that therapy session?

2 A. Yes, ma'am.

3 Q. At any time during that therapy session did this
4 child, victim ever recant or deny or tell her
5 mother nothing happened?

6 A. No, she did not.

7 Q. Did she in fact disclose to her mother sexual
8 abuse?

9 A. She did.

10 Q. And what happened that required there to be no
11 further sessions?

12 A. In my opinion it was going to be
13 counterproductive to victim 's progress with mom not
14 believing or supporting her daughter.

15 Q. And after this session did you have any more
16 involving the mother and daughter?

17 A. I did not.

18 Q. And did you continue to counsel victim ?

19 A. I did.

20 Q. Did she and the law doesn't allow you to say what
21 she say, but did she continue to disclose sexual abuse?

22 A. She has always remained consistent in her
23 disclosures.

24 MR. BROUGH: Your Honor, I am going object
25 to that. That goes not just to time and place

1 but that goes well be beyond time and place.

2 THE COURT: Sustained.

3 MR. BROUGH: And we would ask Your Honor for
4 a motion hearing pursuant to Rule 608.

5 THE COURT: We will address that shortly.

6 Q. Yes or no, did she continue to disclose sexual
7 abuse to you?

8 A. Yes, she did.

9 Q. At any time while you were present during that
10 therapy session was there any form of recantation?

11 A. There was not.

12 MS. REESE: Nothing further.

13 CROSS EXAMINATION

14 BY MR. BROUGH:

15 Q. So, is your testimony that Lillian Collins just
16 lied about the fact that victim said nothing happened?

17 A. My testimony is that victim did not recant during
18 that therapy session.

19 Q. It is your testimony that that question and
20 answer session never took place?

21 A. It did take place. We did have a joint session
22 on July the 25th of 2008.

23 Q. Is it your testimony that Lillian Collins never
24 asked her daughter, victim, what happened and that
25 victim never responded that nothing happened?

1 A. My testimony is that ~~VICTIM~~ did tell her mother
2 what happened during that session.

3 Q. But not that nothing happen?

4 A. She did not state that nothing happened.

5 Q. So your testimony is then that Miss Collins lied?

6 A. My testimony is that, I mean, I am not here to
7 call anyone a liar, but that did not occur, no.

8 MR. BROUGH: Thank you.

9 THE COURT: You may step down.

10 MS. REESE: Nothing else.

11 THE COURT: All right, ladies and gentlemen
12 that is all of the testimony or evidence to be
13 offered in the trial of the case. What remains
14 to be done are the lawyers final summation.
15 After which I will instruct you on the law and
16 then you will begin with your deliberations.
17 Because of the hour we will recess now for lunch
18 and we will reassume with those final arguments
19 and instructions and deliberations at
20 two o'clock this afternoon. At two o'clock this
21 afternoon. So you are excused now for lunch.
22 Keep in mind my caution, don't discuss the case
23 with anyone and doesn't conduct any research, no
24 investigation, no exposure to any type of media
25 coverage.

1 Have a good lunch and please report to your
2 jury room at two o'clock. Two o'clock this
3 afternoon.

4 (Jury leaves the courtroom)

5 THE COURT: All right, Mr. Brough.

6 MR. BROUGH: Your Honor, the defense
7 would make a motion for a mistrial based on
8 prosecutorial misconduct relying
9 specifically on South Carolina Rule of

10 Evidence 608 and also on the case of State
11 versus McKerley, 397 South Carolina 461.
12 Your Honor a witness is not allowed to
13 testify as to the truth or veracity of another
14 witness's statements specifically in the context
15 of dealing with interviewing and forensic
16 interviewing and counseling dealing with
17 situations of child abuse.

18 That testimony can be construed as
19 nothing other than a professional vouching
20 for the credibility of a victim in the case
21 which is impermissible and we would ask that
22 the Court grant a mistrial pursuant to Rule
23 608 and the State versus McKerley case 397,
24 South Carolina 461.

25 Further, we would ask that that mistrial

1 specifically there be a finding of prosecutorial
2 misconduct.

3 Clearly Miss Reese is a highly experienced
4 prosecutor.

5 THE COURT: Miss Reese.

6 MS. REESE: Your Honor, the question I
7 asked was, the law does not allow you to tell us
8 exactly what she said.

9 Did she disclose sexual abuse to you. The
10 answer she got the answer -- or the answer I got
11 was, her disclosures have been consistent. She
12 is not saying it is consistent with sexual abuse
13 she was just saying that those were consistent.
14 It was not the question I asked. The question
15 was yes or no. Had she disclosed sexual abuse.
16 She said her allegations or her disclosures have
17 always been consistent.

18 I don't think it rises to the level of her
19 giving any opinion about her reliability. She
20 just stated that disclosures have been
21 consistent. And this is the on heels of Mr.
22 Brough putting up a witness that said the child
23 recanted that statement.

24 THE COURT: All right. Mr. Brough, I did
25 sustain your objection at the time because I

1 wasn't certain where the witness was going with
2 her testimony. As I reflect upon it now, I do
3 agree with Miss Reese.

4 Miss Reese didn't ask her that question.
5 She asked if she had disclosed sex abuse. The
6 witness volunteered that she was consistent in
7 her reporting. The context of the case is that
8 the defense has accused the witness who is
9 alleged to be the victim of misrepresenting
10 the facts or lying under oath basically of
11 claiming sex abuse when none occurred. So, the
12 fact that she has been consistent in her telling
13 I think is appropriate comment for the witness
14 and for anyone else who has been exposed to her
15 disclosure.

16 Miss Odom was not and did not testify to the
17 truth or the veracity of the child. What she
18 testified to was that she never in front of Miss
19 Odom and her mother recanted her previously
20 disclosure of being the victim of sex abuse.
21 Miss Odom simply stated that with her she was
22 consistent in her disclosure as opposed to
23 recanting as has been claimed by the defense and
24 by your calling of the child's mother.

25 So, in this case whether or not she has been

1 consistent in her position or there has been
2 inconsistent statements I think that door was
3 opened by the defense. And so the prosecution
4 of that witness simply said that she has always
5 been consistent with her and has never recanted
6 as the defense claims that she has. So there is
7 no misconduct on the part of the prosecutor
8 because she simply asked did she make a
9 disclosure. The witness testified that she was
10 always consistent with her and I think that is
11 appropriate under the facts of this case and in
12 the context of the fact that she has been
13 questioned about whether or not the child has
14 recanted or denied sex abuse in front of her and
15 her mother and that is according to the witness
16 was not the case.

17 I think the testimony was proper even though
18 I sustained the objection. I did that as a said
19 because I wasn't sure where she was going with
20 that testimony, but I think the testimony was
21 proper.

22 The prosecution has engaged in no misconduct
23 and there is no ground for any mistrial. So
24 your motion for mistrial is denied.

25 All right. Anything else we need to address

1 before we recess for lunch?

2 MR. BROUGH: No, Your Honor. We simply
3 renew all of our previous motions including
4 Jackson versus Denno and ask for a directed
5 verdict motion at this time.

6 THE COURT: All right, those motions are
7 denied.

8 What about jury instruction requests?

9 MR. BROUGH: Your Honor, I handed your law
10 clerk a copy of a proposed jury instruction
11 dealing with confessions that the defense would
12 request the Court issue.

13 THE COURT: I have it.

14 MS. REESE: And Your Honor, we would ask
15 just simply for your standard charge.

16 We would object to this and ask just for
17 standard charge on the statements.

18 THE COURT: Okay. I haven't read this yet,
19 but I do have a standard instruction.

20 Is there anything in here Mr. Brough that
21 you think is peculiar to this case that would
22 not be included in an ordinary standard
23 instruction on the voluntariness of statements?

24 MR. BROUGH: Your Honor, it goes to the --
25 and I don't have in front of me the Court's

1 standard instructions, so I think it is pretty
2 hard for me to answer that question.

3 THE COURT: Okay. Well, anyway in any event
4 I will review it during the lunch recess and I
5 will let you know.

6 MR. BROUGH: Yes, sir.

7 THE COURT: Okay. All right. The Court is
8 in recess until two o'clock.

9 (Luncheon recess)

10 THE COURT: All right. Ready for the jury?

11 MS. REESE: Yes, Your Honor.

12 MR. BROUGH: Yes, Your Honor.

13 THE COURT: Okay. Bring them in.

14 (Jury entering).

15 THE COURT: Good afternoon ladies and
16 gentlemen. As you know when we recessed all the
17 evidence has been received. What remains to be
18 done are the lawyers final summations after
19 which I will instruct you on the law and then
20 you can begin with your deliberations in the
21 case. So please give the lawyers your attention
22 now as they give you their final summation.

23 THE COURT: Mr. Brough.

24 MR. BROUGH: Thank you, Your Honor.

25 Ladies and gentlemen, I want to first of all

1 thank you for your attention during the
2 case. I know this has been a difficult case to
3 hear.

4 At the beginning of this case I told you in
5 my opening statement you would hear conflicting
6 testimony and I am sure you all know that is
7 true at this point.

8 Mr. Irby has plead not guilty to this charge
9 and therefore it is up to the State to prove
10 beyond a reasonable doubt the allegations they
11 have alleged. And what we have here in this
12 case we have a case where the evidence doesn't
13 make sense. That's what we have. We heard
14 testimony from a number of witnesses and I think
15 the one thing that really stood out when you
16 looked at all of the different testimony is, it
17 all conflicts with each other. No witness got
18 up here and said the same thing at any point in
19 this case.

20 What we have is an allegation that has been
21 made by victim who was Mr. Irby's step daughter.
22 And she made an allegation and she took the
23 stand and I believe she was the first witness
24 that Miss Reese called. She was hesitant in her
25 answers. She gave statements. When you think

1 about the statements that she gave, doesn't seem
2 to make a whole lot of sense. She said that her
3 sister who was Tamika Collins was in the room
4 with her. That her brother ~~MINOR~~ 4 was right next
5 door. That she had called out for help. No one
6 ever heard her. She stated that she moved
7 furniture in the room to block the doorway. No
8 one ever heard any of this. Does any of that
9 really make sense.

10 We know she was writing letters back and forth
11 to her natural father at the time. We know Mr.
12 Irby had tried to impose some sort of
13 discipline. We know there had been disciplinary
14 problems with her at school. At the house. So
15 we have a young teenage child who was
16 essentially receiving discipline from a step
17 parent while communicating with her natural
18 father. I don't think it is unreasonable to
19 assume that there was no love loss between the
20 two them.

21 Now, one of the things that kind of stands
22 out to me in this case is when you look at the
23 evidence there is an allegation. The police
24 come out initially in November of 2007. There
25 is a deputy that comes out with Jennifer Turner.

1 They come out to the residence. They don't
2 arrest Mr. Irby. Victim 's mother doesn't ask
3 that he be arrested. He is not arrested. They
4 say we need further investigation from DSS.

5 I would submit to you that he could have
6 been arrested that night. But he wasn't.

7 When DSS initially gets involved Brenda
8 Sparks Izarro, who is the case worker, sits down
9 and interviews Mr. Irby and Mr. Irby told her
10 essentially the same thing he told you here today
11 from the stand, which is there was a number of
12 disciplinary problems with victim . He tried to
13 impose some sort of discipline. That he denied
14 that this event ever took place. And that's what
15 happened. He did that in her presence. He did
16 that in Detective Alridge's presence.

17 Meanwhile, and in the meantime, a number of
18 other things took place in terms of
19 investigation. And absolutely none of it adds up
20 to what it is revealing. We had a physical exam
21 of victim and that was done by Nancy
22 Henderson. And her testimony is, essentially, it
23 is a normal exam. It could be consistent with
24 essentially anything happening. But what we do
25 know is that exam was done November the 20th 2007

1 and there was a specific alleged act of abuse
2 that was suppose to have occurred not even two
3 weeks before that. Not even two weeks before
4 that. And on the physical exam if you recall her
5 testimony, her drawing and all of this. She drew
6 the hymen which is the area on the inside of
7 vaginal opening and said that hymen there is no
8 tears. There is no scaring from the past.

9 She also testified that if somebody were to
10 be penetrated that that hymen would have made
11 contact with that other individual. What does
12 that mean. It means there is a good chance that
13 with that contact being there that shouldn't be
14 intact if something happened. But it was. We
15 know it was intact. We know that is consistent
16 with nothing happening. We know there is a chance
17 that maybe according to her testimony it healed
18 or some such other thing. But what we do know is
19 that there are people that don't have normal
20 exams and she has had cases like that too. So we
21 know there was a normal exam here.

22 What am I telling. There is no physical
23 evidence this occurred. None. There is no
24 forensic evidence that this crime occurred. So
25 what do you have. You have statements. You have

1 the testimony of the victim and you have a number
2 of other people that essentially talked with her
3 that weren't there. That's what you have. You
4 have her mother saying specifically she denied
5 making. Denied anything ever happened. You have
6 CAC worker saying that conversation didn't take
7 place. You have you lots of conflicting
8 testimony, but the question I ask of you is, does
9 victim's testimony make sense. Does it make
10 sense that she lived in a house with a 17-year
11 old brother in the room next door, with her
12 sister in the same room, that she is moving
13 furniture around and crying out for help and
14 nobody ever heard her on a repeated basis. Does
15 that even make sense? There is no way that makes
16 sense.

17 Now the State is going to get up here and
18 they are going to talk about that Mr. Irby gave
19 that statement. After he denied it initially and
20 denied it again, after sitting there and being
21 cross examined and questioned for over seven
22 hours between Alridge, between Detective Morgan,
23 eventually he said, I will just sign on the
24 bottom line. Just leave me alone. And that's
25 what he said. That's what he testified to on the

1 stand. But that's the only evidence that they
2 really have to rest their hat on, are these
3 statements.

4 Now, the one thing I find very interesting
5 about this statements is, if you recall Detective
6 Morgan while he was on the stand and Miss
7 Reese was asking questions, indicated that the
8 reason that you don't tell people what you know
9 is because it could result in a false confession.
10 False confessions exist.

11 Now, the thing that speaks volumes to me is
12 nothing in any of those confessions, or alleged
13 confessions, matches victim's story. None of it
14 adds up. None of those statements match what she
15 said on the stand. None of those statements
16 match the information Detective Morgan had when
17 he was interviewing Mr. Irby. That is why he
18 went back and kept him another hour to get yet
19 another statement which still didn't match. He
20 wanted a confession because without it there is
21 not any real evidence that this occurred. Not
22 anything that is critical. That is where we
23 are.

24 We have a situation where you have a family
25 that is, you know, a mixed family essentially.

1 Those are not James' kids. He is put in a
2 position where he has to try and get some sort of
3 discipline. There are problems at school. They
4 are getting called down there by the police and
5 everything else. They are sitting there in the
6 other rooms doing all sorts of other stuff they
7 Shouldn't be doing and there is no discipline
8 that is imposed on them at all. So when he
9 finally makes a choice he is going to step up all
10 this mess happens. It all happened after victim
11 was told no. That there would be consequences if
12 she didn't do what she was suppose to do. What
13 happened after that happened. The police come
14 and Mr. Irby stands accused of this crime. The
15 crime in which there is no actual evidence that
16 it really occurred. Not any credible evidence.

17 If the victim's allegations are true and she
18 called out and she called out for help and she
19 screamed out and she is moving furniture, do you
20 really think no one would have heard her. Her
21 brother is right next door. He is not a little
22 kid. He is 17. Her sister is in the same room.
23 You are moving heavy dresser draws. You are
24 moving furniture. Trying to block doors with
25 furniture and no one hears you. Screaming out

1 for help and no one hears you. That is what the
2 testimony is. Does that make sense. It doesn't.
3 Not in the least.

4 Judge Cole is going to instruct you on the
5 law and he will tell you among other things that
6 Mr. Irby is to be presumed innocent and the
7 presumption of innocence carries with the
8 defendant back into the jury room. In other
9 words you are suppose to start with the position
10 he is innocent and then you will have to look at
11 whether or not the State actually overcame their
12 burden of proof beyond a reasonable doubt. Do
13 you have a reason to hesitate to think that Mr.
14 Irby might not have done these things. And you
15 should have a reason to hesitate. You should.
16 The testimony doesn't make sense. There is no
17 physical evidence that any of this actually
18 occurred.

19 All the testimony is conflicting. Her mom
20 says she recanted. The CAC people say her mom is
21 a liar. This case doesn't add up. Not in the
22 slightest and you should return a verdict of not
23 guilty.

24 Thank you.

25 THE COURT: Miss Reese.

1 MS. REESE: Thank you, Your Honor.

2 When I was a little girl my father would buy
3 books for me called five-minute mini series. I
4 don't know if anybody remembers those. But
5 there were little paragraphs and little stories,
6 three or four pages and you have to look in
7 those pages to find the clues. And I loved
8 doing them because it made my daddy proud when I
9 could find the clues. He would always say,
10 Susan, look for the clues. Make sure you look
11 for the clues. My dad and I were close and as I
12 got older I began to watch him probably more
13 than I really had to as a child, and I began to
14 notice that, when he would do something he
15 always knew the right thing to do. He always
16 knew. He could read people. He could react to
17 people and he always knew whether that person
18 needed help. Needed understanding. Needed to
19 talk. He always knew how to react in a
20 situation. And I asked him one day, Dad, how do
21 you always know this and he said Susan, people
22 show you who they are. Just pay attention.
23 People show who they are.

24 So, as I got older and became a prosecutor I
25 think I used both of those things. Both of that

1 love of mystery and trying to figure out where
2 the truth is. But also, the people do show who
3 they are. And in a case like this, where there
4 is a child, what you know and what you learned
5 from doing these cases is there is not going to
6 be that fingerprint. There is not going to be
7 that DNA. Because children don't tell when this
8 happens. Children keep quiet. Children hope
9 that it goes away. They are like a deer in head
10 lights and maybe if I do this differently. They
11 love the people who are hurting them. So they
12 don't know how to handle it. And so you don't
13 have the physical evidence.

14 Doctor Henderson said in about three days
15 these injuries heal. In 90 percent of confirmed
16 cases of abuse you don't see medical evidence.
17 So what we always thought if this child isn't a
18 virgin we would know that. That is just not true
19 and that is a medical expert. She is an expert.
20 She is a board certified expert in the field of
21 child sexual abuse and she says you are not going
22 to find this. So you have to look elsewhere.
23 And there is ample evidence that this man did
24 exactly, exactly what victim said he did.

25 Let's look first at her. Let's look first

1 don't have to have a particular date and time.

2 If the situation were any different, you
3 could have used children without ever worrying
4 about about getting caught because no child would
5 ever be able to do that.

6 Now, she tells you that there was a first
7 incident. It was a year or more before this.
8 She said she cleaned her room. She says she is
9 going to get a trash bag. He is the only one
10 home. He is going between the kitchen and the
11 living room. She gets snatched to the side. She
12 is pushed down to the floor. Her hands and legs
13 come up over her head. He pushes them up and he
14 sticks his finger in vagina. That is what I call
15 the ring of truth. People don't make that up.
16 That is not something you make up. That is not
17 something a child makes up. That really
18 happened. It is not stuff you just hear about.
19 That is bizarre. And what we find out is, she
20 told her mother that day. Her mother gets home.
21 She immediately tells her this happened to me.
22 There was no field trip then. We know. We have
23 been able to confirm she reported this a year
24 before before any field trip. Before he ever
25 told anybody that she couldn't go on the field

1 trip. She had reported this a year before. She
2 told her mother. She told her immediately and
3 nothing happened. Nothing happened.

4 He continued to live in the house. What
5 does this child do. Who does she tell. What is
6 she suppose to do. Then things were kind of
7 quiet. He starts coming into her room at night.
8 And what does she say, well, he told people he
9 was coming in my room to turn the TV off but I
10 know how to turn a TV off. He would always come
11 in and tell mom he was turning the TV off. He
12 would come in and he would touch on my legs and
13 try to pull my clothes off and I would tell him
14 to get out and he would get out. He would touch
15 on me. He would mess with me.

16 It makes sense. If a child is going to lie
17 about this she is going to say, well, he did this
18 and then he raped me and he kept raping me. But
19 she doesn't. She tells you that there is a lull
20 in between the time that she tells the first time
21 and then he touches, he touches me, he touches
22 me. He is testing the waters. That is consistent
23 with what really happened. It is not a lie. It
24 is not something a child would make up. She has
25 told one time and he is waiting to see if she

1 trip. She had reported this a year before. She
2 told her mother. She told her immediately and
3 nothing happened. Nothing happened.

4 He continued to live in the house. What
5 does this child do. Who does she tell. What is
6 she suppose to do. Then things were kind of
7 quiet. He starts coming into her room at night.
8 And what does she say, well, he told people he
9 was coming in my room to turn the TV off but I
10 know how to turn a TV off. He would always come
11 in and tell mom he was turning the TV off. He
12 would come in and he would touch on my legs and
13 try to pull my clothes off and I would tell him
14 to get out and he would get out. He would touch
15 on me. He would mess with me.

16 It makes sense. If a child is going to lie
17 about this she is going to say, well, he did this
18 and then he raped me and he kept raping me. But
19 she doesn't. She tells you that there is a lull
20 in between the time that she tells the first time
21 and then he touches, he touches me, he touches
22 me. He is testing the waters. That is consistent
23 with what really happened. It is not a lie. It
24 is not something a child would make up. She has
25 told one time and he is waiting to see if she

1 going to tell again. Is something going to
2 happen. I am going to go in here and just touch.
3 I am going to go in here and do this. And what
4 does she tell her mom. He needs to stop coming
5 in my room at night. He needs to stop messing
6 with me. Nothing happens. Nothing changes. He
7 continues to come in. So what does she say,
8 well, I started -- onetime I tried to move my
9 dresser. She doesn't say she does that. The
10 way the defense makes it sound is that there is
11 horrible calamity and she is moving furniture and
12 she is screaming at the same time. That is not
13 what she said. She said some times I try to move
14 my dresser in front of the door. I started
15 wearing clothes to bed. I didn't wear shorts and
16 pajamas any more. I wore clothes and pants.
17 That is the ring of truth. That is the
18 experience of a child who is really trying to
19 figure out what do I do. I told somebody. How
20 do I stop it. It is not something that a child
21 makes up. I started wearing pants to bed and
22 thought he could get to me.

23 The five-year old sister who is in the
24 bunkbed, sometimes I made her sleep with me,
25 because I figured he wouldn't mess with me if she

1 is in there.

2 Now remember what Lillian Collins tells you
3 on cross examination. ~~MINOR~~ 5, the five-year old
4 -- there are only two other kids in the house.
5 ~~MINOR~~ 4, who is 17. ~~MINOR~~ 5, who is five. ~~MINOR~~ 5
6 goes to see the grandmother and stays with the
7 grandmother. She also goes to see her father for
8 visitation so she is not always there. And on
9 cross examination Mr. Brough asked her what was
10 ~~MINOR~~ 5 doing the night he did this to you, the
11 night he raped you. She said honestly, I can't
12 even remember that she was there.

13 This is not a child who is making things up.
14 She is consistent. She has been consistent. She
15 has been telling about this since 2006 when it
16 started. She says in November he comes in one
17 night. He starts messing with her. She says get
18 out of my room and he leaves. That time he comes
19 back. See it has been a year. It has been a
20 year since anything happen. It is a year since
21 anybody has confronted him. So he goes back in.
22 He pulls her pants off. She says she screams for
23 her momma and he hits her and tells her to shut
24 up. Puts his hand over her mouth and he puts his
25 private in her private. She said then he left.

1 And she said I tried to cry myself to sleep. The
2 ring of truth. I tried to cry myself to sleep.
3 What does she do. What does she do now. She
4 writes a letter to her father. We don't even
5 know if they were ever sent. She finally thinks
6 about her Aunt Jennifer, her mother's sister.
7 I'll call her. In two days she thinks, she calls
8 her mother's, sister and she tells her. What
9 does Jennifer Turner say. Jennifer Turner says
10 she is crying on the phone. She tells her about
11 a sexual assault and she calls the police and she
12 goes to the house. She wants to take the child
13 out of there, but the mother says she is not
14 going. She stays here. And the officer says,
15 well, there will have to be an investigation
16 then. I will make a report. And for five days
17 that child stayed in the home with this defendant
18 after she had disclosed what he done to her and
19 she never wavered. She told it to Jennifer. She
20 told it when he was there. She never wavered.

21 Then what happens. The child gets taken out
22 of the home. Not the defendant. The child gets
23 taken out of the home. She is the one that has
24 to leave. She is the one that has to go.

25 This child could not maintain this story for

1 five years. She has been consistent. She has
2 never wavered from it for five years. You have
3 seen her. Her ability to process things. This
4 is a story you don't have to have have a good
5 memory if you are telling the truth.

6 Brenda Izarra, she gets this case five days
7 after, or the Tuesday after the child reports it
8 on a Friday. And she goes to talk to the child.
9 The child discloses to her sexual assault. The
10 same disclosure. She called the police to the
11 school. The police remove victim from the home
12 and she interviews this defendant and this is
13 story number one. This is what he tells her.
14 Remember the child's mother is with the defendant
15 at the Department of Social Services and he says,
16 this is all about a field trip. No field trip a
17 year ago when she reported it the first time.
18 This is all about a field trip. I didn't let her
19 go on the field trip. He had to get control of
20 those children. That is what tells you. He has
21 to control her. He has to control her. If she
22 is not on the field trip she is not with friends.
23 There is nobody to tell.

24 He says to Brenda Izarra, well, every time I
25 try to discipline Lillian's family interferes so

1 we are not letting her go over there to the
2 holidays. Isolate. Who she is going to tell.

3 These kids in this house they make plans. I
4 tell them I am making the plans. I come in and
5 try and make plans. I am going to make plans for
6 the whole family. Isolate.

7 He says "victim" and I wrestle all the time.
8 Now remember this child just turned 13. She and
9 I wrestle all the time. So he is already started
10 to think about how do I make this reasonable. I
11 never put my finger in her private. But that's
12 not what his own wife says. His own wife has
13 said consistently, even when he was with her,
14 that "victim" reported digital penetration. When
15 she confronted him he said, yeah, I did put my
16 finger in but it was accident. This is woman who
17 supports him. Who sports him at the time. Is
18 going to DSS with him and she says yeah he
19 admitted to me he put his finger in her private.
20 "victim" is bad. Everything he can say about this
21 child he says about her. And he says I have to
22 go down that hall every night to turn that TV
23 off. He confirms what "victim" said. He said he
24 was coming in her room to turn the TV off. And
25 then he says I told Lannette every time I went

1 down that hall because when there is a child like
2 victim you have to cover yourself.

3 So you get this picture of this man going
4 down the hall to that little girl's room. He
5 says I am going to turn off her television, but
6 what you find out when Lillian Collins testifies
7 is that there is a timer on the TV. She says
8 there were timers on these TV's that he goes to
9 turn off the TV in her room. That is exactly
10 what she says.

11 The second meeting, Brenda Izarra is
12 standing in his house in the kitchen by herself.
13 He is in there with her. She says all of a
14 sudden he grabs his crotch and says I am not an
15 average sized man. People show you who they
16 are.

17 Tanya Alridge says she gets the Children's
18 Advocacy Center information and she goes down
19 with this written statement. And you will have
20 this written statement. It is broken English,
21 but you heard this man speak. He is very
22 articulate. His writing is no indication
23 whatsoever of the way he speaks. And the way he
24 talks and way he conveys information. And the
25 story changes. When she gets this written

1 statement it changed a little bit. The first
2 statement is, the child told me that every dog
3 will have its day. This is a 13-year old child.
4 That is not something a 13-year old child says.
5 The child told me every dog would have this day.
6 This is new information. This is all about a
7 field trip and again the field trip didn't happen
8 a year ago when she reported it. ^{victim} is bad.
9 He goes through all the bad things about this
10 child and then he says the child asked me to
11 smell her cookies. She just turned 13.

12 I submit to you that is most ridiculous
13 thing I ever heard. The child asked me to smell
14 her cookies. Because now he is thinking, you
15 know what, maybe I can make this about her.
16 Maybe if I make her look bad enough, then they
17 will stop investigating this. And then he says
18 the child has sniffed my underwear. The child
19 has sniffed my underwear. Don't leave your
20 common sense at the door.

21 Lynn McMillian interviews this child and she
22 says she is emotional. She is tearful. It is
23 hard for her to engage. Again not a child with a
24 lie. A child with a lie can engage. You can say
25 that. A child who doesn't want to talk about it

1 pulls away. She didn't want to talk about it in
2 front of you. She says this child made a
3 disclosure. Told her what happened. Again,
4 consistent. She has disclosed every time.
5 Defense asked her several questions. First of
6 all, they made it sound like she cried out every
7 night. She reported crying out that last time.
8 But they ask her several questions. Well, why
9 didn't you say. Why didn't you tell people that
10 he was doing this or doing that or he has made
11 some kind of reference to some specific abuse and
12 and she looked at him and she said that he didn't
13 always mess with me in the same way. That's the
14 ring of truth. You don't have to have a good
15 memory if you are telling the truth. She didn't
16 necessarily understand the question but she
17 did understand it wasn't always the same thing.
18 Some times it was touching. The one time it
19 digital penetration. The last time, the last
20 time is when he went inside her vagina.

21 Doctor Henderson testified. She talked to
22 you about the hymen and something that we all
23 heard, that if a child is a virgin you will be able
24 to tell. She says that is not true. It is just
25 simply not true, especially when a child gets

1 older. The hymen is estrogenized. Things past
2 through it very well. And you just can't tell.
3 In ninety percent of cases of confirmed sexual
4 abuse have no medical evidence. Studies show
5 that. She seen that. Confirmed sexual abuse.
6 No medical.

7 Danny Morgan says, okay, I get this person.
8 I am asked to talk to him. I looked at the
9 second statement and I think, well lets go talk
10 to him and see what is going on. He goes in
11 there. He finds him to be very articulate. And
12 he says for the first two hours his job is to
13 interview people. So for the first couple of
14 hours it is use about getting to know them. It
15 is about talking to him. It is about finding out
16 about their family. Build a rapport. Because if
17 you want somebody to talk to you you got to build
18 a rapport.

19 The defense talks about, oh, he was held
20 for six hours, seven hours. For the first couple
21 of hours we just talked. Then he has to go to
22 Family Court. So he is not there the whole time.
23 He goes to Family Court. He does his Family
24 Court thing. He gets lunch. He comes back and
25 then he talks to Detective Morgan again. He says

1 Detective Morgan says to him look, I think you
2 are not telling the truth. He says okay, okay,
3 okay. Here it is, I am laying on the floor in
4 the living room and I am asleep and I am wearing
5 loose boxers and I have erection in my sleep.
6 And how he would know that I don't know. And all
7 of a sudden I wake to someone performing oral sex
8 on me and I let it go on for a while and then I
9 look down and it is the child so I sent her to
10 her room.

11 Don't lose your common sense at the door.
12 All right. I am going to make this -- I am going
13 to explain it because it is really her fault
14 because she is a bad girl. This has got to be
15 about her. And how terrible she is. It sounds
16 good to me. It sounds like a reasonable
17 explanation. And then he says and there was
18 another time. All right. We did have sex, but I
19 was asleep and I was naked on the floor and I was
20 sleeping and I woke up and she was straddling me.
21 The child was on top of me and he even goes so
22 far as to say, oh, my gosh he was raped by a 12,
23 13-year old child. That is what he says
24 happened. And if you look at the statement he
25 puts a lot stuff in there. He puts in there he

1 talks about the DSS thing. He is very concerned
2 that he lied to DSS that he was self-employed, so
3 he directs the officer to put that in the
4 statement. The officer says they went through
5 every paragraph. If you look at this writing.
6 We talked about it. We discussed what needs to
7 be in there. He directs me what to put in there
8 and then I read it for him. This was not
9 seven hours of questioning. The statement --
10 that five-page statement took forever to write
11 down once he makes this submission. He says then
12 I put it down. He signed it. He agreed that it
13 was him. Every single paragraph he initialed.
14 Every single place he signed. He even confronted
15 Detective Alridge. That was his statement it was
16 true. So then Detective Morgan says to him look,
17 if you are going to tell me anything else you
18 better tell me now. I don't want you thrown to
19 the wolves. You better make sure everything you
20 have to tell me comes out now and don't be
21 telling it later. Okay, well, there is one more
22 thing. See victim offered to perform oral sex on
23 me and I let her do it in her bedroom. Because
24 now he is thinking, well, wait a minute. I
25 haven't explained it in the bedroom. Maybe I

1 better do that just in case. He admits, he
2 admits to sexual intercourse with a 13 -- 12-year
3 old child at the time. It is just her fault. It
4 is just all her fault. He was seduced.

5 Notice he keeps saying he was threatened and
6 he was scared so he had to admit to something.

7 He denies the finger. The one thing he has
8 admitted to before and a person that supports him
9 says yeah, he admitted to putting his finger in
10 her vagina. He denies that. He wasn't
11 threatened. He was wasn't coerced. He is still
12 denying the finger and you know why he is denying
13 that because that is something he can't explain
14 without it being her fault. That, he can not
15 explain that without being her fault. So he is
16 going to keep denying that. It has to be her
17 fault. Has to be her fault. And this sounds
18 good to him. And now he got a little buyer's
19 remorse because at the time it sounded like a
20 reasonable explanation. This is what happens
21 when a person is in power. This is what happens
22 when they decide they deserve something. They
23 are entitled to something. They can say stuff
24 like this and it sounds good to them. People
25 show you who they are.

1 The defense calls Lillian Collins. I don't
2 understand that. I don't understand her. I
3 don't know what she was thinking, but what can we
4 confirm from her testimony. She confirms that
5 ~~Victim~~ reported digital penetration a year or
6 more before this incident. Reluctantly she
7 admits, yeah, she did report it to me. She
8 admits that she didn't do anything about it. She
9 confronted James and what does she say he says, I
10 put my finger in her vagina accidentally. A year
11 before. Before any field trip. At the time she
12 told DSS workers that they were still together
13 and she was defending him. She admits that she
14 work up one night, walked into the hallway and
15 saw the defendant standing naked in that hallway.
16 She admits that. She didn't do anything.

17 When the child disclosed she left the house.
18 She left. Miss Collins visited him in jail. She
19 accepted jewelry from him and let her daughter
20 see it. She had a tattoo with his name on it.

21 This child, who had finally been able to
22 disclose sexual abuse gets to see that. Gets to
23 see all that. And we wonder why she is angry.
24 We wonder why she would be angry. And then she
25 goes to the defendant's attorney office and she

1 signs an affidavit saying the child recanted.
2 The problem is, that the counselor who is present
3 says that never happened. The counselor who is
4 the only other person who is present in the room
5 says that Victim asked her why did you pick him
6 over me. The mother said what happened and the
7 child tells her. And she continues to disclose
8 abuse and she always disclosed abuse.

9 You find out from Lillian Collins that her
10 bedroom is on the other side of house from this
11 and you find out that the little five-year old
12 that we heard so much about, why doesn't she wake
13 up is not even in the house all the time. She is
14 gone. She gone visitation. She is gone to
15 grandparents. And we find out about the timers
16 on the TV. The child never recanted. I don't
17 know. I don't know why people make decisions
18 that they make. But the result is, victim lost
19 her home. Lost her family.

20 Mr. Irby comes up and tells you he is the
21 ~~victim of all this~~. He moved into the house.
22 There was no control over this children. He had
23 to get control over them and this is all about
24 the field trip. All of it is about a field trip.
25 Defendant has admitted sexual battery in these

1 statements. He just puts it in the way it's her
2 fault. It has got to be her fault. Everything
3 has got to be her fault. It is the children's
4 fault. It is Dannette's fault. Everybody's
5 fault.

6 We have proven there was a sexual battery.

7 Sexual battery is penetration, however slight,
8 of the vaginal opening of a child or oral sex.
9 And we have given you two; digital penetration a
10 year before that the defendant admitted to, to
11 his wife and has been confirmed over and over
12 again that, yes, this was reported. And the
13 second, the actual sexual intercourse act just
14 before she reported. He admits that in the
15 statement. He admits it happened. He just
16 admits she did it to him.

17 And the defense is -- what I call, as a child I
18 use to watch a little show called, "Let's Make a
19 Deal." And it use to be that you could, if you
20 didn't like what was behind door number one you
21 could choose door number two. And that's what we
22 got. I call it the let's make a deal defense.
23 The first defense is, victim is lying. She is a
24 liar. She is a liar. She is making all this up
25 because she didn't want discipline. This is

1 about a field trip. Who wouldn't want to be
2 victim . Didn't she fun up here
3 yesterday. Wasn't that fun. She discloses
4 sexual abuse to her mother. She repeatedly
5 discloses sexual abuse. When she she finally
6 does and when somebody finally listens to her she
7 gets removed from the house. She losses her
8 brother. She losses her sister. She goes to
9 different homes to live. She gets to watch her
10 mother support the defendant. Go to visit him,
11 communicate with him. She has to talk to
12 officers and investigators. She has to go
13 through medical examinations. She has to come in
14 to this courtroom in front of people she had
15 never met before she has to talk about the worse
16 thing that ever happened to her and she gets to
17 be called a liar. Who wouldn't want to be her.

18 It is a miracle. It is a miracle children
19 go through this. Where is the pay off for her.
20 The defendant doesn't live in the house. She
21 never got to go anywhere she wanted too. She
22 is living in Texas. What did she gain and what
23 did she lose?

24 The statements don't make sense. The
25 statements make more sense when you understand

1 it just has to be about it being her fault. I
2 don't believe those statements. I don't believe
3 that is what happened. There is no way that
4 this 12-year old child was smelling his
5 underwear. Was pursuing him. Was walking into
6 the bathroom with her shirt off and walking
7 around with panties on and raping him when he
8 was sleeping. He had to explain the fact that
9 he had sexual intercourse with her. He had to
10 explain it. And it sounded good to him.

11 I guess defense three would be she recanted.
12 But she didn't. The counselor with notes about
13 that interview said that never ever happen.
14 Never happened. I guess the defense is it could
15 be involuntary. He never tells us how he was
16 threatened. I felt threatened. How did they
17 threaten you. Well, they told me he wouldn't
18 want me to throw to the wolves. Oh, ok, so I
19 will just say that I had sex with my
20 stepdaughter. He agreed to these statements.
21 He talked. The difference is at the time it
22 sounded good. He thought that was a reasonable
23 statement at the time. Now, looking back buyers
24 remorse.

25 There was not one mention of any threat to

1 this person. Nobody hit him. Nobody hurt him.
2 He gave those statements. Now he just doesn't
3 like the way it sound.

4 And I guess the final defense is, she didn't
5 cry out. Nobody heard her. Somebody would have
6 come running. Really, in that house. This
7 child cried out for a year before. She told.
8 And she told. And she asked for help. It
9 wasn't that nobody was crying, it was that
10 nobody was listening.

11 When I was little girl about five or six,
12 got really sick and I was just so sick I was
13 laying in bed one night, chills, fever. I was
14 so scared. I knew I was sick. And my dad
15 walked into the bedroom. He sat down on the
16 bed next to me and I thought, you know, I need
17 some help I need to feel better. I don't know
18 what to do. And I remember my dad laying down
19 in the bed next to me, putting his arms around
20 me and holding me as tight as he could. Just
21 holding me. I didn't physically feel any
22 better, but I felt better. And as old as I am
23 today I remember that moment in my life. I
24 remember my father holding me and I felt
25 everything is going to be okay. See my father

1 was the man in our house. Defendant told people
2 he was the man in the house and that is what
3 victim needed him to be. She needed to be
4 loved. She needed to be cared for. What she
5 got is sexual assault. He isolated her. He
6 abused her and then he called her a liar. And
7 those are the memories she will have the rest of
8 her life. That's the memory that father figure
9 she will go with. She was in his hands. You
10 can't change that. But you can do something
11 about it. Today she is yours.

12 Thank you.

13 THE COURT: Mr. Foreman and ladies and
14 gentlemen you of course have heard and seen all
15 the evidence in the case. You now heard the
16 final summations of the lawyers and therefore I
17 am now going to instruct you on the law that is
18 applicable in the case. Then you will be asked
19 to go back and begin with your deliberations and
20 through that process you will exam the evidence,
21 decide the facts, apply the law and render a fair
22 and just decision in this case. Whatever that
23 decision maybe.

24 It is your exclusive duty to determine what
25 the facts are. You do that through your own

1 common sense examination and evaluation of all
2 the testimony and other evidence received during
3 the course of this trial. You twelve jurors
4 alone will decide what weight, value and effect
5 to give any particular testimony or offered in
6 the case.

7 Your soul objective is to simply reach the
8 truth in the matter and by doing that you would
9 have fulfilled your obligation as jurors and that
10 is to simply give both the State and the
11 defendant an impartial trial.

12 Now, in this case as you know, the State
13 through the solicitor has accused the defendant
14 of having committed the crime of criminal sexual
15 conduct with a minor in the second degree and
16 that charge and the allegations setting forth
17 that charge are contained in that document which
18 I referred to prior too and after your selection
19 as jurors it is referred to as the Indictment.

20 The Indictment alleges that the defendant,
21 James Benjamin Irby, did here in Spartanburg
22 County, between October 29th of 2005 and
23 November 9th of 2007, committed the crime of
24 criminal sexual conduct with a minor in the
25 second degree, in that he did engage in a sexual

1 battery, upon a minor, victim who was
2 14 years of age or less, but at least 11 years of
3 age at the time of that battery.

4 Now, as to those allegations and as to that
5 charge the defendant has entered a plea of not
6 guilty. And as I told you that plea of not
7 guilty places upon the State the burden of
8 proving the allegation set forth in the
9 indictment. The burden of proving each of the
10 essential elements of the crime alleged against
11 the defendant and therefore the burden is upon
12 the State to establish the defendant's guilt from
13 the satisfaction of you 12 jurors beyond a
14 reasonable doubt before any verdict of guilty
15 could be returned.

16 The Indictment is not evidence in the case.
17 It is not proof of anything. It does not
18 establish anything. It simply sets forth the
19 charge. It will however be in the jury room
20 because it is on the back of Indictment, Mr.
21 Foreman, that you will be asked to indicate the
22 jurors unanimous decision, whatever that decision
23 maybe. In the lower left hand corner of the
24 Indictment you will see word verdict on the back.
25 And it is beneath that word that you will

1 indicate the jurors' decision. You will also be
2 called upon to sign your name as foreperson and
3 place the appropriate date on that charge.

4 The burden is never upon a defendant to
5 prove that he or she is not guilty or to prove
6 that he or she is innocent because in some cases
7 that might not be possible.

8 The burden is always upon the State because
9 they brought this charge against the defendant to
10 establish his guilt to your satisfaction beyond a
11 reasonable doubt. It is a vitally important and
12 carnal rule of law that every defendant in a
13 criminal trial and does not matter however
14 serious the offense might be for which that
15 person stands charge that person shall always be
16 presumed innocent of that charge and that
17 presumption of innocence remains with any
18 defendant as it does with this defendant from the
19 time that he is placed under arrest and
20 throughout the course of the criminal process and
21 even throughout the course of the actual trial in
22 the case. And that presumption of innocence will
23 be with him even as you go back to begin with
24 your deliberations in this case. And that
25 presumption of innocence will be with him in that

1 jury room and it will be with him forever unless
2 you 12 jurors determine that he is no longer
3 entitled to that presumption of innocence. In
4 other words, after you carefully examined all the
5 evidence in the case and from that evidence you
6 determine what you believe to be the true facts
7 and upon determining those facts you apply the
8 law that I have provided you. If you 12 jurors
9 unanimous determine that his guilt has been
10 proven beyond a reasonable doubt, then he
11 would no longer be entitled to that presumption
12 of innocence, but it is only if and unless and
13 until you are satisfied of his guilt beyond a
14 reasonable doubt that presumption of innocence
15 would no longer be applicable.

16 Now, while the State does have the burden of
17 proving the defendant's guilt to your
18 satisfaction beyond a reasonable doubt, that
19 doesn't mean that the State has to prove his
20 guilt beyond all doubt, or be beyond any possible
21 doubt, but it does require that the State prove
22 his guilt to your satisfaction beyond a
23 reasonable doubt. And the term reasonable doubt
24 should be given its plain and ordinary meaning.
25 A reasonable doubt is the kind of doubt that

1 would cause a reasonable person to hesitate to
2 act upon the information provided. And a
3 defendant in a criminal trial is entitled to any
4 reasonable doubt that arises from the evidence or
5 lack of evidence in the case and if upon any
6 factual issue essential to a finding of a verdict
7 of guilty you have some reasonable doubt as to
8 how that issue should be resolved it is your duty
9 to resolve that reasonable doubt in favor of the
10 defendant.

11 Now therefore, if upon your consideration of
12 the whole case you have a reasonable doubt as to
13 his guilt you must resolve that doubt in his
14 favor and return a verdict of not guilty. And at
15 the same time after you considered all the
16 evidence, decided the facts and applied the law
17 if you have no reasonable doubt as to his guilt
18 then it would be your corresponding duty to find
19 him guilty where you are convinced of that guilt
20 beyond a reasonable doubt.

21 The same law that provides that you are the
22 judges of the facts also provides that I am the
23 judge of the law and that simply means that
24 nobody is going to tell you how you are going to
25 arrive at your determination of fact in this

1 case. You do that as I have already stated
2 through the exercise of good judgement and common
3 sense conscientiously applied to the testimony
4 and evidence received during the course of the
5 trial.

6 You must however under your oath as a juror
7 accept the law as I provided it to you as being
8 the law that you are to apply in the case. In
9 other words, you are never to concern yourself
10 with what you thought the law was before you came
11 to serve as a juror this week or what you think
12 the law ought to be. Under your oath as a juror
13 you must simply accept the law as I provided it
14 to you as being the law as you should apply in
15 this case and then you simply take that law and
16 you apply it to the facts as you 12 jurors
17 determine those facts to be based upon your comon
18 sense and examination of the testimony and
19 evidence received during the course of the trial.

20 Now, because you are the soul judges of the
21 facts in this case you are therefore necessarily
22 the soul judges of the credibility or the
23 believability of each of the witnesses that have
24 testified during the course of this trial. And
25 you 12 jurors alone will decides what weight,

1 value and effect to give any particular witness's
2 testimony or even a portion of that testimony.
3 But there are several factors which you should
4 consider in arriving in your assessment as to a
5 particular witness's credibility and I am going
6 to list those factors for you.

7 You should consider the demeanor of the
8 witness. That is how the witness appeared to
9 you, as the witness testified from that witness
10 stand. Was the witness straight forward in
11 responding to questions or was the witness
12 hesitant or evasive in responding to questions
13 that were asked of that witness. Simply put, did
14 the witness appear to you to be telling the truth
15 and to have knowledge of the facts to which that
16 witness has testified.

17 You should also consider whether or not the
18 testimony of a witness is consistent or is it
19 inconsistent with the other witness's testimony
20 here in court or statements made by that same
21 witness whether in court or outside of court.
22 And you should consider whether or not the
23 testimony of a witness is consistent or is it
24 inconsistent with other testimony or other
25 evidence received during the course of the trial.

1 You should also consider how the witness came to
2 know the facts to which a witness has testified.

3 In other words, what was that particular
4 witnesses' opportunity and ability to perceive
5 the existence those facts for which that witness
6 has testified by having previously used his or
7 her senses, and then what is that witnesses'
8 ability to be able to come in to court and to
9 accurately recollect to you as to what they
10 previously perceived.

11 You should also consider any bias or
12 prejudice or interest that a witness might have
13 with regard to the case. In other words, do you
14 find some reason that a particular witness would
15 come into court and would testify one way or the
16 another, to help or to hurt one side or the other
17 and you may consider any interest that a witness
18 might have in the outcome of the case.

19 If you determine that a witness does have
20 such an interest and you find that that interest
21 would bear upon that particular witness's
22 credibility.

23 You should also consider whether or not the
24 testimony of a witness is straightened or was it
25 weakened by other testimony or other evidence

1 received during course of the trial. Because you
2 are the judges of the facts and because you are
3 the judges of the credibility of each witness
4 that has testified you are permitted to believe
5 as much or as little of what a witness has
6 testified too as you deem as appropriate.

7 Now therefore, you may believe everything
8 that a witness testified to. You may choose to
9 believe none of it. You may believe one portion
10 of a witness's testimony and reject some other
11 portion of that same witness's testimony. You
12 may believe one witness as opposed to several, or
13 several as opposed to one. But whatever your
14 good judgement and common sense tells you is the
15 most believable testimony is the testimony you
16 should accept and you should reject any testimony
17 or other evidence that you find not to be
18 credible or believable.

19 Again, your soul objective is to simply
20 reach the truth in the matter and by doing that
21 you would have fulfilled your obligations as
22 jurors in giving both the State and the defendant
23 a fair and impartial trial.

24 Now although it is ordinarily the function
25 of the Court to determine the admissibility of

1 evidence, it is always the jury's decision as to
2 what weight, if any, to give to any evidence
3 which has been introduced and received during the
4 course of the trial. There has been admitted
5 into evidence during the trial of this case
6 certain statements which are alleged to have been
7 made by the defendant pursuant to some
8 questioning or interrogation by law enforcement
9 officers. You are instructed that in regards to
10 any statement that is alleged to have been made
11 by the defendant you as the triers of the facts
12 in the case must make your own determination as
13 to whether or not any statement was made by the
14 defendant and if it was made whether or not any
15 such statement was freely and voluntarily
16 given by the defendant.

17 You are further instructed that before you
18 may consider any statement that is alleged has
19 been made by the defendant against him you must
20 be satisfied beyond a reasonable doubt that any
21 statement given by the defendant was freely and
22 voluntarily made after considering the totality
23 of the circumstances surrounding the making of
24 any statement.

25 In making your determination as to the

1 voluntariness of any statement you must consider
2 a number of factors relating to the
3 characteristics of the defendant as well as the
4 circumstances surrounding the interrogation which
5 resulted in the giving of any statement. Some of
6 the factors that you must consider are whether or
7 not the defendant was advised of and understood
8 his constitutional rights to remain silent. That
9 anything he said may be used against him in court.
10 That he had the right to have the presence of a
11 lawyer. If he could not afford a lawyer one
12 would be appointed for him before any questioning
13 took place. And then if he wished to answer
14 questions he could stop that questioning at any
15 time during the course of the interrogation.

16 You must also consider the evidence relating
17 to the age, intelligence, education, capacity and
18 experience of the defendant. As well as the
19 nature of the interrogation itself including
20 whether or not there were any threats made,
21 coercion present or promises made to the
22 defendant.

23 If after your consideration the totality of
24 the circumstances relating to any statement you
25 find was made, if you are not satisfied beyond a

1 reasonable doubt that any statement made was
2 freely and voluntarily made, then you must not
3 consider that statement in any way against the
4 defendant. Should you find beyond a reasonable
5 doubt that any statement made by the defendant
6 was given freely and voluntarily, then you may
7 consider that statement as you deem appropriate
8 and you may accept it or reject it in its
9 entirety or in any part thereof just as you do
10 any other evidence in the case.

11 Now, in this case as you know the defendant
12 is charged with criminal sexual conduct with a
13 minor in the second degree. That is a statutory
14 offense and that just means that you will see
15 these blue books over here. Every year from
16 January to June the legislature meets in session.
17 They pass a number of laws and rules and
18 regulations that govern our conduct in a variety
19 of ways. Some of those statutes are criminal
20 penalty statutes and that just means that they
21 define a particular criminal offense. They
22 prohibit us from engaging in that conduct that
23 constitutes that criminal offense. And where a
24 person is found to have engaged in that conduct
25 in violation of that statute then it subjects

1 that person to some form of punishment or penalty
2 for having violated the statute.

3 Please understand however that you are never
4 to be concerned with punishment or penalty. That
5 is not something that a jury decides. Your soul
6 obligation and duty in this case is to determine
7 whether or not the defendant has been proven
8 guilty of the crime which has been alleged
9 against him and you are to make that
10 determination without any regard to any
11 consequence of your decision.

12 The statute that the State claims the
13 defendant violated is set forth in section
14 16-3-655 of those codes of laws. Particularly
15 subsection B-1, which provides as follows; a
16 person is guilty of criminal sexual conduct with
17 a minor in the second degree if the actor engages
18 in sexual battery with the victim who is 14 years
19 of age or less, but who is at least 11 years of
20 age.

21 Section 16-3-651 of the Codes of Laws
22 provides definitions for various terms that is
23 included within the criminal sexual conduct
24 statute.

25 The term actor is defined as a person

1 accused of criminal sexual conduct. In this case
2 that would be the defendant, James Benjamin Irby.
3 A victim is defined as person who has alleged to
4 have be subjected to criminal sexual conduct. In
5 this case that would be 'victim' . A
6 sexual battery, is defined as sexual intercourse,
7 cunnilingus, fellatio, anal intercourse or any
8 intrusion however slight of any part of a
9 person's body or of any object into the genital
10 or anal openings of another person's body, except
11 when accomplished for medically recognized
12 treatment or diagnostic purposes. And fellatio
13 is defined as oral stimulation of the male
14 genitalia.

15 Therefore, based on the language of this
16 statute where by a violation of this section is
17 alleged as it is in this case there are two
18 essential elements which must be proven beyond a
19 reasonable doubt before the defendant could be
20 found guilty of criminal sexual conduct with a
21 minor in the second degree.

22 First of all it must be proven that the
23 defendant, James Benjamin Irby, did engage in a
24 sexual battery, as that term has been defined for
25 you, with 'victim'

1 Secondly, it must be proven that at the time
2 of the commission of any sexual battery, victim
3 - - - - - was 14 years of age or less, but
4 was at least 11 years of age.

5 You are further instructed that a lack of
6 consent on the part of an alleged victim is not
7 an element of the offense of criminal sexual
8 conduct with a minor and need not be proven.
9 Consent is not an issue in the trial of this case
10 or in any case of criminal sexual conduct
11 involving a minor child under the age of
12 16 years. A child under the age of 16 years is
13 not legally capable of voluntarily consenting to
14 a sexual battery committed by an adult under the
15 law of this state.

16 Time is also not a material element of the
17 crime of criminal sexual conduct with a minor in
18 the second degree in the testimony of a person
19 claiming the commission of a criminal sexual
20 conduct does not necessarily have to be
21 corroborated. But the two elements that I have
22 just previously explained to you must be proven
23 beyond a reasonable doubt before the defendant
24 could be found guilty of criminal sexual conduct
25 with a minor in the second degree.

1 In this case the State is alleging the
2 defendant committed a sexual battery between
3 October 29th of 2005 and November 9th of 2007.
4 So, in order for the defendant to be proven
5 guilty of the crime of criminal sexual conduct
6 with a minor in the second degree it is required
7 that the State prove that the defendant did
8 commit or engage in a sexual battery with the
9 victim and that criminal offense occurred between
10 October 29th of 2005 and November 9th of 2007.

11 Now, ladies and gentlemen, I am not in any
12 way concerned with what your decision is; but I
13 do tell you that the verdict of the jury must be
14 unanimous. All 12 of you must be in agreement
15 before any decision maybe returned to the court.

16 Mr. Foreman, as you know you are going to be
17 called upon to preside over jury deliberations.
18 During those deliberations in the jury room
19 simply to insure that those deliberations are
20 carried out in some orderly fashion. But all
21 jurors are expected to participate in those
22 deliberations because as I told you, the verdict
23 is intended to be the unanimous and consensus
24 opinion of all 12 jurors and therefore all of you
25 will have an equal say and an equal vote of what

1 the ultimate decision in this case will be. But
2 it must be unanimous.

3 Now Mr. Foreman, as I indicated to you, you
4 are going to be asked to indicate the jury
5 unanimous decision on the back of the Indictment.
6 You have two potential verdict forms in this
7 case. Those two forms are guilty and not guilty.
8 So whichever your decision is indicate in the
9 space provided. Also sign your name as
10 foreperson. You are the only juror that needs to
11 sign the jury form and place the appropriate date
12 beneath that.

13 I don't know if we have smokers on the jury.
14 If we do, you are permitted to smoke during
15 deliberations, but you can not smoke in the jury
16 room. So, if you want to smoke let the bailiff
17 know. He will take those that need to smoke
18 outside for that purpose. You are however
19 instructed that deliberations have to stop when
20 any juror is absent for any authorized purpose.
21 And deliberations may only reassume when all 12
22 jurors are present so that all may participate.
23 During the course of your deliberations there may
24 come a time when you have a question about the
25 evidence in the case or you have a question about

1 the facts of the case, or you might even wonder
2 if there is some other piece of evidence that you
3 think might help you and you wonder if it exist
4 and if it does can you have it. Please
5 understand now that you are going back to begin
6 your deliberations no additional evidence can be
7 received whether it exists or not. Even if there
8 is something out there no additional evidence can
9 be received. You have received all the evidence
10 to be introduced in the trial in this case. If
11 at any time you have a question about the
12 testimony of a witness and you think that
13 question can be answered by having testimony
14 replayed in its entirety or even some portion of
15 it, we can bring you back into the courtroom to
16 have testimony replayed in whole or in part. I
17 do not have transcripts of witness's testimony
18 for your benefit to take to the jury room. But
19 if you want to hear a witnesses testimony let me
20 go through the bailiff and we will bring you back
21 in the courtroom to have that testimony replayed.

22 If at any time you have a question about the
23 law that is applicable I am permitted to answer
24 those questions. So, if you need a
25 re-instruction or you need additional explanation

1 or clarification of some point of law I am happy
2 to provide you with that a additional
3 instruction, clarification or explanation.

4 Mr. Foreman, if at any time you need to
5 address some matter to me if you will write it on
6 a piece of paper. Give it to the bailiff. He
7 will provide that to me and I will respond to
8 that issue as necessary. After you have reached
9 your decision indicate the verdict on the back
10 of the Indictment. Knock on the door. Let the
11 bailiff know that you have reached a unanimous
12 verdict. But you maintain possession of the
13 verdict form Mr. Foreman. I will receive that
14 after you have come back into the courtroom and
15 been seated in the jury box. So you hold on to
16 it. Just let the bailiff know you have reached
17 a decision but you will maintain possession of
18 the verdict form.

19 I think that covers everything. So, I am
20 going to ask the original 12 jurors to go with
21 the bailiff to the jury room. Mr. Wright, the
22 alternate, will stay in the courtroom with me.
23 But I ask that you not begin your deliberations
24 until I send you word to do so. I have some
25 matters I need to address with the lawyers. If I

1 don't need you to bring you back for any reason I
2 will send word by way of bailiff that you may
3 begin with your deliberations. In that event he
4 will bring each exhibit which has been introduced
5 and to you, Mr. Foreman, he will also bring the
6 verdict form. If I need to bring you back for
7 any reason I will do so and provide you with
8 additional explanation or instruction. Otherwise
9 once the bailiff tells you to begin deliberations
10 you may begin with those deliberations and notify
11 us when you have concluded.

12 So the original 12 please go with the
13 bailiff to the jury room but wait my instruction
14 as to when to begin deliberations.

15 (Whereupon, the jury exited the courtroom at
16 3:15.)

17 THE COURT: Mr. Wright as you know you are
18 not permitted to participate in the jury
19 deliberations because the original 12 jurors are
20 apparently able to do that. So, that is going
21 to conclude your service for the trial in this
22 case. Nevertheless, I do want to thank you for
23 your participation in the case and the time and
24 attention that you devoted to it. You maybe
25 excused for the balance of the afternoon. If

1 you will call back to the number that you have
2 on your juror information pamphlet, the one
3 eight hundred number, call that number after
4 6 o'clock this evening to receive further
5 reporting information. Okay.

6 JUROR: Yes, sir.

7 THE COURT: Thank you again for your
8 participation.

9 Are you there any exceptions taken to the
10 instruction or request for additions to the
11 instruction by the State?

12 MS. REESE: None from the State.

13 THE COURT: By the defendant?

14 MR. BROUGH: None, Your Honor.

15 THE COURT: All right. Let me ask you all
16 to verify these exhibits before we go back.
17 All accounted for?

18 MS. REESE: Yes, Your Honor.

19 THE COURT: All right, Mr. Bailiff if you
20 will take the exhibits and the verdict form and
21 tell the jury to begin with their deliberations
22 and notify us when they have concluded and we
23 will be at ease while the jury is deliberations.

24 (WHEREUPON, the jury begins to deliberate
25 at 3:22)

1 THE CLERK: All rise.

2 THE COURT: The jury wants to rehear some
3 testimony. We will bring them back and hear
4 that.

5 (WHEREUPON, the jury come into open court
6 and listened to the testimony of the defendant.)

7 THE COURT: All right. Please retired to
8 the jury room to continue with your
9 deliberations.

10 (WHEREUPON, the jury continues deliberations
11 at 4:28.)

12 THE COURT: We will continue to be at ease
13 while the jury is deliberating.

14 (Court in recess.)

15 THE COURT: The jury has reached a decision.
16 Are we ready to receive it?

17 MS. REESE: Yes, Your Honor.

18 MR. BROUGH: Yes, Your Honor.

19 THE COURT: Bring them in.

20 (WHEREUPON, the jury came into open
21 court at approximately 4:40.)

22 THE COURT: Mr. Foreman, have you and your
23 fellow jurors reached a unanimous decision?

24 THE FOREMAN: Yes, sir.

25 THE COURT: Did you sign your name as

1 foreperson and date it?

2 THE FOREMAN: I haven't dated it.

3 THE COURT: Well, put the date on it.

4 All right. If you would please hand that
5 verdict form by way of the bailiff.

6 All right. You may publish the verdict.

7 THE CLERK: You the jurors in general
8 session court, case 2008-GS-42-1526, State
9 versus James Benjamin Irby, Indictment for
10 criminal sexual conduct with a minor in the
11 second degree. The verdict is guilty. This is
12 signed and dated by the foreperson.

13 Ladies and gentlemen, if this is your
14 verdict and still your verdict please raise your
15 right hands.

16 (Jurors raise their right hands.)

17 So say you all.

18 THE COURT: Does the defendant wish to have
19 have the jury polled?

20 MR. BROUGH: Yes, Your Honor.

21 THE COURT: All right. Poll the jury
22 please, ma'am.

23 THE CLERK: Ladies and gentlemen of the jury
24 I will ask a question of you and at this time I
25 will call your name individually and ask you to

1 stand and respond to my question. The question
2 being, is this your verdict and still your
3 verdict.

4 Number 93, Mr. Loftis?

5 JUROR: Yes, ma'am.

6 THE CLERK: Number 150, Mr. Smith?

7 JUROR: Yes, ma'am.

8 THE CLERK: Number 39, Mr. Cook?

9 JUROR: Yes, ma'am.

10 THE CLERK: Number 154, Mr. Starnes?

11 JUROR: Yes, ma'am.

12 THE CLERK: Number 131, Mr. Randall?

13 JUROR: Yes, ma'am.

14 THE CLERK: Number 35, Mr. Claytor?

15 JUROR: Yes, ma'am.

16 THE CLERK: Number 158, Mr. Tanner?

17 JUROR: Yes, ma'am.

18 THE CLERK: Number 149, Mr. Smith?

19 JUROR: Yes, ma'am.

20 THE CLERK: Number 144, Mr. Smith.

21 JUROR: Yes, ma'am.

22 THE CLERK: Number 119, Mr. Pack?

23 JUROR: Yes, ma'am.

24 THE CLERK: Number 44, Miss Crum?

25 JUROR: Yes, ma'am.

1 THE CLERK: And number 30, Mr. Cecil?

2 JUROR: Yes, ma'am.

3 THE COURT: The jury has been polled sir.

4 Any other matters that need to be addressed
5 with the jury present?

6 MS. REESE: Not from the State.

7 MR. BROUGH: No, Your Honor.

8 THE COURT: All right. Thank you ladies and
9 gentlemen. That concludes your service for this
10 case and for afternoon. We do anticipate
11 selecting another jury beginning in the morning
12 at 9:30 and so while you are excused for today I
13 would ask that you please report to your jury
14 assembly room at 9:30 in the morning at which
15 time you maybe called upon to participate in
16 another case. But thank you for your service in
17 this one.

18 Have a good afternoon. We will see you at
19 9:30 in the morning.

20 (Jury exits courtroom.)

21 THE COURT: All right. Any other matters
22 that need to be addressed prior to the
23 imposition of sentence?

24 MR. BROUGH: The defense would make a motion
25 for a new trial, renewing all of our previous

1 motions, objections including specifically,
2 motion for directed verdict, Jackson versus
3 Denno, as well as the motion for mistrial.

4 THE COURT: All right. Each of those
5 motions are denied.

6 All right. Anything further on behalf of
7 the State?

8 MS. REESE: Your Honor, I spoken with the
9 victim. She does not wish to speak. She is
10 emotional and she just rests on what you heard
11 in court.

12 As far for prior record, the defendant has
13 an 1996 criminal domestic violence, a 1999
14 malicious injury to property, 2001 criminal
15 domestic violence, 2000 driving under influence,
16 2000 assault and battery, 2001 violation of a
17 protective order and 2011 failure to stop.

18 THE COURT: Mr. Brough.

19 MR. BROUGH: Your Honor, may it please the
20 Court. Your Honor, Mr. Irby's mother, Marian,
21 initially contacted my office on his behalf.
22 Unfortunately she could not be in court. Mr.
23 Irby's grandmother is sick.

24 As the court had heard, Mr. Irby did own his
25 own landscaping business. He has since been out

1 of work with that business. He was in the
2 process of attempting to go back to school and
3 take classes in welding either at a community
4 college or another speciality school in Forest
5 City, North Carolina.

6 Your Honor, we ask the Court to consider
7 that while Mr. Irby does have some things on his
8 record outside of the 2011 failure to stop there
9 was a significant lapse of time where he was
10 doing well.

11 Your Honor, we ask for you to give Mr. Irby
12 credit for any time which he is entitled to
13 under the department of corrections and we ask
14 the Court respectfully for a lenient sentence on
15 his behalf.

16 THE COURT: Mr. Irby, is there anything
17 you like to add other than what your lawyer has
18 told me?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. On Indictment
21 2008GS1536, State versus James Benjamin Irby,
22 Indictment for the criminal sexual conduct with
23 a minor in the second degree wherein you have
24 been found guilty by the jury of that offense,
25 the sentence of the Court is you James Benjamin

1 Irby the 3rd, be confined to the South Carolina
2 Department of Corrections for a period of 18
3 years.

4 Mr. Irby, you have right to appeal the
5 verdict of the jury and the sentence of the
6 Court. You must file your notice of your
7 intention to appeal those decisions within ten
8 days of today's date.

9 Anything else?

10 MS. REESE: No, Your Honor.

11 THE COURT: Court is in recess until 9:30 in
12 the morning.

13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Spartanburg County, South Carolina, on the 18th and 19th day of September, 2012.

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

December 16, 2012

Aileen Butler

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES IRBY,

APPELLANT

APPELLATE CASE NO. 2012-213028

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT	
The court erred by ruling appellant's confession was admissible where Detective Danny Morgan admitted he told appellant he could be "thrown to the wolves" if he continued to maintain his innocence and Morgan also acknowledged he told appellant of another defendant who allegedly received the maximum sentence because he only belatedly admitted his guilt since appellant's confession was induced by threats and the promise of a lesser sentence if he confessed and it was not admissible	5
<u>Jackson v. Denno</u> hearing	5
Trial	11
Discussion	13
CONCLUSION.....	16

TABLE OF AUTHORITIES

Cases

<u>Clanton v. Cooper</u> , 129 F.3d 1147 (10 th Cir. 1997)	14
<u>Jackson v. Denno</u> , 378 U.S. 368 (1964)	4, 5, 7
<u>Lego v. Tomey</u> , 404 U.S. 477 (1972)	15
<u>Miranda v. Arizona</u> , 384 U.S. 436 (1966)	5, 7
<u>State v. Osborne</u> , 301 S.C. 363, 392 S.E.2d 178 (1990)	14, 15
<u>State v. Rochester</u> , 301 S.C. 196, 391 S.E.2d 244 (1990)	14

STATEMENT OF ISSUE ON APPEAL

Whether the court erred by ruling appellant's confession was admissible where Detective Danny Morgan admitted he told appellant he could be "thrown to the wolves" if he continued to maintain his innocence and Morgan also acknowledged he told appellant of another defendant who allegedly received the maximum sentence because he only belatedly admitted his guilt since appellant's confession was induced by threats and the promise of a lesser sentence if he confessed and it was not admissible?

STATEMENT OF THE CASE

Appellant was indicted by the Spartanburg County Grand Jury for the offense of criminal sexual conduct with a minor in the second degree. R. 309. A Jackson v. Denno, 378 U.S. 368 (1964) hearing was held on January 29, 2011 before the Honorable J. Derham Cole. Christopher Brough represented appellant. Susan Reese and Jennifer Jordan were the assistant solicitors. R. 1. At the conclusion of the Jackson v. Denno hearing Judge Cole took the matter of the admissibility of appellant's statements under advisement. R. 95, ll. 7-8.

Appellant's case came on for trial on November 18, 2012 before the Honorable J. Derham Cole. Christopher Brough represented appellant. Susan Reese was the assistant solicitor. R. 96. Judge Cole ruled immediately prior to trial that motion to suppress appellant's confession was denied. R. 97, ll. 1-9.

On November 19, 2012 the jury found appellant guilty. R. 295, ll. 7-12. Judge Cole sentenced appellant to eighteen years imprisonment. R. 297, ll. 1-3.

This appeal follows.

ARGUMENT

The court erred by ruling appellant's confession was admissible where Detective Danny Morgan admitted he told appellant he could be "thrown to the wolves" if he continued to maintain his innocence and Morgan also acknowledged he told appellant of another defendant who allegedly received the maximum sentence because he only belatedly admitted his guilt since appellant's confession was induced by threats and the promise of a lesser sentence if he confessed and it was not admissible.

Jackson v. Denno hearing

A Jackson v. Denno, 378 U.S. 368 (1964), hearing was held on January 29, 2011. Spartanburg Department of Social Services worker Brenda Azzara testified that on November 14, 2007 that appellant was asked to come in for an interview. Appellant and his wife came to the Department of Social Services office in Spartanburg in their own automobile. Detective Tonya Aldredge was also invited to the interview by Azzara. The interview concerned appellant allegedly having sexual contact with his thirteen year old stepdaughter. R. 11, l. 3 – 12, l. 12.

Detective Aldredge read appellant his Miranda¹ rights and had him sign a pre-interrogation waiver form. R. 12, ll. 16-19. Azzara recalled that appellant spoke "freely and willing" during the entire interview. R. 13, ll. 12-15.

Appellant told Aldredge and Azzara that the allegations were not true. He told his stepdaughter to clean her room, and that if he did not see progress she was not going on the class field trip to the Biltmore Estates. Appellant explained that he and the minor's mother had a hard time coping with the problems the minor was having at home and at school.

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

Appellant related that on the evening he told his stepdaughter she could not go on the field trip "she got mad and went into her room." Appellant recalled: [T]he next thing he knew Jennifer [his wife's sister and the stepdaughter's Aunt] and the police were there." R. 14, ll. 4-25: Appellant told Azzara and Aldredge that the child made the story up out of spite because she could not go on the field trip. R. 14, l. 25 - 15, l. 13.

Azzara testified that appellant refused to take a polygraph exam at a later date, and he stated he did not "believe in them." R. 18, ll. 3-17. Appellant did not make any admissions of guilt, and he did not ask for an attorney. He was not arrested, and left after the interview. R. 19, ll. 7-13.

Detective Aldredge was the state's next witness. Aldredge said she was merely present at the November 14, 2007 interview at DSS, and that Azzara asked all of the questions. R. 20, l. 14 - 21, l. 11.

Aldredge said she next saw appellant at the "detention center" on November 30, 2007, where he apparently was present for failure to pay child support. R. 21, l. 21 - 22, l. 1. Aldredge admitted appellant did not sign a pre-interrogation form before she spoke to him. R. 39, l. 25 - 40, l. 10. Aldredge again asked appellant if he would take a polygraph exam, and this time appellant agreed. Aldredge said the polygraph exam was then scheduled for December 5, 2007. R. 22, ll. 2-23.

Aldredge recalled that on December 5, 2007, prior to the polygraph examination, appellant offered to write his own statement. Aldredge said it took appellant about thirty minutes to write the statement. R. 302. R. 23, l. 24 - 24, l. 25.

Aldredge said after appellant finished his statement she took him to Detective Danny Morgan who was the polygraph operator. R. 25, ll. 4-13. Appellant denied he did anything

improper in his written statement. He wrote that his stepdaughter did not like to behave, and she made a sexually explicit remark to him that he reported to his wife, the minor's mother. State's exhibit 3, R. 301; R. 25, ll. 4-16.

Aldredge remembered appellant had to be at his family court hearing on December 5, 2007, so she brought him to the courthouse after the polygraph exam. Detective Morgan testified that appellant finished the polygraph but he did not have time to tell him the results before appellant was taken to his family court hearing. Aldredge said on the way back from the family court hearing she stopped at McDonald's and got appellant something to eat. R. 26, ll. 1-23.

Azzara confirmed appellant gave the five page statement after the polygraph exam, and then another one page statement. These are the inculpatory statements at issue. R. 28, ll. 15-25. Aldredge not locate the pre-interrogation waiver form from December 5, 2007 but she insisted: "I did read him his rights. I believe he signed a pre-interrogation form, but I could not locate that form." R. 31, l. 7-33, l. 12. On cross-examination Aldredge denied that she in fact never advised appellant of his Miranda warnings on December 5, 2007 and she insisted she read appellant his rights. R. 41, l. 13-42, l. 7.

The key witness during the Jackson v. Denno hearing was polygraph operator Danny Morgan. Morgan was subsequently terminated from the Sheriff's Department for "making some inappropriate comments while I was working a part time job." He denied he was terminated for misconduct while conducting a polygraph exam. R. 58, l. 25-59, l. 8.

Morgan identified the waiver of rights form he had appellant sign at 11:00 a.m. on December 5, 2007. R. 44, ll. 4-8; R. 301, State's exhibit 3.

Morgan testified appellant was cooperative during the polygraph exam. After the polygraph exam was completed he received a telephone call stating that appellant "had to be in family court sometime around 2:00 or something like that. And routinely the polygraph process to get to completion usually runs between two and a half, around two and a half hours, maybe three." R. 48, ll. 6-25.

Morgan testified once appellant arrived back at the police station from family court he spoke with him about the results of the polygraph exam. Morgan informed appellant that he had failed the polygraph exam. Morgan said appellant then "began to change his 'story'" about thirty minutes later. R. 50, ll. 2-9; R. 62, ll. 10-23. Morgan admitted the obvious -- that if appellant confessed it made his case much better. R. 63, l. 25 - 64, l. 3. The following occurred on cross-examination of Detective Morgan after defense counsel played a portion of the DVD of the interrogation that is now before this Court:

(Whereupon, the tape was played.)

Q. Now, you talk to him about going this way or going that way. Would you agree with me that you were talking about choosing to remain silent or choosing to confess?

A. No, not choosing to remain silent, *about choosing to continue to lie about the allegation or what he had done or choosing to tell the truth about what he had done.* That's what I was talking about.

Q. You indicated that you said you're not saying you can make it all better. Do you recall saying that?

A. Yes.

Q. Would you agree with me that that also implies you can make at least some of it a little better?

A. No, sir. The very statement says, *was that I can help you to understand what will happen or what is likely to happen. That was based on my experience. So the portion of that was*

to help him to understand where he was at based on the choices that he might make.

R. 63, l. 6-24. (emphasis added).

Morgan admitted he talked to appellant about being him "throwing him to the wolves" because Morgan said "from the standpoint of my past experience this is what could happen." R. 64, l. 12 - 65, l. 3.

Morgan said he talked to appellant about being "thrown to the wolves" because he wanted appellant to understand what his "choices could be." R. 66, ll. 2-13. Morgan admitted to telling appellant about another defendant who would not confess, "and he got the maximum sentence. That's what you told Mr. Irby." Morgan did not deny telling appellant about another defendant who got the maximum sentence and the following occurred:

A. And I made a distinction that that was different person and the ages of those children were like six and seven.

Q. Okay. So, in other words, you didn't tell him specifically he would get the maximum sentence, but you talked about other people in the context of giving him choices, correct?

A. I told him about things that I had seen happen before.

Q. And this is after the conversation where you basically told him that if he wasn't truthful you didn't want to see him thrown to the wolves, correct?

A. Yes.

Q. Okay. You'd agree with me that those are coercive efforts, correct?

A. No, sir.

Q. You used a good bit of psychology in this interview to get him to confess, didn't you?

A. I'm not a psychologist. I just talk to people.

Q. Talked to Mr. Irby for a long time, didn't you?

A. Yes, I did.

R. 68, l. 22 – 69, l. 16.

On re-direct examination the solicitor asked Morgan about a portion of the tape where Morgan told appellant about another defendant who had gotten sixty years in prison. Morgan's point to appellant, as he again stated before the jury, was that the defendant's belated confession came too late to help him. R. 69, l. 20 – 70, l. 14; R. 203, ll. 10-25. The entire tapes of the interrogations, State's exhibits 2 and 3, are before this Court for review since court reporters refuse to transcribe the actual portions of the DVD's as they are played live in court. Regardless, the import was obvious that there was a point of no return for appellant and that he had better confess so that he too did not get thrown to the wolves and receive the maximum sentence.

Appellant then took the stand in his own defense. He testified that Morgan "was saying that, you know, if I didn't tell him something they would give me so many years, and if I did tell him something, then they would give me like five or four years." Appellant said after he took the polygraph is when he started feeling the threats. He testified that he was in leg irons at the time, in a small interrogation room, and that Detective Morgan was a bigger man. R. 74, l. 1 – 76, l. 10.

Consistently with the officer's testimony appellant said he was told if he didn't tell Morgan "something, then they was going to give me the maximum." Appellant said conversely he was told he would probably four or five years if he confessed. R. 74, l. 1 – 75, l. 5; 76, l. 18 – 79, l. 12.

Defense Counsel Brough argued that appellant was told he needed to confess or he was going "to be thrown to the wolves." Brough said Detective Morgan clearly conveyed to appellant that if he talked to Morgan and told him the truth he would be treated better "and less harshly, because given Detective Morgan's experience with people that he had dealt with in the past that didn't come forward and had to have it dragged out of them received the maximum sentence." R. 92, ll. 4-12. (emphasis added). Brough argued that this was a threat and that confessions given by threats or promises, however slight, were not admissible. R. 92, l. 4 - 93, l. 16.

The assistant solicitor attempted to argue that Morgan was trying to convey to appellant that "look you've got two roads to go down, you can take one of two, in my experience it's better to tell the truth." R. 94, ll. 20-23.

The defense and solicitor agreed that the judge should consider the portions of the DVD showed to him in court, and he did not need to view the entire interrogations to understand the points that were made. R. 87, l. 2 - 88, l. 9.

The Trial

As stated above, prior to the trial beginning the judge summarily denied the motion to suppress appellant's confession. Appellant's seventeen-year-old stepdaughter then testified and claimed that on one occasion appellant grabbed her from behind and started to pull down her underwear. R. 107, l. 5 - 108, l. 8. The minor said she talked to her mother about it but her mother did not believe appellant had done anything to her. R. 108, ll. 16-24.

The minor maintained on other occasions appellant would come into her room and touch her on her leg. She said she would tell appellant to stop and he would leave the room. R. 109, l. 6 - 110, l. 21.

The stepdaughter testified that one time appellant forcibly had sex with her. She said she told her mother twice about the incident. She said she called her aunt because her mother thought she was lying. The minor said her aunt called the police, and the police came to their house. R. 111, l. 6 – 112, l. 23.

The stepdaughter insisted she would "screamed" for her mother when she was sexually assaulted. She claimed her mother made no effort to check on her when she screamed. R. 116, ll. 5-17.

The minor remembered going to one counseling session together with her mother at the insistence of the Department of Social Services. R. 117, ll. 16-21. Appellant's wife, and the child's mother, Ms. C. said during the counseling session she asked her daughter three times if anything happened. Her daughter, and appellant's stepdaughter, told her three times that "nothing happened." Ms. C. remembered that the counselor terminated the session. R. 217, l. 11 – 219, l. 6; Defendant's exhibit # 1, Supp. R. p 1.

Gina Odem, the counselor, was called as a reply witness. Odem claimed that the child did not recant her allegations in that single session with her mother. Odem said she thought the presence of Ms. C. in the future was going to be "counterproductive" since she thought her daughter was lying. R. 235, l. 5 – 237, l. 23.

Detective Danny Morgan testified before the jury about the December 5, 2007 interrogation of appellant. Morgan said the interrogation started at about 9:30 in the morning and that appellant had a break for a family court hearing before the interview again resumed. R. 174, l. 18 – 180, l. 18; R. 199, ll. 20-24.

On cross-examination Morgan admitted he had told appellant he would hate to see him "thrown to the wolves." Morgan said that he was confident appellant had sexual conduct with his stepdaughter. R. 204, ll. 1-21.

Morgan also admitted he told appellant about another man who had received the maximum sentence because it took him "a very long time to come out with the truth and at that point that person . . . kind of like had his back against the wall and had no choice but to give the truth he finally did give the truth" and he ended up receiving the maximum penalty on it. R. 203, l. 10 – 204, l. 21. Morgan said he did not view any of this as a threat. R. 204, ll. 22-23.

Appellant testified in his own defense and denied sexually abusing his stepdaughter. Appellant said he confessed because he was threatened, and told that he would be "thrown to the wolves" if he did not admit to having sex with his stepdaughter. Appellant testified that he and his wife discussed Morgan's statement that he would probably do about five years if he admitted the sexual misconduct "even though I didn't do nothing. That is what I was going to do. But I did not do this." R. 234, ll. 14-19; R. 231, l. 18 – 232, l. 17.

Discussion

As seen, Detective Morgan acknowledged telling appellant he could be "thrown to the wolves" or he did not want to see him "thrown to the wolves" because he would not be "truthful." Detective Morgan also admitted he talked to appellant about another defendant who received the maximum sentence because he did not admit his guilt until it was too late in the process for him to be helped. Appellant also testified that Morgan mentioned a sentence of about five years if he was "truthful", and when compared with the threat of the maximum sentence and being "thrown to the wolves" he confessed.

In addition to feeling threatened by the above, appellant noted he was in a small room with Detective Morgan who was a bigger man while appellant was in leg irons after a long day of interrogation.

In State v. Osborne, 301 S.C. 363, 392 S.E.2d 178 (1990) the Supreme Court considered a case where the defendant was told she did not have to say anything but if she withheld evidence she could be charged with a crime. The Supreme Court found that the defendant's confession given under these circumstances was coerced.

In State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990), the Supreme Court held that a confession induced by threats or promises, however slight, was not admissible. The Court in State v. Osborne distinguished Rochester on the grounds that the polygraph examiner in Rochester only told the defendant that it would be "in his best interest" to tell the truth. " The present case is Osborne and not Rochester.

Detective Morgan admitted he talked to appellant about "being thrown to the wolves," and told him about another defendant who received the maximum sentence because his cooperation with the police came too late in the process. Appellant was informed essentially that time was of the essence to tell the truth. Otherwise he was passing the point of no return, and he would be "thrown to the wolves."

Appellant's confession in this case was induced by these threats and the promise that if he confessed he would be treated less harshly, and even with leniency. In Clanton v. Cooper, 129 F.3d 1147 (10th Cir. 1997), a civil §1983 case, the Court held that falsely telling a defendant that physical evidence linked him to the crime was insufficient to establish a coerced confession; but telling the defendant he would get a twenty-five year sentence if he -

did not confess and "would get off lightly" if the defendant confessed created a jury issue in the violation of a constitutional right under the color of state law action.

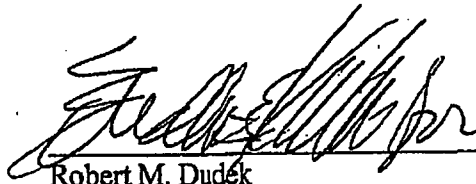
Similar to the sheriff in State v. Osborne, Detective Morgan here stated that he did not consider his statements to appellant a threat or a promise. Again, Morgan admitted he told appellant he could be "thrown to the wolves" for not being honest and that he told appellant about another defendant who received the maximum because of his untimely cooperation. The state failed in its burden of showing appellant's confession was voluntary under these circumstances. See Lego v. Tomey, 404 U.S. 477 (1972).

Appellant's confession in this case was coerced, and the trial judge's summary ruling otherwise was error. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed and this case remanded to the Spartanburg County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'R. M. Dudek', is written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of April, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

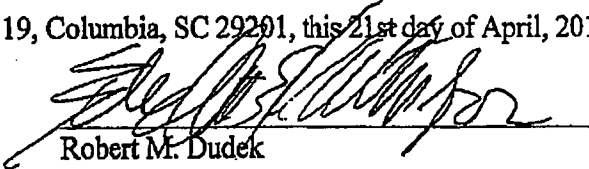
JAMES IRBY,

APPELLANT

APPELLATE CASE NO. 2012-213028

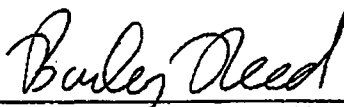
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 21st day of April, 2014.


Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of April, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2012-213028

THE STATE,

Respondent,

vs.

JAMES IRBY,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	3
ARGUMENT.....	13
I. The trial judge properly admitted Appellant's statements into evidence after determining Appellant made the statements knowingly and voluntarily under the totality of the circumstances.	13
CONCLUSION.....	21

TABLE OF AUTHORITIES

Cases

<u>Arizona v. Fulminante</u> , 499 U.S. 279 (1991)	16
<u>Jackson v. Denno</u> , 378 U.S. 368 (1964)	2
<u>Miller v. Fenton</u> , 796 F.2d 598 (3rd Cir. 1986)	15
<u>Miranda v. Arizona</u> , 384 U.S. 436 (1966)	3, 14
<u>Rose v. Lee</u> , 252 F.3d 676, 685 (4th Cir. 2001)	16
<u>Schneekloth v. Bustamonte</u> , 412 U.S. 218 (1973)	15
<u>State v. Arrowood</u> , 375 S.C. 359, 652 S.E.2d 438 (Ct. App. 2007)	13, 20
<u>State v. Baccus</u> , 367 S.C. 41, 625 S.E.2d 216 (2006)	13
<u>State v. Breeze</u> , 379 S.C. 538, 665 S.E.2d 247 (Ct. App. 2008)	14
<u>State v. Myers</u> , 359 S.C. 40, 596 S.E.2d 488 (2004)	14
<u>State v. Osborne</u> , 301 S.C. 363, 392 S.E.2d 178 (1990)	16
<u>State v. Pendergrass</u> , 270 S.C. 1, 239 S.E.2d 750 (1977)	18
<u>State v. Rabon</u> , 275 S.C. 459, 272 S.E.2d 634 (1980)	15
<u>State v. Rochester</u> , 301 S.C. 196, 391 S.E.2d 244 (1990)	14, 16, 17
<u>State v. Saltz</u> , 346 S.C. 114, 551 S.E.2d 240 (2001)	14, 15
<u>State v. Simmons</u> , 384 S.C. 145, 682 S.E.2d 19 (Ct. App. 2009)	13
<u>State v. Von Dohlen</u> , 322 S.C. 234, 471 S.E.2d 689 (1996)	15, 20
<u>United States v. Braxton</u> , 112 F.3d 777 (4th Cir. 1997)	15-16

STATEMENT OF ISSUE ON APPEAL

I.

The trial judge properly admitted Appellant's statements into evidence after determining Appellant made the statements knowingly and voluntarily under the totality of the circumstances.

STATEMENT OF THE CASE

In January of 2011, a Spartanburg County Grand Jury indicted Appellant for second-degree criminal sexual conduct with a minor. On January 29, 2011, the Honorable J. Derham Cole presided over a Jackson v. Denno¹ hearing. Christopher Brough represented Appellant at the hearing, and Assistant Solicitors Susan Reese and Jennifer Jordan represented the State.

On November 18, 2012, Appellant proceeded to trial. Christopher Brough represented Appellant at trial, and Assistant Solicitor Susan Reese represented the State. On November 19, 2012, the jury found Appellant guilty as charged. Judge Cole sentenced Appellant to eighteen years of imprisonment.

Appellant filed a timely notice of appeal. This brief follows.

¹ Jackson v. Denno, 378 U.S. 368 (1964).

STATEMENT OF FACTS

Jackson v. Denno Hearing

On January 29, 2011, the trial judge held a Jackson v. Denno hearing. The following testimony and evidence was presented:

Testimony of Brenda Azzara

On November 14, 2007, Brenda Azzara, an employee with the Department of Social Services, met with Appellant. (R. p. 11.) According to Azzara, Detective Tonya Aldredge and Appellant's wife were both present during the interview. (R. p. 12.) Appellant was not under arrest. (R. p. 11.) Detective Aldredge read Appellant his rights under Miranda.² (R. p. 12; R. p. 23.) Appellant gave a written statement denying Victim's allegations of sexual abuse. (R. p. 14.) Appellant claimed Victim got mad at him when he told her that she could not go on a field trip unless she cleaned her room, and the next thing he knew the police were at his home. (R. p. 14.)

Testimony of Detective Aldredge

On November 30, 2007, Detective Aldredge met with Appellant at the detention center. (R. p. 21.) Appellant was at the detention center for a family court issue. (R. p. 22.) Detective Aldredge read Appellant his rights under Miranda. (R. p. 22.) According to Detective Aldredge, Appellant agreed to take a polygraph examination, which was eventually scheduled for December 5, 2007. (R. p. 22.) On December 5, 2007, before the polygraph was administered, Detective Aldredge read Appellant his rights under Miranda, and Appellant gave another statement denying the allegations. (R. pp. 24-25; R. p. 33.) Detective Danny Morgan administered the polygraph examination. (R. p. 25.)

² Miranda v. Arizona, 384 U.S. 436 (1966).

Later that day, Detective Aldredge transported Appellant to the courthouse for a family court hearing. (R. pp. 25-26.) After the hearing, which lasted approximately one hour, Detective Aldredge stopped at McDonald's in order to get Appellant something to eat. (R. p. 26.) Thereafter, Detective Aldredge took Appellant back to the sheriff's office to see Detective Morgan. (R. p. 26.) According to Detective Aldredge, she did not witness any threats or coercion by Detective Morgan. (R. p. 27.) Moreover, Appellant never requested an attorney or asked to stop the interview. (R. p. 27.) Appellant apologized for not being completely truthful. (R. p. 28.) After the interview was over, Detective Aldredge transported Appellant back to the detention center. (R. p. 29.) According to Detective Aldredge, Appellant never told her that he was threatened or coerced by Detective Morgan. (R. p. 29.)

Testimony of Detective Morgan

On December 5, 2007, Detective Morgan performed a polygraph examination on Appellant. (R. p. 43.) Before Detective Morgan began the examination, he read Appellant his rights under Miranda and went over the waiver of rights form with Appellant. (R. p. 44.) According to Detective Morgan, Appellant was not under the influence of drugs or alcohol at that time. (R. p. 44.) Further, Appellant's speech was coherent, and Appellant seemed to understand Detective Morgan's questions. (R. p. 45.) Additionally, Appellant did not appear to have any mental health issues. (R. p. 45.)

After Appellant completed the polygraph examination, Appellant went to a family court hearing. (R. p. 48.) After the family court hearing, Appellant returned to the sheriff's office in order to discuss the results of his polygraph examination. (R. pp. 49-50.) Detective Morgan testified that he did not threaten Appellant, coerce Appellant, or promise Appellant anything. (R. p. 45; R. pp. 50-51; R. p. 57.) In addition, Detective

Morgan offered Appellant breaks throughout the course of the interview. (R. p. 53.) Detective Morgan also testified that he never offered Appellant four years if Appellant would just confess to the crime. (R. p. 58.) In fact, Detective Morgan told Appellant that he did not have the power to make any deals. (R. p. 70.) In addition, Detective Morgan told Appellant that he was not making Appellant any promises and not threatening Appellant. (R. p. 70.)

Testimony of Appellant

During the hearing, Appellant testified on his own behalf. (R. p. 71.) Appellant claimed that he was not advised of his rights under Miranda when Detective Aldredge picked him up from the detention center on December 5, 2007. (R. p. 73.) Appellant claimed he "felt threatened" during his interview with Detective Morgan. (R. p. 74.) Appellant claimed that he felt threatened because Detective Morgan allegedly said to him that "if [Appellant] didn't tell [Detective Morgan] something they would give [him] so many years, and if [he] did tell [Detective Morgan] something, then they would only give [him] like five or four years."³ (R. p. 74.) Further, Appellant claimed he felt threatened when Detective Morgan stated that he did not want to see Appellant thrown to the wolves. (R. p. 74.) But when defense counsel asked Appellant why he felt threatened by Detective Morgan's wolves comment, Appellant stated: "Well, I mean, in the video, I mean, he told me about, you know, if I told him something he would give me five years, but if I didn't tell him something he would give me 20 years." (R. p. 74.) Further, Appellant admitted that one of the officers got him lunch that day. (R. p. 75.)

On cross-examination, the solicitor asked Appellant what Detective Morgan said to make Appellant feel threatened. (R. p. 79.) In response, Appellant stated: "I believe he

³ Nowhere in the video does Detective Morgan tell Appellant that he would get four or five years if he confessed. In fact, Detective Morgan denied making that statement. (R. p. 58.)

told me if I tell him something they would give me only five years or four years, but if I didn't tell him something, then they was going to give me the maximum." (R. p. 79.) Appellant did not mention the wolves comment. (R. p. 79.) Appellant admitted that Detective Morgan read him his rights under Miranda, and Appellant knew he had the right to an attorney and could stop the interview. (R. pp. 81-82.) In addition, Appellant admitted that he signed a form waiving his rights. (R. p. 82.)

Notably, after Appellant gave the five page statement, Detective Morgan questioned Appellant regarding another allegation involving a different minor ["Victim 2"]. (R. p. 84.) Appellant refused to make any admissions regarding the allegations made by Victim 2. (R. pp. 84-85.) In fact, Appellant stated: "If [Detective Morgan] asked me anything about [Victim 2], nothing happened with [Victim 2], so I had no reason to, you know, go into that." (R. p. 85.)

State's Exhibits 2 & 3

During the Jackson v. Denno hearing, the State introduced a video of the polygraph examination and a video of the interview that occurred on December 5, 2007. (State's Exh. 2 from Hearing (DVD); State's Exh. 3 from Hearing (DVD).)

Before the polygraph examination began, Appellant told Detective Morgan that he was not under the influence of drugs or alcohol and was in good mental health. Approximately two hours and thirty minutes later, Appellant had to take a break in order to go to family court. (State's Exh. 2 from Hearing (DVD).)

After Appellant returned from family court, Detective Morgan told Appellant that he failed the polygraph examination. Thereafter, Appellant implied that Victim was involved in sexual activities with someone else. Approximately twenty-five minutes into the second video, Detective Morgan told Appellant that Victim probably turned to

Appellant because she either liked him and wanted to feel that way with him or Victim turned to Appellant because she is devious and wanted to have something over Appellant to hang him. A few seconds later, Detective Morgan stated: "James, there has been sexual contact between you and [Victim]. You have been involved in having sex with her. The thing is I don't want to just see you being thrown to the wolves on this . . . I think it needs to be clear what she was doing -- how she did this. . . ." (State's Exh. 3 from Hearing (DVD).)

Around twenty-eight minutes into the interview, Appellant stated that he and Victim never had sex. However, Appellant claimed Victim came into the living room where Appellant was sleeping. Appellant's penis was exposed. When Appellant woke up, Victim had her mouth on his penis. Appellant told Victim to go to her room. Appellant claimed he did not tell anyone of this event because he wanted to protect his family. (State's Exh. 3 from Hearing (DVD).)

Detective Morgan told Appellant that it was important to be honest. Around thirty-one minutes into the second video, Detective Morgan told Appellant that this alleged living room incident could have caused Appellant to fail the polygraph examination. However, it was unlikely. Detective Morgan reminded Appellant that the question Appellant failed on the polygraph examination was "did you put your penis in [Victim's] vagina." And the second question was "did you put your penis in [Victim's] vagina in her bedroom." Thus, according to Detective Morgan, Appellant's living room story did not explain why Appellant failed the polygraph examination considering the question was so specific. (State's Exh. 3 from Hearing (DVD).)

Around thirty-two minutes into the second interview, Detective Morgan reminded Appellant that it was important for Appellant to be completely honest. "I'm not telling

you that if you do this then you're going to get this kind of deal . . . I do not have any kind of power at all to make deals." Detective Morgan explained that he was going to tell Appellant about things he had seen in his experience. Detective Morgan stated: "None of this is designed to tell you that you should do this or you should do that. Those are choices you are going to have to make." Thereafter, Detective Morgan told Appellant that he believed that more sexual activity occurred between Victim and Appellant. (State's Exh. 3 from Hearing (DVD).)

Approximately thirty-nine minutes into the second interview, Detective Morgan told Appellant he "really [does not] believe that [Appellant] would have done these things without [Victim] initiating it. But the fact is there has been a lot more happened between you." Thereafter, Detective Morgan urged Appellant to tell the truth. Approximately forty-one minutes into the second interview, Detective Morgan told Appellant about a defendant who eventually told the truth. However, that defendant molested children that were six and seven years old. That defendant ultimately got the maximum sentence for each child, and the sentences ran consecutively. (State's Exh. 3 from Hearing (DVD).)

Thereafter, Appellant denied committing the alleged acts while blaming Victim for any inappropriate behavior. Appellant did not confess to any involvement on his part. In response, Detective Morgan told Appellant that there was more sexual contact between Appellant and Victim than what Appellant claimed occurred. Detective Morgan stated: "I know you had sex with her. I know your penis has been inside her vagina." (State's Exh. 3 from Hearing (DVD).)

Around forty-four minutes into the second interview, Appellant told Detective Morgan that he was going to tell Detective Morgan what really happened. Appellant

claimed that he was sleeping naked in the living room. He claimed he had a "hard on." When Appellant woke up, Victim was on top of Appellant, and his penis was on the lips of her vagina. Appellant claimed he whipped Victim and sent her to her room. (State's Exh. 3 from Hearing (DVD).)

Approximately fifty-eight minutes into the second interview, Detective Morgan stated: "I believe that there's been an ongoing sexual relationship here." Detective Morgan told Appellant that he believed there has been more sexual activity that occurred than what Appellant described. However, Detective Morgan explained that Appellant's best bet was to tell the truth about everything and get everything out in the open. Once again, Appellant blamed Victim. Appellant did not admit to any culpability on his part. Appellant stated that he never had "full force vaginal sex with [Victim]." (State's Exh. 3 from Hearing (DVD).)

Around one hour and eight minutes into the second interview, Detective Morgan offered Appellant water. Approximately one hour and twenty-four minutes into the interview, Detective Morgan asked Appellant if he wanted to provide a corrected statement. Appellant stated that he did want to provide a corrected statement, and that he was "not trying to do no 30 or 60 years. . . ." Detective Morgan told Appellant that he was not threatening Appellant with 30 or 60 years. The case he described earlier involved younger girls. Appellant indicated that he understood and asked what the sentence for what he was charged with carried. Appellant stated that he was "going to get pinned with this anyway." (State's Exh. 3 from Hearing (DVD).)

Before Appellant gave a written statement, approximately one hour and twenty-seven minutes into the second interview, Detective Morgan offered Appellant water, but Appellant refused. Detective Morgan left the room to get himself some water for a few

minutes. Detective Morgan brought back Appellant water and asked if he needed anything else. Thereafter, Appellant asked if he would be charged even though he did not initiate any of the sexual activity. Appellant wrote a statement, which blamed Victim for the sexual activity that occurred. Appellant denied any culpability on his part. (State's Exh. 3 from Hearing (DVD).)

Approximately two hours and thirty-five minutes into the second interview, Appellant stated that he had been treated professionally, not coerced or threatened, and was offered breaks. About nine minutes later, Appellant stated that he told the truth because it was the right thing to do not because he was coerced or threatened. Around two hours and fifty-five minutes into the second interview, Appellant took a break for approximately five minutes. (State's Exh. 3 from Hearing (DVD).)

When Appellant returned from the break, Detective Morgan brought up the allegations made by Victim 2. Appellant denied touching or doing anything sexual with Victim 2. (State's Exh. 3 from Hearing (DVD).)

Approximately three hours and ten minutes into the second interview, Detective Morgan reminded Appellant that he cannot offer Appellant a deal. Additionally, Detective Morgan stated that he was not threatening Appellant in any way. Thereafter, Detective Morgan told Appellant that Victim gave a different story. Thus, Detective Morgan believed there was more sexual activity that occurred than what Appellant admitted. Once again, Detective Morgan reminded Appellant that he needed to be truthful. Around three hours and sixteen minutes into the second interview, Detective Morgan reminded Appellant of the other case that he worked on where the defendant molested six and seven year old girls and received the maximum sentence. However,

Detective Morgan told Appellant that he was not saying that would happen to Appellant. (State's Exh. 3 from Hearing (DVD).)

Thereafter, Appellant continued to deny the allegations made by Victim 2. When Detective Morgan tried to end the interview, approximately three hours and eighteen minutes into the second interview, Appellant admitted that he let Victim perform oral sex on him in Victim's bedroom. However, Appellant once again denied the allegations made by Victim 2. Towards the end of the second interview, Appellant denied having sex with Victim; he only admitted to oral sex. (State's Exh. 3 from Hearing (DVD).)

Trial

On November 18, 2012, Appellant proceeded to trial. Before the trial began, the trial court denied Appellant's motion to suppress his statements. (R. p. 97.)

Testimony of Victim

On one occasion, Appellant forced Victim to the floor and performed digital penetration on Victim. (R. p. 108.) Victim told her mother, but Appellant continued to live in the house with Victim. (R. pp. 108-109.) On another occasion, Appellant came into Victim's room, pulled her clothes down, and touched her legs. (R. pp. 109-110.) Victim told her mother of this occurrence, but Appellant continued coming into Victim's room. (R. p. 110.) At one point, Victim started placing a dresser in front of her door and wearing blue jeans to bed so that Appellant could not bother her. (R. pp. 110-111.)

In November of 2007, Appellant came into Victim's room while Victim was sleeping and pulled down her clothes. (R. p. 111.) Thereafter, Appellant put his penis inside Victim's vagina. (R. p. 111.) Victim called her aunt to tell her what happened, and Victim's aunt called the police. (R. p. 112.)

Testimony of Brenda Izarra

On November 14, 2007, Izarra interviewed Appellant. (R. p. 129.) Izarra was present when Detective Aldredge read Appellant his rights under Miranda. (R. p. 129.) Appellant denied the allegations Victim made against him. (R. p. 130.) In fact, Appellant grabbed himself on the crotch and said he was not an average sized man. (R. p. 134.) Thus, if he had touched Victim, then she would have been "torn up." (R. p. 134.)

Testimony of Gina Odom

Victim's mother testified that during the therapy session with Gina Odom, a contract therapist with the Children's Advocacy Center in Spartanburg, Victim denied the sexual abuse by Appellant. However, at trial Odom testified that Victim never recanted the allegations she made against Appellant. (R. p. 237.) In fact, according to Odom, Victim disclosed the sexual abuse to her and Victim's mother during the counseling session. (R. p. 237.) Further, Odom testified that Victim's mother did not support Victim in this matter. (R. p. 237.)

ARGUMENT

I.

The trial judge properly admitted Appellant's statements into evidence after determining Appellant made the statements knowingly and voluntarily under the totality of the circumstances.

Appellant contends the trial judge erred in admitting his statements to law enforcement into evidence. However, viewing the totality of the circumstances, Appellant made the statements knowingly and voluntarily. Detective Morgan did not threaten Appellant or promise Appellant anything in return for a confession. Further, even if this Court were to find that Detective Morgan's comments were a threat or a promise, Appellant's will was not overborne by the comments. Accordingly, as Appellant's will was not overborne and his statements were freely and voluntarily made, the trial court properly admitted Appellant's statements into evidence, and its ruling was fully supported by the evidence. Thus, Appellant's conviction and sentence should be affirmed.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). On appeal, the trial judge's decision as to the voluntariness of a statement will not be reversed unless the ruling was so erroneous it constituted an abuse of discretion. State v. Simmons, 384 S.C. 145, 162, 682 S.E.2d 19, 28 (Ct. App. 2009). "Factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion." State v. Arrowood, 375 S.C. 359, 365, 652 S.E.2d 438, 441 (Ct. App. 2007). "When reviewing a trial court's ruling concerning voluntariness, [the appellate court] does not reevaluate the facts based on its own view of the preponderance

of the evidence, but simply determines whether the trial court's ruling is supported by any evidence." State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001) (emphasis added).

Analysis

"[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." Miranda, 384 U.S. at 444. Prior to custodial interrogation, a suspect must be warned he has a right to remain silent, any of his statements may be used against him, he has a right to an attorney, and an attorney will be appointed to him prior to any questioning if he desires one and cannot afford one. Id. at 479. Once those warnings are given to a suspect and the suspect is afforded an opportunity to exercise his rights, the suspect may knowingly and intelligently waive those rights and make a statement. Id.

However, a confession or statement by a defendant is not admissible unless voluntarily made. State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). If a defendant is advised of his constitutional rights and then chooses to make a statement, the burden is on the State to prove by a preponderance of the evidence that the defendant voluntarily waived his rights. State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990). "The process for ascertaining whether a statement is voluntary is bifurcated because the process involves determinations by both the trial judge and the jury." State v. Breeze, 379 S.C. 538, 543, 665 S.E.2d 247, 250 (Ct. App. 2008). Pursuant to the bifurcated process, the trial judge must first determine in an evidentiary hearing whether the State proved the statement was voluntarily made by a preponderance of the evidence

and then, if the trial judge finds the State met its burden, the statement is submitted to the jury where its voluntariness must be proven beyond a reasonable doubt. Id.

The critical factor in an evaluation of the voluntariness of a defendant's statements is whether the defendant's will was overborne when he confessed. State v. Von Dohlen, 322 S.C. 234, 244, 471 S.E.2d 689, 695 (1996); see also Miller v. Fenton, 796 F.2d 598, 604 (3rd Cir. 1986) ("We emphasize that the test for voluntariness is not a but-for test: we do not ask whether the confession would have been made in the absence of the interrogation. Few criminals feel impelled to confess to the police purely of their own accord, without any questioning at all."). "If a suspect's will is overborne and his capacity for self-determination critically impaired, use of the resulting confession offends due process." Saltz, 346 S.C. at 136, 551 S.E.2d at 252.

When considering the voluntariness and admissibility of a defendant's statements, the trial judge should examine the totality of the circumstances under which the statements were made, including the characteristics of the accused and the details of the interrogation, to determine whether the State has met its burden of proof. State v. Rabon, 275 S.C. 459, 461, 272 S.E.2d 634, 635 (1980). Factors to be considered in the totality of the circumstances analysis include: (1) the age of the accused; (2) the educational level and intelligence of the accused; (3) the accused's knowledge of his constitutional rights; (4) the length of the accused's detention; (5) the nature of the questioning and whether it was repeated and prolonged; and (6) the presence or absence of the use of punishment, including deprivation of food or sleep. Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973).

Notably, "[t]he mere existence of threats, violence, implied promises, improper influence, or other coercive police activity, however, does not automatically render a

confession involuntary. The proper inquiry 'is whether the defendant's will has been 'overborne' or his 'capacity for self-determination critically impaired.'"' United States v. Braxton, 112 F.3d 777, 780 (4th Cir. 1997). Accordingly, a threat or promise in connection with a confession does not render a confession per se involuntary. Arizona v. Fulminante, 499 U.S. 279, 285 (1991); Rose v. Lee, 252 F.3d 676, 685 (4th Cir. 2001). Instead, courts look at the totality of the circumstances when determining whether or not a confession was unconstitutionally coerced. Lee, 252 F.3d at 685.

In State v. Osborne, our Supreme Court held that the defendant's statements were involuntary and inadmissible because the police threatened the defendant on numerous occasions. State v. Osborne, 301 S.C. 363, 366, 392 S.E.2d 178, 179 (1990). The officers told the defendant that "she would be charged with 'withholding evidence' if she did not make a statement." Id. at 365, 392 S.E.2d at 179. Additionally, the officers told the defendant that her previous statement "did not 'fit the facts' and therefore she must make another statement or face charges for 'withholding evidence.'"' Id. The Court noted that the defendant was advised of her right to remain silent but then told she would be charged with a crime if she withheld evidence. Id. at 367, 392 S.E.2d at 180. Because the threats were of such a coercive nature, the defendant's statements were inadmissible. Id. 366, 392 S.E.2d at 179.

In Rochester, our Supreme Court held that the defendant's statement was voluntary and admissible. Rochester, 301 S.C. at 200, 391 S.E.2d at 246. The polygraph examiner told the defendant that he knew the defendant was lying, and "'it would be certainly, probably, in his best interest to tell the truth.'" Id. at 199, 391 S.E.2d at 246. Our Supreme Court reasoned that the polygraph examiner's statement was not a promise

of leniency because the statement was "not on its face an inducement or hope of lighter punishment." Id. at 200-01, 391 S.E.2d at 247.

A. Wolves Comment

In this case, the evidence and testimony presented during trial established Appellant's statements were knowingly and voluntarily made under the totality of the circumstances.

Regarding the circumstances under which the statements were made, the State presented testimony establishing Appellant, who was thirty-eight years old at the time of the interview, was informed of his rights, appeared to understand those rights, waived those rights, and signed a waiver of rights form before he was interviewed by Detective Morgan. Although the interview was rather lengthy, the interview itself was conducted in a non-confrontational manner. Appellant had a break for an hour or two in between the two interviews and was given food. Further, Appellant was offered breaks throughout the course of the interview. Moreover, Appellant's demeanor throughout the video appeared to be calm and relaxed.

Detective Morgan told Appellant numerous times that he was in no way threatening Appellant or promising Appellant anything. In fact, during the interview, Appellant noted that he had not been threatened or promised anything. As for the wolves comment made by Detective Morgan, the comment was more akin to the comment in Rochester. Detective Morgan was merely pointing out that it was in Appellant's best interest to tell the truth.

Further, even if the wolves comment could be construed as some type of threat, Appellant's will was not overborne by the comment. In fact, Appellant did not confess to

the crime immediately after Detective Morgan made the wolves comment. Instead, Appellant blamed Victim for performing oral sex on him while he was sleeping.

Notably, immediately before Detective Morgan made the wolves comment he told Appellant: "James, there has been sexual contact between you and [Victim]. You have been involved in having sex with her. Thus, Appellant's statement regarding Victim performing oral sex on him while he was asleep was most likely the result of Detective Morgan telling Appellant that he knew Appellant was lying, not the wolves comment.

Further supporting the voluntariness of the statement, Appellant responded appropriately to the questions asked of him during the interview, appeared to fully understand the questions being asked of him, and denied committing the alleged acts while blaming Victim for any inappropriate behavior. Cf. State v. Pendergrass, 270 S.C. 1, 8-9, 239 S.E.2d 750, 753 (1977) ("In this case, appellant, a man with a twelfth grade education who had previously served time in jail, signed a written express waiver of his right to counsel. The voluntariness of the waiver can be discerned from the fact that the statement which followed it was self-serving and was an attempt on appellant's part to cast the blame on his co-defendant.").

B. Other Defendant Comment

In addition, Detective Morgan's comment regarding another defendant receiving the maximum sentence was neither a threat nor a promise of a lesser sentence if Appellant confessed. In fact, around thirty-two minutes into the second interview, Detective Morgan reminded Appellant that it was important for Appellant to be completely honest. "I'm not telling you that if you do this then you're going to get this kind of deal . . . I do not have any kind of power at all to make deals." Detective Morgan

explained that he was going to tell Appellant about things he had seen in his experience. Detective Morgan stated: "None of this is designed to tell you that you should do this or you should do that. Those are choices you are going to have to make." Thereafter, Detective Morgan told Appellant that he believed that more sexual activity occurred between Victim and Appellant. (State's Exh. 3 from Hearing (DVD).)

Approximately thirty-nine minutes into the second interview, Detective Morgan told Appellant he "really [does not] believe that [Appellant] would have done these things without [Victim] initiating it. But the fact is there has been a lot more happened between you." Thereafter, Detective Morgan urged Appellant to tell the truth. Approximately forty-one minutes into the second interview, Detective Morgan told Appellant about a defendant who eventually told the truth. That defendant molested children that were six and seven years old and ultimately received the maximum sentence for each child, and the sentences ran consecutively. (State's Exh. 3 from Hearing (DVD).)

Approximately one hour and twenty-four minutes into the interview, Detective Morgan asked Appellant if he wanted to provide a corrected statement. Appellant stated that he did want to provide a corrected statement, and that he was "not trying to do no 30 or 60 years. . . ." Detective Morgan told Appellant that he was not threatening Appellant with 30 or 60 years. The case he described earlier involved younger girls. Moreover, Detective Morgan told Appellant multiple times that he did not have the power to offer Appellant a deal. Thus, Detective Morgan made it clear to Appellant that he was not threatening Appellant with any type of sentence, and he did not have the power to offer Appellant any type of deal. (State's Exh. 3 from Hearing (DVD).)

Interestingly, the only non-self-serving statement Appellant made was when Detective Morgan tried to end the interview, which was hours after Detective Morgan made the wolves comment. Notably, even after Detective Morgan made those comments, Appellant refused to confess to touching Victim 2 inappropriately. If Appellant's will was so overborne by Detective Morgan's comments, then Appellant would have confessed to touching Victim 2 as well.

Looking at the totality of the circumstances surrounding Appellant's statements, nothing presented during trial suggested Appellant's will was overborne at the time he made the statements. See Von Dohlen, 322 S.C. at 244, 471 S.E.2d at 695 ("The pertinent inquiry is, as always, whether the defendant's will was 'overborne.'"). Instead, the testimony presented by the State along with the actual recording of the interview itself established Appellant's statements were knowingly and voluntarily made after Appellant was informed of and waived his rights.

Therefore, the trial court properly admitted Appellant's statements into evidence after determining the statements were knowingly and voluntarily made, and its ruling was fully supported by the evidence and testimony presented during trial. See Arrowood, 375 S.C. at 369, 652 S.E.2d at 443 ("The trial judge's determination is not in error if there is any evidence in the record to support it."). Accordingly, Appellant's conviction and sentence should be affirmed.

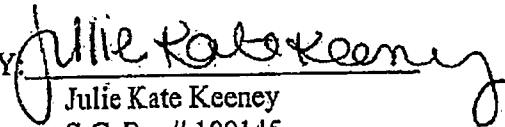
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General

BY: 
Julie Kate Keeney
S.C. Bar # 100145

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

April 10, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2012-213028

THE STATE,

Respondent,

vs.

JAMES IRBY,

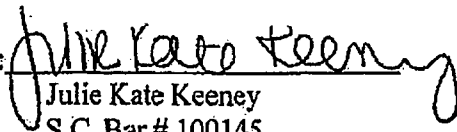
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General

BY: 
Julie Kate Keeney
S.C. Bar # 100145

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

April 10, 2014

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

James Irby, Appellant.

Appellate Case No. 2012-213028

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2015-UP-021
Submitted November 1, 2014 – Filed January 14, 2015

AFFIRMED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Julie Kate Keeney, both of Columbia,
for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Myers*, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004) ("On
appeal, the trial [court]'s ruling as to the voluntariness of [a] confession will not be

disturbed unless so erroneous as to constitute an abuse of discretion."); *State v. Goodwin*, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009) ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); *id.* ("When seeking to introduce a confession, the State must prove that the statement was voluntary . . ."); *id.* ("The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the giving of a confession."); *State v. Von Dohlen*, 322 S.C. 234, 244, 471 S.E.2d 689, 695 (1996) ("It is generally recognized that the police may use some psychological tactics in eliciting a statement from a suspect. . . . These ploys may play a part in the suspect's decision to confess, but so long as that decision is a product of the suspect's own balancing of competing considerations, the confession is voluntary." (alteration by court) (internal quotation marks omitted)).

AFFIRMED.¹

FEW, C.J., and KONDUROS and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11828
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 03, 2015

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. James Irby
Lower Court Case No. 2008GS4201536
Appellate Case No. 2012-213028

RECEIVED

MAR 14 2015
Referred to MS Williams/lem
Answered _____

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

The following exhibits filed in this case are being returned to you:

State's Exhibits #2 and #3

Please sign and return the enclosed copy of this letter acknowledging receipt of these items.

Receipt Acknowledgment

Name: _____

Date: _____

Very truly yours,


CLERK

Enclosure

cc: Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire
Julie Kate Keeney, Esquire

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg SC

James Benjamin Irby III #392507
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2015-CP-42-996

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR-9 PM 4:33
MEHOP BLACKLEY

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution 4460 Broad River Rd
2. Name and location of Court which imposed sentence General Session Columbia SC 129210
Seventh Circuit Spartanburg SC
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-42-1536
 - (b) Criminal Sexual Conduct Second degree
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 9-18-2012
 - (b) 18 years

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed Conviction _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 14, 2015 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished opinion NO 2015-up 021 _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR -9 PM 4:33
M. HOPE BLACKLEY

- (a) Ineffective Assistance of trial Counsel
- (b) Ineffective Assistance of Appeal Counsel
- (c) Prosecutor Misconduct

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Please see attachment sheets
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. NO
 - ii. NO
 - iii. NO
 - iv. NO
- (b) the name and location of the Court in which each was filed:
 - i. NO
 - ii. NO
 - iii. NO
 - iv. NO
- (c) the disposition thereof:
 - i. NO
 - ii. NO
 - iii. NO

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2015 MAR -9 PM 4:33
 M. HOPE BLACKLEY

- iv. NO
- (d) the date of each such disposition:
- i. NO
- ii. NO
- iii. NO
- iv. NO
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. NO
- ii. NO
- iii. NO
- iv. NO

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
NO

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. NO
- ii. NO
- iii. NO

- (b) the proceedings in which each ground was raised:

- i. NO
- ii. NO
- iii. NO

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) This is int. al PCR

- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR -9 PM 4:33
M. HOPE BLACKLEY

- (a) your arraignment and plea? NO
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes Jackson v Denno
18. If you answered "yes" to one or more parts of (17), list: Family Court

(a) the name and address of each attorney who represented you:

- i. Christopher D. Brough 175 Magnolia St Suite 202 Spartanburg SC, 29301
- ii. Robert M. Dudek 1330 Lady Street Suite 401 Columbia SC 29201
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Family Court hearing, Jackson v Denno hearing, Trial and sentencing
- ii. Direct Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

for conviction and sentence to be vacated and to be released from custody or conviction and sentence be remanded for New trial and for Trial Attorney to refund money Paid

20. Are you now under sentence from any other court that you have not challenged?

NO

* Petitioner believes he has additional claims for Post Conviction relief, but does not yet have collateral Counsel assess to the discovery process, or funds for expert services to investigate these claims as such the petitioner would respectfully reserve the right to amend application for future issues.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 MAR -9 PM 4:33
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

County of Spartanburg SC

VERIFICATION

I, James B. Irby III #352507, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James B. Irby III

SWORN to and subscribed before me this 25th
day of February, 2015.

Susan H. Fryc (L.S.)
Notary Public

My Commission Expires: _____

My Commission Expires
March 5, 2018

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR -9 PM 4:33
M. HOPE BLACKLEY

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

James B Irby ^{JB} #352507
I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

James B. Irby
Applicant

SWORN or affirmed to and subscribed before me this
25th day of February, 2015.

Susan H. Dye
Notary Public

My Commission Expires: _____

My Commission Expires
March 5, 2018

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR -9 PM 4:33
M. HOPE BLACKLEY

February 19, 2015

James E. Benjamin, Jr., III
B.R.C.I., Murray & E.
4460 Broad River Rd.
Columbia, SC 29210

M. Hope Blackley
Clerk of Court
180 Magistrate St.
Spartanburg, SC 29306

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR -9 PM 4:33
M. HOPE BLACKLEY

RE: Filing PCR Application and requesting
Counsel as witness and/or other
issues.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR -9 PM 4:33
M. HOPE BLACKLEY

Dear Clerk:

I am requesting that the enclosed application for
Post Conviction Relief be filed with you or office. I
would like to have a stamp dated and filed in your office
to note with the name of the attorney that is assigned
to handle this case and file application. I have enclosed
a self-addressed envelope to be used for mail purposes
of any copies and forms your office need to send to
me. Thank you for your time and consideration in
this matter.

Sincerely
James E. Benjamin, Jr.
James Benjamin, Jr.

On the 25th day of February
2015
Susan N. Dye

My Commission Expires
March 5, 2018

Attachment II(a) Ineffective Assistance of Trial Counsel

- (1) Counsel ineffective for abandoning trial strategy.
- (2) Counsel failed to motion for in camera hearing.
- (3) Counsel failed to object to hearsay and perjury testimony.
- (4) Counsel failed to pre-trial interview witnesses and victim.
- (5) Counsel failed to obtain expert witnesses.
- (6) Counsel failed to investigate the back ground of the witnesses and victim.
- (7) Counsel failed to object to prosecutor's unconstitutional burden shifting, and prejudicial comments and motion for mistrial.
- (8) Counsel failed to contact, interview and subpoena potential witnesses.
- (9) Counsel failed to present character witnesses and evidence of petitioner's good character.
- (10) Counsel failed to present, submit into evidence and argue favorable evidence during trial and closing arguments.
- (11) Counsel failed to prepare for case and trial by not investigating evidence, not investigating the facts, and not investigating the circumstances of the case.
- (12) Counsel failed to impeach witnesses and victim.
- (13) Counsel failed to adequately investigate the facts surrounding police interrogation.
- (14) Counsel failed to apprise himself of the Rape Shield Law

I request Counsel to review final orders of PCR Court and carefully review insufficiently through a Rule 59(e) motion requesting the PCR Court to specifically address each issue raised in the application.

(5cc)

- (15) Counsel failed to object to and correct victim's psychological and Educational character evidence of victim presented at trial.
- (16) Counsel failed to get victim mental evaluation.
- (17) Counsel failed to prepare petitioner for trial.
- (18) Counsel failed to disclose and go over Discovery material with Petitioner.
- (19) Counsel failed to object to ^{irrelevant} ~~prejudicial~~ testimony and evidence.
- (20) Counsel failed to object to prejudicial testimony and evidence.
- (21) Counsel failed to go over or even consider possible defenses with petitioner.
- (22) Counsel failed to go over the law with petitioner.
- (23) Counsel failed to disclosed and go over any changes and developments in the case with petitioner.
- (24) Counsel failed to prepare and present mitigation evidence at trial.
- (25) Counsel failed to file for sentence reconsideration.
- (26) Counsel failed to object to the bolstering of witnesses and victim's testimony.
- (27) Counsel failed at Jackson v Denno hearing to submit relevant evidence to the Judge.
- (28) Counsel failed to object to Judges ~~motion~~ denied motion to suppress statements.

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2015 MAR -9 PM 4:33

M. HOPE BLACKLEY

Attachment 11(b) Ineffective Assistance of Appellant Counsel

- (1) Counsel failed to present all available relevant and admissible mitigating evidence in brief.
- (2) Counsel failed to brief all coercion issues on DVD and their time frames of events.
- (3) Counsel failed to have records saved after he was informed testimony was missing.
- (4) Counsel failed to brief direct verdict of acquittal issue which was preserved for Appellant review.

Attachment 11(c) - Prosecutor Misconduct

- (1) Prosecutor vouching for the credibility government witnesses, witnesses and victims.
- (2) Prosecutor presenting and failing to correct perjured testimony of victims and witnesses.
- (3) Prosecutor presenting and failing to correct perjured testimony of victims and witnesses.
- (4) Prosecutor making misstatements of law and facts.
- (5) Prosecutor violated Petitioner's due process rights to fair trial by making unfair improper prejudicial biased and burden shifting statements at trial.
- (6) Prosecutor violated Rule 5/ Brady Motion For Discovery failed to produce all evidence favorable Brady v Maryland, 373 U.S. 83 (1963) Kyles v Whitney, 514 U.S. 419 (1995), and information subject to disclosure to Rule 6 of the South Carolina Criminal Rules of Procedure.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR -9 PM 4:33
M. HOPE BEACKLEY

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg, SC

James Benjamin Irby III #35250-7
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2015-CP-42-1240

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution 4460 Broad River Rd
2. Name and location of Court which imposed sentence General Session Columbia SC 29210
Seventh Circuit Spartanburg, SC
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-42-1534
 - (b) Criminal Sexual Conduct Second degree
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 9-18-2012
 - (b) 18 years

Revised 3/2003

CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 25 PM 9:02
J. HOPE BLACKLEY

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed Conviction _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 14, 2015 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished opinion NO 2015-up 021 _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 25 AM 9:03
M. HOPE BLACKLEY

- (a) Ineffective Assistance of Trial Counsel
- (b) Ineffective Assistance of Appeal Counsel
- (c) Prosecutor Misconduct

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Please see attachment sheets
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. NO
 - ii. NO
 - iii. NO
 - iv. NO
- (b) the name and location of the Court in which each was filed:
 - i. NO
 - ii. NO
 - iii. NO
 - iv. NO
- (c) the disposition thereof:
 - i. NO
 - ii. NO
 - iii. NO

2015 MAR 25 AM 9:03
 M. HOPE BLACKLEY
 CLERK OF COURT
 SPARTANBURG COUNTY

- iv. NO
- (d) the date of each such disposition:
- i. NO
- ii. NO
- iii. NO
- iv. NO
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. NO
- ii. NO
- iii. NO
- iv. NO

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
- i. NO
- ii. NO
- iii. NO
- (b) the proceedings in which each ground was raised:
- i. NO
- ii. NO
- iii. NO

CLERK OF DISTRICT COURT
SPARTANBURG COUNTY
2015 MAR 25 AM 9:03
M. HOPE BLACKLEY

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) This is initial PCR
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NO
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes Jackson v Denno
18. If you answered "yes" to one or more parts of (17), list: Family Court

(a) the name and address of each attorney who represented you:

- i. Christopher D. Brough 175 Magnolia St Suite 202 Spartanburg SC, 29130
- ii. Robert M. Dudek 1330 Lady Street Suite 401 Columbia SC 29201
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Family Court hearing, Jackson v Denno hearing, Trial and sentencing
- ii. Direct Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:
for conviction and sentence to be vacated and to be released from custody or conviction and sentence be remanded for New trial and for Trial Attorney to refund money Paid
20. Are you now under sentence from any other court that you have not challenged?
NO

* Petitioner believes he has additional claims for Post Conviction relief, but does not yet have collateral Counsel assess to the discovery process, or funds for expert services to investigate these claims as such the petitioner would respectfully reserve the right to amend application for future issues.

CLERK OF COURT
 SPARTANBURG COUNTY
 2015 MAR 25 AM 9:03
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

County of Spartanburg SC

VERIFICATION

I, James B. Irby III #392507, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James Benjamin Irby III

SWORN to and subscribed before me this 25th
day of February, 2015.

Susan H. Frye (L.S.)
Notary Public

My Commission Expires: _____

My Commission Expires
March 5, 2018

CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 25 AM 9:03
M. HOPE BLACKLEY

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

James B Irby ID # 352507
I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

James B Irby
Applicant

SWORN or affirmed to and subscribed before me this
23rd day of February, 2015.

Susan H. Dye
Notary Public

My Commission Expires:

My Commission Expires
March 5, 2018

CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 25 AM 9:03
M. HOPE BLACKLEY

Attachment II(a) Ineffective Assistance of Trial Counsel

- (1) Counsel ineffective for abandoning trial strategy
- (2) Counsel failed to motion for in camera hearing
- (3) Counsel failed to object to hearsay and perjury testimony
- (4) Counsel failed to pre-trial interview witnesses and victim
- (5) Counsel failed to obtain expert witnesses
- (6) Counsel failed to investigate the back ground of the witnesses and victim
- (7) Counsel failed to object to prosecutor's unconstitutional burden shifting, and prejudicial comments and motion for mistrial
- (8) Counsel failed to contact, interview and subpoena potential witnesses
- (9) Counsel failed to present character witnesses and evidence of petitioner's good character.
- (10) Counsel failed to present, submit into evidence and argue favorable evidence during trial and closing arguments
- (11) Counsel failed to prepare for case and trial by not investigating evidence, not investigating the facts, and not investigating the circumstances of the case
- (12) Counsel failed to impeach witnesses and victim
- (13) Counsel failed to adequately investigate the facts surrounding police interrogation
- (14) Counsel failed to apprise himself of the Rape Shield Law

(See) I request Counsel to review final order of PCR Court and carefully review insufficiently through a Rule 59(c) motion requesting the PCR Court to specifically address each issue raised in the application.

(15) Counsel failed to object to and correct victim's psychological and Educational character evidence of victim presented at trial.

(16) Counsel failed to get victim mental evaluation.

(17) Counsel failed to prepare petitioner for trial.

(18) Counsel failed to disclose and go over Discovery material with Petitioner.

(19) Counsel failed to object to ^{irrelevant} ~~prejudicial~~ testimony and evidence.

(20) Counsel failed to object to prejudicial testimony and evidence.

(21) Counsel failed to go over or even consider possible defenses with petitioner.

(22) Counsel failed to go over the law with petitioner.

(23) Counsel failed to disclose and go over any changes and developments in the case with petitioner.

(24) Counsel failed to prepare and present mitigation evidence at trial.

(25) Counsel failed to file for sentence reconsideration.

(26) Counsel failed to object to the bolstering of witnesses and victim's testimony.

(27) Counsel failed at Jackson v Denno hearing to submit relevant evidence to the Judge.

(28) Counsel failed to object to Judge directed mother to express statements.

CLERK OF COURT
SPARTANBURG COUNTY

2015 MAR 25 AM 9:03

M. HOPE BLACKLEY

Attachment 11(b) Ineffective Assistance of Appellant Counsel

- (1) Counsel failed to present all available relevant and admissible mitigating evidence in brief
- (2) Counsel failed to brief all coercion issues on DVD and their time frames of events
- (3) Counsel failed to have records saved after he was informed testimony was missing
- (4) Counsel failed to brief direct verdict of acquittal issue which was preserved for Appellant review

Attachment 11(c) - Prosecutor Misconduct

- (1) Prosecutor vouching for the credibility government witnesses, witnesses and victims
- (2) Prosecutor presenting and failing to correct perjured testimony of victims and witnesses.
- (3) Prosecutor presenting and failing to correct perjured testimony of victims and witnesses
- (4) Prosecutor making misstatements of law and facts
- (5) Prosecutor violated Petitioner's due process rights to fair trial by making unfair improper prejudicial biased and been shifting statements at trial.
- (6) Prosecutor violated Rule 5/ Brady Motion For Discovery failed to produce all evidence favorable Brady v Maryland, 373 U.S. 83 (1963) Kyles v Whitney, 514 U.S. 419 (1995), and information subject to disclosure to Rule 6 of the South Carolina Criminal Rules of Procedure.

CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 25 AM 9:03
M. HOPE BLACKNEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

Gail Moffitt
Assistant Clerk of Court

March 25, 2015

To: James Benjamin Irby III

Mr. Irby, we are in receipt of your PCR application. Enclosed, is a copy for your records.

A handwritten signature in dark ink, appearing to read "A. Miller", is written over a horizontal line.

A. Miller
Senior Court Clerk
Spartanburg County Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
IN THE SEVENTH JUDICIAL CIRCUIT

James Benjamin Irby, #352507,

Applicant,

vs.

State of South Carolina,

Respondent.

Case Nos.: 2015-CP-42-0996
2015-CP-42-1240

ORDER OF MERGER

2016 JAN -5 PM 1:58

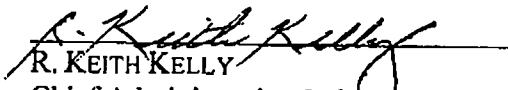
Applicant in the above-captioned matters has filed two applications for post-conviction relief. The first of those was filed March 9, 2015, (2015-CP-42-0996), and second was filed March 25, 2015 (2015-CP-42-1240). Since an applicant is not generally allowed to have two post-conviction relief proceedings *in regard to the same conviction*, see *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991); *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. § 17-27-90, this Court hereby orders that the two proceedings be merged. The application for post-conviction relief filed March 25, 2015 (2015-CP-42-1240) will be considered an amendment to the initial application for post-conviction relief filed March 9, 2015 (2015-CP-42-0996).

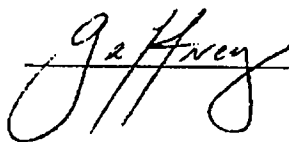
The Clerk of Court is therefore ordered to merge the two cases, with docket number 2015-CP-42-0996 being the surviving case. Hereafter, the word "Application" will refer to docket number 2015-CP-42-0996; docket number 2015-CP-42-1240 will be referred to and considered as the Amendment to this application for post-conviction relief.

RKK

IT IS THEREFORE ORDERED that the Spartanburg County Clerk of Court merge docket number 2015-CP-42-1240 into docket number 2015-CP-42-0996, with file 2015-CP-42-0996 being the surviving file and all future pleadings bearing docket number 2015-CP-42-0996. Docket number 2015-CP-42-1240 will be dismissed upon the merger.

AND IT IS SO ORDERED this 4 day of January, 2015-2016


R. KEITH KELLY
Chief Administrative Judge
Seventh Judicial Circuit

, South Carolina.

2016 JAN -5 PM 1:56

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

James Benjamin Irby, #352507,

Case Nos.: 2015-CP-42-0996
2015-CP-42-1240

Applicant,

MOTION FOR MERGER

v.

State of South Carolina,

Respondent.

Applicant in the above-captioned matter has filed two applications for post-conviction relief; the first of those was filed March 9, 2015 (2015-CP-42-0996). Applicant then filed another application on March 25, 2015 (2015-CP-42-1240). An applicant is not generally allowed to have two post-conviction relief proceedings in regard to the same conviction. See Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. § 17-27-90. Therefore, Respondent hereby moves this Court to merge the two proceedings and to instead consider the application for post-conviction relief filed March 25, 2015 (2015-CP-42-1240) to be an amendment to the initial application for post-conviction relief filed March 9, 2012 (2015-CP-42-0996).

[Signature block on following page]

2016 JAN -5 PM 1:57

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
JAMES BENJAMIN IRBY, #352507,

Applicant,

vs

STATE OF SOUTH CAROLINA.

Respondent.

IN THE COURT OF COMMON PLEAS

2015-CP-42-0996

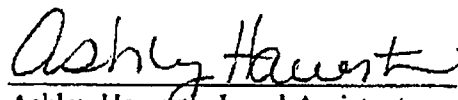
2015-CP-42-1240

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Motion for Merger** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. John Brandt Rucker, Esquire
Brandt Rucker Attorney At Law
522 North Church Street
Greenville, SC 29601

DATED this 18TH day of December, 2015.


Ashley Hawthorn, Legal Assistant
For Respondent

2016 JAN -5 PM 1:57



ALAN WILSON
ATTORNEY GENERAL

December 18, 2015

2016 JAN -5 PM 1:56

The Honorable R. Keith Kelly
Chief Administrative Judge-CP, 7th Circuit
125 E. Floyd Baker Blvd.
Gaffney, SC 29340

Re: James Benjamin Irby v. State of South Carolina
2015-CP-42-0996
2015-CP-42-1240

Dear Judge Kelly:

Enclosed please find the original proposed **Order of Merger** in the above-captioned case. If this Order meets your approval, please sign and forward to the Spartanburg Clerk's office and have the clerk serve the order on all parties. If you have any questions, please feel free to contact me.

Sincerely,

Alicia A. Olive
Assistant Attorney General

AAO/ah
Enclosure(s)

cc: J. Brandt Rucker, Esquire
James Benjamin Irby, #352507

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

James Benjamin Irby, #352507,

2015-CP-42-0996

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on March 25, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at the 2008 term of the Spartanburg County Grand Jury for criminal sexual conduct with a minor, second degree (2008-GS-42-1536). Christopher Brough, Esquire, represented Applicant. On September 18, 2012, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. The jury found Applicant guilty as indicted. Judge Cole sentenced Applicant to imprisonment for a term of 18 years.

Applicant filed a timely notice of appeal. Robert M. Dudek, Esquire, represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on January 14, 2015. State v. Irby, Op. No. 2015-UP-021 (S.C. Ct. App. filed January 14, 2015). The remittitur was returned on March 03, 2015.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the transcript from

Applicant's trial, and Applicant's records for the Department of Corrections and appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of trial Counsel" in that:
 - a. Counsel failed to investigate, in that:
 - i. Counsel failed to "interview witnesses and victim" prior to trial
 - ii. Counsel "failed to go over or even consider possible defenses with petitioner"
 - iii. Counsel failed "to prepare for case and trial by not investigating evidence"
 - iv. Counsel failed to investigate the background of the witnesses and victim
 - v. Counsel "failed to obtain expert witnesses"
 - vi. Counsel "failed to contact, interview and subpoena potential witnesses"
 - vii. Counsel failed to present character witnesses and evidence of Applicant's good character
 - b. Counsel abandoned trial strategy
 - c. Counsel "failed to motion [sic] for in camera hearing"
 - d. Counsel "failed to object to hearsay and perjury testimony"
 - e. Counsel failed to impeach witnesses and victim
 - f. Counsel "failed to object to prosecutor's unconstitutional, burden shifting, and prejudicial comments and motion for mistrial"
 - g. Counsel "failed to prepare and present mitigation [sic] evidence at trial"
 - h. Counsel "failed to disclose and go over discovery material with" Applicant
 - i. Counsel failed to object to irrelevant testimony and evidence

- j. Counsel failed to object to the bolstering of witnesses and victim's testimony
 - k. Counsel failed at *Jackson v. Denno* hearing to submit relevant evidence to the judge
 - l. Counsel failed to file a motion to reconsider Applicant's sentence.
2. "Involuntary Assistance of Appeal Counsel," in that:
- a. Counsel "failed to present all available relevant and admissible mitigating evidence in brief"
 - b. Counsel "failed to brief all coercion issues on DVD and their time frames of events"
 - c. Counsel "failed to have records saved after he was informed testimony was missing"
 - d. Counsel "failed to brief direct verdict of acquittal issue which was preserved for Appellant review"
3. "Prosecutor Misconduct," in that:
- a. Prosecutor vouched for the credibility of government witnesses and victims;
 - b. Prosecutor presented and failed to correct perjured testimony of victims and witnesses;
 - c. "Prosecutor making misstatements of law and facts";
 - d. "Prosecutor made unfair improper prejudicial biased and burden-shifting statements at trial;
4. Rule 5/Brady Violation
- a. "Prosecutor violated Rule 5/Brady Motion for Discovery"

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is also without merit. Respondent contends that Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S.

387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. Therefore, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant's allegations regarding prosecutorial misconduct should be dismissed. PCR "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or

of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b) (2003). See also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for [PCR] is not a substitute for an appeal."). Applicant could have raised this issue at trial or on appeal. In failing to do so, he has waived this allegation as ground for relief. Therefore, Respondent requests this allegation be dismissed pursuant to Rule 12(b)(6), SCRPC.

VI.

The Applicant also alleges a Brady violation and that the State failed to comply with Applicant's discovery requests. First, prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by section 17-27-20(b). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. By failing to do so, he has waived this allegation as grounds for relief.

Second, Respondent would submit that these claims lack merit. In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct.

2201 (1989). Respondent submits that the Court should summarily dismiss this allegation.

VII.

Respondent therefore requests that this Court convene an evidentiary hearing only on the allegations of ineffective assistance of trial counsel and ineffective assistance of appellate counsel and a Brady violation. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VIII.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code Ann. § 17-27-10 *et seq.*; Rule 71.1, SCRCP. All claims should be made well in advance of the PCR hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Filings by Applicant will not be considered at the PCR hearing.

IX.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

X.

WHEREFORE, having made its Return, Respondent requests that a hearing be held solely on the claims of ineffective assistance of counsel and ineffective assistance of appellate counsel.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Dec. 18th, 2015

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

JAMES BENJAMIN IRBY, #352507

Applicant,

vs

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS

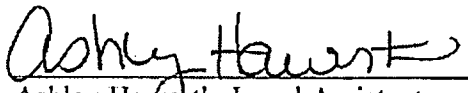
2015-CP-42-0996

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. John Brandt Rucker, Esquire
Brandt Rucker Attorney At Law
522 North Church Street
Greenville, SC 29601

DATED this 18TH day of December, 2015.


Ashley Hawthorth, Legal Assistant
For Respondent

WITNESSES

Spartanburg Co. Sheriff's Office

REPORT MADE

REPORT MADE

REPORT MADE

REPORT MADE

CRIMINAL WARRANTS

CRIMINAL WARRANTS

ARREST WARRANT NUMBER
K31784

Amended

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 90-155-42-1034

Amended
The State of South Carolina

County of Spartanburg

Barry J. Barnette, Acting Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE
vs.

James Benjamin Irby

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR, SECOND DEGREE

SC Code: 16-03-655 (B) (1)
CDR Code: 0397
Class FEL/C

M. HOPE BLACKLEY

JAN 25 AM 8:39

SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

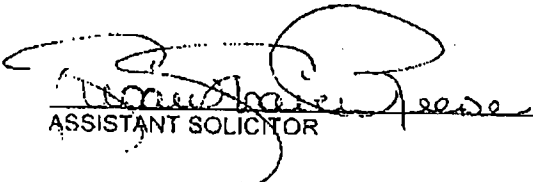
INDICTMENT

At a Court of General Sessions, convened on 27 11 2011 the
Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

That the Defendant, James Benjamin Irby, did in Spartanburg County, between the dates of October 29, 2005 and November 9, 2007, commit the crime of Criminal Sexual Conduct with a minor in the Second Degree in that the Defendant did engage in a sexual battery upon the minor, [REDACTED] who was fourteen (14) years of age or less, but at least eleven (11) years of age at the time of the battery. Said incident occurred in Spartanburg County, South Carolina, in violation of Section 16-03-655 (B) (1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


ASSISTANT SOLICITOR

Computer
ARREST WARRANT

K- 317841

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

SPARTANBURG COUNTY

THE STATE

against

IRBY, JAMES BENJAMIN

SPARTANBURG, SC 29301

Sex: Race: Height: Weight:

DL State: DL#: 5'09" 130

DOB: Agency ORI#:

Prosecut:

Prosecuting Officer:

Offense: **ALDRIDGE, TK/50Y**

Offense Code: **SEX / CRIMINAL SEXUAL CONDUCT**

Code/Ordinance Sec: **WITH MINOR - VIC 0390**

This Warrant is **CERTIFIED FOR SERVICE** in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant

on **IRBY, JAMES BENJAMIN**

12/05/07
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ROBERT HALL
180 MAGNOLIA STREET
SPARTANBURG, SC 29306

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

SPARTANBURG COUNTY

Personally appeared before me the affiant

being duly sworn deposes and says that defendant

did within this county and state on

State of South Carolina (or ordinance of ☐ County/ ☐ Municipality

in the following particulars:

DESCRIPTION OF OFFENSE:

16-03-0655(0)

the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID COMMIT A SEXUAL BATTERY, SAID VICTIM BEING BETWEEN

THE AGES OF ELEVEN AND FOURTEEN YEARS.

AFFIANT'S BELIEF IS BASED UPON POLICE INVESTIGATION.

SPARTANBURG

SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR - VIC

MARC KITCHENS

16-03-0655(0)

Signature of Affiant

Affiant's Address

Affiant's Telephone

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

X

SPARTANBURG

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on defendant

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of **IRBY, JAMES BENJAMIN**

DESCRIPTION OF OFFENSE:

SPARTANBURG

SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR - VIC

16-03-0655(0)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said

defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to

the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on

Signature of Issuing Judge

Judge Code:

800 ORIGINAL

ROBERT HALL

AFFIDAVIT

CASE # K317641

ALDRIDGE, TK/50Y

IRBY, JAMES BENJAMIN

16-03-0655(0)

SPARTANBURG

SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR - VIC

MARC KITCHENS

16-03-0655(0)

Signature of Affiant

Affiant's Address

Affiant's Telephone

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

X

SPARTANBURG

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on defendant

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of **IRBY, JAMES BENJAMIN**

DESCRIPTION OF OFFENSE:

SPARTANBURG

SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR - VIC

16-03-0655(0)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said

defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to

the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on

Signature of Issuing Judge

Judge Code:

800 ORIGINAL

ROBERT HALL

S.C. Attorney General
April 21, 2003
SC

CASE # K317641

ALDRIDGE, TK/50Y

IRBY, JAMES BENJAMIN

16-03-0655(0)

SPARTANBURG

SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR - VIC

MARC KITCHENS

16-03-0655(0)

Signature of Affiant

Affiant's Address

Affiant's Telephone

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

X

SPARTANBURG

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on defendant

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of **IRBY, JAMES BENJAMIN**

DESCRIPTION OF OFFENSE:

SPARTANBURG

SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR - VIC

16-03-0655(0)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said

defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to

the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on

Signature of Issuing Judge

Judge Code:

800 ORIGINAL

ROBERT HALL

Issuing Court: SPARTANBURG, SC 29306
Magistrate: 803-295-7186
☐ Municipal ☐ Circuit

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE VS.

James Benjamin Irby III

AKA:

Race: BLACK Sex: M Age: 43

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: SPARTANBURG, SC

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - 2nd degree 0-20 years

in violation of § 16-03-0655

of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS(CSC☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST: [Signature] REESE, SUSAN S

6172 [Signature] SC Bar# Defendant

[Signature] Attorney for Defendant 71856 SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,

for a determinate term of 18 days/months/years or

☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of

days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS4201536

A/W#: K317841

Date of Offense: 12/6/2007

S.C. Code § : 16-03-0655

CDR Code #: 0396

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP

days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

2053

September 18, 2012

15:35:02 Monday, April 27, 2015

CMTI330D

SCDC OFFENDER MANAGEMENT SYSTEM

04/27/15

OMCOMITA

RELEASE DATE SCREEN

C056427

SCDC# > 352507

LOC: BROAD RIVER

IRBY, JAMES BENJAMIN

SCDC CLASSIFICATION...: VIOLENT

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE

SEXUAL REGISTRY...: Y

SEXUAL PREDATOR...: PENDING

DNA STATUS...: COMPLETED

GPS REQUIREMENT...: N

PREA DECISION...:

CURRENT SENTENCE: 018-00-000

CONSECUTIVE SENTENCE ...: N

018-00-000

CURRENT SENT START DATE: 01/21/2012

PROJECTED COMPLETION DATES

MAXOUT DATE: 05/06/2027

CURRENT EWC ..: 3 F 5

YOA SIX YEAR DATE: / /

CURRENT EEC ..: NOT CURRENTLY EARNING EEC

INITIAL PAROLE DATE: 00/00/0000

NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000

LABOR CREW/WORK PROG DATE: 99/99/9999

TOTAL EARNED WORK CREDITS ...: 000280

LABOR CREW DISQ REASON:

TOTAL EDUCATION CREDITS: 000000

CURRENT OR PRIOR SEX CONDUCT CONVICT

TOTAL EXTRA EARNED CREDITS ..: 000

SUPERVISED REENTRY DATE...: 00/00/00

TOTAL SERVICE TIME EARNED ...: 001176

ISS.....:

PFKEYS:

5:HISTORY OF DATE CHANGES

South Carolina Department of Corrections

Classification Summary Reports

Date: Monday, April 27, 2015

Classification Summary Reports

Inmate Number **352507**

Submit

Classification Summary Report for IRBY, JAMES BENJAMIN :

Create PDF

CLASSIFICATION SUMMARY REPORT DATED 04/27/2015

SCDC# 00352507

IRBY, JAMES BENJAMIN

FBI# 654274CB5

OFFENDER ADULT-STRAIGHT
TYPE: SENTENCE

INSTITUTION: BROAD RIVER

SECURITY/CUST: 3 MINIMUM IN

CURR INCARC 18 YRS 0 MOS 0
SENT: DAYS

VICTIM
WITNESS:

MED MED PROB/NO WORK
CLASS: RESTRICT

INST
RESTRICT:

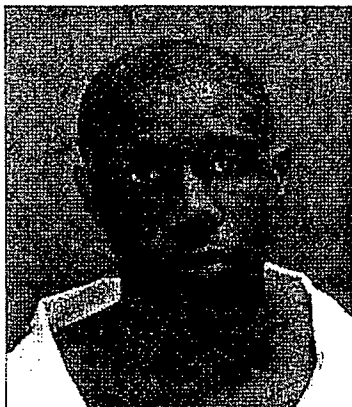
MENTAL
CLASS:

CURRENT NO CURRENT
PROGRAM: PROGRAM

SEX REGISTRY: Y

DNA: C

AGE: 45



RESIDENT
STABILITY:

NA

DORMROOMBUNK_CODE: MU 0285 A

PROJ MAXOUT
DATE: 05/05/2027

PROJ PAROLE DATE: -

EWC JOB: WARDKEEPER ASSISTANT

ASSIGNMENT: ASST WARD KEEPER

EWC
LEVEL: 3F5 EEC LEVEL:

EDUC
PGM: NO CURR EDUC PROGRAM

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	SENTENCE DYS	COUNTY	START	SENTENCE V/NV	CAT	INDICT
CRIM SEX COND.W/MINOR(2N	18	0	0	SPARTANBURG	01/21/2012	V	4	08GS4201536

COMPLETED OFFENSES

NO COMPLETED OFFENSES

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARIES HISTORY

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
06/27/2014	BROAD RIVER	INCARCERATED	RETURN FROM COURT
06/27/2014	SPARTANBURG CO	AUTH ABSENCE (AWL)	TO COURT
02/14/2013	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
02/08/2013	KIRKLAND	INCARCERATED	ADMINISTRATIVE
02/08/2013	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/24/2012	KIRKLAND	INCARCERATED	R&E PROCESSING
09/24/2012	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
WARDKEEPER ASSISTANT	12/02/2014	-		3F5
FOOD SERVICE AIDE	02/19/2013	12/01/2014	UNSAT JOB PERFORM	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 15 OR MORE	04/18/2013	04/03/2014	POOR ATTENDANCE

***** END OF REPORT *****

Create PDF

Source : SummaryReport.jsp

Copyright © 2007-2015 South Carolina Department of Corrections. All rights reserved.
[Version: 1.4.12 Built: 02/03/2015 11:57:23 AM Time: 03:28:57 PM]

DOC

STATE OF SOUTH CAROLINA

JUNTY OF SPARTANBURG

ATE VS.
James Benjamin Irby III

CA: BLACK Sex: M Age: 43

DB: SS#: 123456

Address: 123456

City, State, Zip: SPARTANBURG, SC 29161

#: SID#: 123456

DL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

disposition of the said indictment comes now the Defendant who was

Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - 2nd degree 0-20 years

violation of § 16-03-0655 of the S.C. Code of Laws, bearing CDR Code # 0396

NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury

Disposition is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Other

TEST: REESE, SUSAN SC Bar# 6772 Defendant

Attorney for Defendant

HEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed years

or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

\$; plus costs and assessments as applicable*; the balance is suspended with probation for

years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of

probation, which are incorporated by reference.

CONCURRENT or ☐ CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Amount: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Line:

4-1-206 (Assessments 107.5 %)

4-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

4-1-211(A)(2) (DUI Surcharge) \$100 \$

56-5-2995 (DUI Assessment) \$12 \$

56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

14-1-213 (Drug Court Surcharge) \$150 \$

50-21-114 (BUI Breath Test Fee) \$50 \$

16-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

to County (if paid in installments) \$ 3.00

TOTAL \$ 133.00

Presiding Judge

Judge Code: 2053

Sentence Date: September 18, 2012

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Mark of Court/ Deputy Clerk

Court Reporter: Allen

CA/217 (03/2011)

444

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

James Benjamin Irby, III, 352507,

☒ Plaintiff

v.

State Of South Carolina

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2015-CP-42-00996

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Tricia A. Blanchette, Bar No. 74904

Address:

PO Box 2147

Leesville, SC 2970

phone: 803-908-3266 fax:

e-mail: blanchettelaw@gmail.com other:

Defendant's Attorney:

Valerie G. Giovanoli, Bar No.

Address:

PO Box 11549

Columbia, SC 29211

phone: 803-734-3737 fax: 803-734-4113

e-mail: other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Amendment

Estimated Time Needed: 6 hours Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

October 16, 2017

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-42-00996

JAMES BENJAMIN IRBY, 352507,)
Applicant,)
v.)
STATE OF SOUTH CAROLINA,)
Respondent,)

AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF

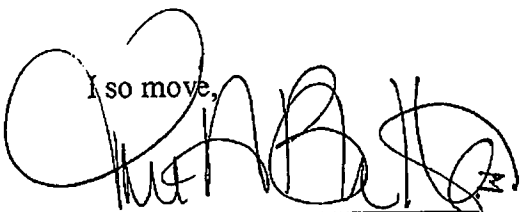
FILED
CLERK OF COURT
SPARTANBURG COUNTY
2017 OCT 30 PM 3:09
M. HOPE BLACKLEY

This matter comes before the Court by way of an Application for Post Conviction Relief filed on March 9, 2015. By and through his undersigned counsel, Applicant would move to amend his Application for Post Conviction Relief. In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial. Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of trial counsel:

1. Trial counsel rendered ineffective assistance regarding the admission and defense of Applicant's interrogation and statements, including but limited to:
 - a. Failure to properly utilize Dr. Richard Leo (or an expert in the area of false confessions) in trial preparation and as an expert witness at the suppression and trial stages. See Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).
 - b. Failure to properly prepare Applicant to testify at the suppression and trial stages regarding his interrogation and statements.
 - c. Failure to properly utilize the video evidence at the suppression and trial stages.
2. Trial counsel rendered ineffective assistance for failing to object to the qualification of Lynn McMillian as an expert and failing to object to her testimony thereafter. Trial Transcript p. 101.
3. Trial counsel rendered ineffective for failing to further cross-examine Dr. Nancy Henderson.

4. Trial counsel rendered ineffective assistance for failing to further cross-examine the victim. ✓
5. Trial counsel rendered ineffective assistance in his handling of the decision to utilize Lillian Collins as a witness at trial and his handling of her trial testimony, to include but not limited to the following:
 - a. Failing to properly prepare for and handle impeachment of Ms. Collins.
 - b. Failing to advise Applicant that Ms. Collins testimony may open the door to otherwise inadmissible testimony from the State's witness regarding the victim's disclosure(s).
 - c. Opening the door to otherwise inadmissible testimony from the State's witness regarding the victim's disclosure(s). Trial Transcript pp. 185-191.
6. Trial counsel rendered ineffective assistance for failing to utilize an expert in the area of sexual abuse to assist in trial preparation, assist in trial and potentially be utilized as an expert at trial. ✓
7. Trial counsel rendered ineffective assistance when he failed to utilize available evidence and witnesses, to include Bernadette Smith, for the defense.
8. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

I so move,


Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
Attorney for Applicant

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2017 OCT 30 PM 3:09
M. HOPE BLACKLEY

October 16, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

James Benjamin Irby, 352507,)
Applicant,)

2015-CP-42-00996

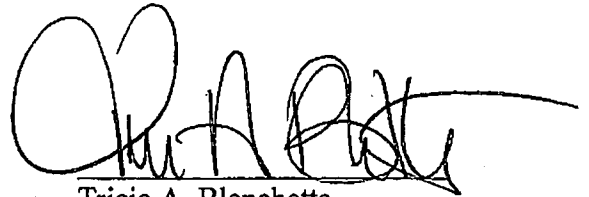
v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the United States Mail on this 16th day of October 2017, a copy of an Amendment to Application for Post Conviction Relief with postage prepaid and the return address clearly shown on said envelope to Valerie G. Giovanoli with the Office of the Attorney General at:

Office of the Attorney General
ATT: Valerie G. Giovanoli, Assistant AG
P.O. Box 11549
Columbia, SC 29211



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
Attorney for Applicant

October 16, 2017

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2017 OCT 30 PM 3:09
M. HOPE BLACKLEY